California Task Force to Study and Develop Reparation Proposals for African Americans

FINAL REPORT

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GRAPHIC CONTENT WARNING

This report contains discussions of racial discrimination, sexual assault, torture, lynching and other forms of extreme violence. The report contains unedited historical quotations and photographs of white supremacist hatred, torture, lynching, autopsy, and other forms of graphic violence.

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EXECUTIVE SUMMARY

"THE CALIFORNIA REPARATIONS REPORT"

PART I: RECOUNTING THE HISTORICAL ATROCITIES

I. Introduction and Background

The African American story in the United States is marked by repeated failed promises to right the wrongs of the past—both distant and recent—and failure to acknowledge and take responsibility for the structural racism that perpetuated these harms. This report, crafted by the Task Force to Study and Develop Reparation Proposals for African Americans pursuant to its mandate under Assembly Bill 3121 (2020), seeks to change this story with incontrovertible evidence of the harms requiring reparations and meaningful recommendations designed to redress them. The historical information and recommendations in this report are supported by extensive research and analysis, expert witness testimony, and testimony from those who have lived through the horrors and pursued the solutions that are addressed in this report. Taken together with the substantive analysis regarding international standards; local, state, federal, and international examples of reparations; methods for educating the public regarding the critical issues addressed herein; and a catalogue of the racist laws and policies that cumulatively created this nation, this report is intended to satisfy the requirements of AB 3121 in an accessible and comprehensive manner that will facilitate progress towards—finally—enacting meaningful reparations for African Americans in California and the United States.

In 1863, President Abraham Lincoln signed the Emancipation Proclamation, and in 1865 the states ratified the 13th Amendment to the U.S. Constitution, which commanded that "[n]either slavery nor involuntary servitude . . . shall exist within the United States."[1] In supporting the passage of the 13th Amendment, its co-author Senator Lyman Trumbull of Illinois said that "it is perhaps difficult to draw the precise line, to say where freedom ceases and slavery begins . . . ."[2] The United States then experienced a 12-year period after the Civil War called Reconstruction, during which the federal government tried—with some success—to give newly freed African Americans access to basic civil rights.[3] As just one example of the many ways in which this period reflected an expansion of rights, by 1868, more than 700,000 African American men were registered to vote in the former Confederate states.[4] These advancements came to an abrupt end after the presidential election of 1876, when federal political leaders reached a compromise which resulted in the withdrawal of federal troops from key locations in the South, effectively ending Reconstruction.[5]

COURTESY OF JOHN PARROT/STOCKTREK IMAGES VIA GETTY IMAGES

More Than 50 percent of U.S. Presidents from 1789 to 1885 enslaved African Americans

The first twenty-one Presidents seated together in The White House. The enslavers are shaded in red.

Later, in 1883, the United States Supreme Court interpreted the 13th Amendment as empowering Congress "to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."[6] However, other than during Reconstruction, instead of abiding by the Supreme Court's and the Constitution's mandates to abolish "badges and incidents of slavery," the United States federal, state, and local governments, including California, perpetuated and created new iterations of these "badges and incidents." The resulting harms have been innumerable and have snowballed over generations.

In 2020, through the enactment of Assembly Bill No. 3121 (AB 3121, 2019-2020 Reg. Sess.), California began the process of addressing its role in accommodating and facilitating slavery, perpetuating the vestiges of enslavement, propagating state-sanctioned discrimination, and tolerating persistent, systemic structures of discrimination on living African Americans across its systems of government at the local and state level. AB 3121 acknowledged that, as a result of this historic and continued discrimination, African Americans in California, especially those whose lineage can be traced to an enslaved person, continue to suffer economic, educational, and health hardships that have prevented them as a people from achieving equality.[7] AB 3121 established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States (Task Force), and directed the Task Force to study and develop reparation proposals for African Americans, taking into account:

a. the institution of slavery, including the federal and state governments that constitutionally and statutorily supported the institution of slavery;

b. the legal and factual discrimination against freed slaves and their descendants from the end of the Civil War to the present, including economic, political, educational, and social discrimination;

c. the lingering negative effects of the institution of slavery on living African Americans and on society in California and the United States;

d. how instructional resources and technologies deny the inhumanity of slavery and the crime against humanity committed against people of African descent in California and the United States;

e. the role of Northern complicity in the Southern-based institution of slavery; and

f. the direct benefits to societal institutions, public and private, including higher education, corporate, religious, and associational.[8]

AB 3121 also required the Task Force to recommend appropriate ways to educate the California public of the Task Force's findings; recommend appropriate remedies in consideration of the Task Force's findings; and submit to the Legislature a report of its work.[9] This is the Task Force's final report, incorporating and updating the contents of an interim report issued in June 2022.

Today, 160 years after the abolition of slavery, its badges and incidents remain embedded in the political, legal, health, financial, educational, cultural, environmental, social, and economic systems of the United States of America.

Part I of this report summarizes the harms caused by slavery and the lingering negative effects of the institution of slavery on descendants of persons enslaved in the United States and, more broadly, on living African Americans and on society in California and the United States.[10] So thoroughly have the effects of slavery infected every aspect of American society over the last 400 years, that it is nearly impossible to identify every "badge and incident of slavery," include every piece of evidence, and describe every harm done to African Americans, and particularly to freed slaves and their descendants. In order to address this practical reality, Chapters 1-13 describe a sample of government actions and the compounding harms that have resulted, organized into specific areas of systemic discrimination.[11]

In order to maintain slavery, government actors adopted white supremacist beliefs and passed laws to create a racial hierarchy and control enslaved and free African Americans.[12] After the end of slavery, although the federal Constitution recognized African Americans as citizens on paper, the government failed to give them the full rights of citizenship[13] and failed to protect African Americans from widespread terror and violence.[14] Along with a dereliction of its duty to protect its African American citizens, direct federal, state and local government actions continued to enforce the racist lies created to justify slavery. These laws and government-supported cultural beliefs have since formed the foundation of innumerable modern laws, policies, and practices across the nation.[15]

Today, 160 years after the abolition of slavery, its badges and incidents remain embedded in the political, legal, health, financial, educational, cultural, environmental, social, and economic systems of the United States of America.[16] Racist, casteist, untrue, and harmful stereotypes created to support slavery continue to physically and mentally harm African Americans today.[17] Without a remedy specifically targeted to dismantle our country's racist foundations and heal the injuries inflicted by colonial and American governments, the "badges and incidents of slavery" will continue to harm African Americans in almost all aspects of American life.

Part II of this report discusses international standards for remedying the wrongs and injuries discussed in Part I. This well-established framework has guided the Task Force in the formulation of its recommendations so that they comport with the five elements of reparations as set by international standards: restitution, compensation, rehabilitation, satisfaction, and non-repetition. Part II also provides examples of prior international and domestic efforts to provide reparations for human rights violations, such as apartheid, incarceration, and forced sterilization. In keeping with the legal framework for reparations, Part III discusses the required components of a formal apology and recommends how the State of California should offer a formal apology on behalf of the People of California for the perpetration of gross human rights violations and crimes against humanity against African enslaved people and their descendants.

In Parts IV and V, the Task Force recommends appropriate remedies in consideration of the Task Force's findings, including (a) how any form of compensation to African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States, should be calculated; (b) what form of compensation should be awarded, through what instrumentalities, and who should be eligible for such compensation; and (c) whether any other forms of rehabilitation or restitution to African descendants are warranted and what form and scope those measures should take. The latter includes recommendations that the Legislature enact a range of policies needed to guarantee restitution, compensation, rehabilitation, satisfaction, and non-repetition.

Part VI of the report contains a summary of the Task Force's findings and recommendations regarding implementation of the California Racial Justice Act (Assem. Bill No. 2542 (2019-2020 Reg. Sess.)), and Part VII summarizes findings from community engagement and community input regarding reparations and the work of the Task Force. Part VIII recommends appropriate ways to educate the California public about the Task Force's findings and of the legacy of enslavement and legal discrimination in California. Finally, Part IX contains a compendium of California laws and policies that have had a significant impact in the development of the state and nation's unjust legal systems, including those that have subjugated and continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery.

Taken together, the components of this report are not only intended to satisfy the requirements the Legislature set out in AB 3121, but also to serve as a blueprint for other states and, eventually, the federal government when they perform the critical task of atoning for this nation's victimization of African Americans, especially those who are descendants of persons enslaved in the United States. While California's first-in-the-nation effort is an important step, and the Task Force eagerly anticipates the Legislature's enactment of the recommendations contained herein, this national shame can ultimately be comprehensively redressed only through national reparations.

AB 3121 authorized the Task Force to hold public hearings to pursue its mission.[18] In order to inform the contents of its report, the Task Force held 16 public meetings, during which it considered public comments, expert, and personal witness testimony, in addition to considering the voluminous materials submitted to the Task Force via email from those unable to attend the meetings. In total, the Task Force heard over 48 hours of testimony from 133 witnesses, as well as over 28 hours of public comment in the course of its meetings, and received approximately 4,000 emails and 150 phone calls.

COURTESY OF CAROLYN COLE/LOS ANGELES TIMES VIA GETTY IMAGES

Lisa Holder is a member of the California Reparations Task Force which gathered to hear public input on reparations at the California Science Center in Los Angeles CA. (2022)

When discussing issues as complex as race and reparations, precision is paramount. Precision helps ensure that the writers and the reader begin in the same place, to arrive at the same understanding. As described later in this report, words have been weaponized throughout American history to dehumanize African Americans. Words can also be used to mend—to acknowledge, to respect, and to uplift. To that end, this report defines and adopts the following terms throughout its pages.

The N-word—the word "nigger" has been used for centuries to dehumanize African Americans.[19] The terms "Negro" and "Colored person" (as opposed to "person of color"), although adopted by African American communities for periods of time, have since been recognized as derogatory terms.[20] When quoting historical documents, this report will quote these words—not to condone the words or their

vicious meanings—but to present them in the context in which these slurs were used. The California Legislature enacted AB 3121, recognizing that the lasting wounds of enslavement and discrimination cannot begin to mend until those wounds are first addressed. In that same spirit, this report quotes these terms recognizing that reparations or any other answer to racism cannot be complete until this report squarely faces the horrors of enslavement and the systemic discrimination that followed and persists today.

White supremacy—white supremacy is a system of belief and power that white people are superior to other races.[21] This report confronts the idea of white supremacy and the various forms that it takes. When discussing the concept of white supremacy, the report uses the term to refer to two concepts.

First, this report uses the terms "white supremacy" or "white supremacists" to identify groups or individuals who believe that white people are superior to people of other races. When used this way, "white supremacy" describes individual prejudice. Examples of white supremacist groups—including groups that exist to this day—include, for example, the Ku Klux Klan.[22]

Second, this report uses the term "white supremacy" in the American context to describe the racist premise upon which social and legal rules and practices are formed with the intention of discriminating or enacting violence against African Americans, among other marginalized groups.[23] This report also uses it to describe cultural images and stereotypes that reinforce prejudices against African Americans and others.[24] When used this way, white supremacy describes forms of racism that extend beyond individuals or organizations, a form of racism often described as structural or systemic racism.[25] As this report demonstrates, the fundamental political, social, and economic system of our country negatively impacts African Americans regardless of the intent of any one person to be racist.

This report does not use the term "white supremacy" to describe white people as a group, white Americans, or white Californians. Not all white people are white supremacists. Anyone, regardless of race, with or without intent, consciously or unconsciously, can engage in acts of white supremacy, or be a part of a racist system. A racist system harms all who live in it, even those who may have historically reaped the benefits of the system.[26]

Throughout the report, we use words that center the people discussed.

Rather than refer to "slaves," this report refers to "enslaved persons." Most historians now refer to "enslaved persons" instead of "slaves" because the term "slave" reduces the enslaved person to an object.[27] Instead, historians use "enslaved person" to grant agency and recognition to the enslaved individual and to remind us about the violence and inhumanity of slavery.[28]

For similar reasons, this report refers to "enslavers," rather than "owners" or "masters."[29] The words master or owner suggests a false sense of natural authority and suggest that the enslaved person is less capable than the enslaver.[30] It also hides the fact that these individuals actively chose to enslave other human beings who are—as they were then—entitled to the same human rights as themselves.

Instead of "fugitive," this report refers to "freedom-seekers" when describing enslaved persons or other people seeking to escape enslavement and other forms of captivity. The term "fugitive" was commonly used with laws such as the Fugitive Slave Laws of 1793 and 1850 passed by Congress, which used the term to reinforce the system of enslavement and criminalize those who sought freedom from it.[31]

Rather than refer to "felon" or "ex-offender," this report uses terms such as "formerly incarcerated" and "returning citizen." Similarly, this report uses terms such as "person in prison" or "incarcerated person," rather than "inmates." Like the term "fugitive," the terms "felon," "ex-offender," and "inmate" have stigmatized people who are or have once been in jail or prison.[32] By labeling people as nothing more than their criminal justice status, these words deny people their full personhood and reinforce a stigma that prevents people from fully participating in society.[33]

Instead of referring to people without homes as "the homeless," this report uses terms such as "unhoused people" or "people experiencing homelessness." This follows the practice of the Associated Press Style Guide, which recognized that the phrase "the homeless" dehumanizes people by collectively reducing them to a label based on housing status, rather than their status as people.[34]

African American—The Task Force voted to generally use "African American," rather than "Black" or "Black American" when discussing racial classifications. This term includes the descendants of enslaved people who were abducted from their African homelands by force to be enslaved in North America. This report uses "African American" instead of "Black" to refer to such persons, unless "Black" is in a quotation or the source cited or data being relied upon in the text exclusively uses "Black."

Descendant—The Task Force voted that eligibility for monetary reparations should be limited to those who are able to establish that they are a lineal descendant

of an African American Chattel enslaved person or of a free African American person living in the United States prior to the end of the 19th Century.[35] When this report refers to "descendants," it refers to that group of eligible people as defined by the Task Force in that vote.

Though the report uses person-centered terms, the report may sometimes quote historical documents or statements that do not. This report presents these quotations unaltered to present them unfiltered and to provide historical context.

In using person-centered words, this report recognizes that words alone may not cure the wounds that people have suffered.[36] While words may not fix the systems they describe, this report uses these words, recognizing that they are the beginning—not the end—of what must be done to redress racism, past and present.

II. Enslavement

Nationally

America's wealth was built by the forced labor of trafficked African peoples and their descendants who were bought and sold as commodities.[37] American government at all levels allowed or participated in exploiting, abusing, terrorizing, and murdering people of African descent so that mostly white Americans could profit from their enslavement.[38]

After the War of Independence, the United States built one of the largest and most profitable enslaved labor economies in the world.[39]

The federal government politically and financially supported enslavement.[40] The United States adopted a national Constitution that protected slavery and gave pro-slavery white Americans outsized political power in the federal government.[41] Half of the nation's pre-Civil War presidents enslaved African Americans while in office,[42] and, throughout American history, more than 1,800 Congressmen from 40 states once enslaved African Americans.[43] By 1861, almost two percent of the entire budget of the United States went to pay for expenses related to enslavement,[44] including enforcing fugitive slave laws.[45]

Enslavers made more than $159 million between 1820 and 1860 by trafficking African Americans within the U.S.[46] Charles Ball, an enslaved man who was bought by slave traffickers in Maryland and forced to march to South Carolina, later remembered: "I seriously meditated on self-destruction, and had I been at liberty to get a rope, I believe I should have hanged myself at Lancaster. . . . I had now no hope of ever again seeing my wife and children, or of revisiting the scenes of my youth."[47]

Historians have argued that many of today's financial accounting and management practices developed among enslavers in the U.S. South and the Caribbean.[48] In order to continually increase production and profits, enslavers regularly staged public beatings and other violent acts and maintained deplorable living conditions.[49]

The American colonial Slave Codes created a new type of slavery that was different from the slavery which existed in pre-modern times.

- Babies were enslaved at birth, for their entire lives, and for the entire lives of their children, and their children's children.
- These laws denied political, legal, and social rights to free and enslaved Black people alike in order to more easily control enslaved people.
- These laws divided white people from Black people by making interracial marriage a crime.

Some of these laws survived well into the 20th century. The Supreme Court only declared that outlawing interracial marriage was unconstitutional in 1967.

Historians have also found evidence that enslavers raped and impregnated enslaved women and girls and profited from this sexual violence by owning and selling their own children.[50] President Thomas Jefferson, who enslaved four of his own children, wrote that the "labor of a breeding [enslaved] woman" who births a child every two years is as profitable as the best enslaved worker on the farm.[51]

In the census of 1860, the last census taken before the Civil War, of the about 12 million people living in the 15 slave-holding states, almost four million were enslaved.[52] In order to terrorize and force this enormous population to work without pay, the colonial and American governments created a different type of slavery.

Unlike slavery in some other locations, slavery in America was based on the idea that race was the sole

basis for life-long enslavement, that children were enslaved from birth, and that people of African descent were naturally destined to be enslaved.[53] Colonists in North America claimed and passed laws[54] to maintain a false racial hierarchy where white people were naturally superior.[55] Colonial laws effectively made it legal for enslavers to kill the people they enslaved.[56] In some states, free and enslaved African Americans could not vote or hold political office.[57] Enslaved people could not resist a white person, leave a plantation without permission, or gather in large groups away from plantations.[58]

After the War of Independence, the American government continued to pass laws to maintain this false racial hierarchy which treated all African Americans as less than human.[59] After the Civil War, the federal government failed to meaningfully protect the rights and lives of African Americans.[60] When Andrew Johnson became president after the assassination of Abraham Lincoln, he proclaimed in 1866, "[t]his is a country for white men, and by God, as long as I am President, it shall be a government for white men[.]"[61]

The Slave Codes were reborn as the Black Codes and Jim Crow laws segregating African Americans and white Americans in every aspect of life.[62] Although many of these laws were most prominent in the U.S. South, they reflected a national desire to reinforce a racial hierarchy based in white supremacy.

California

Although California technically entered the Union in 1850 as a free state, its early state government supported slavery.[63] Proslavery white southerners held a great deal of power in the state legislature, the state court system, and among California's representatives in the U.S. Congress.[64]

Some scholars estimate that up to 1,500 enslaved African Americans lived in California in 1852.[65] Enslaved people trafficked to California often worked under dangerous conditions,[66] lived in unclean environments,[67] and faced brutal violence.[68]

In 1852, California passed and enforced a fugitive slave law that made California a more proslavery state than most other free states.[69] California also outlawed nonwhite people from testifying in any court case involving white people.[70]

California did not ratify the Fourteenth Amendment, which protected the equal rights of all citizens, until 1959 and did not ratify the Fifteenth Amendment, which prohibited states from denying a person's right to vote on the basis of race, until 1962.[71]

III. Racial Terror

Nationally

After slavery, white Americans, sometimes aided by the government, maintained the badges of slavery by carrying out violence and intimidation against African Americans for decades.[72] Racial terror pervaded every aspect of post-slavery life and prevented African Americans from building the same wealth and political influence as white Americans.[73]

African Americans faced threats of violence when they tried to vote, when they tried to buy homes in white neighborhoods, when they tried to swim in public pools, and when they tried to assert equal rights through the courts or in legislation.[74] White mobs bombed, murdered, and destroyed entire towns.[75] Federal, state, and local governments ignored the violence, failed to prosecute offenders, or participated in the violence themselves.[76]

Racial terror takes direct forms, such as physical assault, threats of injury, and destruction of property. It also inflicts psychological trauma on those who witness the harm and injury.[77] Many African Americans were traumatized from surviving mass violence and by the constant terror of living in the U.S. South.[78] Lynchings in the American South were not isolated hate crimes committed by rogue vigilantes, but part of a systematic campaign of terror to enforce the racial hierarchy.[79]

Racial terror targeted at successful African Americans has contributed to the present wealth gap between African Americans and white Americans.[80]

While lynching and mob murders are no longer socially acceptable, scholars have argued that its modern equivalents continue to haunt African Americans today in the form of extrajudicial killings by the police and vigilantes.[81] Racial terror remains a tool for other forms of discrimination and control of African Americans, from redlining and segregated schools to disparate healthcare and denial of bank loans.

California

Supported by their state and local governments, Californians also terrorized and murdered African Americans in Californian.[82] The Ku Klux Klan (KKK) established chapters all over the state in the 1920s.[83] During that time, California sometimes held more KKK events per year than even Mississippi or Louisiana.[84] Many of California's KKK members were prominent individuals who held positions in civic leadership and police departments.[85]

For example, in Los Angeles in the 1920s, numerous prominent residents and city government officials were KKK members or had KKK ties, including the mayor, district attorneys, and police officers.[86] Violence against African American homeowners in California peaked in the 1940s, as more African Americans bought—or attempted to buy—homes in white neighborhoods across California.[87]

Today, police violence against and extrajudicial killings of African Americans occur in California in the same manner as they do in the rest of the country.[88]

IV. Political Disenfranchisement

Nationally

African Americans have pursued equal political participation since before the Civil War, but the federal, state, and local governments of the United States have suppressed and continue to suppress African American votes and political power.[89] After the Civil War, the United States protected the voting rights of African Americans on paper, but not in reality.[90] During the 12-year period after the Civil War called Reconstruction, the federal government tried to give newly freed African Americans access to basic civil rights,[91] and by 1868, more than 700,000 Black men were registered to vote in the South.[92] During Reconstruction, over 1,400 African Americans held federal, state, or local office, and more than 600 served in state assemblies.[93] However, progress was short lived.

COURTESY OF LOS ANGELES EXAMINER/USC LIBRARIES/CORBIS VIA GETTY IMAGES

Rayfield Lundy, Republican candidate for the California 55th Assembly District inspects a burnt cross at 1816 East 122nd Street, Los Angeles, California. (1952)

During the contested presidential election of 1876, Republicans and Democrats agreed to withdraw federal troops from key locations in the U.S. South, effectively ending Reconstruction.[94] Southern states then willfully ignored the voting protections in the U.S. Constitution, and passed literacy tests, poll taxes, challenger laws, grandfather clauses, and other devices to prevent African Americans from voting.[95] States also barred African Americans from serving on juries.[96]

This targeted government action stripped African Americans of the political power they gained during Reconstruction. For example, in 1867, African American turnout was 90 percent in Virginia.[97] After Virginia's voter suppression laws took effect, the number of African American voters dropped from 147,000 to 21,000.[98] During Reconstruction, 16 African American men held seats in Congress.[99] From 1901 until the 1970s, not a single African American served in Congress.[100]

These government actions returned white supremacists to power in local, state, and federal government.[101] Historians have argued that racist lawmakers elected from the Southern states blocked hundreds of federal civil rights laws[102] and rewrote many of the country's most important pieces of legislation to exclude or discriminate against African Americans.[103]

For example, the New Deal, a series of federal laws and policies designed to pull America out of the Great Depression, created the modern white middle class and

many of the programs that Americans depend upon today, such as Social Security.[104] But the New Deal excluded African Americans from many of its benefits.[105]

Historians have argued that Southern lawmakers ensured that the GI Bill was administered by states instead of the federal government to guarantee that states could direct its funds mostly to white veterans.[106] Similarly, in order to secure the support of white southern lawmakers, Congress included segregation clauses or rejected anti-discrimination clauses in the Hill Burton Act of 1946, which paid for our modern healthcare infrastructure, and in the Housing Act of 1949, which helped white Americans buy single family homes.[107] These federal legislative decisions perpetuated the racial hierarchy which continues today.

California

California also passed and enforced laws to prevent African Americans from accumulating political power.[108]

California's law prohibiting non-white witnesses from testifying against white Californians protected white defendants from justice.[109] The California Supreme Court warned that allowing any non-white person to testify "would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls."[110]

California did not allow African American men to vote until 1879.[111] The state also passed many of the voter suppression laws that were used in the South.[112] California prohibited individuals convicted of felonies from voting,[113] added a poll tax,[114] and put in place a literacy test.[115]

V. Housing Segregation

Nationally

America's racial hierarchy was the foundation of a system of segregation in the United States after the Civil War.[116] The aim of segregation was not only to separate, but also to force African Americans to live in worse conditions in nearly every aspect of life.[117]

Government actors, working with private individuals, actively segregated America into African American and white neighborhoods.[118] Although this system of segregation was called Jim Crow in the South, it existed by less obvious, yet effective, means throughout the entire country, including in California.[119]

During enslavement, about 90 percent of African Americans were forced to live in the South.[120] Immediately after the Civil War, the country was racially and geographically configured in ways that were different from the way it is segregated today.[121] Throughout the 20th century, American federal, state, and local municipal governments expanded and solidified segregation efforts through zoning ordinances, slum clearance policies, construction of parks and freeways through the middle of African American neighborhoods, and public housing siting decisions.[122] Courts enforced racially restrictive covenants and prevented homes from being sold to African Americans until the late 1940s.[123]

The federal government used redlining to deny African Americans equal access to the capital needed to buy a single-family home at the same time that it subsidized white Americans' efforts to own the same type of home.[124] As President Herbert Hoover stated in 1931, single-family homes were "expressions of racial longing" and "[t]hat our people should live in their own homes is a sentiment deep in the heart of our race."[125]

The passage of the Fair Housing Act in 1968 outlawed housing discrimination, but did not fix the structures put in place by 100 years of discriminatory government policies; residential segregation continues today.[126]

The average urban African American person in 1890 lived in a neighborhood that was only 27 percent African American.[127] In 2019, America is as segregated as it was in the 1940s, with the average urban African American living in a neighborhood that is 44 percent African American.[128] Better jobs, tax dollars, municipal services, healthy environments, good schools, access to health care, and grocery stores have followed white residents to the suburbs, leaving concentrated poverty, underfunded schools, collapsing infrastructure, polluted water and air, crime, and food deserts in segregated inner city neighborhoods.[129]

California

In California, the federal, state, and local governments created segregation through redlining, zoning ordinances, school and highway siting decisions, and discriminatory federal mortgage policy.[130] California's "sundown towns," like most of the suburbs of Los Angeles and San Francisco, prohibited African Americans from living in towns throughout the state.[131]

The federal government financed many whites-only neighborhoods throughout the state.[132] The federal Home Owners' Loan Corporation maps used in redlining described many Californian neighborhoods in racially discriminatory terms.[133] For example, in San Diego there were "servant's areas" of La Jolla and several areas "restricted to the Caucasian race."[134]

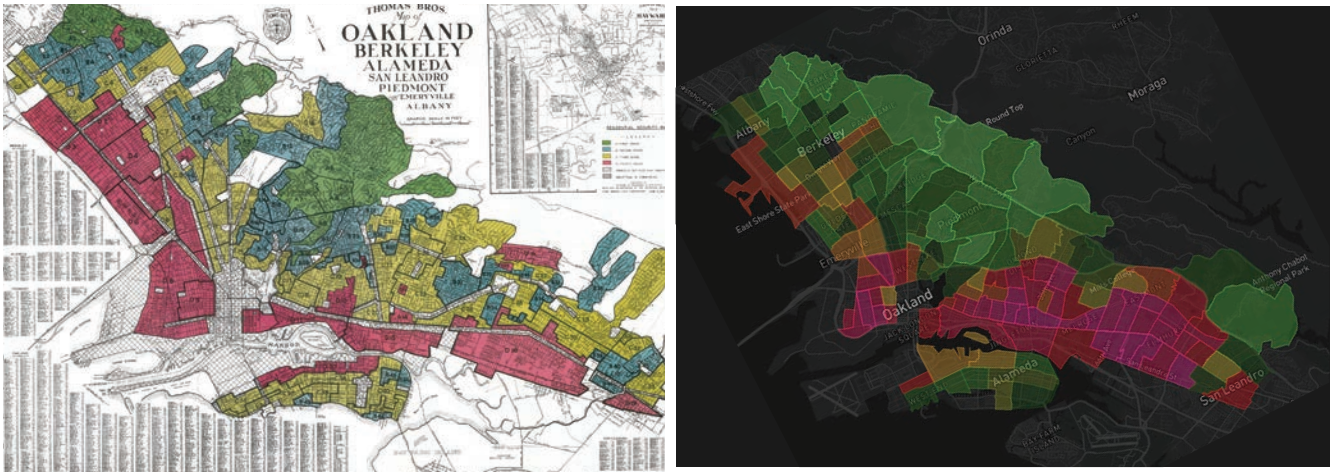
During World War II, the federal government paid to build segregated housing for defense workers in Northern California.[135] Housing for white workers was more likely to be better constructed and permanent.[136] While white workers lived in rooms paid for by the federal government, African American war workers lived in cardboard shacks, barns, tents, or open fields.[137]

Racially-restrictive covenants, which were clauses in property deeds that usually allowed only white residents to live on the property described in the deed, were commonplace and California courts enforced them until at least the 1940s.[138]

Numerous neighborhoods around the state rezoned African American neighborhoods for industrial use to keep out white residents[139] or adopted zoning ordinances to ban apartment buildings to try and keep out African American residents.[140]

State agencies demolished thriving African American neighborhoods in the name of urban renewal and park construction.[141] Operating under a state law for urban redevelopment, the City of San Francisco declared that the Western Addition, a predominately African American neighborhood, was blighted, and destroyed the Fillmore, San Francisco's most prominent African American neighborhood and business district.[142] In doing so, the City of San Francisco closed 883 businesses, displaced 4,729 households, destroyed 2,500 Victorian homes,[143] and damaged the lives of nearly 20,000 people.[144] It then left the land empty for many years.[145]

COURTESY OF "NOT EVEN PAST: SOCIAL VULNERABILITY AND THE LEGACY OF REDLINING"/ HTTPS://DSL.RICHMOND.EDU/SOCIALVULNERABILITY



The image on the left shows a redlining map of Oakland, CA, made by the Home Owners Loan Corporation during the 1930s. The red portions are non-white neighborhoods deemed by the federal agency to be a credit risk. The map on the right shows the Center for Disease Control's Social Vulnerability Index scores for census tracts today. The Social Vulnerability Index is widely used to assess a community's capacity to prepare for, respond to, and recover from human and natural disasters. The red portion indicates the highest level of vulnerability to disasters.

VI. Separate and Unequal Education

Nationally

Through much of American history, enslavers and the white political ruling class in America falsely believed it was in their best interest to deny education to African Americans in order to dominate and control them.[146] Enslaving states denied education to nearly all enslaved people, while the North and Midwest segregated their schools and limited or denied education access to freed African Americans.[147]

After slavery, southern states maintained the racial hierarchy by legally segregating African American and white children, and white-controlled legislatures funded African American public schools far less than white public schools.[148] In 1889, an Alabama state legislator stated, "[e]ducation would spoil a good plow hand."[149] African American teachers received lower wages, and African American children received fewer months of schooling per year and fewer years of schooling per lifetime than white children.[150]

Contrary to what most Americans are taught, the U.S. Supreme Court's landmark 1954 case *Brown v. Board of Education*, which established that racial segregation in public schools is unconstitutional, did not mark the end of segregation.[151]

Nationally, nonwhite school districts get

$23 Billion LESS

than predominantly white districts

After *Brown v. Board*, many white people and white-dominated school boards throughout the country actively resisted integration.[152] In the South, segregation was still in place through the early 1970s due to massive resistance by white communities.[153] In the rest of the country, including California, education segregation occurred when governments supported residential segregation coupled with school assignment and siting policies.[154] Because children attended the schools in their neighborhood and school financing was tied to property taxes, most African American children attended segregated schools with less funding and resources than schools attended by white children.[155]

In 1974, the U.S. Supreme Court allowed this type of school segregation to continue in schools if it reflected residential segregation patterns between the city and the suburbs.[156] In part, as a result of this decision and other U.S. Supreme Court decisions that followed, many public schools in the United States never integrated in the first place or were integrated and subsequently re-segregated.

California

In 1874, the California Supreme Court ruled that segregation in the state's public schools was legal,[157] a decision that predated the U.S. Supreme Court's infamous "separate but equal" case, *Plessy v. Ferguson*, by 22 years.[158]

In 1966, as the South was in the process of desegregating, 85 percent of African American students in California attended predominantly minority schools, and only 12 percent of African American students and 39 percent of white students attended racially balanced schools.[159] Like in the South, white Californians fought desegregation and, in a number of school districts, courts had to order districts to desegregate.[160] Any progress attained through court-enforced desegregation was short-lived. Throughout the mid- to late-1970s, courts overturned, limited, or ignored desegregation orders in many California districts, as the U.S. Supreme Court and Congress limited methods to integrate schools.[161] In 1979, California passed Proposition 1, which further limited desegregation efforts tied to busing.[162]

In the vast majority of California school districts, schools either re-segregated or were never integrated, so segregated schooling persists today. California is the sixth-most segregated state in the country for African American students.[163] In California's highly segregated schools, schools mostly attended by white and Asian children receive more funding and resources than schools mostly attended by African American and Latino children.[164]

VII. Racism in Environment and Infrastructure

Nationally

Due to residential segregation, African Americans have lived in poor-quality housing throughout American history, exposing them to disproportionate amounts of lead poisoning and increasing their risks of infectious disease.[165] Segregated African American neighborhoods have more exposure to hazardous waste, oil and gas production, and automobile and diesel fumes, and are more likely to have inadequate public services like sewage lines and water pipes.[166] African Americans are more vulnerable than white Americans to the dangerous effects of extreme weather patterns like heat waves, worsened by the effects of climate change.[167]

California

National patterns are replicated in California. African Americans in California are more likely than white Californians to live in overcrowded housing and near hazardous waste.[168] African American neighborhoods are more likely to lack tree canopy[169] and suffer from the consequences of water[170] and air pollution.[171] For instance, African American neighborhoods in the San Joaquin Valley were historically denied access to clean water.[172]

VIII. Pathologizing the African American Family

Nationally

Government policies and practices have destroyed African American families throughout American history. After the Civil War, southern state governments re-enslaved children by making them "apprentices" and forcing them to labor for white Americans, who were sometimes their former enslavers.[173] In the past century, both financial assistance and child welfare systems have based decisions on racist beliefs about African Americans, which continue to operate as badges of slavery.[174]

Government-issued financial assistance has excluded African Americans from receiving benefits. In the early 1900s, state governments made support payments every month to low income single mothers to assist them with the expenses incurred while raising children.[175] African American families were generally excluded, despite their greater need.[176]

Scholars have found that racial discrimination exists at every stage of the child welfare process.[177] Comparing equally poor African American and white families, studies have found that even with families considered to be at equal risk for future abuse, state agencies are more likely to remove African American children from their families than remove white children from their families.[178]

As of 2019, African American children make up 14 percent of American children, but 23 percent of children in foster care.[179] Studies have shown that this is likely not because African American parents mistreat their children more often, but rather due to poverty and racist systems.[180]

Meanwhile, the criminal and juvenile justice systems have intensified these harms to African American families by imprisoning large numbers of African American youth and separating African American families.[181]

California

Trends in California match those in the rest of the country. Recent California Attorney General investigations have found several school districts that punished African American students at higher rates than students of other races.[182] A 2015 study ranked California among the five worst states in foster care racial disparities.[183] African American children in California make up approximately 22 percent of the foster population, while making up only *six percent* of the general child population,[184] a disparity far higher than the disparity in national percentages.[185] Some counties in California—both urban and rural—have much higher disparities compared to the statewide average. In San Francisco County, which is largely urban and has around 800,000 residents, the percentage of African American children in foster care in 2018 was over *25 times* the rate of white children.[186]

IX. Control Over Creative, Cultural, & Intellectual Life

Nationally

During slavery, state governments controlled and dictated the forms and content of African American artistic and cultural production.[187] After the Civil War, governments and politicians embraced minstrelsy, which was the popular racist and stereotypical depiction of African Americans through song, dance, and film.[188] Federal and state governments failed to protect African American artists, culture-makers, and media-makers from discrimination and simultaneously promoted discriminatory narratives.[189]

Federal and state governments allowed white Americans to steal African American art and culture with impunity—depriving African American creators of valuable copyright and patent protections.[190] State governments denied African American entrepreneurs and culture-makers access to leisure sites, business licenses, and funding for leisure activities.[191] State governments memorialized the Confederacy as just and heroic through monument building, while suppressing the nation's history of racism and slavery.[192] States censored cinematic depictions of discrimination against and integration of African Americans into white society.[193]

California

In California, city governments decimated thriving African American neighborhoods with vibrant artistic communities, like the Fillmore in San Francisco.[194] Local governments in California have discriminated against, punished, and penalized African American students for their fashion, hairstyle, and appearance.[195] State-funded California museums have excluded African American art from their institutions.[196] California has criminalized African American rap artists, as California courts have allowed rap lyrics to be used as evidence related to street gang activity.[197] California has also been home to numerous racist monuments and memorials for centuries.[198]

X. Stolen Labor and Hindered Opportunity

Nationally

During slavery, the labor of enslaved African Americans built the infrastructure of the nation, filled the nation's coffers, and produced its main agricultural products for domestic consumption and export.[199] Since then, federal, state, and local government actions directly segregated and discriminated against African Americans.[200] In 1913, President Woodrow Wilson officially segregated much of the federal workforce.[201] While African Americans have consistently served in the military since the very beginning of the country, the military has historically paid African American soldiers less than white soldiers and often deemed African Americans unfit for service until the military needed them to fight.[202]

Federal laws have also protected white workers while denying the same protections to African American workers, setting up and allowing private discrimination.[203]

According to one meta-study, from 1989 to 2014, employment discrimination against African Americans had not decreased.

Approximately 85 percent of all African American workers in the United States at the time were excluded from the labor protections passed in the 1938 Fair Labor Standards Act—protections like federal minimum wage, the maximum number of working hours before overtime pay is required, and limits on child labor.[204] The Act essentially outlawed child labor in industrial settings, where most white children worked at the time, and allowed child labor in agricultural and domestic work, where most African American children worked.[205]

Although federal and state laws like the Federal Civil Rights Act of 1964 and the California Fair Employment and Housing Act of 1959 prohibit discrimination, enforcement is slow and spotty.[206] Federal and state policies like affirmative action produced mixed results and were short lived.[207] African Americans continue to face employment discrimination today.[208]

California

Several California cities did not hire African American workers until the 1940s, and certain public sectors continued to avoid hiring African American workers even in 1970.[209] The San Francisco Fire Department, for example, had no African American firefighters before 1955, and by 1970, when African American residents made up 14 percent of the city's population, only four of the Department's 1,800 uniformed firefighters were African American.[210] During the New Deal, several California cities invoked city ordinances to prevent African American federal workers from working within their cities.[211] Labor unions excluded African American workers in California.[212] Today, by some measures, two of California's major industries, Hollywood and Silicon Valley, employ disproportionately fewer African Americans.[213]

XI. An Unjust Legal System

Nationally

American government at all levels criminalized African Americans for the purposes of social control, and to maintain an economy based on exploited African American labor.[214]

After the Civil War, and throughout legal segregation, states passed numerous laws that criminalized African Americans when they performed everyday tasks, like stepping into the same waiting rooms as white Americans at bus stations or walking into a park for white people.[215]

In the South, until the 1940s, African American men and boys were arrested on vagrancy charges or minor violations, fined, and forced to pay off their fine in a new system of de facto enslavement called convict leasing.[216] In the words of the Supreme Court of Virginia, they were "slaves of the state."[217]

COURTESY OF THE LIBRARY OF CONGRESS

The convict leasing system in the South re-enslaved thousands of African American men and boys through the use of trumped up charges. (1903)

During the "tough on crime" and "War on Drugs" era, politicians continued to criminalize African Americans to win elections. President Richard Nixon's domestic policy advisor explained that by "getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, [the Nixon White House] could disrupt those communities. . . . Did we know we were lying about the drugs? Of course we did."[218]

The criminalization of African Americans is an enduring badge of slavery and has contributed to the over-policing of African American neighborhoods, the school to prison pipeline, the mass incarceration of African Americans, and other inequities in nearly every corner of the American legal system.[219]

It has also led to a rejection by police and mainstream media of accepting African Americans as victims. Law enforcement poorly investigates or ignores crimes against African American women.[220] African American children on average remain missing longer and are more likely to be missing than non-African American children.[221]

The American criminal justice system overall physically harms, imprisons, and kills African Americans more than other racial groups relative to their percentage of the population.[222] While constitutional amendments[223] and federal civil rights laws[224] have tried to remedy these injustices, scholars have argued that the U.S. criminal justice system is a new iteration of legal segregation.[225]

California

Like the rest of the country, California police stop, shoot, kill, and imprison more African Americans than their share of the population.[226] Police officers reported ultimately taking no action during a stop most frequently when stopping a person they perceived to be African American, suggesting there may have been no legitimate basis for the stop.[227] Additionally, a 2020 study showed that racial discrimination is an "ever-present" feature of jury selection in California.[228] The lingering effects of California's punitive criminal justice policies, such as the state's three-strikes law, have resulted in large numbers of African Americans in prisons and jails.[229]

XII. Mental and Physical Harm and Neglect

Nationally

The government actions described in this report have had a devastating effect on the health of African Americans. Compared to white Americans, African Americans live shorter lives and are more likely to suffer and die from almost all diseases and medical conditions than white Americans.[230] When they are hospitalized, African American patients with heart disease receive older, cheaper, and more conservative treatments than their white counterparts.[231]

Researchers have found that by some measures, this health gap has grown and cannot be explained by poverty alone,[232] as middle- and upper-class African Americans also manifest high rates of chronic illness and disability.[233] Researchers have linked these health outcomes in part to African Americans' unrelenting experience of racism in our society.[234] Research suggests that race-related stress may have a greater impact on health among African Americans than diet, exercise, smoking, or income status.[235]

In addition to physical harm, African Americans experience anger, anxiety, paranoia, helplessness, hopelessness, frustration, resentment, fear, lowered self-esteem, and lower levels of psychological functioning as a result of racism.[236] These feelings can profoundly undermine African American children's emotional and physical well-being and their academic success.[237]

California

These measures are similar in California. The life expectancy of an average African American Californian was 75.1 years, six years shorter than the state average.[238] African American babies are more likely to die in infancy, and African American mothers giving birth die at a rate almost four times higher than the average Californian mother.[239] Compared with white Californians, African American Californians are more likely to have diabetes, die from cancer, or be hospitalized for heart disease.[240]

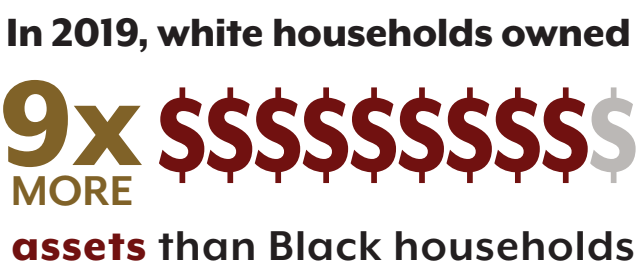
African American Californians suffer from high rates of serious psychological distress, depression, suicidal ideation, and other mental health issues.[241] Unmet mental health needs are higher among African American Californians, as compared with white Californians, including lack of access to mental healthcare and substance abuse services.[242] African American Californians have the highest rates of attempted suicide among all racial groups.[243]

XIII. The Wealth Gap

Nationally

As described in further detail throughout this report, government policies perpetuating badges of slavery have helped white Americans accumulate wealth, while erecting barriers which prevented African Americans from doing the same.

Federal and California Homesteading Acts essentially gave away hundreds of millions of acres of land almost for free, mostly to white families.[244] Today, as many as 46 million of their living descendants, approximately one-quarter of the adult population of the United States, reap the wealth benefits of these laws.[245] In the 1930s and 1940s, the federal government created programs that subsidized low-cost loans, which allowed millions of average white Americans to own their homes for the first time.[246] Of the $120 billion worth of new housing subsidized between 1934 and 1962, less than two percent went to nonwhite families.[247] Other bedrocks of the American middle class, like Social Security and the GI Bill, also mostly excluded African Americans.[248] The federal tax structure has in the past and continues today to discriminate against African Americans.[249]



These harms have compounded over generations, resulting in an enormous wealth gap that is the same today as it had been two years before the Civil Rights Act was passed in 1964.[250] In 2019, the median African American household had a net worth of $24,100, 13 percent of the median net worth of white households at $188,200.[251] This wealth gap persists regardless of education level and family structure and across all income levels.[252]

California

The wealth gap exists in similar ways in California. A 2014 study of the Los Angeles metro area found that the median value of liquid assets for native born African American households was $200, compared to $110,000 for white households.[253]

California's homestead laws similarly excluded African Americans before 1900 because they required a homesteader to be white.[254] Throughout the 20th century, federal, state and local governments in California erected barriers to African American homeownership and supported or directly prohibited African Americans from living in suburban neighborhoods.[255] Californians passed Proposition 209 in 1996, which prohibited the consideration of race in state contracting.[256] One study has estimated that, as a result of Proposition 209, minority- and women-owned business enterprises have lost about $1 billion.[257]

Key Findings of Part I

- In order to maintain slavery, colonial and American governments adopted white supremacist beliefs and passed laws in order to maintain a system that stole the labor and intellect of people of African descent. This system was maintained by and financially benefited the entire United States of America and its territories.

- This system of white supremacy is a badge of slavery and continues to be embedded today in numerous American and Californian legal and social systems. Throughout American history, this system has been upheld by federal, state, and local laws and policies and by violence and terror. All over the country, but particularly in the South during the era of legal segregation, federal, state, and local governments directly engaged in, supported, or failed to protect African Americans from the violence and terror aimed to subjugate African Americans.

- These government actions and derelictions of duty caused compounding physical and psychological injury for generations. In California, racial violence against African Americans began during slavery, continued through the 1920s, as groups like the Ku Klux Klan permeated local governments and police departments, and peaked after World War II, as African Americans attempted to move into white neighborhoods.

- After the Civil War, African Americans briefly won political power during Reconstruction. In response, southern states responded by systematically stripping African Americans of their power to vote. Racist lawmakers elected from southern states blocked hundreds of federal civil rights laws and edited important legislation to exclude or discriminate against African Americans, harming African American Californians.

- Government actors, working with private individuals, actively segregated America into African American and white neighborhoods. In California, federal, state, and local governments created segregation where none had previously existed through discriminatory federal housing policies, zoning ordinances, school siting decisions, and discriminatory federal mortgage policies known as redlining. Funded by the federal government, the California state and local government also destroyed African American homes and communities through park and highway construction, urban renewal, and by other means.

- Enslavers denied education to enslaved people in order to control them. Throughout American history, African American students across the country and in California have attended schools with less funding and resources than white students. After slavery, southern states passed laws to prevent African American and white students from attending the same schools. Throughout the country, children went to the school in their neighborhoods, so education segregation was created by residential segregation. Many public schools in the United States never integrated in the first place or were integrated and then re-segregated. Today, California is the sixth most segregated state in the country for African American students, who attend schools with less funding and resources than white students.

- Due to residential segregation, African Americans—compared to white Americans—are more likely to live in worse quality housing and in polluted neighborhoods with inadequate infrastructure. African American Californians face similar harms.

- Government-issued financial assistance has historically excluded African Americans from receiving benefits. The current child welfare systems in the country and in California operate on harmful and false racial stereotypes of African Americans. This has resulted in extremely high rates of African American children removed from their families, even though African American parents generally do not mistreat their children at higher rates than white parents.

- Federal and state governments, including California, failed to protect African American artists, culture-makers, and media-makers from discrimination and simultaneously promoted discriminatory narratives. State governments memorialized the Confederacy as just and heroic through monument building, while suppressing the nation's history of racism and slavery.

- Federal, state, and local government actions, including in California, have directly segregated and discriminated against African Americans at work. Federal and state policies like affirmative action produced mixed results and were short lived. African Americans continue to face employment discrimination today in the country and in California.

- American government at all levels, including in California, have historically criminalized African Americans for the purposes of social control, and to maintain an economy based on exploited African

American labor. This criminalization is an enduring badge of slavery and has contributed to the over-policing of African American neighborhoods, the school to prison pipeline, the mass incarceration of African Americans, a refusal to accept African Americans as victims, and other inequities in nearly every corner of the American and California legal systems. As a result, the American and California criminal justice system physically harms, imprisons, and kills African Americans more than other racial groups relative to their percentage of the population.

- The government actions described in this report have had a devastating effect on the health of African Americans in the country and in California. Compared to white Americans, African Americans live shorter lives and are more likely to suffer and die from almost all diseases and medical conditions than white Americans. Researchers have linked these health outcomes in part to African Americans' unrelenting experience of racism. In addition to physical harm, African Americans experience psychological harm, which can profoundly undermine African American children's emotional and physical well-being and their academic success.

- Government laws and policies perpetuating badges of slavery have helped white Americans accumulate wealth, while erecting barriers which prevented African Americans from doing the same. These harms compounded over generations, resulting in an enormous gap in wealth today between white Americans and African Americans in the nation and in California.

PART II: INTERNATIONAL PRINCIPLES OF REPARATION AND EXAMPLES OF REPARATIVE EFFORTS

XIV. International Reparations Framework

AB 3121 requires the recommendations from the Reparations Task Force to "comport with international standards of remedy for wrongs and injuries caused by the state, that include full reparations and special measures, as understood by various relevant international protocols, laws, and findings."[258]

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The United Nations emblem is seen in front of the United Nations Office (UNOG) in Geneva, Switzerland. (2008)

The United Nations Principles on Reparation set forth a legal framework for providing full and effective reparations to victims of gross violations of international human rights law and serious violations of international humanitarian law.[259] The framework takes an expansive view of what it means to be a victim. The framework does not define the violations it covers, but the International Commission of Jurists has explained that they are the "types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person."[260] Examples include genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, and systematic racial discrimination.[261] The Convention on the Prevention and Punishment of the Crime of Genocide separately defines "genocide."[262]

According to the international legal framework established by the United Nations Principles on Reparation, a full and effective reparations program must include all of the following: (1) Restitution; (2) Compensation; (3) Rehabilitation; (4) Satisfaction; and (5) Guarantees of non-repetition.[263] The Task Force has sought to ensure that each of these components is addressed in its recommendations to the Legislature in this report, and reiterates to the Legislature that recommendations addressing each component would need to be implemented in order to achieve a reparations plan that complies with the international standard for reparations.

Restitution

"*Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious

violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."[264]

According to the International Commission of Jurists' (ICJ) interpretation of the U.N. Principles on Reparation, where the state can return a victim to the status quo, the state has "an obligation to ensure measures for its restoration."[265] However, even though restitution is considered the primary form of reparation, the ICJ acknowledges that "in practice," restitution "is the least frequent, because it is mostly impossible to completely return [a victim] to the situation [they were in] before the violation, especially because of the moral damage caused to victims and their relatives."[266] So, the ICJ specifies that where complete restitution is not possible, as will often be the case, the state must "take measures to achieve a status as approximate as possible."[267] In situations where even this is not feasible, "the State has to provide compensation covering the damage arisen from the loss of the *status quo ante*."[268]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part IV of this report regarding how to appropriately calculate restitution for the whole class of individuals determined to be eligible for reparations.

Compensation

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

a. Physical or mental harm;

b. Lost opportunities, including employment, education and social benefits;

c. Material damages and loss of earnings, including loss of earning potential;

d. Moral damage;

e. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.[269]

According to the ICJ's interpretation of the U.N. Principles on Reparation, compensation is to be understood "as the specific form of reparation seeking to provide economic or monetary awards for certain losses, be they of material or immaterial, of pecuniary or non-pecuniary nature."[270] The ICJ highlights how compensation has been awarded by claims commissions for claims of "material and immaterial damage" and especially those involving "wrongful death or deprivation of liberty."[271] The United Nations has recognized a right to compensation "even where it is not explicitly mentioned" in a particular treaty, and the Human Rights Committee "recommends, as a matter of practice, that States should award compensation."[272] The basis for this recommendation comes from Article 2(3)(a) of the International Covenant on Civil and Political Rights.[273] International jurisprudence divides compensation into "material damages" and "moral damages."[274] Material damages include, among other types, loss of actual or future earnings, loss of movable and immovable property, and legal costs.[275] Moral damages include physical and mental harm.[276]

"Rehabilitation should include medical and psychological care as well as legal and social services."

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part IV of this report regarding how to appropriately compensate those who are able to demonstrate that they have suffered specific compensable injuries.

Rehabilitation

"*Rehabilitation* should include medical and psychological care as well as legal and social services." [277] According to the ICJ's interpretation of the U.N. Principles on Reparation, "victims are entitled to rehabilitation of their dignity, their social situation and their legal situation, and their vocational situation."[278] The ICJ also highlighted the Convention Against Torture's assessment on what constitutes rehabilitation.[279] Accordingly, "rehabilitation must be specific to the victim, based on an independent, holistic and professional evaluation of the individual's needs, and ensure that the victim participates in the choice of service providers."[280] Furthermore, "the obligation to provide the means for as full rehabilitation as possible may not be postponed and does not depend on the available resources of the State."[281] Finally, rehabilitation "should include a wide range of inter-disciplinary

services, such as medical and psychological care, as well as legal and social services, community and family-oriented assistance and services; vocational training and education," and "rectification of criminal records" or "invalidation of unlawful convictions."[282]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part V of this report regarding a wide variety of statutory and regulatory changes that the Legislature should enact in order to support rehabilitation of those eligible for the recommended programs.

Satisfaction

Under the U.N. Principles on Reparation, satisfaction should include, where applicable, any or all of the following:

a. Effective measures aimed at the cessation of continuing violations;

b. Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

c. The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

d. An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

e. Public apology, including acknowledgment of the facts and acceptance of responsibility;

f. Judicial and administrative sanctions against persons liable for the violations;

g. Commemorations and tributes to the victims;

h. Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels. [283]

According to the ICJ's interpretation of the U.N. Principles on Reparation, satisfaction is a "non-financial form of reparation for moral damage or damage to the dignity or reputation" that has "been recognized by the International Court of Justice."[284] Satisfaction can take the form of a condemnatory judgment, or the acknowledgment of truth, as well as the acknowledgment of responsibility and fault.[285] The ICJ also held that satisfaction includes "the punishment of the authors of the violation."[286] Furthermore, "the U.N. Updated Principles on Impunity recommend that the final report of truth commissions be made public in full."[287] This is supported by the U.N. Human Rights Commission's resolution on impunity which recognizes that "for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation."[288]

Another important factor for satisfaction is a "public apology" and a "public commemoration."[289] A public apology helps "in restoring the honour, reputation or dignity of a [victim]."[290] The public commemoration "is particularly important in cases of violations of the rights of groups or a high number of persons, sometimes not individually identified, or in cases of violations that occurred a long time in the past."[291] A public commemoration "in these cases has a symbolic value and constitutes a measure of reparation for current but also future generations."[292]

Satisfaction can take the form of a condemnatory judgment or the acknowledgment of truth, as well as the acknowledgment of responsibility and fault.

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part III of this report, regarding the manner and scope of a formal apology, and in Part V of this report, regarding a variety of statutory and regulatory changes that should be enacted by the Legislature to achieve satisfaction. These recommendations are based on the fulsome accounting in Part I of this report, that addresses the need for a "full and public disclosure of the truth."[293] Additionally, Part VII of this report serves as a first step toward a more comprehensive program of

a "full and public disclosure of the truth"[294] by bringing forward data and elevating the stories regarding the harms suffered by the community. Part VIII of this report offers recommendations to the Legislature that would ensure that the public is educated about, and the steps needed to collectively redress, the harms. And finally, Part IX of this report offers a detailed accounting of the legal methods used to perpetuate a system of unequal justice, which the Task Force recommends the Legislature dismantle in order to ensure satisfaction.

Guarantees of Non-Repetition

Under the U.N. Principles on Reparation, guarantees of non-repetition should include, where applicable, any or all of the following measures:

a. Ensuring effective civilian control of military and security forces;

b. Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

c. Strengthening the independence of the judiciary;

d. Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

e. Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

f. Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

g. Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

h. Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.[295]

According to the ICJ's interpretation of the U.N. Principles on Reparation, the guarantee of non-repetition derives from general international law.[296] A guarantee of non-repetition is an aspect of "restoration and repair of the legal relationship affected by the breach."[297] According to the International Law Commission, "[a]ssurances and guarantees are concerned with the restoration of confidence in a continuing relationship."[298] A guarantee of non-repetition overlaps with international human rights law because "States have a duty to prevent human rights violations."[299] A guarantee of non-repetition is "required expressly" as part of the "legal consequences of [a state's] decisions or judgments."[300] This express requirement is supported by the U.N. Commission on Human Rights, the Human Rights Committee, the Inter-American Court and Commission on Human Rights, the Committee of Ministers and Parliamentary Assembly of the Council of Europe, and the African Commission on Human and Peoples' Rights.[301] Another measure that falls under the guarantee of non-repetition is "the necessity to remove officials implicated in gross human rights violations from office."[302] Finally, a guarantee of non-repetition can and often must involve "structural changes" that must be "achieved through legislative measures" to ensure that the violations cannot ever happen again.[303]

While the U.N. Principles on Reparation are primarily based on the notion of government responsibility, the negotiators also reached a consensus that "non-State actors are to be held responsible for their policies and practices, allowing victims to seek redress and reparation on the basis of legal liability and human solidarity, and not [just] on the basis of State responsibility."[304] Principle 3(c) provides for equal and effective access to justice, "irrespective of who may ultimately be the bearer of responsibility for the violation."[305] Additionally, Principle 15 states, "[i]n cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim."[306]

According to the international legal framework laid out by the UN Principles on Reparation, victims of gross violations of international human rights law and serious violations of international humanitarian law should be provided with full and effective reparations.[307] Victims are "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law."[308] Furthermore, "the term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."[309] Additionally, "[a] person shall be considered a victim regardless of whether the perpetrator of the violation

is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim."[310]

Also, the ICJ has specified that for purposes of the UN Principles on Reparation, the definition of "victim" is meant to be broad.[311] According to the ICJ, a "victim is not only the person who was the direct target of the violation, but any person affected by it directly or indirectly."[312] The ICJ cited how certain authorities "disfavor the distinction between direct and indirect victims," so "[r]eparations programmes should use a wide and comprehensive definition of 'victim' and should not distinguish between direct and indirect victims."[313] A comprehensive definition of the word "victim" should include family members who have endured "unique forms of suffering as a direct result" of what happened to their families.[314]

While the UN Principles on Reparation do not formally define "gross violations of international human rights law" or "serious violations of international humanitarian law," the ICJ defines "gross violations" and "serious violations" as the "types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person."[315] Examples of these types of violations include "genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination."[316] The ICJ also held that "harm should be presumed in cases of gross human rights violations"[317]

Victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to certain remedies under international law:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered; and
- Access to relevant information concerning violations and reparation mechanisms. [318]

According to the UN Human Rights Committee, "the right to an effective remedy necessarily entails the right to reparation."[319] An effective remedy refers to procedural remedies whereas the right to reparation refers to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Also, victims "shall have equal access to an effective judicial remedy as provided for under international law."[320] This would require a state to "establish functioning courts of law or other tribunals presided over by independent, impartial and competent individuals exercising judicial functions as a prerequisite to ensuring that victims have access to an effective judicial remedy."[321] This would also require the state to have "competent authorities to enforce the law and any such remedies that are granted by the courts and tribunals."[322]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part V of this report regarding a wide variety of statutory and regulatory changes to ensure non-repetition of the identified historical injustices. Additionally, Part VIII of this report offers recommendations to the Legislature that would ensure that the public is educated about and understands these harms. And finally, Part IX of this report offers an accounting of the legal methods used to perpetuate a system of unequal justice, which the Task Force recommends the Legislature dismantles in order to ensure non-repetition.

XV. Examples of Other Reparatory Efforts

International Reparatory Efforts

In carrying out the Legislature's direction to address how the Task Force's recommendations comport with international standards of remedy, the Task Force has considered and addressed worldwide examples of past and present attempts to remedy wrongs and injuries caused by state and private actors in other contexts, including attempts that have included full reparations. The Task Force examined the following initiatives:

International

Germany-Israel

This reparations program was intended to address the harms inflicted on Jewish people who lived in Germany or in territories controlled by Germany during the Third Reich, the regime that ruled Germany from 1933 to 1945.[323] Beginning in 1933, the Third Reich implemented several provisions to control and limit the citizenship and freedom of its Jewish citizens.[324] Initially, the laws

excluded Jewish citizens from certain positions, schools, and professions.[325] Eventually, these acts culminated in the "Final Solution," the Holocaust, which was the genocide of the Jewish people through systematic killing inside and outside of concentration and extermination camps throughout Germany and territories controlled by Germany.[326] In addition to these atrocities, about $6 billion in property was stolen from the Jewish people in Germany and territories controlled by Germany.[327] Those that survived the concentration and extermination camps, and those who survived outside of camps in slave labor programs or by hiding, suffered significant physical and psychological injuries.[328]

In September 1952, representatives of the newly established State of Israel and the newly formed Federal Republic of Germany (FRG) met in Luxembourg and signed an agreement that required the FRG to pay reparations to Israel for the material damage caused by the criminal acts perpetrated by Germany against the Jewish people in the Holocaust.[329] Although the 1952 Luxembourg Agreement predates the United Nations General Assembly's Principles on Reparation, which identify the five requirements for a full and effective reparations scheme,[330] the Agreement comes close to fully embodying those principles. The 1952 Agreement consisted of three parts, two of which were protocols.[331] The first part of the Agreement required the FRG to pay Israel three billion Deutschemarks (DM)[332] to help resettle Jewish refugees in the new State of Israel.[333] The DM3 billion sum would be paid in annual installments.[334] The second part, Protocol 1, required the FRG to enact laws to compensate individuals.[335] And the third part, Protocol 2, required the FRG to pay the Conference on Jewish Material Claims against Germany (Claims Conference) DM450 million.[336]

In 1965, the FRG enacted the Federal Compensation Final Law. The Final Law made the following changes to the Agreement:

- It created a hardship fund of DM1.2 billion to support refugees from Eastern Europe who were previously ineligible for compensation, primarily emigrants from 1953 to 1965;[337]
- It included compensation for health by easing the burden on claimants to prove damages to their health were caused by their earlier persecution, by including a presumption that if the claimant had been incarcerated for a year in a concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime;[338]
- The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after;[339]
- The ceiling for education claims increased to DM10,000;[340]
- And claims already adjudicated were to be revised based on the new law. [341]

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Emaciated survivors of one of the largest Nazi concentration camps, at Ebensee, Austria, entered by the 80th division, U.S. Third army on May 7, 1945.

The Luxembourg Agreement was unique in many ways. It was the first reparations agreement that required a country to compensate another country that was not the victor in a war.[342] Further, it was the first reparations program where the perpetrator paid reparations "on its own volition in order to facilitate self-rehabilitation."[343] And the Agreement was formed by two states that were "'descendent' entities of the perpetrators and the victims."[344]

The program was also the largest reparations program ever implemented.[345] The German government received over 4.3 million claims for individual compensation, of which two million were approved.[346] It is estimated that by 2000, Germany had paid more than DM82 billion ($38.6 billion) in reparations.[347]

Moreover, the Agreement had significant economic and political consequences for Israel and the FRG.[348] The treaty enabled a substantial trade relationship between the countries.[349] During the period of enforcement for the treaty, they did not have political or diplomatic relations.[350] But when reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.[351]

The 1953, 1956, and 1965 Compensation Laws excluded compensation for forced and slave labor.[352] But in 2000, Germany and seven other countries—including the United States—enacted the Forced and Slave Labor Compensation Law.[353] Former slave laborers[354] received DM15,000 ($7,500).[355] Former forced laborers received DM5,000 ($2,500).[356] Payments were limited to claimants only and not extended to descendants.[357] However, heirs of anyone who died after February 1999, the date negotiations over compensation began, could file a claim.[358] The Law also allowed for compensation of all non-Jewish survivors living outside the five Eastern European countries that signed the law.[359] The International Organization for Migration processed those claims.[360] By the claims deadline, it had received 306,000 claims.[361]

Chile

Under the dictatorship of General Augusto Pinochet, from 1973 to 1990, the people of Chile experienced systematic state torture and violence: approximately 2,600 to 3,400 Chilean citizens were executed or "disappeared," while another estimated 30,000 to 100,000 were tortured.[362] In 1988, a plebiscite was held to determine whether General Pinochet should remain president of the country, and Pinochet lost.[363] However, it was not until March 1990 that Patricio Aylwin was sworn in as President of the Republic of Chile.[364]

COURTESY OF BETTMANN VIA GETTY IMAGES

Chile's Presidential Palace burns at the height of bombardment during the coup d'etat by the nation's armed forces. (1973)

One month after his inauguration, Aylwin created the National Truth and Reconciliation Commission.[365] This eight-member commission was tasked with disclosing the human rights violations that occurred under the previous dictatorship, gathering evidence to allow for victims to be identified, and recommending compensation in a legal, financial, medical and administrative capacity.[366] In February 1991, the Commission delivered its first report to the President, the Retting Report.[367] President Aylwin sent a draft bill on victim compensation to Congress; the bill used the recommended measures of compensation from the Retting Report.[368] The bill was approved and signed into law (Law 19.123) on February 8, 1992.[369]

Law 19.123 established the National Corporation for Reparation and Reconciliation with the purpose of coordinating, carrying out, and promoting actions needed to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission.[370] As written in Law 19.123, the Corporation was tasked to achieve all of the following:

- Promoting reparations for the moral injury caused to the victims of the Pinochet regime and providing the social and legal assistance needed by their families to access the benefits of the law;[371]
- Promoting and assisting actions aimed at determining the whereabouts and circumstances surrounding the disappearance or death of people at the hands of the Pinochet regime;[372]
- Serving as repository for the information collected by the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation, and all information on cases and matters similar that may be compiled in the future. The Corporation was authorized to request, collect, and process information in the possession of public or private institutions regarding human rights violations or political violence during the Pinochet regime;[373]
- Conducting research and making decisions in certain cases, regarding whether the person was a victim of human rights violations or political violence.[374]
- Entering into agreements with nonprofit institutions or corporations to provide the professional assistance needed to carry out the aims of the Corporation, including medical benefits.[375]
- Making proposals for consolidating a culture of respect for human rights in the country.[376]

Law 19.123 also established a monthly pension for the families of the victims of human rights violations or political violence as identified in the report by the Truth and Reconciliation Commission.[377] The Institute of Pension Normalization was placed in charge of paying the pensions throughout the country.[378] Article 24 of the law established that the pension was compatible with any other benefits that the beneficiary was receiving at the moment, or would receive in the future, as well as any other social security benefits.[379] In 1996, the monthly pension amounted to 226,667 Chilean pesos, or around $537.[380] This figure was used as a reference for estimating the different amounts provided to each type of beneficiary as defined in Law 19.123.[381]

In the years since its enactment, there have been public criticisms of the restitution or compensation measures enacted. For example, some have objected to allowing compensation based on the presumed death of some victims, while others have expressed a mistrust in the creation of a public interest corporation with little oversight and limited ability to investigate the whereabouts of disappeared detainees.[382] Others have criticized the single pension model that does not take into account the number of members in each family in determining the amount of restitution.[383] Law 19.123 also excluded certain beneficiaries (unmarried partners, victims without children, and mothers of children of unknown parentage).[384]

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately $200 per month) and free education, housing, and health care.[385]

South Africa

Apartheid was an institutional regime of racial segregation and systemic oppression, implemented in South Africa to deprive the majority Black South African population of basic rights and secure the white minority's power over the country.[386] Similar to the United States's system of segregation, de jure racial segregation was widely practiced in South Africa since the first white settlers arrived in the region.[387] When the National Party gained control of the government in 1948, it expanded the policy of racial segregation, naming the system apartheid.[388] This system of "separate development" was furthered by the Population Registration Act of 1950, which classified all South Africans as either Bantu (all Black South Africans), "Coloured" (those of mixed race), or white.[389] Another piece of legislation, the Group Areas Act of 1950, established residential and business sections in urban areas for each race, and barred members of other races from living, operating businesses, or owning land in areas designated for a different race.[390] The law was designed to remove thousands of "Coloureds," Black South Africans, and Indians from areas classified for white occupation.[391] As a result of several laws, specifically, the Population Registration Act, the Group Areas Act, and several "Land Acts" adopted between 1913 and 1955, more than 80 percent of South Africa's land was set aside for the white minority.[392]

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Anti-apartheid marchers (1969)

To enforce the segregation of the races and prevent Black South Africans from encroaching on white areas, the government strengthened existing "pass" laws, requiring "nonwhites to carry documents authorizing their presence in restricted areas."[393] Many private companies, including some based in the United States and Europe, enabled apartheid by manufacturing the military and police vehicles[394] used to enforce segregation, or by creating the document system that stripped Black South Africans of their citizenship and rights.[395]

In 1995, following the election of Nelson Mandela as the country's first non-white president, the South African government passed the Promotion of National Unity and Reconciliation Act (Act) to help transition South Africa out of the apartheid era and into a democracy in which Black South Africans would have full participation.[396] To make that transition, the Act created the Truth and Reconciliation Commission (Commission), which operated through three committees: the Committee on Human

Rights Violations, which investigated the gross human rights violations committed during the apartheid regime; the Committee on Reparations and Rehabilitation (CRR), which developed final compensation policy recommendations to address the harms suffered by the victims of the gross human rights abuses committed to uphold apartheid; and the Amnesty Committee, which was responsible for determining which perpetrators of gross human rights violations would receive amnesty for civil and criminal liability for their crimes.[397]

In its final policy recommendations, the CRR recommended financial and symbolic compensation reparations as well as community rehabilitation programs and institutional reforms.[398] To ensure successful implementation, the CRR also recommended that the government appoint a national body to implement the programs and a secretariat within the office of the President or the Vice President to oversee implementation.[399] The government adopted some of the CRR's symbolic reparation recommendations, community rehabilitation program recommendations, and institutional reforms.[400] The government paid reburial expenses to 47 families of disappeared persons whose remains were found and reburied, and enacted regulations to integrate institutions. There were also improvements made in housing, education, and access to medical care for Black South Africans.[401]

The South African government did not adopt the CRR's financial recommendations nor its recommendation to appoint a national implementing body.[402] In 2003, five years after the CRR submitted its final reparations policy recommendations, the South African government paid a one-time payment of 30,000 Rand (R) to some of the 22,000 victims.[403] The payment was about one-fifth of the amount the CRR recommended that the government pay in individual reparations grants to adequately compensate victims for their suffering.[404] By 2004, about 10 percent of the confirmed victims had still not received their payment.[405]

The Commission's CRR was also responsible for developing both the Urgent Interim Reparations policy program (UIR) and making final policy recommendations to the President.[406] The UIR was an interim financial compensation program.[407] The UIR regulations required referrals and financial assistance to access services necessary to meet urgent medical, emotional, educational, material, and symbolic needs to applicants whose requirements the CRR deemed urgent.[408] The UIR payments were calculated based on need and the number of the victim's dependents, ranging from a maximum of R2000 ($250) for a victim with no dependents to a maximum of R5705 ($713) for those with five or more dependents.[409] The first UIR payments were made in July 1998.[410] The UIR "process was mostly completed in April 2001."[411] The President's Fund paid out about R44,000,000 ($5.5 million) in cash payments to 14,000 victims for three years.[412]

Some critics of the UIR program criticize the lack of information shared with victims about the Commission.[413] Specifically, victims were not given information about how the Commission was organized or how it functioned.[414] Thus, they were not empowered to engage with the Commission, nor were they knowledgeable about the next steps in the restitution process.[415] And they received little information regarding the perpetrators the Amnesty Committee was considering for amnesty.[416]

Canada

Indigenous children in Canada were sent to residential schools from the 1600s until the mid-1990s, where they suffered severe abuses.[417] First established by Roman Catholic and Protestant churches, and based on claimed racial, cultural, and spiritual superiority, residential schools were an attempt to separate Indigenous children from their traditional cultures and convert them to Christianity.[418] The passage of the Indian Act in 1876 formally gave the federal government the power to educate and assimilate Indigenous people in Canada,

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Indian residential school.

and the Act's 1894 amendment made attendance at residential schools mandatory.[419] Starting in the 1880s, the Canadian government established and expanded the residential school system, ostensibly to assimilate Indigenous peoples into settler society and to reduce Indigenous dependence on public assistance.[420]

There were 130 residential schools in Canada between 1831 and 1996.[421] During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools.[422] Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing.[423] Children were forced to leave their homes, parents, and often their siblings, as the schools were segregated based on gender.[424] Indigenous culture was disparaged from the moment the children arrived at school, where they were required to give up their traditional clothes and wear new uniforms, the boys had their hair cut, and many students were given new names.[425] At some schools, children were banned from speaking their native language, even in letters home to their parents.[426] The Christian missionary staff at these schools emphasized Christian traditions while simultaneously denigrating Indigenous spiritual traditions.[427] Physical and sexual abuse were common.[428] Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza.[429]

Indigenous communities struggled to heal the harm done by these residential schools, and starting in 1980, former students campaigned for the government and churches to acknowledge the abuses of this system and provide some compensation.[430] In 1996, a group of 27 former students filed a class action lawsuit against the Government of Canada and the United Church of Canada.[431] Thousands of other former students began to sue the federal government and churches.[432] The federal government issued a Statement of Reconciliation in 1998 that recognized the abuses of the residential school system and established the Aboriginal Healing Foundation.[433] In 2001, the federal government created the Office of Indian Residential Schools Resolution Canada to manage the abuse claims filed by former students through the alternative dispute resolution process.[434]

In 2006, the Canadian government entered into the Indian Residential Schools Settlement Agreement.[435] It acknowledged the damage Canada inflicted on its Indigenous peoples through the residential school system and established a multibillion-dollar fund to help former students recover.[436] The Agreement has five main components: the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services.[437] The Settlement Agreement allocated $1.9 billion to the Common Experience Payment for all former students of the residential schools.[438] Every former student was given $10,000 for the first year at school and $3,000 for each additional year.[439] By the end of 2012, 98 percent of the 80,000 eligible former students received payments.[440]

The Independent Assessment Process provided a mechanism to resolve sexual and serious physical and psychological abuse claims.[441] By the end of 2012, it had provided more than $1.7 billion to former students.[442]

The Settlement Agreement also allocated $60 million to the Truth and Reconciliation Commission for five years so that individuals, families, and communities could tell their stories, and the Commission held national events to bring public attention to this issue.[443] The Commission issued a report in December 2015 entitled, Honouring the Truth, Reconciling for the Future, that documented the experiences of the 150,000 survivors.[444] The Settlement Agreement also allocated $20 million for commemorative projects and $125 million for the Aboriginal Healing Foundation.[445] It also established the Indian Residential Schools Resolution Health Support Program, which provides former students with mental health resources provided by elders, Indigenous community health workers, psychologists, and social workers.[446]

In January 2023, Canada also agreed to pay $2.8 billion to settle the latest in a series of lawsuits seeking compensation for the harm to Indigenous communities through the residential schools.[447] This settlement is a resolution of a class action lawsuit initially filed by 325 First Nations in 2012 seeking compensation for the destruction of their languages and culture.[448] Under this settlement, the federal government agreed to establish a trust fund for Indigenous communities to use for educational, cultural, and language programs.[449] A federal court judge approved the $2.8 billion settlement in March 2023, noting that it was "fair, reasonable, and in the best interests" of the plaintiffs.[450] The agreement allows the First Nations communities themselves to decide what to do with these funds based on the "four pillars" principles outlined in the agreement: the revival and protection of Indigenous language; the revival and protection of Indigenous culture; the protection and promotion of heritage; and the wellness of Indigenous communities and their members.[451] The settlement was to go to an appeal period, after which the money would be managed by a board of Indigenous leaders through a nonprofit fund.[452] The settlement does not release the federal government from future lawsuits involving children who died or disappeared at the residential schools.[453]

Domestic Reparatory Efforts

History of the Reparations Movement in the United States

The earliest calls for reparations for African Americans precede the Civil War, with enslaved people demanding compensation for their labor and bondage.[454] In 1783, Belinda Sutton, a formerly enslaved woman in

Massachusetts, petitioned the Massachusetts General Court for a pension from the estate of her enslaver, Isaac Royall, Jr.[455] Sutton's petition is one of the first examples of African Americans demanding reparations.[456] The court granted her petition, partially due to Royall's resistance to American independence and allegiance to King George III.[457]

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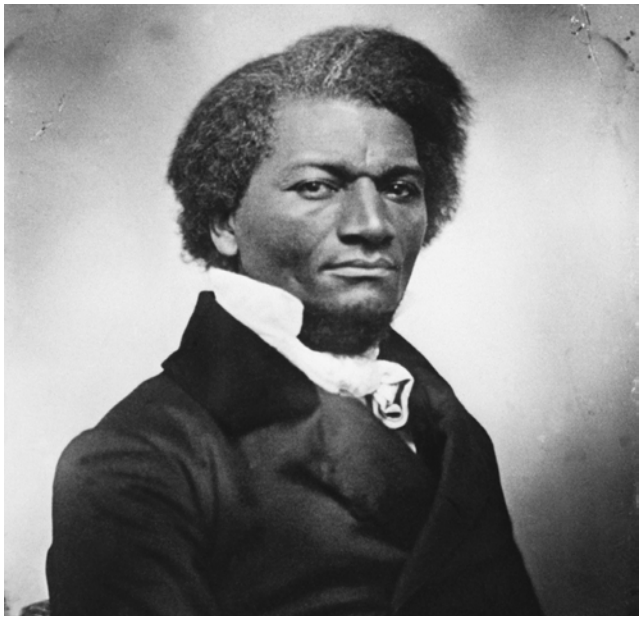

Born into slavery, American writer and abolitionist Frederick Douglass (1817-1895) bought his freedom with income earned from lecturing abroad. (c. 1855)

Calls for reparatory justice gained momentum at the end of the Civil War, after the federal government failed to fulfill General William T. Sherman's promise to give forty acres and a mule to those who were formerly enslaved.[458] African American abolitionist Frederick Douglass demanded land distribution for the formerly enslaved, comparing their plight to the Russian serfs who received land grants following their emancipation.[459]

In the late 1800s, African American freedmen led the call for reparations. Callie House and Isaiah Dickerson chartered the first national reparations organization, the National Ex-Slave Mutual Relief, Bounty, and Pension Association (MRBPA), in Nashville, in 1898.[460] The MRBPA grew to 300,000 members by 1916.[461] Their mission included: (1) identifying the formerly enslaved and adding their names to the petition for a pension; (2) lobbying Congress to provide pensions for the nation's estimated 1.9 million formerly enslaved—21 percent of all African Americans by 1899; (3) starting local chapters and providing members with financial assistance when they became incapacitated by illness; and (4) providing a burial assistance payment when a member died.[462] MRBPA filed a lawsuit against the federal government on behalf of African American freedmen and their ancestors for the value of the cotton that had been grown and harvested by persons "subject to a system of involuntary servitude" in the South between 1859 and 1868.[463] The MRBPA petitioned for $68 million—the money the government collected from the "Internal Revenue Tax on Raw Cotton" on the cotton they produced.[464] The claim was denied based on government immunity.[465] The U.S. Supreme Court affirmed.[466]

The MRBPA faced strong opposition from the U.S. government.[467] In 1916, the government indicted Callie House for fraud, claiming that the leaders of MRBPA obtained money from the formerly enslaved by fraudulent circulars advertising that reparations from the government were forthcoming.[468] House was convicted and served time in a penitentiary in Missouri.[469]

Another reparations trailblazer was "Queen Mother" Audley Moore, known as the "Mother" of the modern reparations movement.[470] Moore founded several organizations, including the Committee for Reparations for Descendants of U.S. Slaves, dedicated to fighting for land and other reparations for African Americans.[471] In the 1950s she formally petitioned the U.N. for reparations for African Americans.[472]

In the 1960s, many civil rights and Black Nationalist groups also demanded reparatory justice, in addition to legal equality. For example, the Black Panther Party's Ten-Point Program called for the "end to the robbery by the [w]hite man of our Black community" and demanded the debt owed of forty acres and two mules.[473] In a speech to students at Michigan State University in 1963, Malcolm X called for reparations:

> The greatest contribution to this country was that which was contributed by the Black man . . . Now, when you see this, and then you stop and consider the wages that were kept back from millions of Black people, not for one year but for 310 years, you'll see how this country got so rich so fast. And what made the economy as strong as it is today. And all that, and all of that slave labor that was amassed in unpaid wages, is due someone today.[474]

The reparations movement surged in the 1980s.[475] The National Coalition of Blacks for Reparations in America was founded in 1987,[476] and with its help, U.S. Rep. John Conyers in 1989 introduced H.R. 40, a bill to establish a federal Commission to Study and Develop Reparation Proposals for African Americans.[477] Rep. Conyers introduced the bill 20 times without success.[478]

The publication of the 2014 essay, *The Case for Reparations*, by Ta-Nehisi Coates in The Atlantic,[479] refocused the country's attention on reparations.[480] And in the summer of 2020, the murder of George Floyd by police in Minneapolis sparked racial justice protests across the country that further pushed demands for reparations to the forefront of public conversation.[481] Reparations was also an issue in the 2020 Democratic presidential primary.[482] In April 2021, H.R. 40, sponsored by U.S. Rep. Sheila Jackson Lee, was voted out of the House Judiciary Committee for the first time, but failed to receive consideration by the full House of Representatives in the 117th Congress (2021-2022).[483]

In the absence of federal action, states, cities, and municipalities have taken calls for reparations into their own hands. For example, California, with AB 3121, the Task Force, and this report, has begun the process of developing a reparations program specific to our state's experience. Nevertheless, this Task Force trusts that the federal government will develop a national solution to what is ultimately a national responsibility.

U.S. Indian Claims Commission

The United States Indian Claims Commission (Commission or ICC) was established in 1946 through federal legislation.[484] The ICC was ostensibly established to redress the harms inflicted on native populations during the campaign of colonization and relocation of the late 18th and 19th centuries.[485] The government's inhumanity and the atrocities committed during this period were diverse and devastating.[486] The government's actions included the widespread killing of Native Americans that many, including California Governor Gavin Newsom, have called a genocide, and a staggering theft of Native American land.[487] Spurred by the doctrine of Manifest Destiny, the government acquired nearly two billion acres of land from Indigenous peoples, leaving just 140 million acres under Native control.[488] This dispossession was accomplished by various means, including outright conquest, treaty, executive order, and federal statute.[489] Although the government's abuses during this period were far-reaching, the ICC's focus was solely on land transactions, mostly notably the treaty process.[490]

The ICC was authorized to adjudicate tribal land claims, but it was limited to awarding monetary relief and did not have jurisdiction to restore title to land.[491] The authorizing legislation permitted various claims, including those premised on "fraud, duress, [and] unconscionable consideration" as well as those based on "fair and honorable dealings."[492] The congressional Committee on Indian Affairs stated that the bill was "primarily designed to right a continuing wrong to our Indian citizens for which no possible justification can be asserted."[493] Indeed, the majority of claims alleged that "the United States acquired valuable land for unconscionably low prices in bargains struck between unequals."[494] Another large swath of claims alleged that the government had failed to abide by treaty provisions and called for an historical accounting, including in instances where the government was alleged to have mismanaged tribal funds.[495]

The Commission initially comprised three members, all appointed by President Harry Truman.[496] The ICC acted as a "quasi-judicial branch of the legislature" that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided over trials.[497] Claims could be filed only during the first five years of the Commission, and within that filing period 370 petitions were submitted and later divided into more than 600 dockets.[498] Neither the statute of limitations nor doctrine of laches could be raised as a defense to tribal claims, but all other defenses were available to the government.[499]

The ICC was initially set to terminate ten years after its first meeting,[500] but its lifespan was repeatedly extended until its termination in 1978.[501] Individual cases often took several years to complete,[502] and the appeal process alone typically took between eight months and three

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President Truman and tribal leaders gather to sign bill creating the Indian Claims Commission. (1946)

years.[503] During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60 percent of matters.[504] It awarded approximately $800 million in total compensation to tribal claimants.[505] At its termination in 1978, the Commission had not fully cleared its docket, and the remaining matters were transferred to the Court of Claims.[506]

Historians and legal scholars have argued that the Commission did not go nearly far enough to address the centuries-long slaughter, displacement, and oppression of Native Americans.[507] The Commission was not empowered to convey land back to tribes,[508] yet its rulings have barred all subsequent claims, including those to repossess land.[509] Nor did the Commission address issues such as the suppression of Native languages, religions, and forms of government.[510] And even where a tribe was able to secure a financial award, the amounts were significantly reduced in various ways. For example, the awards were whittled down by offsets for monies purportedly spent by the government on behalf of the tribes, but those monies had often been spent to promote governmental rather than tribal interests.[511] Moreover, except in the rare claim premised on a Fifth Amendment "taking," the Commission ruled that interest on amounts owed was not recoverable.[512] The unpaid interest was estimated by the U.S. Solicitor General to have been several billion dollars.[513]

A core defect in the ICC's structure and practice was the adversarial rather than investigative nature of the proceedings.[514] One scholar has observed that "the Commission, submissive to the requests of the lawyers who practice before it, has provided for a bewildering series of hearings on title, value offset, attorneys [*sic*] fees and all the motions that any party chooses [to] present."[515] Moreover, the government's role as an adversary to the claimants meant that government attorneys often aggressively fought *against* proper compensation for tribal claimants, and as a matter of policy the Attorney General did not pursue settlement.[516] Finally, the Native Americans' obligation to retain counsel at their own cost diminished any eventual financial award.[517] In light of these and other inefficiencies, many have argued that the Commission should have operated as an investigative rather than quasi-judicial body.[518] Indeed, the Commission was statutorily authorized to conduct its own investigations,[519] but it rarely employed these powers and instead consistently acted as a tribunal.[520]

Tuskegee Study of Untreated Syphilis in the Negro Male

The Tuskegee Study of Untreated Syphilis in the Negro Male (Study) was conducted in Macon County, Alabama between 1932 and 1972 on the campus of the Tuskegee Institute.[521] The Study was intended to observe the natural history of untreated syphilis in African American men.[522] A total of 600 African American men[523] were enrolled in the Study and told by researchers that they were being treated for "bad blood," which colloquially in the region referred to a number of diagnosable ailments including, but not limited to, anemia, fatigue, and syphilis.[524] The African American men in the Study were only told they were receiving free health care from the federal government of the United States.[525] Although there were no proven treatments for syphilis when the study began, penicillin became the standard treatment for the disease in 1947; however, the medicine was withheld from those enrolled in the study, resulting in blindness, deteriorating mental health, severe health issues, and sometimes death.[526]

Following a leak of the Study and subsequent reporting by the Associated Press in July 1972, international public outcry led to a series of actions taken by U.S. federal agencies.[527] The Assistant Secretary for Health and Scientific Affairs appointed an Ad Hoc Advisory Panel that concluded that there was evidence that the Study routinely ignored scientific research protocols necessary to ensure the safety and well-being of the human subjects involved.[528]

Although there were no proven treatments for syphilis when the Tuskegee study began, penicillin became the standard treatment for the disease in 1947; however, the medicine was withheld from those enrolled in the study, resulting in blindness, deteriorating mental health, severe health issues, and sometimes death.

Following the Advisory Panel's findings in October 1972, a class-action lawsuit was filed on behalf of the men in the Study—as well as their wives, children, and families—resulting in a nearly $10 million settlement in 1974.[529] Under the settlement, 70 living syphilitic participants received $37,500 each.[530] The 46 living men in the control group received $16,000 each.[531] The family members of the 339 deceased syphilitic participants received $15,000 per participant.[532] The family members of the deceased members of the control group received $5,000 per participant.[533] The settlement included free healthcare for life for the participants still living, as well as healthcare for their infected wives, widows, and children.[534]

The federal government in 1974 enacted legislation to study and write regulations governing studies involving human participants and to implement policy changes to protect human subjects in biomedical and behavioral research.[535]

Following a 1994 symposium studying the Tuskegee Syphilis experiments, the Tuskegee *Syphilis Study Legacy Committee* was formed[536] and issued its final report in 1996, seeking to: (1) persuade President Bill Clinton to apologize to the surviving Study participants, their families, and to the Tuskegee community; and (2) develop a strategy to redress the damages caused by the Study and to transform its damaging legacy.[537]

In 1997, President Clinton formally apologized and held a ceremony at the White House for surviving Tuskegee Study participants.[538] Along with the apology, President Clinton pledged a $200,000 planning grant to help Tuskegee University build a Center for Bioethics in Research and Health Care.[539] President Clinton also announced the creation of bioethics fellowships for minority students and extended the life of the National Bioethics Advisory Commission to 1999.[540] Additionally, the President directed the Health and Human Services Secretary to draft a report outlining ways to better involve all communities—especially minority communities—in research and health care.[541]

In 2022, the Milbank Memorial Fund—the foundation that paid the funeral expenses of the deceased Study participants as an incentive for their participation—publicly apologized to descendants of the Study's victims for its role in the Study.[542]

Japanese American Incarceration

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066, which ordered the incarceration of Japanese Americans and created a zone "from which any or all persons may be excluded," at the discretion of the Secretary of War or appropriate military commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona.[543] By the fall of 1942, all Japanese Americans were evicted from California and sent to one of ten incarceration camps that were built to imprison them.[544] Many incarcerated persons lost their property and assets as they were prohibited from taking more than what they could carry with them, and what remained was either sold, confiscated, or destroyed in government storage.[545] Over a hundred thousand Japanese Americans were incarcerated in desolate camps, for up to four years.[546]

In 1980, the United States Congress and President Jimmy Carter approved the Commission on the Wartime Internment and Relocation of Civilians (CWRIC).[547] The CWRIC was established to: (1) review the facts and circumstances surrounding the relocation and incarceration of thousands of American civilians during World War II under Executive Order 9066 and the impact of that order on American citizens and resident aliens; (2) review directives of United States military forces requiring the relocation and incarceration of American citizens, including Aleut civilians and permanent resident aliens of the Aleutian and Pribilof Islands; and (3) recommend appropriate remedies.[548] In December 1982, the Commission released a 467-page report, Personal Justice Denied, detailing the history and circumstances of the wartime treatment of people of Japanese ancestry and the people of the Aleutian Islands.[549]

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The Manzanar War Relocation Center in Owens Valley, CA, where Japanese Americans were incarcerated under Executive Order 9066 during World War II. (1942)

The findings and recommendations of the CWRIC, among other events, helped bring about the passage of the Civil Liberties Act of 1988 to acknowledge and provide redress for the incarceration of Japanese Americans in the United States between 1942 and 1946.[550] The federal government's plan included a cash payment of $20,000 for each surviving incarcerated person and a program to fund public education of the events.[551]

Under the Act, the United States Attorney General was charged with locating eligible individuals,[552] and by 1999, redress payments had been distributed to approximately 82,220 claimants.[553]

The Civil Liberties Act of 1988 also established the Civil Liberties Public Education Fund within the U.S. Treasury, administered by the Secretary of the Treasury, and available for disbursements by the Attorney General and by the newly established Civil Liberties Public Education Fund Board of Directors.[554] The trust totaled $1,650,000,000, and the fund would terminate once the money was exhausted or 10 years after the enactment of

the Civil Liberties Act of 1988.[555] The Act also called upon each department and agency of the U.S. Government to review with liberality, giving full consideration to the findings of the CWRIC, any application by an eligible individual for the restitution of any position, status, or entitlement lost because of any discriminatory act of the U.S. Government against those of Japanese ancestry during the period of incarceration.[556] Finally, along with the Act's payments, the Government offered a formal apology to each surviving incarcerated person.[557]

September 11, 2001

The militant network al-Qaeda carried out four coordinated terrorist attacks against the United States on September 11, 2001, commonly known as 9/11.[558] The incineration of the Twin Towers and the crashed aircrafts released clouds of noxious toxins in Lower Manhattan.[559] First responders, volunteers, and residents near Ground Zero inhaled harmful dust, smoke, toxic chemicals, and particle remnants.[560] This toxic exposure subsequently caused various illnesses, including more than 60 types of cancer, respiratory conditions, and digestive disorders.[561] Thousands of survivors and first responders have been diagnosed with 9/11-related illnesses, and thousands more have died.[562]

COURTESY OF CHIP SOMODEVILLA VIA GETTY IMAGES

Senate and House Democrats hold a news conference with first responders from New York and members of Iraq and Afghanistan Veterans of America to announce their support for the permanent reauthorization of the James Zadroga 9/11 Health and Compensation Reauthorization Act (2015)

Almost immediately after the September 11 attacks, Congress passed the Air Transportation Safety and Stabilization Act, which enacted the September 11th Victim Compensation Fund (VCF).[563] This bill sought to bring financial relief to any individual, or relative of a deceased individual, who was physically injured or killed as a result of the terrorist attacks.[564] The claims window for VCF closed in 2004.[565]

The VCF was reopened on January 2, 2011, when President Barack Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act).[566] While the original VCF only covered the victims (or their heirs) who were either killed or injured as a direct result of the 9/11 terrorist attacks, the Zadroga Act expanded the VCF to compensate victims for injury or death related to the debris removal process conducted in the aftermath of the terrorist attacks, and exposure to the toxic air in Lower Manhattan and the other attack sites.[567] The new claim filing deadline was October 2016.[568] The Zadroga Act also established the World Trade Center Health Program to provide medical monitoring and treatment for responders and survivors with chronic health conditions arising from the 9/11 attacks.[569] In contrast to the World Trade Center Health Program, the VCF does not cover mental health conditions.[570]

In 2015, the Zadroga Act was reauthorized and extended until December 2020.[571] Certain award calculations were changed.[572] The original VCF paid an average death claim award of over $2 million[573] and awarded anywhere from $500 to over $8.6 million in personal injury claims.[574] Due to budgetary considerations, the 2015 reauthorization of the Zadroga Act limited the maximum amounts individuals could receive as compensation.[575] It capped awards for non-economic loss from cancer conditions at $250,000, awards for non-economic loss from non-cancer conditions at $90,000, and awards for loss of annual income at $200,000.[576]

The VCF was designed to be a compensation scheme in lieu of tort litigation for the economic and noneconomic losses incurred by victims who were physically injured and families of victims whose lives were taken as a result of the 9/11 attacks.[577] Claimants who participated in this compensation scheme waived their right to sue for damages for injury or death as a result of the attacks.[578] A compensation fund was chosen as an alternative to potential class action toxic tort litigation because it was determined to be a more efficient and effective solution for compensating victims.[579] It was enacted to relieve victims and their families from navigating through the

legal system and possibly having their claims failing due to government immunity or other potential bars.[580]

The VCF has received inconsistent funding. In the two decades since the 9/11 attacks, the Fund has struggled to meet rising medical costs and cancer rates.[581] Many exposure symptoms and 9/11-related diseases took years to manifest.[582] The VCF's most recent five-year extension only lasted until 2020.[583] In February 2019, a Special Master determined that the then-current funding was insufficient to pay the remaining pending and projected VCF claims, and announced that award amounts would need to be reduced.[584] In response to public outrage, the VCF was permanently authorized in July 2019, ensuring that the VCF has sufficient funding to pay all pending claims and all future claims filed by October 1, 2090.[585] It also allows for supplemental compensation to any victim whose previous award had been reduced due to the previous budgetary restrictions.[586]

The VCF's efficacy has also been impacted by some claimants providing inadequate documentation for their claim or filing premature claims. According to the VCF's 2022 Annual Report, 54 percent of claims are deactivated for failure to provide the minimum required information, 41.9 percent of all claims are submitted with insufficient proof of presence documents, and 32.3 percent do not have a certified physical condition at the time the claim is filed.[587]

Sandy Hook Elementary School

On December 14, 2012, a gunman shot and murdered 20 children and six adult staff members at Sandy Hook Elementary School in Newton, Connecticut, after killing his own mother.[588] The gunman used two high-powered rifles, two semi-automatic pistols, as well as several hundred rounds of ammunition stored in high-capacity magazines; his mother had lawfully purchased several of the guns.[589] When he arrived at the school, he shot and killed the school's principal and school psychologist.[590] Teachers, who heard the gunshots, entered lockdown procedures, but he was able to enter a classroom where he killed the teacher and fourteen children.[591] He entered a second classroom and killed the teacher and six students; he also killed a special education aide and a behavioral therapist.[592] When police arrived at the school, they discovered that the gunman had killed himself.[593] It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall.[594] The school was demolished in 2014 and replaced by a new building in 2016.[595]

In 2013, Connecticut Governor Dannel P. Malloy established the Sandy Hook Advisory Commission and directed it to review current policy and make specific recommendations in the areas of public safety, with particular attention paid to school safety, mental health, and gun violence prevention.[596] The Commission concluded that the shooter acted alone, but did not identify a motive.[597] The Commission made several recommendations, including investment in mental health professionals, funding for short-term and long-term recovery plans, and behavioral health and education responses to crisis events.[598]

After the shootings, the federal government gave the town of Newton and several agencies related to Sandy Hook over $17 million in aid, used primarily to enhance mental health services and school security.[599] Much of the money from the grants went directly to opening the new Sandy Hook Elementary.[600]

In 2013, the federal Department of Justice's Office for Victims of Crime granted to the Connecticut Judicial Branch $1.5 million to reimburse organizations and agencies that provided direct support to victims, first responders, and the Newton community.[601] The grant was distributed through the Antiterrorism and Emergency Assistance Program, which grants awards for crisis response, and is funded by the Crime Victims Fund for the Antiterrorism Emergency Reserve Fund.[602] The federal DOJ also provided $2.5 million in funding for Connecticut and Newtown law enforcement agencies through the Bureau of Justice Assistance.[603]

In 2014, the federal DOJ issued another grant for $7.1 million through its Office for Victims of Crime.[604] This grant was for victim services, school safety efforts, and new mental health services.[605] Additionally, the town of Newton and the state received $2.5 million from the federal DOJ for police overtime costs.[606]

COURTESY OF SPENCER PLATT VIA GETTY IMAGES

Youth at a rally for National Gun Violence Awareness Day in Newtown, CT. (2022)

School Emergency Response to Violence Grants from the Department of Education totaled $6.4 million; $1.3 million was earmarked for mental-health providers working with student survivors.[607] The remainder was used to hire teachers, security guards, and other personnel.[608]

Iranian Hostages

On November 4, 1979, roughly 3,000 Iranians stormed the U.S. embassy in Tehran and took 63 American men and women hostage, including diplomats.[609] The seizure took place shortly after the Iranian Revolution.[610] In early 1981, Algerian diplomats brokered an agreement, the Algiers Accords, and the hostages were released on January 20, 1981, minutes after the inauguration of Ronald Reagan as U.S. President.[611] The Algiers Accords included, among other items, a provision preventing the freed hostages from seeking compensation from Iran in U.S. courts.[612] As a result, former hostages and their families have never successfully won court judgments to collect damages for the harms of the hostage crisis.[613]

COURTESY OF EXPRESS/EXPRESS VIA GETTY IMAGES

United States hostages returning from Iran after being held for 444 days. (1981)

On the same day that the Algiers Accords were signed, then-U.S. President Jimmy Carter created the President's Commission on Hostage Compensation, with the goal of providing recommendations on financial compensation to former hostages.[614] The commission issued a report that the United States, as the employer of the former hostages, should not be held liable in a "tort sense" but that the former hostages should receive a payment of tax-exempt detention benefits in the amount of $12.50 per day of captivity, similar to benefits paid to Vietnam War prisoners of war.[615] These recommendations were debated in Congress, but ultimately not adopted.[616]

In 2015, Congress passed the Justice for United States Victims of State Sponsored Terrorism Act, establishing a fund through the Consolidated Appropriations Act of 2016 to compensate the American diplomats and staff who had been held hostage at the U.S. Embassy in Tehran for 444 days between 1979 and 1981.[617] The Fund initially included an appropriation for $1.025 billion for Fiscal Year 2017.[618] Further funding has been provided by proceeds of federal enforcement actions.[619] At the time of passage, 37 former hostages were still alive.[620] Each hostage is entitled to receive $10,000 per day of captivity, and spouses and children are each entitled to a lump sum of $600,000.[621] Some of the appropriated money came from a $9 billion penalty assessed on Paris-based bank BNP Paribas, for violating sanctions against Iran, Sudan, and Cuba.[622]

In November 2019, Congress enacted the United States Victims of State Sponsored Terrorism Fund Clarification Act, amending the original legislation by extending the life of the Fund and expanding eligibility to receive payments from the Fund—by including, for example, 9/11 victims who had won judgments against Iran.[623] The Consolidated Appropriations Act of 2021 again amended the legislation.[624]

The Fund has distributed $3.3 billion since its creation.[625] As of the latest report, $93.5 billion in compensatory and statutory damages remained unpaid for the former hostages, judgement holders, and 9/11 victims eligible for compensation from the fund.[626] The Fund is scheduled to terminate in 2039, and the Special Master plans to authorize future payments if sufficient funds are available.[627]

State and Local Reparatory Efforts

Rosewood, Florida

The decimation of Rosewood started on January 1, 1923, when a white woman named Fannie Taylor reported an attack by an unidentified African American man in the town next to Rosewood.[628] Many African American descendants of Rosewood contend that the "attack" was a cover-up for a visit from her white lover.[629] Hearing the report from Taylor, a white vigilante mob led by Levy County Sheriff Robert Elias Walker descended upon Rosewood.[630] The mob tortured and killed Sam Carter, an African American.[631]

For the next week, hundreds of white vigilantes, consisting of KKK members and other deputies from neighboring counties, arrived in Rosewood.[632] They burned every home and building, including churches and schools, murdered six African American residents, and wounded dozens more.[633] Two white men also died in a shootout.[634] News of the "race war" traveled quickly throughout the state and country,[635] but the Florida Governor never sent the National Guard to protect African American residents and end the violence.[636] Many of Rosewood's African American residents fled to the nearby swamps and hid during the riots.[637] A

rescue train evacuated fleeing residents to Gainesville.[638] At the end of the violence, only the house of John and Mary Jane Hall Wright, the white residents of Rosewood, remained standing.[639]

In February 1923, a grand jury convened in Bronson, Florida, to investigate the Rosewood massacre.[640] Four days later, the grand jury found insufficient evidence to prosecute.[641] African American residents never returned to Rosewood.[642]

After weeks of sensation in the news following the violence in January 1923, the story of the Rosewood massacre disappeared from public media, as survivors largely never spoke of the event.[643] In 1982, the St. Petersburg Times unraveled the history of Rosewood in a comprehensive article that later became a story on CBS's *60 Minutes*.[644] Doctor was the driving force behind Rosewood becoming a public issue.[645] He secured pro bono counsel to help descendants and victims seek compensation from the state for the violence and destruction of Rosewood.[646]

In 1993, an academic report substantiated the claims of Rosewood descendants.[647] Chaired by Dr. Maxine Jones of the Florida State University Department of History, the team issued *A Documented History of the Incident Which Occurred at Rosewood, Florida, in January 1923*.[648]

Then in 1994 the Florida Legislature passed a claim bill to acknowledge and provide redress for the destruction and massacre of Rosewood.[649] Florida's restitution to victims included approximately $2.1 million in compensation and a state scholarship fund for direct descendants.[650] The bill "recognized an equitable obligation to redress the injuries as a result of the destruction of Rosewood" and consisted of: (1) a finding of facts; (2) a direction to the Florida Department of Law Enforcement to conduct a criminal investigation in and around the destruction of Rosewood; (3) $500,000 to be distributed from the General Revenue Fund to African American families from Rosewood to compensate for demonstrated property loss; (4) compensation up to $150,000 from the General Revenue Fund for each of the nine living survivors; (5) the establishment of a state scholarship fund for direct descendants of Rosewood families; (6) a direction to the state university system to continue researching the destruction of Rosewood, the history of race relations in Florida, and to develop educational materials about the destruction of Rosewood.[651]

The Rosewood Family Scholarship Program is codified in the state's Education Code[652] and the Florida Department of Education promulgated the criteria to receive an award.[653] The Rosewood Family Scholarship provides student financial assistance to a maximum of 50 students annually and currently pays up to $6,100 per student per academic year.[654] To be eligible, applicants must: be direct descendants who complete a Florida financial aid application; provide documentation of ancestry such as a birth certificate, marriage license, death certificate, church record, or obituary; and enroll in a state university, Florida College System institution, or career center authorized by law.[655] Applicants are selected based on need.[656]

COURTESY OF BETTMANN VIA GETTY IMAGES

An African American home in flames, the work of a mob of whites during the race riots in Rosewood, FL. (1923)

In 2004, a Florida Historical Marker co-sponsored by the state and the Real Rosewood Foundation, a non-profit dedicated to preserving the history of Rosewood, was placed on State Road 24 to note where the community once was.[657] It states: "Those who survived were forever scarred."[658]

North Carolina Sterilization

In 1919, North Carolina passed its first forced-sterilization law, which was amended in 1929 to allow the head of any penal or charitable institution that received some state support to "have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof."[659] The North Carolina Supreme Court invalidated the law in 1933 because it failed to provide any notice or opportunity for appeal.[660] In response, the North Carolina Legislature created the North Carolina Eugenics Board, to implement the newly amended forced-sterilization law with very limited appeal rights.[661]

The five members of the Board heard petitions brought by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians arguing that individuals should be sterilized due to being epileptic, "feebleminded," or mentally diseased.[662] There was a very limited appeal process, but the board approved

about 90 percent of the petitions.[663] The state ultimately sterilized around 7,600 persons, the third-largest number in the country.[664] The program was somewhat unique in that it also sterilized non-institutionalized individuals, not just those residing in penal or mental facilities.[665] Moreover, the vast majority of sterilizations took place after World War II.[666]

In 2002, Governor Mike Easley apologized for forced sterilizations performed under the purview of the State of North Carolina's Eugenics Board.[667] In 2010, Governor Bev Perdue established the North Carolina Justice for Sterilization Victims Foundation as part of the North Carolina Department of Administration, to function as a clearinghouse to help victims of the former state Eugenics Board.[668] During 2011 and 2012, the Foundation also supported the separate Gubernatorial Task Force on Eugenics Compensation established under Executive Order 83.[669] This effort culminated in the State Legislature creating the Eugenics Asexualization and Sterilization Compensation Program in 2013.[670] North Carolina was the first state to pass legislation to compensate victims of state-sponsored eugenic sterilizations.[671] The law set aside a $10 million pool for compensation payments, and 220 victims received $20,000 in 2014, $15,000 in 2015, and a final payment of around $10,000 in 2018.[672]

The statute compensates individuals who were asexualized or sterilized involuntarily under the authority of the Eugenics Board of North Carolina under either the 1933 or 1937 version of the laws, and who were still alive at the time the statute was enacted.[673] The limitation of compensation to those sterilized by the State Eugenics Board limited the state's ability to remedy much of the involuntary sterilization that occurred in the state, as many individuals were ultimately sterilized at the county level without the involvement of the State Board.[674]

Virginia (Eugenics)

In 1924, Virginia passed its Eugenical Sterilization Act, which authorized the sexual sterilization of inmates at state institutions.[675] The Act authorized the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded to impose sterilization upon any patient when he had the opinion that doing so was for the best interest of the patients and of society.[676]

The Eugenical Sterilization Act was passed on the same day alongside the Racial Integrity Act, which banned interracial marriage by requiring marriage applicants to identify their race as "white," "colored," or "mixed," with "white" being defined as a person "who has no trace whatsoever of any blood other than Caucasian."[677] Scholars have observed that the two acts, passed together, aimed to purify the white race.[678] One inmate, Carrie Buck, appealed her order of sterilization, but the U.S. Supreme Court upheld the Virginia state law in *Buck v. Bell* (1927) 274 U.S. 200.[679] The controversial ruling was never overturned, but the law was repealed in 1974.[680] Between 1927 and 1972, Virginia sterilized about 8,300 people.[681]

The Act provided that the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded could impose sterilization when he had the opinion that it was for the best interest of the patients and of society that any inmate of the institution under his care should be sexually sterilized and the requirements of the Act were met.

In 2002, 75 years after *Buck v. Bell*, Virginia Governor Mark R. Warner issued an apology for the state's embrace of eugenics and denounced the state's practice that involuntarily sterilized persons confined to state institutions from 1927 to 1979.[682] In 2015, the Virginia Legislature voted to enact the Virginia Victims of Eugenics Sterilization Compensation Program (VESC) and allocated $400,000 from the state general fund for compensation to individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015.[683] As written in the budget, the funds were to be managed by the Department of Behavioral Health and Developmental Services and limited to $25,000 per claim[684] instead of the proposed $50,000 per claim.[685] Furthermore, should the funding provided for compensation be exhausted prior to the end of fiscal year 2016, the Department was directed to continue to collect applications.[686] The Department was mandated to provide a report to the Governor and the Chairs of the House Appropriations and Senate Finance Committees on a quarterly basis on the number of additional individuals who applied.[687] As of the enactment, there were only 11 surviving victims.[688]

An individual or lawfully authorized representative is eligible to request compensation under this program if the individual was: (a) involuntarily sterilized pursuant to the 1924 Virginia Eugenical Sterilization Act; (b) living as of February 1, 2015; and (c) sterilized while a

patient at Eastern State Hospital; Western State Hospital; Central State Hospital; Southwestern State Hospital; or the Central Virginia Training Center (formerly known as the State Colony for Epileptics and Feeble-Minded; now closed).[689]

California Sterilization Compensation Program

California's eugenic sterilization program began in 1909 and authorized medical superintendents in state homes and state hospitals to perform "asexualization" on patients.[690] This allowed medical personnel to perform vasectomies on men and salpingectomies on women who were identified as "afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeblemindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."[691]

California maintained 12 state homes and state hospitals that housed thousands of patients who were committed by the courts, family members, and medical authorities.[692] While many sterilizations included the use of consent forms, such consent was often a condition for release from commitment, and this along with other conditions prevented true consent.[693] Moreover, though the law did not target specific racial or ethnic groups, in practice, "labels of 'mental deficiency' and 'feeblemindedness' were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women."[694]

California's eugenic sterilization law was repealed in 1979, but sterilization without proper consent continued in state institutions.[695] In 2003, the State of California formally apologized for California's eugenic sterilization program up to 1979, including apologies from Governor Gray Davis, Attorney General Bill Lockyer, and a resolution passed by the State Senate expressing profound regret for the program.[696]

California's eugenic sterilization program began in 1909 and authorized medical superintendents in state homes and state hospitals to perform "asexualization" on patients.

In 2014, the California State Auditor released an audit of female inmate sterilizations that occurred in the state prison system's medical facilities between fiscal years 2005-2006 and 2012-2013.[697] The auditor discovered 144 women imprisoned by the state were sterilized through bilateral tubal ligation, which was medically unnecessary and used solely for female sterilization.[698] Following this report, the Legislature prohibited the sterilization for the purpose of birth control of any individual under the custody of the California Department of Corrections and Rehabilitation.[699] There are an estimated 244 survivors of illegal prison sterilization.[700]

The California Legislature passed, and Governor Gavin Newsom signed, Assembly Bill No. 137 in the 2021-2022 legislative session, apologizing for sterilizations at state prisons, ordering the creation of memorial plaques, and allocating $4.5 million for compensation to those sterilized by the state.[701] AB 137 created the California Forced or Involuntary Sterilization Compensation Program (Program), which financially compensates survivors of state-sponsored sterilization.[702] The California Victim Compensation Board administers the Program.[703]

Each approved applicant receives an initial payment of $15,000 within 60 days of notice of confirmed eligibility.[704] After all applications are processed and all initial payments are made, any remaining program funds will be disbursed evenly to the qualified recipients by March 31, 2024.[705]

Chicago Police Department

Jon Burge was a high ranking Chicago Police Department officer who, from 1972 to 1991, led a group of detectives and officers who tortured and abused over 120 African Americans, causing many victims to issue coerced confessions.[706] Burge led operations of cruelty that included physical and psychological abuse such as "trickery, deception, threats, intimidation, physical beatings, sexual humiliation, mock execution, and electroshock torture."[707] Moreover, evidence suggests judges and some city officials were complicit in these abuses for many years.[708] As a result, many African American victims were convicted of crimes due to coerced confessions, and some were sentenced to the death penalty.[709] There was an effort to hold Burge specifically accountable for his actions, but the statute of limitations had expired on many of the cases of torture.[710] Community members started to seek alternative methods of repair, which eventually led to a reparations ordinance.[711]

Community activists in Chicago, including those in the Chicago Torture Justice Memorial and attorney Joey Mogul of People's Law Office, sought compensation for years.[712] Activists petitioned the Inter-American Commission for

Human Rights (IACHR) and the United Nations Committee Against Torture (UNCAT).[713] Although the IACHR did not take official action, the UNCAT issued a report affirming the advocates' position and urged the United States to provide redress to the survivors of torture, "by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors."[714] The UNCAT also noted that, although Burge was later convicted for perjury and obstruction of justice, investigations did not gather sufficient evidence for a constitutional rights violation prosecution, so no police officer has been convicted for their crimes and the majority of victims still did not receive "compensation for the extensive injuries suffered."[715]

In 2015, the Chicago City Council "approved a municipal ordinance giving reparations to Burge torture survivors," and the $5.5 million package awarded claimants $100,000 in financial payments.[716] In addition, the ordinance included a formal apology; the creation of a commission to administer financial reparations; free tuition at the City Colleges of Chicago and free access to job training and placement programs for survivors;

COURTESY OF SCOTT OLSON VIA GETTY IMAGES

Demonstrator outside federal courthouse where Chicago Police Commander Jon Burge was arranged for perjury during trial on police torture. (2008)

psychological counseling and healthcare for survivors; priority access to other support services for survivors; the inclusion of the Burge case in U.S. history curriculum for eighth and tenth grade students; and a memorial site.[717] The intended recipients of the compensation included all torture survivors who have a credible claim of "torture or physical abuse" at "the hands of Jon Burge or his subordinates..." between May 1, 1972 and November 30, 1991; intended recipients also included immediate family members of victims, and "in some cases . . . their grandchildren."[718]

As of 2021, the only portion of the ordinance remaining unfulfilled is the memorial.[719] While the memorial has still not been built, individuals at the Chicago Torture Justice Memorial continue meeting with the Mayor and remain hopeful the process will start soon, though the city's ordinance and resolution did not specify a timeline or specific funding for the memorial.[720]

Evanston, Illinois

The City of Evanston passed the Restorative Housing Program in March 2021 to redress the city's discriminatory practices in housing, zoning, and lending that created a wealth and opportunity gap between white and African American Evanstonians.[721] Before enacting the program, the City Council's Reparations Subcommittee had commissioned a report, entitled, Evanston Policies and Practices Directly Affecting the African American Community, 1900-1960 (and Present).[722] According to the report, "the City of Evanston officially supported and enabled the practice of segregation,"[723] with specific actions such as: passing a zoning ordinance in 1921 that implicitly condoned race-based housing segregation; the demolition of homes owned by African American families for economic development, on the grounds that they were "unsanitary" or "overcrowded"; providing permits to Northwestern University to develop temporary, segregated housing for veterans after World War II; segregating other post-World War II temporary housing for veterans; and failing until the late 1960s to enact a fair housing ordinance to outlaw housing discrimination.[724]

Under the city's Restorative Housing Program, African American Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided $25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage.[725] The Restorative Housing Program was the first such repair program enacted by the city, but Evanston has also studied its discriminatory past, created an Equity and Empowerment Commission, created a City Reparations Fund, honored local historical African American sites, and issued an apology.[726]

The Restorative Housing Program aimed to increase African American homeownership in order to revitalize and preserve African American owner-occupied homes in Evanston.[727] To be eligible, the home must be located in Evanston and be the applicant's primary residence.[728] The program will eventually extend funds to all intended recipients: Evanston residents of African American ancestry who are at least 18 years old, and, in order of priority, either: (1) an Ancestor, a resident who lived in Evanston between 1919 and 1969, was at least 18 years old at the time, and experienced housing discrimination due to the city's policies or practices; (2) a Direct Descendant of an Ancestor (e.g., child, grandchild,

great-grandchild); or (3) a resident who does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to a city ordinance, policy or practice after 1969.[729]

At the close of the first round of applications, 122 Ancestor-applicants were verified by the city, and 16 were randomly selected in January 2022 via the city's lottery to receive the first round of payments.[730] In March 2023, Evanston voted to expand the form of compensation to include direct *cash payments*[731] and announced plans to disburse 35 to 80 additional grants.[732]

Providence's reconciliation principles underscored action, emphasizing a community-owned but institutionally-supported process, and the principle that reconciliation cannot be accomplished without reparations.

In November 2022, the City Council passed a resolution to dedicate up to $1 million annually to the City Reparations Fund, for a period of 10 years, taken from the graduated real estate transfer tax collected from all property purchased above a price of $1.5 million.[733] More funding came in December 2022 when the City Council passed Resolution 125-R-22 to transfer $2 million from the City's General Fund to the Reparations Fund.[734] Evanston Mayor Daniel Biss launched a survey to assess Evanston residents' views on the reparations program on February 16, 2023.[735]

Asheville, North Carolina

In June 2021, the City Council of Asheville, North Carolina voted to allocate $2.1 million of the city's proceeds from the sale of city-owned land to support a Reparations Commission.[736] A portion of this land had been purchased by the city in the 1970s through urban renewal, a policy that "resulted in the displacement of vibrant Black communities and the removal of Black residents and homeowners, many into substandard public housing."[737] The city anticipates that of the $2.1 million, $200,000 will fund the Reparation Commission's planning and engagement process, leaving approximately $1.9 million in initial funding for compensation.[738] The city's Reparations Commission is working on a report that is scheduled to be completed by October 31, 2023.[739]

The Commission is required to consider ways to make amends for the city's participation in and sanctioning of the enslavement of African Americans, its enforcement of segregation and accompanying discriminatory practices, its implementation of an urban renewal program that destroyed multiple successful African American communities, and many other actions it took inflicting harms upon African Americans living in Asheville.[740] The Commission is charged with making short-, medium-, and long-term recommendations to "make significant progress toward repairing the damage caused by public and private systemic racism," so that the City of Asheville and local community groups may incorporate these recommendations into their short- and long-term priorities and plans.[741] The resolution states that the "report and the resulting budgetary and programmatic priorities may include but not be limited to increasing minority homeownership and access to other affordable housing, increasing minority business ownership and career opportunities, strategies to grow equity and generational wealth, closing the gaps in health care, education, employment and pay, neighborhood safety and fairness within criminal justice."[742]

Providence, Rhode Island

After the murder of George Floyd by Minneapolis police in May 2020, the mayor of Providence, Rhode Island signed an executive order to launch a truth-telling, reconciliation, and restitution process to "eradicat[e] bias and racism" against its African American and Indigenous residents and other people of color.[743] Following that three-part process, the city issued a formal apology and enacted a 2023 city budget that includes $10 million earmarked for programs recommended by the city's Municipal Reparations Commission, but does not include direct cash payments to descendants.[744]

Beginning with a truth-telling phase, the Rhode Island Black Heritage Society collaborated with city and state historical institutions to publish a 200-page report, A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020).[745] The report documents the history of harm that Providence sought to remedy, including the lasting wounds caused by slavery, the genocide of Indigenous people, and the ongoing racial discrimination from 1620 to 2020 throughout the City of Providence and the State of Rhode Island.[746]

In the reconciliation phase, the Providence Cultural Equity Initiative and Roger Williams University published a report detailing their efforts to survey Providence community members, develop guiding principles for reparations, and develop a model and proof of concept to continue reconciliation in perpetuity,

including through a multimedia initiative.[747] For its guiding principles on reconciliation, the Reconciliation Report noted the need for ongoing, communal learning, a focus on particular people and places, and the importance of efforts to cross barriers of identity and empathy.[748] The city's reconciliation principles also rejected depictions of participants that reduced them to racialized categories or tropes, while celebrating resilience both past and present.[749] Finally, Providence's reconciliation principles underscored action, emphasizing a community-owned but institutionally-supported process, and the principle that reconciliation cannot be accomplished without reparations.[750]

With regard to the third and final phase—reparations—the mayor's 2022 executive order created the Municipal Reparations Commission (Commission), consisting of 13 members from the local community.[751] The Commission held over a dozen public meetings, discussing the justifications for reparations and the form they might take.[752]

In November 2022, Jorge Elorza, the Mayor of Providence, signed a city budget allocating $10 million—provided to the city from the American Rescue Plan Act—to fund programs across seven of the Commission's recommendations.[753] The Mayor also issued an executive order recognizing and apologizing for the city's role in discriminating against African Heritage and Indigenous people.[754]

PART III: RECOMMENDATION FOR A FORMAL APOLOGY

XVI. Recommendation for a California Apology

The Legislature directed the Task Force to recommend appropriate remedies in consideration of the Task Force's findings. In those recommendations, the Legislature required the Task Force to address, among other issues, how the State of California will offer a formal apology on behalf of the people of California for the perpetration of gross human rights violations and crimes against humanity on African slaves and their descendants.[755]

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. In 2005, the United Nations adopted General Assembly Resolution 60/147 setting forth 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.[756] The Basic Principles and Guidelines include the principle of satisfaction.[757] "Satisfaction" can include, among other things, 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.[758]

Apologies alone are inadequate reparations to victims.[759] 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.[760] An effective apology should both acknowledge and express regret for what was done to victims and their relatives and take responsibility.[761] 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.[762] An apology should also be accompanied by a request for forgiveness.[763]

Apologies alone are inadequate reparations to victims. 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.

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 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.[764]

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 apologize on behalf of the State of California and the People of California for the State's perpetration of gross human rights violations against Africans who were enslaved and their Descendants; and the State must do so through public apology, requests for forgiveness, censure of state perpetrators, and tributes to victims.

The Task Force recommends that the Legislature formally apologize on its own behalf, and on behalf of the State of California, for all of the harms delineated in Part I of this report, and for the atrocities committed by California state actors who promoted, enforced, and facilitated the institution of chattel slavery and its ongoing legacy of systemic discrimination. The Task Force has found that 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 disbursal of state and federal funding. The apology should also include a censure of the gravest barbarities carried out on behalf of the state by—or with the knowledge or support of—its representative officers, governing bodies, and people, as documented in this report.

In addition to acknowledging the atrocities committed by the state or which the state failed to deter or punish, the 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 should participate in the development of the apology. The Task Force recommends that the Legislature accomplish this by establishing 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 and elected and appointed officials at the state and local levels. The listening sessions should inform the language of the Legislature's apology and the methods enacted by the Legislature to satisfy victims.

Finally, the Legislature should order the commission of plaques or other commemorative tributes to secure communities' memory of the victims and the injustices, as occurred in California's apology for forced sterilizations.[765] 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 stakeholders, plaques and memorials can honor survivors and raise awareness of descendants' ongoing struggle for justice.

Importantly, however, the Task Force reminds the Legislature that an apology on its own, no matter how forceful or detailed, is not enough; to have any effect under existing standards for reparations and reconciliation, the apology must take place within the same legislative effort that results in compensation and the enactment of policy recommendations to ensure non-repetition of the significant atrocities that would be addressed by the apology.

PART IV: METHODOLOGIES FOR CALCULATING COMPENSATION AND RESTITUTION

XVII. Calculations of Reparations and Forms of Compensation and Restitution

In enacting AB 3121, the Legislature charged the Task Force with recommending appropriate remedies in consideration of the Task Force's findings, including: (1) how any form of compensation to African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States, is calculated; (2) what form of compensation should be awarded, through what instrumentalities, and who should be eligible for such compensation; and (3) how, in consideration of the Task Force's findings, any other forms of rehabilitation or restitution to African descendants are warranted and what form and scope those measures should take.[766]

In preparing the recommendations in Chapter 17 of this report, the Task Force consulted with a team of preeminent economists and policy experts, including Dr. Kaycea Campbell, Dr. William Spriggs, Dr. William A. Darity Jr., Dr. Thomas Craemer, and A. Kirsten Mullen. The Task Force also relied upon its own expertise, the

public comments via in-person hearings, telephone or other remote access and email, and the testimony of dozens of witnesses who appeared before the Task Force.

In developing the recommendations regarding methodologies for calculating reparations, the Task Force considered, among numerous other factors, harms to African Americans (especially descendants of persons enslaved in the United States) attributable to the State of California and its local jurisdictions, and the availability of data. In many instances of atrocities, California has not collected data that would allow for precise calculations, and for those areas, the Task Force recommends, as AB 3121 directs, how the Legislature should calculate reparations in drafting and implementing a future state-level reparations scheme.

The difference in life expectancy between African Americans and white non-Hispanics in California can be interpreted as the cumulative effect of unequal treatment, from unequal access to health insurance and health care based on occupational discrimination, to discriminatory local zoning that exposes African American neighborhoods to greater environmental harm.

The Task Force voted to recommend that only those individuals who are able to demonstrate that they are the descendant of either an enslaved African American in the United States, or a free African American living in the United States prior to 1900, be eligible for monetary reparations.[767] The Task Force also determined that the State of California, potentially through the recommended new California American Freedman's Affairs Agency, should take responsibility for assisting any requester in establishing whether they qualify, by funding or otherwise handling the tracing and confirmation of this lineage through whatever means necessary. While the data available to the Task Force and its experts did not separate out descendant status from other racial or ethnic data, the Task Force generally recommends that the Legislature begin to collect data regarding descendant status and, when calculating reparations as recommended by the Task Force, take this data into account in formulating the most accurate amount of needed reparations as possible.

The Task Force also offers specific, preliminary estimates for the Legislature's consideration, regarding losses to African Americans in California, due to (a) health disparities, (b) disproportionate African American mass incarceration and over-policing, (c) housing discrimination, and (d) devaluation of African American businesses. Further, with regard to two other atrocities, unjust property takings by eminent domain and labor discrimination, the Task Force recommends a method of calculation for such reparations.

Although compensation and restitution for particular injuries is a necessary step toward comporting with international standards for reparations, it is not enough. Compensation or restitution for particular injuries, alone, would not provide a sufficient remedy for the many other longstanding laws and policies, and the scope of harm caused by them, detailed in Chapters 1 through 13 of this report against the whole class of people impacted by those atrocities. For these harms established by the detailed factual record recounted in Chapters 1 through 13, cumulative monetary payments must be made.

Health Harms

The difference in life expectancy between African Americans and white non-Hispanics[768] in California can be interpreted as the cumulative effect of unequal treatment, from unequal access to health insurance and health care based on occupational discrimination, to discriminatory local zoning that exposes African American neighborhoods to greater environmental harm (e.g., placement of toxic industries in residential neighborhoods, creation of food deserts), as well as explicit and implicit discriminatory behavior of medical personnel from which the state should shield its residents. These discriminatory practices are exacerbated by the State of California's willing complicity in federal redlining policies that created de jure racially-segregated living arrangements and the state's unwillingness to meaningfully address occupational discrimination. The Task Force recommends that the Legislature estimate the cost of health differences between African Americans and white non-Hispanic Californians and issue reparations according to that calculation, as follows:

1. Take the value of the individual's statistical life (roughly $10,000,000) and divide it by the white non-Hispanic life expectancy in California (78.6 years in 2021), to obtain the value for each year of life absent anti-Black racial discrimination ($127,226).[769]

2. Then calculate the difference in average life expectancy in years between African American and white non-Hispanic Californians (7.6 years in 2021).

3. Then multiply the two to arrive at a total loss in value of life for each African American due to health disparities based on racial discrimination ($966,918). An African American Californian at the average life expectancy of 71 years of age who spent their entire life in California would be entitled to the full amount.

4. For eligible recipients who spent part of their life in California, an annual value can be obtained by dividing the full amount by the African American life expectancy: $966,918 / 71 = $13,619. This would be the value of each year spent in California, to which an African American Californian would be entitled, subject to their eligibility.

Mass Incarceration and Over-Policing of African Americans

The "War on Drugs" began in 1971.[770] Established research shows that although people of all races use and sell illegal drugs at remarkably similar rates,[771] the federal and state governments disproportionately target African Americans for drug-related arrests.[772] To measure racial mass incarceration disparities in the 49 years of the War on Drugs from 1971 to 2020, the Task Force's experts estimated the disproportionate years spent behind bars for African American compared to white non-Hispanic drug offenders, and multiplied them with what a California state employee would have earned in a year on average (since incarcerated persons were forced, unpaid "employees" of the state). The Task Force's experts then added compensation for loss of freedom, comparable to Japanese American World War II prisoners, and arrive at $159,792 per year of disproportionate incarceration in 2020 dollars.

COURTESY OF SEAN RAYFORD VIA GETTY IMAGES

Protests break out in Charlotte, NC after police shooting. (2016)

To estimate the number of disproportionately incarcerated African American individuals:

1. The Task Force's experts used total California arrest figures for felony drug offenses and African American drug felony arrests from 1971 to 2020, to compute the African American percentage.

2. The Task Force's experts then computed the difference between the percentage of African American drug felony arrests and the estimated African American population percentage for each year. The difference between the two provides an estimate of the percentage of excess African American felony drug arrests.

3. The Task Force's experts obtained the number of African American excess felony drug arrests by multiplying the percentage of excess African American felony drug arrests times the total number of felony drug arrests.

4. The Task Force's experts then multiplied African American excess felony drug arrests by the average drug possession-related prison term of 1.48 years and the annual reparations amount of $20,000, and add the annual amounts up over the entire time period from 1971 to 2020, to arrive at a total sum of $227,858,891,023 in 2020 dollars.

5. Disproportionate law enforcement reduced the quality of life for all African American Californian descendants who lived in California during the "War on Drugs." The Task Force's experts therefore divided the total sum by the estimated 1,976,911 African American California residents who lived in the state in 2020, for an amount per recipient of $115,260 in 2020 dollars, or $2,352 for each year of residency in California from 1971 to 2020. The Task Force also recommends that African American California residents who served time for the possession or distribution of substances now legal (e.g., cannabis) should additionally be entitled to sue for compensation for their time in prison, or that the State of California create a special compensation fund to allow for specific redress of that specific harm.

Housing Discrimination

Nefarious housing discrimination has always existed in the United States, including in California even before the state's founding in 1850.[773] Individual participants in the housing market discriminated against African American buyers and renters, local zoning rules enforced segregation, and the state allowed this discrimination to occur even though the Supreme Court ruled it unconstitutional

in *Buchanan v. Warley* (1917) 245 U.S. 60.[774] As a result, as of 2019, a year before the Reparations Task Force was established, African American Californians controlled far less of the state's average per-capita housing value than did white Californians.[775]

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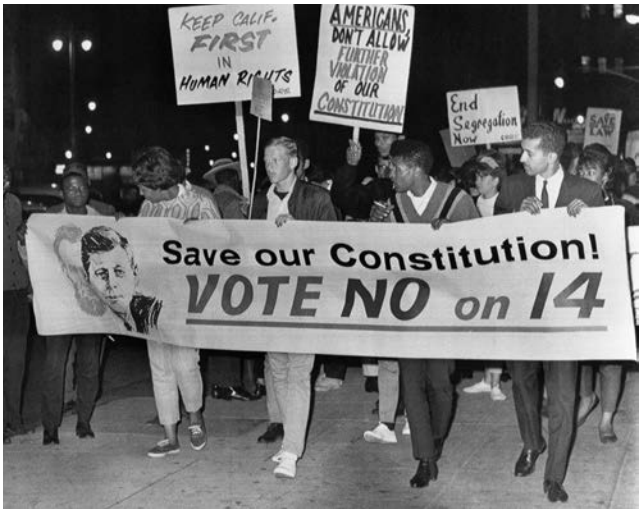

Protest for fair housing. (1964)

The Task Force presents two potential methods to calculate the losses due to housing discrimination. The first calculates all monetary losses due to racial housing discrimination by calculating the average per capita white to African American homeownership wealth gap in 2019, and compounding interest on that gap until 2022.

The second method calculates monetary losses specifically due to redlining. As discussed in Chapter 5, Housing Segregation, redlining is a clear case of state-sanctioned housing discrimination beginning with the New Deal in 1933, and lasting for 44 years until the Community Reinvestment Act of 1977 formally (although not effectively) sought to combat the persisting effects of redlining.[776] While redlining denied federally insured, affordable mortgages to those in African American neighborhoods based on federal law, California could have insured redlined homes in place of the federal government to address this injustice in a timely fashion. But not only did California not engage in any policies to ameliorate the effect of federal redlining, it embraced redlining policies and other policies discriminating against African Americans Californians.[777]

Method 1: Estimating Financial Losses Due to All Forms of Housing Discrimination until the Present

In 2019, one year before the Legislature enacted AB 3121, and one year before the COVID-19 crisis hit, the average African American non-Hispanic home in California had a value of $593,200, and the average white non-Hispanic home had a value of $773,400.[778] At the time, about 36.8 percent of African American Californian households owned their own home, while 63.2 percent of white Californian households did, reflecting a homeownership gap of 26.4 percentage points.[779] Using 2019 census figures for the average number of people living in African American and white California households, the experts estimated the total wealth in home values controlled collectively by African American and white Californians.

2,213,986 / 2.44 = 907,371

[2,213,986 African Americans living in California in 2019[780] / 2.44 average number of African Americans per household in California in 2019[781] = 907,371 African American households in California]

14,364,928 / 2.36 = 6,086,834

[14,364,928 white Americans living in California in 2019[782] / 2.36 white Americans per household in California in 2019[783] = 6,086,834 white households in California]

The experts then estimated the total wealth in homes controlled in 2019 collectively by all African American non-Hispanic Californian households, and the total wealth in homes controlled in 2019 collectively by all white Californian households.

($593,200 • 907,371).368 = $198,076,911,610

[($593,200)[784] (907,371 African American households in California) (0.368)[785] = $198,076,911,610 in homeownership wealth owned by African American Californians in 2019]

($773,400 • 6,086,834).632 = $2,975,176,286,659

[($773,400)[786] (6,086,834 white households in California) (0.632)[787] = $2,975,176,286,659 in homeownership wealth owned by white Californians in 2019]

After calculating the total housing wealth controlled by each of the two racial groups, the experts computed the estimated per-capita amount held by each group—including those who do not own houses, due to housing discrimination.

$198,076,911,610 / 2,213,986 = $89,466

[$198,076,911,610 / 2,213,986 African Americans in California = $89,466 per capita African American Californian homeownership wealth]

$2,975,176,286,659 / 14,364,928 = $207,114

[$2,975,176,286,659 / 14,364,928 white Californians = $207,114 per capita white Californian homeownership wealth]

Comparing the two shows an estimated per capita home ownership wealth gap of $117,648 in 2019. Adding a compounded, annual 30-year mortgage interest rate (3.10 percent in 2020),[788] the African American and white homeownership gap in California, in 2020, is approximately $121,295 in 2020 dollars.

[$117,648 (1 + 0.031) = $121,295 in 2020 dollars]

While this figure represents the cumulative effect of all sources of discrimination, including individuals (home owners, real estate agents), corporate banks, local zoning boards, as well as state and federal actors (e.g. through policies like redlining), it represents a cautious estimate because it assumes that reparations for de jure discrimination (i.e., redlining) should not have been paid earlier (i.e., after 1977 when the federal government passed a law attempting to counteract the persisting effects of redlining).

Method 2: Estimating Financial Losses Due Primarily to Redlining

Alternatively, the Legislature could estimate the financial losses due to housing discrimination by calculating losses due primarily to redlining. This process follows a similar method to the one used above but uses data instead from 1930 (three years before the start of federal redlining in 1933) and 1980 (three years after the Community Reinvestment Act of 1977 formally sought to end private lending practices that reproduced redlining). While the Task Force would ideally use data from 1933 and 1977 to performthis calculation, at the time of this report, relevant data from those years is unavailable, andthe Task Force relies instead on data from the nearest decennial censuses (1930 and 1980).

In 1930, Black homes in California had a mean value of $4,535, and white homes in California had a mean value of $6,067, reflecting a $1,532 difference.[789] At the time, in California, about 37.6 percent of African Americans owned their own home, versus 48.2 percent of white Americans, revealing a homeownership gap of 10.6 percent.[790] From this data, the Task Force's experts estimated the total wealth held in home values collectively by African Americans and white Californians.

The Task Force's expert team estimated the total wealth in homes held in each year. For 1930:

($4,535 • 22,595).376 = $38,528,090

[($4,535 mean value of an African American home in California in 1930) (22,595 African American households in California in 1930[791]) (0.376) = $38,528,090 total African American wealth in California homes in 1930]

($6,067 • 1,482,203).482 = $4,334,397,340

[($6,067 mean value of a white home in California in 1930) (1,482,203 white households in California in 1930[792]) (0.482) = $4,334,397,340 total white wealth in California homes in 1930]

Calculating the total wealth held by each of the two racial groups, they then computed the estimated wealth per-capita (i.e. per person) in each group (whether homeowner or not).

$38,528,090 / 81,048 = $475

[$38,528,090 total African American wealth in California homes in 1930 / 81,048 African Americans in California in 1930[793] = $475 African American per capita wealth in California homes in 1930]

$4,334,397,340 / 5,408,260 = $801

[$4,334,397,340 total white wealth in California homes in 1930 / 5,408,260 white Americans in California in 1930[794] = $801 white per capita wealth in California homes in 1930]

Taking the difference between the two ($801 - $475) results in an estimated per capita African American-white home value wealth gap of $326 (in 1930 dollars), favoring white Californians. This gap represents the unequal starting positions for African American and white Californians even before the federal government massively subsidized white homeownership (while excluding African American applicants) through the New Deal and GI Bill.[795]

In other words, the Task Force's expert team calculated that discriminatory redlining facilitated by the State of California caused the average African American in California to lose $160,931 in homeownership wealth.

The experts then repeated the calculation with data from 1980, three years after the federal government attempted to end the effects of redlining through the Community Reinvestment Act of 1977.[796] Because the 1980 census did not provide the total number of white

or African American households in California, the experts estimated this figure by dividing the total number of white and African American Californians by the mean or average number of white Americans and African Americans per household that year:

1,819,281 / 3.67 = 495,717

[1,819,281 African Americans in California in 1980[797] / 3.67 African Americans per household in 1980[798] = 495,717 African American California households in 1980]

18,030,893 / 3.22 = 5,599,656

[18,030,893 white Americans in California in 1980[799] / 3.22 white Americans per household in 1980[800] = 5,599,656 white American California households in 1980]

In 1980, the average African American non-Hispanic California home was worth $66,670, and the average white non-Hispanic California home an estimated $100,516 in 1980 dollars.[801]

The California homeownership gap in 1980 amounted to 20.1 percentage points, with 40.6 percent of Black homes being owner-occupied, and 60.7 percent of white homes being owner occupied.[802]

($66,670 • 495,717).406 = $13,418,077,670

[($66,670 average value of an African American home in California in 1980[803]) (495,717 African American households in California in 1980) (0.406) = $13,418,077,670 total homeownership wealth of African Americans in California in 1980]

($100,516 • 5,599,656).607 = $341,652,998,655

[($100,516 average value of a white home in California in 1980[804]) (5,599,656 white American households in California in 1980) (0.607) = $341,652,998,655 total homeownership wealth of white Americans in California in 1980]

Divided by the entire African American population in California in 1980, and the entire white population in California in 1980, respectively, each of these estimates yields the per-capita wealth in homes held by each group. The estimated average per capita African American wealth in California homes in 1980 amounted to $7,375, and the estimated per capita white homeownership wealth in California homes amounted to $18,948. In short, white Californians' per capita home wealth was $11,573 (in 1980 dollars) greater than that of African American Californians.

To identify how much of the 1980 per-capita homeownership wealth gap was due to California's complicity in federal redlining discrimination, the 1930 per-capita homeownership wealth gap can be subtracted from the 1980 value. After adjusting the 1930 per-capita homeownership wealth gap into its equivalent purchasing power in 1980 dollars,[805] subtracting the 1930 per-capita homeownership wealth gap from the 1980 per-capita homeownership wealth gap ($11,573 - $1,483) results in a redlining per-capita wealth gap of $10,090, quantifying how much Black Californians lost in homeownership wealth due to federal redlining discrimination and California's complicity in this policy. Compounding $10,090 up to 2020 using the annual 30-year mortgage interest rates[806] yields a per-capita value of $161,508 in 2020 dollars. In other words, the Task Force's expert team calculated that discriminatory redlining facilitated by the State of California caused the average African American in California to lose $161,508 in homeownership wealth.

To estimate a hypothetical amount California might have to pay to make up only for redlining, the expert team multiplied the average loss to African American Californians due to redlining with the number of African Americans living in the State in 1980. While the Task Force recommends reparations payments to descendants, specifically, because the U.S. Census does not currently identify the number of such descendants in the State, this report uses the number of census respondents who identified as Black or African American alone as a rough estimate. Multiplying the average-per capita housing wealth gap in 2020 dollars ($161,508) with the number of African American residents in California in 1980 (1,819,281)[807] yields $293,828,435,748—or approximately $294 billion (in 2020 dollars). If all 1,976,911 African American non-Hispanic California residents who lived in the State in 2020[808] were eligible African American descendants of the enslaved in the United States, each would receive housing reparations up to $148,630—or $3,378 for each year between 1933 and 1977 spent as a resident of the State of California.

Unjust Property Takings

As documented in Chapter Five, Housing Segregation, California built its cities over the bones of the African American neighborhoods that it tore apart through eminent domain,[809] building the highways, cities, and parks that have enabled the State of California to become the fourth or fifth largest economy in the world.[810] The unjust taking of land did more than just seize property—it destroyed communities and forced African Americans out of their neighborhoods and watering holes. At its peak in 1980, 7.7 percent of the population in California was Black.[811] By 2020, that number dropped to about

five percent.[812] In 2018 alone, 75,000 Black Americans left the state.[813] The State's more expensive coastal cities alone have shed 275,000 Black residents.[814]

Due to the voluminous records associated with the State's many eminent domain actions throughout history, the Task Force and its experts did not have sufficient capacity, within the lifespan of the Task Force, to provide a calculation of the harm caused by unjust property takings throughout the State. Nevertheless, the Task Force's economic expert team explored two potential methods to quantify the damage caused by these actions, examining the displacement of African Americans Californians by the state and its local governments through eminent domain.

One method the Legislature could undertake would be to calculate the loss in property value experienced by displaced African Americans or descendants. This could be done by examining the market value of the seized property at the time it was taken, subtracting the amount paid to the owner after eminent domain, and adding the increase in the property's net value by adding in a fair measure of the estimated appreciation to the present day. A second method of estimating loss could measure the compensation due by using the current value of the property seized from African Americans or descendants. These methods for calculating harm are complicated if the property value has declined in value since it was seized, or if the seized property is now being used for infrastructure whose value is difficult to quantify. But, based on its experts' recommendations, the Task Force suggests some strategies to assist the Legislature in overcoming that hurdle.

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Eviction of families in Oakland, CA to make way for a housing project (1941)

Devaluation of African American Businesses

As detailed in Chapters 10 and 13, discriminatory policies resulted in the decimation and devaluation of African American businesses.[815] Business formation results from a combination of factors creating demand for businesses—including the public sector, households, business-to-business transactions, and the entrepreneurial environment—as well as existing rules, regulations, and taxes. But, as documented in Chapters 10 and 13, the doors to entrepreneurial opportunity are much more closed to the state's African American residents than its white ones due to discrimination and its effects, including sharp differences in access to capital and equity.[816] While the lack of business data collected by the State of California limited the Task Force's experts' ability to quantify the harms caused by discrimination against African American businesses, other available data from the United States Census can be used to approximate some of those harms. Based on its experts' analysis, the Task Force recommends a method for the Legislature to calculate the harms caused by discrimination against African American businesses based on the expected number of African American businesses that should exist in California, given the state's policies, aggregate household incomes, and demand for public investments, goods, and services.

The doors to entrepreneurial opportunity are much more closed to the state's African American residents than its white ones due to discrimination and its effects, including sharp differences in access to capital and equity.

The State of California does not collect information on business establishments by race, and does not maintain a database of contractors at the state or local level by race. Instead, the Task Force's experts reviewed the U.S. Census Bureau's Survey of Business Owners, which provides information about businesses, including information distinguished by race.[817] The most recent data from the Census's survey of business owners is from 2012.[818] Though the Census only gives a snapshot of differences in business ownership in 2012, it displays the total wealth acquired by African American versus white businesses in California, reflecting the cumulative effects of racial inequalities resulting from actions by the State of California. As a result, it provides a guide for measuring the losses to business wealth caused by discrimination.

In 2012, the U.S. Census Bureau reported that there were 1,875,847 white non-Hispanic owned firms in California,

compared to 166,553 African American non-Hispanic owned firms.[819] Given California's population in 2012,[820] the state had a business ownership rate of roughly 806.7 firms per 10,000 white residents and 738.9 per 10,000 African American residents.[821] The white non-Hispanic owned firms had total sales, receipts or value of shipments totaling around $1.14 trillion, while African American non-Hispanic owned firms had about $14 billion.[822] In other words, white-owned firms had total sales, receipts, or value of shipments 80-times larger than that of African American-owned firms.

Census data show that African American-owned businesses are not overrepresented in the type of ethnic enclave industries of accommodations and food services, or retail sales catering towards an African American market.[823] So, if there were no discriminatory restrictions on access to capital or business equity—that is, if African American and white entrepreneurs competed on an equal playing field—the industry of African American and white businesses would be far more similar, reflecting the business opportunities that exist in California. For instance, the discrimination documented in this report explains why African American businesses lag behind white ones in the construction industry, a capital-intensive industry where access to government contracts matters greatly.[824] The history and ongoing effects of residential segregation and redlining further limited opportunities for African American construction firms in the private sector,[825] highlighting again how discrimination has produced the African American and white business wealth gap in construction, a trend that reoccurs across nearly every other industry.[826]

The Task Force recommends estimating the effect of discrimination against African American businesses by implementing an equation that calculates a figure for each state separately, based on the general demand environment of state and local government contracting and household income. Controlling for each state allows us to then control for differences in each state's business environment. Then estimates can incorporate the number of businesses formed, and sales and receipts generated on those factors. This is an approach used by many sociologists researching differences in business formation using the business environment.[827]

Using this method, the Task Force's experts estimate that African Americans in California were able to create 59,951 fewer firms than African Americans in other states, on average, under the same circumstances, reflecting the disadvantages unique to California. The average sales of firms in California, according to the 2012 U.S. Census Survey, was $1,103,966.[828] Because the average value of a non-financial business is generally 2.3 times its sales value[829] that would give these firms an average value of approximately $2,539,122. Multiplying that value times the missing number of businesses yields $152,222,903,022 in missing African American business wealth in California. On a per capita basis, using the African American population as of 2020,[830] that would amount to roughly $77,000 per African American in California.

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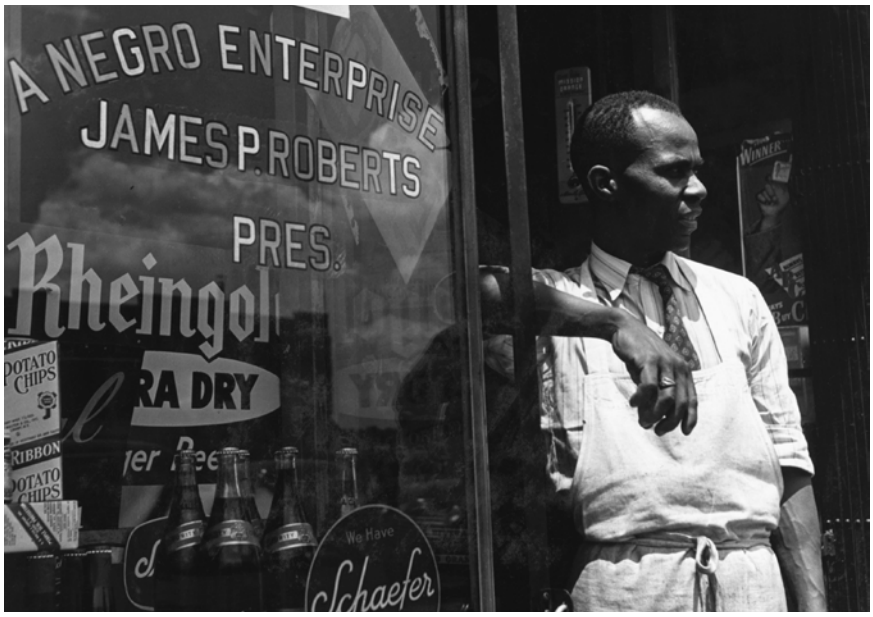


James P. Roberts stands in front of his store, proudly labeled "A Negro Enterprise." (1950)

Conclusion

Since this list of harms and atrocities is not exhaustive, the total of the estimated losses to African American Californians is not a final estimate of losses, nor, given the Task Force's determination of eligibility for compensation, is it is a recommendation of an amount of reparations payments. Rather, it is an economically conservative initial assessment of what losses, at a minimum, the State of California caused or could have prevented, but did not. Further data collection and research would be required to augment these initial loss-estimates. And the Legislature would then have to decide how to translate loss-estimates into proposed reparations amounts and make determinations of who would ultimately be eligible to receive those amounts.

The Task Force also recommends that the Legislature provide reparations for less quantifiable harms. For example, pain and suffering from generations of discrimination represents real harm experienced by descendants.

Also, because in some instances, more data and research are required to calculate the just amount of reparations, the Task Force recommends that the Legislature make a substantial initial down payment on reparations, to be augmented over time with additional payments as new evidence becomes available. It should be communicated to the public that the substantial initial down payment is the beginning of a conversation about redressing the economic and societal harm of historical injustices, not the end of it. Delay of reparations is in itself an injustice that causes more suffering and may ultimately deny justice, especially to the elderly among the harmed. For this reason, the Task Force recommends prioritizing elderly recipients in the monetary reparations program.

PART V: POLICY RECOMMENDATIONS

The Legislature directed the Task Force to recommend appropriate remedies in consideration of the Task Force's findings; to address how California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated; to address how the resulting injuries can be reversed; to provide appropriate policies, programs, projects, and recommendations for the purpose of reversing the injuries; and to identify any other "forms of rehabilitation or restitution to African descendants" necessary.[831] AB 3121 thus requires that the Task Force provide concrete, common-sense, and necessary recommendations to end, once and for all, the discriminatory harm and suffering that those descended from enslaved Africans have uniquely endured and continue to experience in every facet of life.

In response to the Legislature's direction, Part V of the report contains policy recommendations tailored to the harms discussed in Chapters 1 through 13, with "[s]pecial [c]onsideration for African Americans [w]ho are [d]escendants of [p]ersons [e]nslaved in the United States."[832] In the Task Force's view, adoption and implementation of these recommendations is crucial to effectuating AB 3121's purpose and beginning the long-overdue process of providing true reparations to African Americans in California.

AB 3121 thus requires that the Task Force, and ultimately the Legislature and the larger public, provide concrete, common-sense, and necessary recommendations to end, once and for all, the discriminatory harm and suffering that those descended from enslaved Africans have uniquely endured and continue to experience in every facet of life.

As the Legislature recognized in AB 3121,[833] and as Part I of this report documented, emancipation from enslavement did not end the badges and incidents of slavery. By all measures, from health to wealth, African Americans as a group, and especially descendants of those enslaved, live with the persistent consequences of this legacy—consequences that include a shorter life expectancy, a vast wealth gap borne of stolen labor, political disenfranchisement, mass incarceration, the destruction of African American families, inadequate and biased health care, limited education and employment opportunities, unjust takings of property, redlining, and the destruction of African American-owned businesses and cultural institutions. Descendants of those who were enslaved have uniquely carried the weight of the harms and atrocities visited upon their ancestors, as trauma and loss have passed from generation to generation.

As described in Chapters 1 through 13, the harms inflicted upon African Americans have not been incidental or accidental—they have been by design. They are the result of an all-encompassing web of discriminatory laws, regulations, and policies enacted by government. These laws and policies have enabled government officials and private individuals and entities to perpetuate the legacy of slavery by subjecting African Americans as a group to discrimination, exclusion, neglect, and violence in every facet of American life.[834] And there has been no comprehensive effort to disrupt and dismantle institutionalized racism, stop the harm, and redress the specific injuries caused to descendants and the larger African American community. This is not to say that laws and society have not changed at all. But as Malcolm X expressed, "If you stick a knife in my back nine inches and pull it out six inches, there's no progress. If you pull it all the way out,

that's not progress. Progress is healing the wound that the blow made."[835]

AB 3121 invokes the international standards of remedy for wrongs and injuries caused by the state.[836] In developing its policy recommendations in Part V, the Task Force followed the standards embodied in the U.N. Principles on Reparations. These recommended changes or substantially similar measures must be implemented in some form in order for any California reparatory effort to be able to satisfy the international reparations framework's requirements that there be both "rehabilitation" and "guarantees of non-repetition." Further, a number of the policies are also intended to provide restitution to augment the Task Force's recommendations for restitution and compensation in Part IV, Chapter 17, Economic Calculations. Policies necessary to achieve rehabilitation, while also affording special consideration to Descendants, should have the scope needed to bring repair to all those who have endured the harms outlined in this report and to ensure that the guarantee of non-repetition for those harms is fully realized.

The enormity of the task before California and the nation cannot be overstated. The policies recommended in this report, while wide-ranging, are not exhaustive—they are only a start. The harms to be repaired have been more than 400 years in the making. Their undoing will require ceaseless vigilance and a commitment to continually learn and meet the challenges ahead. Time and again, universal policies that have not been specifically directed to stop and repair the harm that continues to afflict African Americans have succeeded only in allowing that harm to continue. Channeling the voices of the hundreds of individuals who testified or offered public comment in Task Force meetings or who participated in community listening sessions, the Task Force urges the Legislature to ensure an end to the ongoing harms and atrocities experienced by its African Americans. This time *must* be different.

In Part V of the report, the Task Force recommends that the Legislature adopt the following policy proposals:

Chapter 18: Introduction to the Task Force's Policy Recommendations

a. Introduction
b. General Structural Policy Recommendations
    1. Create and Fund the California American Freedman Affairs Agency
    2. Repeal Proposition 209
    3. Mandate Effective Racial Impact Analyses
    4. Require Agency Transparency
    5. Make Legislative Findings that Build Legislative Records that Reflect the Historic and Present State of Pervasive Structural Barriers and Discrimination Against African Americans and Support Reparative Enactments
    6. Transmit the AB 3121 Task Force report to the President of the United States and the United States Congress

Chapter 19: Policies Addressing Enslavement

1. Enact a Resolution Affirming the State's Protection of Descendants of Enslaved People and Guaranteeing Protection of the Civil, Political, and Socio-Cultural Rights of Descendants of Enslaved People
2. Amend the California Constitution to Prohibit Involuntary Servitude
3. Require Payment of Fair Market Value for Labor Provided by Incarcerated Persons (Whether in Jail or Prison)
4. Emphasize the "Rehabilitation" in the California Department of Corrections & Rehabilitation (CDCR)
5. Abolish the Death Penalty
6. Prohibit Private Prisons from Benefiting from Contracts with CDCR to Provide Reentry Services to Incarcerated or Paroled Individuals

Chapter 20: Policies Addressing Racial Terror

1. Advance the Study of the Intergenerational, Direct, and Indirect Impacts of Racism
2. Establish and Fund Community Wellness Centers in African American Communities
3. Fund Research to Study the Mental Health Issues Within California's African American Youth Population, and Address Rising Suicide Rates Among African American Youth
4. Expand the Membership of the Mental Health Services Oversight and Accountability Commission to Include an Expert in Reducing Disparities in Mental Health Care Access and Treatment
5. Fund Community-Driven Solutions to Decrease Community Violence at the Family, School, and Neighborhood Levels in African American Communities
6. Address and Remedy Discrimination Against African American LGBTQ+ Youth and Adults, Reduce Economic Disparities for the African American LGBTQ+ Population, and Reduce Disparities in Mental Health and Health Care Outcomes for African American LGBTQ+ Youth and Adults
7. Implement Procedures to Address the Over-Diagnosis of Emotional Disturbance Disorders, Including Conduct Disorder, in African American Children
8. Disrupt the Mental Health Crisis and County Jail Cycle in African American Communities

9. Create and Fund Equivalents to the UC-PRIME-LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists
10. Eliminate Legal Protections for Peace Officers Who Violate Civil or Constitutional Rights
11. Recommend Abolition of the Qualified Immunity Doctrine to Allow Access to Justice for Victims of Police Violence

Chapter 21: Policies Addressing Political Disenfranchisement

1. Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the African American Voting Bloc
2. Increase Funding to Support the California Department of Justice's Enforcement of Voting Rights in California
3. Enact Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities
4. Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among African Americans
5. Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls
6. Remove the Barrier of Proving Identity to Vote
7. Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction
8. Increase Efforts to Restore the Voting Rights of Formerly and Currently Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote

Chapter 22: Policies Addressing Housing Segregation and Unjust Property Takings

1. Prioritize Responsible Development in Communities and Housing Development
2. Enact Policies Overhauling the Housing Industrial Complex
3. Collect Data on Housing Discrimination
4. Provide Anti-Racism Training to Workers in the Housing Field
5. Expand Grant Funding to Community-Based Organizations to Increase Home Ownership
6. Provide Property Tax Relief to African Americans, Especially Descendants, Living in Formerly Redlined Neighborhoods, Who Purchase or Construct a New Home
7. Provide Direct Financial Assistance to Increase Home Ownership Among African Americans, Especially Descendants, Through Shared Appreciation Loans and Subsidized Down Payments, Mortgages, and Homeowner's Insurance
8. Require State Review and Approval of All Residential Land Use Ordinances Enacted by Historically and Currently Segregated Cities and Counties
9. Repeal Crime-Free Housing Policies
10. Increase Affordable Housing for African American Californians
11. Provide Restitution for Racially Motivated Takings
12. Provide a Right to Return for Displaced African American Californians

Chapter 23: Policies Addressing Separate and Unequal Education

1. Increase Funding to Schools to Address Racial Disparities
2. Fund Grants to Local Educational Agencies to Address the COVID-19 Pandemic's Impacts on Preexisting Racial Disparities in Education
3. Implement Systematic Review of School Discipline Data
4. Improve Access to Educational Opportunities for All Incarcerated People
5. Adopt Mandatory Curriculum for Teacher Credentialing and Trainings for School Personnel and Grants for Teachers
6. Employ Proven Strategies to Recruit African American Teachers
7. Require that Curriculum at All Levels Be Inclusive and Free of Bias
8. Advance the Timeline for Ethnic Studies Classes
9. Adopt a K-12 Black Studies Curriculum
10. Adopt the Freedom School Summer Program
11. Reduce Racial Disparities in the STEM Fields for African American Students
12. Expand Access to Career Technical Education for Descendants
13. Improve Access to Public Schools
14. Fund Free Tuition to California Public Colleges and Universities
15. Eliminate Standardized Testing for Admission to Graduate Programs in the University of California and California State University Systems
16. Identify and Eliminate Racial Bias and Discrimination in Statewide K-12 Proficiency Assessments

Chapter 24: Policies Addressing Racism in Environment and Infrastructure

1. Increase Greenspace Access and Recreation Opportunities in African American Communities
2. Test for and Eliminate Toxicity in Descendant Communities
3. Increase Trees in Redlined and Descendant Communities

4. Develop Climate Resilience Hubs in Redlined and Descendant Communities
5. Remove Lead in Drinking Water
6. Prevent Highway Expansion and Mitigate Transportation Pollution

Chapter 25: Policies Addressing Pathologizing the African American Family

1. Reduce and Seek to Eliminate Racial Disparities in the Removal of African American Children from Their Homes and Families
2. Reduce the Placement of African American Children in Foster Care and Increase Kinship Placements for African American Children
3. Establish and Fund Early Intervention Programs that Address Intimate Partner Violence (IPV) Within the African American Community
4. Eliminate Interest on Past-Due Child Support and Eliminate Back Child Support Debt
5. Eliminate or Reduce Charges for Phone Calls from Detention Facilities Located Within the State of California
6. Address Disproportionate Homelessness Among African American Californians
7. Address Disparities and Discrimination Associated with Substance Use Recovery Services
8. End the Under-Protection of African American Women and Girls

Chapter 26: Policies Addressing Control Over Creative, Cultural, & Intellectual Life

9. Provide State Funding to Address Disparities in Compensation Among Athletes in the University of California, California State University, and Community College Systems and Funding to Support African American Athletes in Capitalizing on their Name, Image, and Likeness and Intellectual Property
10. Prohibit Discrimination Based on Natural and Protective Hair Styles in All Competitive Sports
11. Identify and Remove Monuments, Plaques, State Markers, and Memorials Memorializing and Preserving Confederate Culture; Erect Monuments, Plaques, and Memorials Memorializing and Preserving the Reconstruction Era and the African American Community
12. Provide Funding to the Proposed California American Freedman Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life
13. Eliminate the California Department of Corrections and Rehabilitation's Practice of Banning Books

Chapter 27: Policies Addressing Stolen Labor and Hindered Opportunity

1. Create Greater Transparency in Gubernatorial Appointments
2. Provide Guaranteed Income Program for Descendants
3. Eliminate Barriers to Licensure for People with Criminal Records
4. Transform the Minimum Wage Back into a Living Wage
5. Advance Pay Equity Through Employment Transparency and Equity in Hiring and Promotion
6. Create and Fund Professional Career Training
7. Create or Fund Apprenticeship Grant Programs
8. Fund African American Businesses
9. Fund African American Banks

Chapter 28: Policies Addressing the Unjust Legal System

1. Allocate Funds to Remedy Harms and Promote Opportunity
2. Eliminate Barriers for African American Prospective Attorneys by Funding Legal Education and Ending Discriminatory Gatekeeping at the State Bar
3. Prohibit Cash Bail and Mandate that Those Who Are Acquitted or Exonerated be Reimbursed by the Entity or Entities at Fault
4. Enact Enforceable Legislation with Penalties that Dismantles the School to Prison Pipeline and Decriminalizes the Youth Justice System
5. Amend the Penal Code to Clarify and Confirm Decriminalization of Transit and Other Public Disorder Offenses
6. Amend the Penal Code to Shift Public Disorder Infractions and Low-Level Crimes Outside of Law Enforcement Jurisdiction
7. Prohibit Pretextual Traffic and Pedestrian Stops, Probation Inquiries, and Consent-Only Searches
8. Mandate Policies and Training on Bias-Free Policing
9. Enact Legislation that Requires the Department of Justice to Promulgate Model Law Enforcement Policies Designed to Prevent Racial Disparities in Policing
10. Repeal Three Strikes Sentencing
11. Strengthen and Expand the Racial Justice Act
12. Assess and Remedy Racially Biased Treatment of African American Adults and Juveniles in Custody in County Jails, State Prisons, Juvenile Halls, and Youth Camps
13. Accelerate Scheduled Closures of Identified California State Prisons and Close Ten Prisons Over the Next Five Years, with Financial Savings Redirected to the California American Freedman Affairs Agency

Chapter 29: Policies Addressing Mental and Physical Harm and Neglect

1. Address Health Inequities Among African American Californians by Funding the California Health Equity and Racial Justice Fund
2. Improve Health Insurance Coverage
3. Evaluate the Efficacy of Health Care Laws, Including Recent Enactments
4. Address Anti-Black Discrimination in Health Care
5. Mandate Standardized Data Collection
6. Provide Medical Social Workers/Health Care Advocates
7. Improve Diversity Among Clinical Trial Participants
8. Remedy the Higher Rates of Injury and Death Among African American Mothers and Infants
9. Meet the Health Needs of African American Elders
10. Remedy Disparities in Oral Health Care
11. Fix Racially Biased Algorithms and Medical Artificial Intelligence in Health Care
12. Fund and Expand the UC PRIME-LEAD-ABC Program to be Available at All UC Medical Campuses
13. Create and Fund Equivalents to the UC-PRIME -LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists
14. Permanently Fund the California Medicine Scholars Program and Create and Fund Equivalent Pathway Programs for Students in the CSU and UC Systems
15. Review and Prevent Racially Biased Disciplinary Practices by the Medical Board of California
16. Address Food Injustice

Chapter 30: Policies Addressing the Wealth Gap

17. Fund and Conduct a Study to Calculate the Overall Racial Wealth Gap in California
18. Encourage the Federal Government to Use the National Racial Wealth Gap to Determine Federal-Level Reparations

PART VI: MEASURING THE BASELINE FOR RACIAL JUSTICE ACT IMPLEMENTATION

XXXI. California Prosecutorial and Judicial Race Data Survey: Summary of Responses

AB 2542, the California Racial Justice Act of 2020 (Act or RJA), codified in Section 745 of the California Penal Code, prohibits California, through any criminal prosecutor acting in the name of the People or the State, from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity, or national origin.[837] The Act allows an accused person to seek dismissal of pending charges, or vacatur of a conviction or sentence, through a claim alleging that a charge, conviction, or sentence was tainted by racial bias.[838] The Act originally applied prospectively to cases in which judgment had not been entered prior to January 1, 2021.[839] However, AB 256, the Racial Justice Act for All, enacted in 2022, extended the Act's protections to apply retroactively to most cases in which judgment was entered before January 1, 2021.[840]

The Act allows an accused person to seek dismissal of pending charges, or vacatur of a conviction or sentence, through a claim alleging that a charge, conviction, or sentence was tainted by racial bias.

The Racial Justice Act offers different pathways to demonstrating a violation. Some involve showing overt bias or animus, such as use of discriminatory language by a courtroom actor.[841] Others allow for claims that arise from implicit bias.[842] A central purpose of the Act was to respond to *McCleskey v. Kemp* (1987) 481 U.S. 279, 312-313, in which the U.S. Supreme Court accepted racial disparities as "an inevitable part of our criminal justice system" and held that these disparities generally do not violate the Constitution in the absence of proof of discriminatory intent.[843]

With the Racial Justice Act, California rejected the acceptance of racial disparities and sought to begin the process of reforming our unjust legal system. Under the Act, the law is violated when an accused person has been charged with or convicted of a more serious offense than similarly situated persons of other races, ethnicities, or national origins who commit similar offenses, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious

offenses against people who share the accused person's race, ethnicity, or national origin.[844] The Act similarly forbids sentencing disparities arising from race, ethnicity, or nationality, including that of victims.[845]

Racial Justice Act violations can occur at a number of different decision points, including the decision regarding which charges to bring, the convictions obtained, and in sentencing. Where claims of violations involve comparisons to the treatment of others, information about an accused individual's race, the race of the complainant or victim, and the race of those in comparable cases can be critical to establishing a prima facie case that a violation has occurred. A lack of data on race in comparable cases can severely limit the ability of an accused or convicted person to support claims of racial bias. The same is true when agencies do not track or share data on key decisions made by the prosecutor, judge, or jury in comparable cases. This lack of critical information impedes implementation and diminishes the efficacy of the Racial Justice Act. Without access to data, the promise of the Act has the potential to ring hollow for many. Gauging the availability of RJA-relevant data is thus critical to understanding the landscape for potential claims that may be raised under the Act.

In order to establish a baseline regarding the collection of RJA-relevant data, the AB 3121 Reparations Task Force requested that the California Department of Justice Research Center (DOJRC) survey all 58 California superior courts and district attorney offices, as well as a select group of 11 of the largest city attorney offices, regarding what data elements their agencies regularly collect when dealing with criminal cases. The 126 responding criminal justice agencies and courts completed an online questionnaire pertaining to data collected and maintained by their agency, with a focus on what racial data the agencies hold as well as data on factors that may involve prosecutorial or judicial discretion. Chapter 31 of the Task Force's report describes and summarizes the findings.

Notably, the DOJRC conducted the survey prior to the retroactive application of the Act and prior to implementation of AB 2418 (2021-22), the Justice Data Accountability and Transparency Act. The latter statute sought to mandate that agencies collect and transmit specified data, including data on the race of accused persons and victims, to the Department of Justice.[846] These data collection and transmission requirements were set to commence in 2027.[847] However, AB 2418 conditioned the operation of its provisions upon an adequate appropriation by the Legislature.[848] As of the time of this Report's issuance, there has not been an appropriation to this effect. As set forth in Part V, the Task Force's recommendations to the Legislature include full funding of AB 2418 and any further data collection, extraction, analysis, and dissemination that is needed for the Racial Justice Act to be implemented and applied without limitation. An unfunded or otherwise unfulfilled mandate will gravely undermine the law and risk the persistence of unacceptable racial bias in the criminal legal system.

Overall, in the absence of requirements like those set forth in AB 2418, there appears to be a large amount of discretion, and likewise variability, in what data elements are collected across California district attorneys offices, superior courts, and select city attorney's offices and between counties. This lack of consistency and absence of data on key variables could present substantial challenges to presenting and evaluating claims of racial discrimination in the criminal justice system, and could increase the difficulty of sustaining claims of Racial Justice Act violations in some California counties more than others.

PART VII: LISTENING TO THE COMMUNITY

Chapter 32

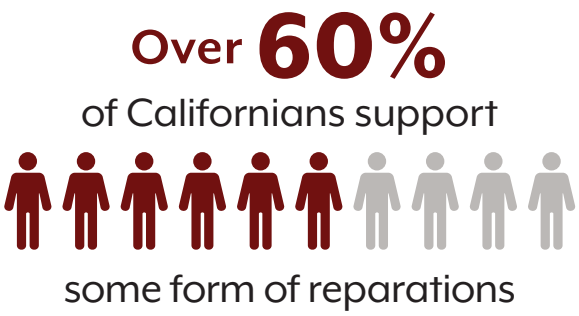
The Task Force engaged the Ralph J. Bunche Center[849] at the University of California, Los Angeles, to design and implement a plan in which it could facilitate the collection and documenting of important community perspectives independent of the formal meetings of the Task Force, through: (1) holding community listening sessions, and engaging with at least 867 people during 2022; (2) collecting seven oral histories and 46 personal testimonies; and (3) administering two statewide surveys. The first survey comprised a representative sample of all Californians, with 2,499 respondents. The second sample, with 1,934 respondents, was over 90 percent African American, and reached through connections to listening session participants. The fundamental goal of this work was to give the community voice in the ongoing statewide conversation concerning reparations—to create space for communities to express their concerns, desires, wishes, and experiences—and to provide the Task Force and the Legislature with additional community input as it explored and deliberated reparations proposals.

Through this multi-pronged approach to community engagement, the Bunche Center focused its data

collection on four areas deemed important by the Task Force: (1) identifying forms of race-based harm through those who experienced it; (2) gauging support for reparations; (3) determining support for different types of reparations; and (4) determining perspective from the wider impacted community regarding eligibility for reparations.

An analysis of the results of the community listening sessions, personal testimonies, oral histories, and statewide surveys revealed the following:

- There are five major types of racially-driven harm that communities consistently identified. Study participants named lack of educational opportunity, discriminatory policing and law enforcement, economic disenfranchisement, housing inequality, and healthcare disparities most often when asked about racially-driven harms that Black people experience. The participants also consistently cited the following harms: food inaccessibility, employment and workplace disparities, inadequate business support infrastructure, the cycle of municipal disinvestment in Black neighborhoods, and displacement.



- There is broad community support for reparations. The survey found that over 60 percent of Californians support some form of reparations, including financial compensation, community investments, educational opportunities, investments for Black businesses and organizations, and land and property ownership. Furthermore, community listening session participants overwhelmingly supported reparations initiatives.
- While a majority of Californians support reparations measures, they are divided on which types should be used. The survey queried respondents on the specific forms of reparations to be applied and found that California residents are largely in support of the three primary types of reparations measures—direct cash payments (66 percent of respondents); monetary reparations without cash measures (77 percent); and non-monetary reparations, such as an apology or monuments (73 percent). Support was consistently highest for remedies incorporating monetary measures, but without direct cash payments, among all Californians, including African American participants. The community listening sessions produced similar results, except that direct cash payments were the most frequently mentioned form of reparations, followed by other monetary measures.
- The opinions about who should be eligible for reparations differed across the statewide sample, the community listening session sample, and African American residents in the statewide sample. A plurality of respondents in the statewide sample supported reparations for all Black people (30 percent) followed closely by support for lineage-based reparations (29 percent). Lineage-based reparations refers to people who are descendants of those enslaved in the U.S. In the statewide sample, 24 percent believed that reparations should be for those Black people who experienced race-based discrimination. On the other hand, 67 percent of respondents in the community listening session sample supported reparations for people who descended from those enslaved in the U.S. (lineage based), while 18 percent supported reparations for all Black people. Black Californians were in the middle of responses when compared to both the overall statewide and community listening session samples. Black Californians indicate nearly equal support for lineage-based (40 percent) reparations and for reparations for all Black residents (39 percent).

The Task Force urges the Legislature, in formulating a state reparations statute or program, to ensure that the widest possible community engagement takes place, in order to ensure that what is enacted in carrying out the recommendations of this report reflects the input of the community intended to be served by this initiative.

PART VIII: RECOMMENDATIONS FOR EDUCATING THE PUBLIC

Chapter 33: Educating the Public & Responses to Questions
In enacting AB 3121, the Legislature directed the Task Force to recommend appropriate ways to educate the California public regarding the Task Force's findings.[850] To achieve this goal, the Task Force consulted academic experts to develop a concept for educating students of all ages and backgrounds, as well as the public in general, through a curriculum designed to make the Task Force's work accessible.

The Task Force recommends that the Legislature adopt the concepts discussed in Chapter 33 of this report, which the Task Force developed with the support of these experts, as a methodology for adopting a standard curriculum centered on the Task Force's findings and recommendations. The Task Force further recommends that the Legislature fund the implementation of age-appropriate curricula across all grade levels, as well as the delivery of these curricula in schools across California. The Legislature should also create a public education fund, specifically dedicated to educating the public about African American history, and support the initial and ongoing education about the Task Force's findings. Additionally, in order to facilitate ongoing conversations in communities across California following the publication of this report, the Task Force has developed materials included within Chapter 33 that will help answer some potential questions people may have about reparations. These questions are expected to come from both those who support reparations, but want to better understand their justification, and those who might be unaware of the need for or purpose of reparations.

The Legislature should also create a public education fund, specifically dedicated to educating the public about African American history, and support the initial and ongoing education about the Task Force's findings.

PART IX: KEY CASES AND STATUTES

Through its enactment of AB 3121, the Legislature charged the Task Force with compiling "[t]he federal and state laws that discriminated against formerly enslaved Africans and their descendants . . . from 1868 to the present," and identifying "[h]ow California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated."[851] Part IX of the report contains a legal compendium that catalogues, summarizes, and memorializes for the public the many state and federal laws that have perpetuated discrimination against African Americans in California, as well as some cases and laws that advanced the rights of African Americans by setting aside those racist laws and policies. Due to the myriad ways in which laws and cases have created and nurtured this system of subjugation, the compendium is illustrative, not exhaustive. Nevertheless, it is intended to provide a comprehensive documentation of the centuries-long struggle in California, dating back to the earliest years of statehood, for personhood, equality, and equity.

Part IX is divided thematically, based on five major subject areas discussed throughout the Task Force's report: (1) Housing (Chapter 35); (2) Labor (Chapter 36); (3) Education (Chapter 37); (4) Political Participation (Chapter 38); (5) the Unjust Legal System (Chapter 39); and (6) Civil Rights Cases (Chapter 40). In doing so, the compendium documents many of the constitutional provisions, statutes, and court cases that form the foundations of the discrimination and atrocities discussed throughout Chapters 1-13 of this report.

Endnotes

[1] Pres. Proc. No. 95 (Jan. 1, 1863); U.S. Const. 13th amend., § 1.

[2] The Reconstruction Amendments' Debates: The Legislative History and Contemporary Debates in Congress on the 13th, 14th, and 15th Amendments (Avins edit., 1967) p. 122.

[3] Foner, Forever Free: The Story of Emancipation and Reconstruction (First Vintage Books 2006) pp. 113-115, 117-118 (Foner, Forever Free); see Foner, Reconstruction: America's Unfinished Revolution, 1863-1877 (2014) pp. 444-445 (Foner, Reconstruction); U.S. Const., 14th amend., § 1; U.S. Const., 15th amend., § 2.

[4] Cobb and Jenkins, *Race and the Representation of Blacks' Interests During Reconstruction* (2001) 54 Pol. Research Quarterly 181, 184.

[5] Foner, Reconstruction, *supra*, at pp. 581-582.

[6] *The Civil Rights Cases* (1883) 109 U.S. 3, 20.

[7] Gov. Code, § 8301, subd. (a)(6).

[8] Gov. Code, § 8301, subd. (b)(1).

[9] Gov. Code, § 8301, subd. (b)(2), (3) & (4).

[10] Gov. Code, § 8301, subd. (b).

[11] The Task Force published Part I of this report—Chapters 1 through 13—as its Interim Report in June 2022. These chapters are now subsumed within this Final Report from the Task Force. The chapters comprising Part I have been revised and updated to reflect the subsequent decision-making and considerations of the Task Force, but the substance of the historical record of atrocities remains unchanged, and forms the basis for the Final Recommendations set forth in this Final Report.

[12] Kolchin, American Slavery: 1619-1877 (1993) pp. 17-18; Kendi, Stamped from the Beginning: The Definitive History of Racist Ideas in America (2016) pp. 38-41.

[13] See generally Chapter 4, Political Disenfranchisement, *infra*.

[14] See generally Chapter 3, Racial Terror, *infra*.

[15] See generally Chapters 2-13, *infra*.

[16] See generally Chapters 4-13, *infra*.

[17] See generally Chapter 12, Harm and Neglect Mental Physical and Public Health, *infra*.

[18] Gov. Code, § 8301.3, subd. (a)(1). The meetings are conducted pursuant to the Bagley Keene Act. Gov. Code, § 11120. Due to the COVID-19 pandemic, from June 2021 to March 2022, all meetings were conducted virtually. See Gov. Code, § 11133(a).

[19] Kennedy, *Nigger: The Strange Career of a Troublesome Word*, Wash. Post (Jan. 11, 2001) (as of Apr. 22, 2022).

[20] Malesky, *The Journey from 'Colored' to 'Minorities' to 'People of Color'*, NPR (Mar. 30, 2014) (as of May 17, 2023); Smith, *Changing Racial Labels: From "Colored" to "Negro" to "Black" to "African American"* (1992) 56 Pub. Opinion Quarterly 496, 497-501 (as of May 12, 2023).

[21] See, e.g., Newkirk II, *The Language of White Supremacy* (Oct. 6, 2017) The Atlantic (as of May 12, 2023).

[22] Southern Poverty Law Center, *Groups* (as of May 12, 2023).

[23] See Bailey et al., *How Structural Racism Works—Racist Policies as a Root Cause of U.S. Racial Health Inequities* (2021) 384 New England J. of Medicine 768, 768-769 (as of May 12, 2023); see also Gates, Jr., Stony the Road: Reconstruction, White Supremacy, and the Rise of Jim Crow (2019) p. xxii.

[24] See *ibid.*

[25] Wiecek, *Structural Racism and the Law in America Today: An Introduction* (2011) 100 Ky. L.J. 1, 5-19 (as of May 12, 2023).

[26] See generally Metzl, *Dying of Whiteness: How the Politics of Racial Resentment Is Killing America's Heartland* (2019).

[27] White House Historical Assn., *Slavery in the President's Neighborhood FAQ* (as of Apr. 22, 2022).

[28] *Ibid.*

[29] Nat. Park Service, *Language of Slavery* (as of Apr. 22, 2022).

[30] *Ibid.*

[31] *Ibid.*

[32] See *ibid.*

[33] Cox, *The Language of Incarceration* (July 23, 2020) 1 Incarceration 1 (as of May 15, 2023); see also Bedell et al., *Corrections for Academic Medicine: The Importance of Using Person-First Language for Individuals who have Experienced Incarceration* (2019) 94 Academic Medicine 172, 173-174 (as of May 15, 2023).

[34] Perlman, *2020 AP Stylebook Changes: Person-First Language, and the Great 'Pled' Debate* (May 6, 2020) Columbia Journalism Rev. (as of Apr. 22, 2022).

[35] See California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2022) Meeting Minutes, pp. 10-12 (as of May 12, 2023). The Task Force's motion was especially informed by the testimony of the author of AB 3121, Dr. Shirley Weber, during the meeting of the Task Force on January 27, 2022. California Task Force to Study and Develop Reparation Proposals for African Americans (Jan. 27, 2022) *Testimony of Dr. Shirley Weber* (as of May 31, 2023).

[36] See Betts, *Incarcerated Language* (2018) Yale Rev. (as of May 12, 2023).

[37] Chapter 2, Enslavement, *infra*, at § V, subd. B; see also Baptist, The Half Has Never Been Told: Slavery and the Making of American Capitalism (2014) p. xxiii.

[38] Chapter 2, Enslavement, *infra*, at § V, subd. B.

[39] Baptist, *supra*, at p. xxiii.

[40] Chapter 2, Enslavement, *infra*, at § IV, subd. C.

[41] Baptist, *supra*, at pp. 9-11. For an in depth discussion, see Chapter 2, Enslavement, § IV, subd. C.

[42] Presidents who owned enslaved people while in office included Presidents

George Washington, Thomas Jefferson, James Madison, James Monroe, Andrew Jackson, John Tyler, James K. Polk, and Zachary Taylor. See Rosenwald, Slave-Owning Presidents Become Targets of Protestors, Wash. Post (June 23, 2020) (as of May 12, 2023).

[43] Weil et al., *More than 1,800 Congressmen Once Enslaved Black People. This is Who They Were, and How They Shaped the Nation*, Wash. Post (Nov. 28, 2022) (as of May 16, 2023).

[44] Ericson, The Federal Government and Slavery: Following the Money Trail (2005) 19 Studies in Am. Pol. Development 107 (as of May 12, 2023).

[45] *Id.* at pp. 112-115.

[46] Pritchett, *Quantitative Estimates of the United States Interregional Slave Trade, 1820-1860* (2001) 61 J. of Econ. History 467, 474.

[47] Ball, Slavery in the United States: A Narrative of the Life and Adventures of Charles Ball, a Black Man (1837) p. 69.

[48] Rosenthal, *Reckoning with Slavery: How Revisiting Management's Uncomfortable Past Can Help Us Confront Challenges Today* (2021) 20 Academy of Management Learning & Ed. 467, 467-472.

[49] Baptist, *supra*, at pp. 116-124. For an in depth discussion of the horrors suffered by enslaved people, see Chapter 2, Enslavement, section V.

[50] Berry, The Price for their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation (2017) pp. 78-83; Douglass, Narrative of the Life of Frederick Douglass, an American Slave (1845) pp. 3-4.

[51] Thomas Jefferson, Letter to Joel Yancey, Jan. 17, 1819 (as of May 9, 2022).

[52] U.S. Census of 1860, Introduction, p. vii (as of May 9, 2022).

[53] Kendi, *supra*, at pp. 38-41.

[54] Kendi, *supra*, at p. 48.

[55] Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (1975) pp. 369, 385-386.

[56] Commonwealth of Virginia Legislature, Act I. *An Act About the Casual Killing of Slaves* (1669) Act I. (as of Apr. 24, 2022).

[57] Berlin, Many Thousands Gone: The First Two Centuries of Slavery in North America (1998) pp. 123-124.

[58] *An Act Concerning Servants and Slaves XXXIV* (1705) Records of the American Colonies, p. 459 (as of Apr. 24, 2022).

[59] See, e.g., U.S. Const., art. I, § 2; Kolchin, *supra*, at pp. 17-18; *Dred Scott v. Sandford* (1857) 60 U.S. 393; Darlene Goring, *The History of Slave Marriage in the United States* (2006) 39 J. Marshall L.Rev. 299 (Abolitionist William Goodell described the way that American law treated the families of enslaved people in 1853 as: "The slave has no rights. Of course, he or she cannot have the rights of a husband, a wife. The slave is a chattel, and chattels do not marry. 'The slave is not ranked among sentient beings, but among things;' and things are not married"); Campbell, Making Black Los Angeles: Class, Gender, and Community, 1850-1917 (2016). The 1850 and 1860 federal censuses did not list most enslaved people by name, as they did for white Americans, but en masse in "slave schedules." (St. Louis Integrated Database of Enslavement, 1850 and 1860 US Census Slave Schedules (as of May 16, 2023).)

[60] See Chapter 3, Racial Terror, and Chapter 4, Political Disenfranchisement.

[61] Petrella and Loggins, *"This is a Country for White Men": White Supremacy and U.S. Politics* (Jan. 5. 2017) Black Perspectives, African American Intellectual History (as of May 16, 2023).

[62] See Chapters 2, 4, 6, 10, 11.

[63] Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (Feb. 2011) 80 Pacific Hist. Rev. 33.

[64] Smith, Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction (2013) p. 8 (Freedom's Frontier).

[65] *Id.* at pp. 40, 257.

[66] Rohrbough, Days of Gold: The California Gold Rush and the American Nation (1997) pp. 136-138.

[67] Baur, *The Health Factor in the Gold Rush Era* (Feb. 1949) 18 Pacific Historical Rev. 97, 97-105.

[68] See e.g., *A Slave Flogged in San Jose*, Daily Alta California (Feb. 16, 1850) p. 2, col. 3; *Slaveholding in California*, Liberator (Aug. 30, 1850) p. 140, col. 5.

[69] An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, California Statutes, at 67–69; Freedom's Frontier, *supra*, at pp. 67-68.

[70] Freedom's Frontier, *supra*, at pp. 71-72.

[71] Waite, *Early California Lawmakers also Preached #Resistance—But Against Immigration*, L.A. Times (Aug. 3, 2018) (as of Jan. 26, 2022); Cottrell, *It Took 92 Years for California to Ratify the 15th Amendment*, The Union (June 26, 2020) (as of May 17, 2023).

[72] See Equal Justice Initiative, Lynching in America: Confronting the Legacy of Racial Terror (2015) p. 3 (as of May 17, 2023) (EJI 2015).

[73] EJI 2015, *supra*, at pp. 3, 7; EJI, Lynching in America: Confronting the Legacy of Racial Terror: Third Edition (2017) pp. 48-50, 65, 73 (as of May 17, 2023) (EJI 3d ed.); Wilkerson, Caste: The Origins of Our Discontents (2020) p. 151; Lee, *How America's Vast Racial Wealth Gap Grew: By Plunder*, N.Y. Times (Aug. 18, 2019) (as of May 17, 2023); *The Case for Reparations*, *supra*; Byman, *The Failure of Counterterrorism After the Civil War*, Lawfare (Aug. 22, 2021) (as of April 4, 2022) (Lawfare).

[74] *The Case for Reparations*, *supra*; Lawfare, *supra*; Chokshi, *Racism at American Pools Isn't New: A Look at a Long History*, N.Y. Times (Aug. 1, 2018) (as of April 4, 2022).

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[781] U.S. Census Bureau, America's Families and Living Arrangements: 2019 (as of May 16, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]). The 2019 Census survey defined households as "a house hold maintained" by "a group of two persons or more residing together and related by birth, marriage, or adoption," and "may include among the household members any unrelated persons . . . who may be residing there." U.S. Census Bureau, Current Population Survey: 2019 Annual Social and Economic (ASEC) Supplement (as of May 16, 2023) at pp. 7-1, 7-2.

[782] Our Changing Population: California, *supra* (measuring data between 2019 and 2021).

[783] America's Families and Living Arrangements: 2019, *supra* (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

[784] 2019 California—Value, Purchase Price, and Source of Down Payment—Owner-occupied Units, *supra* (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

[785] Reflecting the 36.8 percent of Black Californian households who owned their own home. Cal. Assn. of Realtors, *supra*.

[786] U.S. Census Bureau, 2019 California—Value, Purchase Price, and Source of Down Payment—Owner-occupied Units, American Housing Survey (as of Apr. 19, 2023) (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

[787] Reflecting the 63.2 percent of white Californian households who owned their own home. Cal. Assn. of Realtors, *supra*.

[788] Miller, Mortgage Rates Chart: Historical and Current Rate Trends (May 16, 2023) The Mortgage Reports (as of May 16, 2023) (Miller, Mortgage Rates).

[789] The mean home values of white and African American homes in California in 1930 was provided by the California Department of Housing and Community Development, through its analysis of 1930 decennial census microdata.

[790] Collins and Margo, *Race and Home Ownership from the End of the Civil War to the Present* (2011) 101 Am. Economic Rev. 355 (as of Apr. 19, 2023) (Web Appendix Table 1).

[791] U.S. Census Bureau, United States Summary: Families (1930) table 40 p. 33 (as of May 17, 2023). This figure are based off the 1930 census's count of families—which the 1930 census defined as "a group of persons, related either by blood or by marriage or adoption, who live together as one household[.]" *Id.* at p. 5. These figures therefore only include "private families, excluding the institutions and hotel or boarding-house groups[.]" *Id.* at p. 5, p. 33.

[792] *Id.* at table 40 p. 33 (as of May 17, 2023) (including both total native born white Americans and foreign-born white Americans). This figure are based off the 1930 census's count of families—which the 1930 census defined as "a group of persons, related either by blood or by marriage or adoption, who live together as one household[.]" *Id.* at p. 5. These figures therefore only include "private families, excluding the institutions and hotel or boarding-house groups[.]" *Id.* at p. 5, p. 33.

[793] Gibson and Jung, Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19 (as of May 16, 2023).

[794] *Ibid.*

[795] See generally Katznelson, When Affirmative Action was White (2005); California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021) Testimony of Jones (as of Jan. 26, 2022).

[796] See 12 U.S.C. 2901 et seq.

[797] Gibson and Jung, *supra*, at Table 19.

[798] U.S. Census Bureau, Household and Family Characteristics: March 1980, table 8, p. 108 (as of Apr. 24, 2023). The

1980 Census defined its size of household data as "includ[ing] all persons occupying a housing unit." *Id.* at p. 224.

[799] Gibson and Jung, *supra*, at Table 19.

[800] Household and Family Characteristics: March 1980, *supra*, at table 8, p. 106. The 1980 Census defined its size of household data as "includ[ing] all persons occupying a housing unit." *Id.* at p. 224.

[801] The mean home values of white and African American homes in California in 1980 was provided by the California Department of Housing and Community Development, through its analysis of 1980 decennial census microdata.

[802] Collins and Margo, *Race and Home Ownership from the End of the Civil War to the Present* (2011) 101 American Economic Review 355 (Web Appendix Table 1) (as of Apr. 19, 2023).

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[805] U.S. Bureau of Labor Statistics, CPI Inflation Calculator (as of Apr. 24, 2023) (inputting the dates of January 1930 and January 1980 and rounding to the nearest dollar). If kept in nominal dollars, not adjusted for inflation, the difference between the 1980 mean, per capita homeownership gap between African Americans and white Americans ($11,573 in 1980 dollars) and the 1930 mean, per capita homeownership gap between African Americans and white Americans ($326 in 1930 dollars) is $11,247. Compounding $11,247 up to 2020 using the annual 30-year mortgage interest rate yields a per-capita white-African American homeownership gap of $180,027—or $4,092 for each year between 1933 and 1977 spent as a resident of the State of California.

[806] See Miller, Mortgage Rates, *supra*.

[807] Gibson and Jung, *supra*, at Table 19.

[808] U.S. Census Bureau, Quick Facts: California (2021) (as of Apr. 18, 2023)

[809] Chapter 5, Housing Segregation.

[810] ICYMI: California Poised to Become World's 4th Biggest Economy, Office of Governor Newsom (Oct. 24, 2022) (as of May 16, 2023) *citing* Winkler, *California Poised to Overtake Germany as World's No. 4 Economy*, Bloomberg News (Oct. 24, 2022) (as of May 16, 2023).

[811] McGhee, *California's African American Community* (Feb. 22, 2023) Pub. Policy Institute of Cal. (as of May 23, 2023).

[812] California's Population, *supra*.

[813] Helper, *The Hidden Toll of California's Black Exodus*, Cal Matters (July 15, 2020) (as of May 23, 2023).

[814] *Ibid.*

[815] See Chapter 10, Stolen Labor and Hindered Opportunity; Chapter 13, The Wealth Gap.

[816] See Chapter 10, Stolen Labor and Hindered Opportunity; Chapter 13, The Wealth Gap.

[817] U.S. Census Bureau, Survey of Business Owners (SBO) - Survey Results: 2012 (Feb. 23, 2016) (as of May 23, 2023).

[818] See *ibid.*

[819] *Ibid.*

[820] U.S. Census Bureau, American Community Survey, Selected Population Profile in the United States, 2012, SO201 (as of May 17, 2023).

[821] Rounding to the nearest tenth.

[822] Survey of Business Owners (SBO) - Survey Results: 2012, *supra*.

[823] See *ibid.*; cf. Aldrich et al., *Ethnic Residential Concentration and the Protected Market Hypothesis* (1985) 63 Social Forces 996, 996-997, 1007-1008.

[824] See Survey of Business Owners (SBO) - Survey Results: 2012, *supra*.

[825] See, e.g., Lippard, *Building Inequality: A Case Study of White, Black, and Latino Contractors in the Atlanta Construction Industry* (2006) Dissertation, Georgia State University, pp. 179-181 (as of Apr. 20, 2023).

[826] See Survey of Business Owners (SBO) - Survey Results: 2012, *supra*.

[827] See, e.g., Motoyama and M, *Demand Pull or Supply Push? Metro-level Analysis of Start-ups in the United States* (2017) 4 Regional Studies, Regional Science 232, 232-246 (providing an example that highlights the importance of demand or pull factors in business formation compared to push factors—for instance, unemployment that drives professionals to go into self-employment, or discrimination that create ethnic businesses as a source of self-employment to address discrimination in hiring).

[828] Survey of Business Owners (SBO) - Survey Results: 2012, *supra*.

[829] New York University, Stern School of Business, *Revenue Multiples by Sector (US)* (Jan. 2023) (as of April 13, 2023).

[830] U.S. Census Bureau, Quick Facts: California (2021) (as of Apr. 18, 2023).

[831] Gov. Code, §§ 8301, subd. (a), 8301.1, subd. (b)(3)(C), (D) & (G).

[832] Assem. Bill No. 3121 (2019-2020 Reg. Sess.).

[833] Gov. Code, § 8301, subd. (a)(5)-(6).

[834] See generally Chapters 1 through 13, *infra*.

[835] Interview with Malcolm X (Mar. 4, 1964) (as of May 16, 2023).

[836] See generally Chapter 14, International Reparations Framework, *infra*, for a more fulsome discussion of the international law framework for reparations.

[837] Pen. Code, § 745.

[838] *Id.* § 745, subd. (b).

[839] Sen. Com. on Pub. Safety, analysis of Assem. Bill No. 256 (2021-2022 Reg. Sess.) June 29, 2021, p. 5 (as of May 23, 2023).

[840] Assem. Bill No. 256 (2021-2022 Reg. Sess.) (as of May 23, 2023).

[841] Pen. Code, § 745, subd. (a)(1)-(2).

[842] *Id.* at § 745, subd. (a)(3)-(4).

[843] Analysis of Assem. Bill No. 256, *supra*.

[844] See Pen. Code, § 745, subd. (a)(3).

[845] *Id.* at § 745, subd. (a)(4).

[846] Assem. Bill No. 2418 (Reg. Sess. 2021-2022) (as of May 23, 2023).

[847] *Ibid.*

[848] *Ibid.*

[849] Ralph J. Bunche (1903-1971) was the first African American and the first person of color to win the Nobel Peace Prize, an honor he received in 1950 in recognition of his successful mediation of the Armistice Agreements between Arab nations and Israel. Ralph J. Bunche, UCLA Ralph J. Bunche Center for African American Studies (as of May 16, 2023). It was the first and only time in the long history of the Middle East conflict that peace agreements were signed by all of the nations involved. (*Ibid.*) For almost two decades, as Undersecretary General of the United Nations, Bunche was celebrated worldwide for his contributions to humanity, particularly in the areas of peacekeeping, decolonization, human rights and civil rights. (*Ibid.*) UCLA's Center for African American Studies was renamed after Bunche in 2003, in commemoration of the centenary of his birth. (*Ibid.*)

[850] Gov. Code, § 8301.1, subd. (b)(2).

[851] Gov. Code, § 8301.1, subd. (b)(1)(F) & (3)(C).

PART I

RECOUNTING THE HISTORICAL ATROCITIES

CHAPTER 1 Introduction

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I. California's Stories

Why Reparations in California?

After all, California promised to be a free territory not once, but twice. First, in 1823 as a part of Mexico.[1] Then again in 1850, by the time California entered the Union and declared in its Constitution that "neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state."[2]

So why is California considering reparations for African Americans and descendants of enslaved people?

Consider Basil Campbell. Campbell was born enslaved in Missouri, where he married a woman named Mary Stephens and had two sons.[3] In 1854, four years after California joined the Union as a free state, a man named J.D. Stephens bought Campbell for $1,200 and forcibly moved him 1,500 miles away to a farm in Yolo County, California.[4] Campbell never saw his wife or two sons again.[5] J.D. Stephens enslaved Basil Campbell in California, ignoring California's status as a free state, for another seven years, until Stephens decided that Campbell had sufficiently paid off his purchase price.[6] Over the rest of his life, Campbell married again, adopted his wife's children, and amassed a small fortune in land and livestock.[7] A few years after his death in 1906, his two sons from his first marriage in Missouri filed a petition for a portion of Campbell's estate.[8] A California appellate judge concluded that a marriage between enslaved people "is not a marriage relation, and it is mockery to speak of it as such."[9] The land once owned by Campbell is now a nature preserve.[10]

Consider the Short family. In December 1945, O'Day Short, his wife Helen, their seven-year-old daughter Carol Ann, and their nine-year-old son Barry moved into the house that they had built in Fontana, California.[11] In 1945, Fontana was a white neighborhood.[12] Deputy sheriffs warned Short that he was "out of bounds," and that to avoid "disagreeableness," Short should move his family back to the segregated African American neighborhood on "the other side of the Baseline."[13] The real estate agent who sold the property to the Shorts warned them on December 3, 1945 that a "vigilante committee had a meeting on your case last night. They are a tough bunch to deal with. If I were you, I'd get my family off this property at once."[14]

Enslaved people working in California's Gold Mines. (1852)

On December 6, an explosion and a fire engulfed the house.[15] Neighbors reported seeing Helen try to beat down the flames consuming her children.[16] Helen, Carol Ann, and Barry died in the hospital.[17] The San Bernardino County Coroner and District Attorney concluded that the explosion was an accident.[18] The District Attorney based this conclusion partly on a statement given by O'Day while he was in the hospital. During the same conversation, O'Day also said, "I am here on my sick bed, my hair burned off my head, my legs twisted under me. You have no respect for my position. All you want to do is get the information you are looking for."[19] The District Attorney told O'Day that his wife and two young children had died when doctors had been keeping the information from him for fear that his condition would worsen.[20] O'Day Short died a few days later.[21] A subsequent California Attorney General report investigating the murders concluded that no evidence of vigilante activity in Fontana could be found.[22]

Consider Alfred Simmons, an African American school teacher who rented a house from his white colleague in the Elmwood district of Berkeley in 1958.[23] The Berkeley chief of police asked the Federal Bureau of Investigation (FBI) to investigate how Simmons managed to live in the all-white community.[24] The FBI referred the case to the U.S. Attorney, who did not prosecute because no laws had been broken.[25] The Federal Housing Administration, the agency created by the federal government to help Americans buy homes, then wrote to Simmons's white landlord to tell him that his future mortgage insurance applications would be rejected because renting to a African American was an "Unsatisfactory Risk Determination."[26]

Consider Paul Austin and Tenisha Tate-Austin, who bought a home in Marin City in 2016. Three years later, a white appraiser valued their home for $500,000 less than it was worth, calling it a "distinct, marketable area."[27] "I took that as code word as: it's a Black area," said Paul Austin, who testified before the Task Force that he felt physically sick when he read the appraisal report.[28] Paul Austin testified that his grandparents had moved to California in the 1940s to work in the shipyards in Sausalito.[29] When they had saved up enough money to buy a house, his grandparents realized that they could not buy homes outside of Marin City due to redlining.[30] Redlining is a set of government policies that helped white families buy homes in the suburbs while forcing African American families to remain in urban centers.[31] These policies have devalued African American neighborhoods[32] and led to continued education segregation.[33] In 2019, a California Attorney General investigation found that the Sausalito-Marin City School District intentionally established a racially and ethnically segregated elementary and middle school, by offering inferior education programming and directly harming a mostly African American and Latino student body.[34] In the 1950s, Paul Austin's paternal grandparents were one of the first African American families to move to Mill Valley, a white neighborhood.[35] Paul's grandfather built a home where the driveway dropped 90 degrees so that the house could not be seen from the road. "Grandson," Paul's grandfather told him, "I had to build this home at nights and on weekends, so we wouldn't be detected, because they didn't want any Black families living in their city."[36] A white man picked up the lumber for them.[37] Like Alfred Simmons's white landlord, the white woman who sold her land to Paul's grandfather was, in Paul's words, "blackballed," because the neighbors found out that she had

A California appellate judge concluded that a marriage between enslaved people "is not a marriage relation, and it is mockery to speak of it as such."

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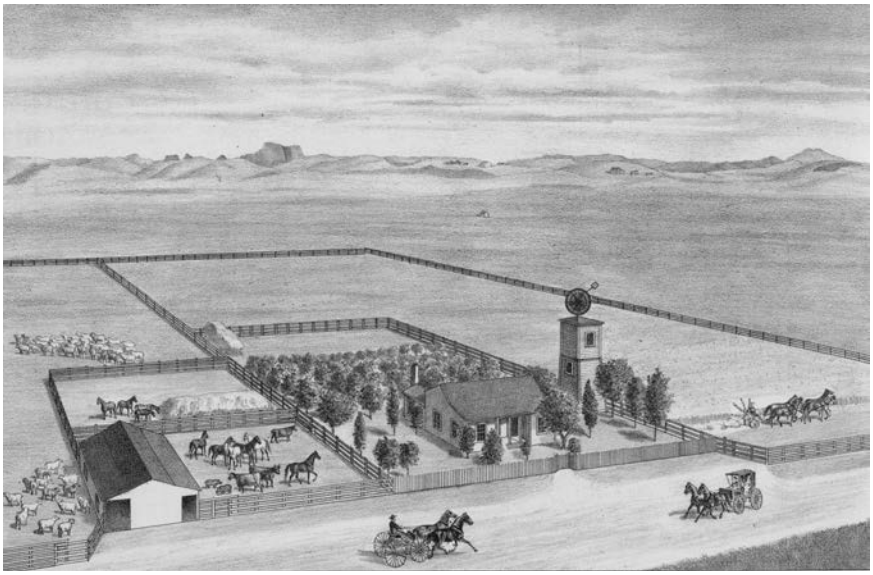


"Residence & Ranch Basil Campbell, near Fairview, Yolo Co." Basil Campbell became one of the wealthiest African Americans in California and owned this ranch. (1879)

sold her property to an African American family.[38] In 2021, Paul testified that the smaller houses in a white neighborhood that are a mile away from Paul and Tenisha's house are valued at $200,000 to $300,000 more.[39]

Consider Paul Austin and Tenisha Tate-Austin, who bought a home in Marin City in 2016. Three years later, a white appraiser valued their home for $500,000 less than it was worth, calling it a "distinct, marketable area."

What does California owe the Campbells, the Shorts, the Simmonses, the Austins, and the 2.28 million African American Californians who have experienced different versions of these stories throughout their lives, their parents' lives, their grandparents' lives, and their great-grandparents' lives, some of whom were enslaved?

Similar stories are repeated throughout the history of California and the nation.

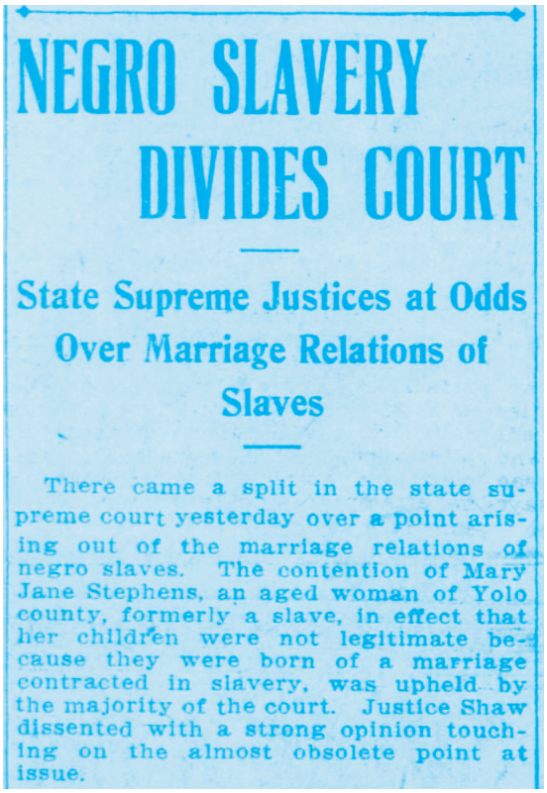
As W.E.B. Du Bois asked in 1935: "Nations reel and stagger on their way; they make hideous mistakes; they commit frightful wrongs; they do great and beautiful things. And shall we not best guide humanity by telling the truth about all this, so far as the truth is ascertainable?" [40]

To that end, the following twelve chapters will recount the horrors and harms perpetrated against African Americans in California and the nation in a number of different areas:

To maintain a system of enslavement and subjugation in the United States, white government leaders used the belief system of white supremacy to restrict the freedom of African Americans and the flourishing of African American culture and prosperity.[41] These belief systems have served to normalize and perpetuate crimes against humanity and systemic racism in our governmental institutions. These beliefs created dehumanizing stereotypes of African Americans, which mainstream arts and culture disseminated and amplified, fueling racial terror and violence long after enslavement ended. These beliefs were enshrined into the United States' laws, court decisions, and government policies and practices, and into California's laws, court decisions, and government policies and practices.[42]

Government actors used these laws and practices to suppress and criminalize African American political participation and rip apart African American families. Federal, California, and local government, acting in tandem and in parallel with private actors, created and intensified housing segregation. Government actions intertwined with private action and segregated America, leading to environmental harms, unequal educational and health outcomes, and over-policing of African American neighborhoods in California and across the nation. Government actions and failures over 400 years have created a wealth gap that persists between African Americans and white Americans at all levels of income, regardless of education or family status. In fact, the wealth gap today is the same size it was two years before the passage of the Civil Rights Act of 1964.[43]

COURTESY OF *THE SAN FRANCISCO CALL* (MAY 8, 1910)



NEGRO SLAVERY DIVIDES COURT

State Supreme Justices at Odds Over Marriage Relations of Slaves

There came a split in the state supreme court yesterday over a point arising out of the marriage relations of negro slaves. The contention of Mary Jane Stephens, an aged woman of Yolo county, formerly a slave, in effect that her children were not legitimate because they were born of a marriage contracted in slavery, was upheld by the majority of the court. Justice Shaw dissented with a strong opinion touching on the almost obsolete point at issue.

In 1910, the California Supreme Court decided that California law did not recognize the family that Basil Campbell created while he was enslaved, and that family could not inherit his fortune.

II. The Task Force's Charge

What does California owe its African American residents?

Assembly Bill No. 3121 (S. Weber) established this Task Force to Study and Develop Reparation Proposals for African Americans.[44] The Task Force consisted of nine members[45] charged with studying the institution of slavery and its lingering negative effects on society and on living African Americans, including descendants of persons enslaved in the United States.[46] The Task Force synthesized documentary evidence of the capture, procurement, and transportation of Africans for the purpose of enslavement; the domestic trade of trafficked African Americans; the treatment of enslaved people; the denial of humanity and the abuse of African Americans; and the discrimination and lingering negative effects that followed in the colonies that eventually became the United States, and the United States of today.[47]

In order to maintain slavery, American government officials used the belief system of white supremacy to restrict the freedom and prosperity of African Americans. These beliefs were enshrined into the laws, court decisions, and policies and practices of the United States and of the state of California.

The Task Force recommends appropriate remedies of compensation, rehabilitation, and restitution for African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States.[48] The Task Force's recommendations address how they comport with international standards and how the State of California will apologize for its role in perpetuating gross human rights violations and crimes against humanity on enslaved Africans and their descendants.[49] The Task Force addresses the role of California laws and policies in continuing the negative lingering effects on African Americans as a group and how these injuries can be reversed.[50] The recommendations include how to calculate compensation, what form it will take, and who should be eligible.[51]

Under international law, a government is responsible where its wrongful actions or negligence caused injury to a specific group of people.[52] Once proven, governments have a duty to remedy wrongful actions.[53] Reparations offer such a remedy, and the United Nations recognizes five formal categories of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[54] American courts of law have long recognized a similar concept—that parties must redress the harms caused by their actions or omissions where there was a duty to act.[55] Advocates frame reparations as a program that seeks acknowledgment, redress, and closure for injustice.[56]

This report has been created by the Task Force to support the Legislature in its future effort to acknowledge the wrongful actions and negligence of California as well as the wrongful actions and negligence of the local governments within its jurisdiction that have harmed African Americans.

In addition to California's potential legal obligations, repairing a wrong is a political and moral obligation. America's and California's democratic forms of government exist to embody the will of the people.[57] In accepting this system, we, as Americans and as Californians, are more than a random group of people who live in the same geographic area; we bind ourselves into a community that lives beyond the lifespans of its individual members.[58] Through government, a community channels its visions for the society it wants to create through the laws that govern it.[59]

Following the charge of AB 3121 to describe the trade of trafficked African people across the oceans and within the lands of the United States, in this report the Task Force recounts the moral and legal wrongs the American and Californian governments have inflicted upon their own African American citizens and residents. Chapter 2 describes the institution of slavery as it existed in the geographic territory of the United States, and the legal, political, economic, and cultural systems maintaining and enriched by enslavement. The subsequent 11 chapters describe how these racist systems metastasized throughout America and California, reaching into all corners of American life. Each chapter traces an issue from its historic foundations in slavery, through successive discriminatory government actions, and government failures to correct and remedy the harms of anti-Black racism. Each chapter describes the uncorrected, compounding, and continuous harms all levels of the American government inflicted upon African Americans, as well as the modern-day effects of those harms.

By focusing on the role of government actors at all levels of local, state, and national authority in enslavement and racial discrimination, this report does not and cannot ignore the countless racist actions of private citizens throughout American history. The government's role does not absolve private actors of their own responsibility or prevent private individuals and entities who benefited from this state of affairs for generations from offering their own apologies and engaging in their own acts of reparations.[60] As the report makes clear in the following pages, federal, state, and local governments often worked in tandem with private individuals[61] to build and maintain a system placing African Americans in the lowest social strata of this country.[62]

The report's focus on African Americans also does not and cannot ignore the countless ways in which the Californian government and its private citizens enslaved, dehumanized, or discriminated against other marginalized communities.

Often, government discrimination or racist mob violence targeted many communities at once. During the Zoot Suit Riots of 1943, white mobs of U.S. servicemen, off-duty police officers, and civilians indiscriminately attacked Latino, African American, and Filipino men in Los Angeles.[63] Sometimes, one racial group committed violence against another. As AB 3121 charged this Task Force solely with investigating the history of systemic racism as it relates to African American Californians, it did not focus on the innumerable acts of racist violence and discrimination by government officials and private citizens against other people of color.

III. Immigration and Migration Patterns

The first ship carrying enslaved people landed in what would become the United States in 1619 on the shores of Virginia.[64] Although Congress outlawed the trans-Atlantic slave trade in 1807, between 1525 and 1866, approximately 388,000 enslaved people were trafficked to the United States.[65] These African men, women, and children were mostly captured on the west coast of the African continent between modern day Senegal and Angola.[66] Once in the United States, the majority of enslaved people remained in the South, although Southern enslavers often brought enslaved people into free states.[67]

In the 1800s and early 1900s, very few African people voluntarily immigrated to the United States, due to immigration laws that limited the number of African immigrants.[68] Between 1870 and 1920, 17,376 African immigrants arrived in the United States, representing 0.06 percent of the total immigrant population at the time.[69] The Johnson-Reed Act of 1924 established an immigration system that limited the number of immigrants from the African continent.[70] Between 1920 and 1970, 58,449 African individuals entered the United States, or about 0.51 percent of the total immigrant population.[71] Beginning in the 1960s, Congress passed immigration reforms which significantly increased Caribbean and African immigration to the United States.[72] As a result, the African American population of the United States became increasingly diverse. In 1990, 363,819 African immigrants entered the United States.[73]

Today, approximately 47 million African American people live in the United States, according to the 2020 census.[74] Of those 47 million African American individuals, academics and other experts differ on the number who are the descendants of people enslaved in the United States. About 12 percent of African American people in America were born in a foreign country.[75] Nine percent of African Americans have at least one foreign-born parent.[76] By 2060, the Black foreign-born population is projected to make up about one-third of the U.S. Black population.[77] Fifty-eight percent of Black immigrants arrived in the United States after 2000.[78] Every U.S. census conducted since 1970 has found that Black immigrants from the English speaking Caribbean earn more, are more likely to be employed than U.S.-born African Americans, are more likely to hold more financial assets,[79] are more likely to own their home,[80] and most are more likely to be healthy than U.S.-born African Americans.[81]

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African Americans take a break from their work on the railroad. (1938)

In California, the African American population remained small until World War II. Unlike the English speaking colonies on the East Coast, racial boundaries were not strict, and a multiracial population lived in California as a Spanish colony in the 1500s.[82] By 1850, when California entered the Union, the African American population of California was a mix of African Americans from the North and South, foreign-born Black Afro-Latinos from Mexico, Peru and Chile, and Jamaicans.[83] The 1860 census counted 4,086 "total free colored" people in California.[84] Sources vary in the estimates of enslaved people in California, with some sources estimating up to 1,500 enslaved African Americans lived in California in 1852.[85] The 1920 census counted 38,763 African Americans, out of a total population of 3.4 million in the state.[86]

California's African American population increased significantly during World War II, as many moved to the state in search of war industry jobs.[87] More African American people moved to California in the 1940s than in the entire previous century of statehood combined.[88] The African American population of California ballooned from 124,306 in 1940 to 1,400,143 in 1970.[89]

IV. State of African Americans in California

California is home to the fifth largest African American population in the United States, after Texas, Florida, Georgia, and New York.[90] As of 2020, about 39.5 million people live in California, of whom about 2.8 million self-identify as African American.[91] Of the current 2.8 million African American Californians, 244,969 are foreign born, according to the U.S. Census Bureau.[92]

While the number of African American Californians has increased in the last 30 years, the overall percentage of African American Californians has fallen over the same period.[93] African American Californians make up about six percent of the state's population today, a decrease from 8.1 percent of the state's population in 1990.[94]

African American Californians live in all 58 Californian counties, but most African American Californians live in Los Angeles County (943,145), San Bernardino County (223,116), San Diego County (211,354), Alameda County (198,250), and Riverside County (197,329).[95] The counties with the highest number of African American Californians, as a percentage of the total population, are Solano County (16.87 percent), Sacramento County (12.43 percent), Alameda County (11.78 percent), Contra Costa County (10.69 percent), and San Bernardino County (10.23 percent).[96] In the past three decades, about 275,000 African American Californians have left expensive coastal cities to move inland or to other states.[97] During the same timeframe, the African American populations of some of California's historically African American neighborhoods in cities across California have plunged: Compton by 45 percent, San Francisco by 43 percent, and Oakland by 40 percent.[98]

Despite the history of African American voter suppression throughout the United States and California, California has steadily improved voting access since the late 20th century.[99] Surveys from 2019 show that six percent of likely voters are African American, equal to their share of the population in California.[100]

Nevertheless, the effects of 400 years of compounding governmental and private acts of racial violence and discrimination described in this report have resulted in disparities between African American and white Californians in almost every corner of life. Compared to white Californians, African American Californians earn less and are more likely to be impoverished. In 2018, on average, African American Californians earned $53,565, compared to $87,078 for white Californians.[101] Around 19.4 percent of African American Californians live below the poverty line, compared to nine percent of white Californians.[102] African American Californians are also

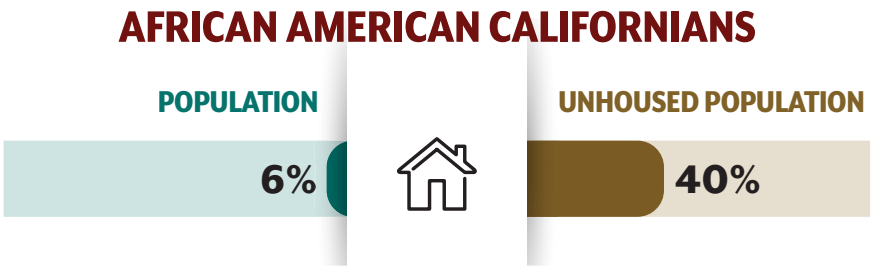
Compared to white Californians, African American Californians are

2x MORE LIKELY to live below the poverty line

far less likely to own a home than white Californians; in 2019, 59 percent of white households owned their homes, compared with 35 percent of African American Californians.[103] And in contrast to the advances in voting rights in California, the rates of African American homeownership in California have declined by over 11 percent since 2010.[104] In fact, African American homeownership in California in the 2010s was lower than in the 1960s, when sellers could still legally discriminate against African American home buyers.[105]

Homelessness is a more acute problem in California than in the rest of the country, and the burden falls heaviest

on African American Californians. Almost 50 percent—or nearly one in every two African American Californians—lives in a household where rent or mortgage payments eat up more than 30 percent of the residents' income, compared to about 30 percent of white Californians who suffer similar housing cost burdens.[106] Nearly 40 percent of California's unhoused people are African American, even though African American Californians represent only six percent of the state's total population.[107]



The pervasive effects of racial discrimination have seriously harmed the health of African American Californians. In 2021, the life expectancy of an average African American Californian was 75.1 years, six years shorter than the state average.[108] African American babies are more likely to die in infancy,[109] and African American mothers giving birth die at a rate of almost four times higher than the average Californian mother.[110] Compared with white Californians, African American Californians are more likely to have diabetes,[111] to die from cancer,[112] or be hospitalized for heart disease.[113]

Racial discrimination in housing, education, and the legal system, along with institutionally racist approaches and a militarized culture, have collectively resulted in the over-policing of African American communities and the mass incarceration of African American citizens.[114] According to data from 2020, the police are more than two times more likely to stop and search African Americans in California than white Americans, even though officers reported no criminal activity for the African American individuals stopped more than twice as often as they did for the white individuals stopped.[115] In 2020, law enforcement officers used force against African Americans in California more than twice as often than they did against white Americans,[116] and data from 2016 to 2019 indicates that law enforcement officers in California are three times more likely to seriously injure, shoot, or kill an African American in California, even when other factors are taken into account.[117] About 28 percent of people imprisoned in California are African American—even though they make up about six percent of the population in the state.[118]

African American youth in the state also face a heightened risk of punishment. African American students in California are suspended at rates 2.4 times higher than the statewide average,[119] and lose the most number of days of instruction to suspensions when compared with other racial groups.[120] Recently, the California Attorney General's Office identified racial disparities in discipline for African American students across three different school districts.[121]

Further, school discipline is often the first step toward law enforcement involvement. African American students in California are disproportionately referred by schools to law enforcement.[122] A California Attorney General's Office investigation found that, since 2015, African American and Latino students in Stockton Unified School District were significantly more likely to experience severe policing outcomes than other students, including being cited or booked into police custody.[123]

As a result, compared to white youth in California, African American youth are over 30 times more likely to be held in a juvenile justice facility in the State.[124] In 2019, African American youth comprised 36 percent of those ordered to be placed in state juvenile detention facilities, even though they make up only 14 percent of the youth population in California.[125]

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CHAPTER 2 Enslavement

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Captives being brought on board of a slave ship on the West Coast of Africa. (c. 1880)

I. Introduction

On July 5th, 1852, Frederick Douglass gave a speech to a crowd of 600 mostly white antislavery activists in Rochester, New York, the day after Independence Day.[1] Douglass was one of the most famous African American antislavery and civil rights activists at the time.[2] He began by praising the courage of the nation's founders in winning their freedom from the British Empire.[3] But Douglass did not come to celebrate American independence and liberty.[4] The United States was founded on the idea that "all men are created equal[,]" but white Americans enslaved their fellow African Americans and "notoriously hate[d] [...] all men whose skins are not colored like your own."[5] For Douglass, the Fourth of July only highlighted the "immeasurable distance" between free white Americans and enslaved African Americans.[6] "The blessings in which you, this day, rejoice, are not enjoyed in common.—The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me," he explained; "*You* may rejoice. *I* must mourn."[7]

Frederick Douglass's speech about the Fourth of July shows the conflict at the heart of American history. The United States prides itself on liberty, equality, and justice for all, but for over 400 years, white people of European ancestry built and continued a brutal caste system based on false notions of racial difference: white people at the top, people of African descent at the bottom, and all other groups ranked in between.[8] From the beginning, America's wealth was built by the forced labor of people from Africa and their descendants. These people were forcibly sold and traded as commodities and millions of them cultivated crops—tobacco, sugar, rice, indigo, wheat, corn, and especially cotton—that allowed American colonies and the early United States to prosper. Colonial governments and the U.S. government at all levels allowed and participated in the exploitation, abuse, terror, and murder of people of African descent so that white people could profit as much as possible from their enslavement. To justify stealing the intellect, skill, and labor of African Americans, enslavers created and spread false, racist ideas that African Americans were less intelligent than whites, that they loved their children less than white parents, and that they felt less pain than white people did.

Insisting that African Americans were less than human made it easier for enslavers and the American government at all levels to deny them the legal rights that many white Americans believed were a basic part of being American. After enslavement officially ended in 1865, white Americans terrorized African Americans with violence and racist ideas. African Americans lived under violent threats to themselves and their families and did not have the economic opportunities or political rights of their white peers. Through laws allowing, promoting, and protecting enslavement, federal, state, and local governments were complicit in stealing centuries of unpaid wages from African Americans. The racist ideas invented to control enslaved people have echoed through centuries of American laws and policies and inflicted physical, mental, and emotional trauma on approximately 16 generations of African Americans. The state and federal governments of this country have never atoned for these harms.

This chapter traces the long arc of enslavement in early North America and the United States. Sections III and IV examine the origins of race-based enslavement targeting people of African ancestry, the ways slavery generated wealth for white colonists in English North America, and the emergence of transatlantic trafficking in enslaved African people. Section V discusses the importance of enslavement to the founding of the United States from the American Revolution to the creation of the U.S. Constitution. Sections VI, VII, and VIII describe the lives of enslaved people during the height of the domestic slave trade, the complicity of northerners in the perpetuation of enslavement, and enslavement's importance to American educational, religious, and governmental institutions. Section IX discusses the expansion of enslavement into western U.S. territories, the establishment of enslavement in California, and the complicity of the California state government in promoting enslavement, oppressive laws, and anti-Black sentiment. Finally, sections X, XI, and XII conclude the chapter by examining the U.S. Civil War, the formal abolition of enslavement, policies toward formerly enslaved people during Reconstruction. It ends by considering the lingering, harmful effects of efforts to recast the defeat of the Confederate States of America into a "Lost Cause" myth that endures to the present day.

II. The Origins of American Enslavement

Pre-Modern Enslavement

Enslavement has existed for thousands of years in many different cultures across the world.[9] It is only in the past 400 to 500 years that white Europeans developed a type of enslavement based heavily on the color of someone's skin and that mainly targeted people of African ancestry.[10] This type of enslavement developed gradually between the 1400s and the 1700s.[11] It was based on the ideas that African ancestry could be the basis for life-long enslavement that the children of enslaved African-descended women could be enslaved from birth, and that people of African descent were naturally destined to be enslaved.[12]

Before the 1400s, a time period known as the "pre-modern era," enslavement and enslaved people differed widely.[13] In the ancient Roman Empire, for instance, those who were enslaved were mostly conquered people who came from multiple racial, ethnic, religious, and class backgrounds across Europe, the Middle East, and North Africa.[14] In the Middle Ages (600s to 1400s), Celtic peoples, North Africans, Scandinavians, and especially Slavic people from Eastern Europe (from whom the word "slave" comes) were the most commonly enslaved groups in Europe.[15] In the Muslim kingdoms of North Africa and the Middle East, both Slavic people and sub-Saharan African people (Africans who lived south of the Sahara Desert) made up a large number of those who were enslaved.[16]

Enslaved people in these diverse societies became enslaved in different ways: they could be prisoners of war, victims of kidnapping, targets of religious crusades, people sentenced to enslavement as a punishment for crimes, or poor people sold to pay off debts.[17] Depending on the culture or time period, children born to one or more enslaved parent were not always automatically enslaved, and it was fairly common for enslavers to free

To justify stealing the intellect, skill, and labor of African Americans, enslavers created and spread false, racist ideas that African Americans were less intelligent than whites, that they loved their children less than white parents, and that they felt less pain than white people.

the children, grandchildren, or great-grandchildren of enslaved people.[18]

Finally, early enslaved people fulfilled a variety of roles in their societies beyond being forced agricultural laborers or house servants.[19] Enslaved people could be status symbols who represented the wealth and power of their enslavers, trusted advisors, poorly treated members of their enslavers' extended families, coerced sexual and marriage partners, or slave-soldiers forced into military service.[20]

Beginnings of Modern Enslavement

Enslavement changed with European world exploration and global colonization between the 1400s and the 1600s.[21] In North America and South America, English, Spanish, French, Portuguese, and Dutch colonizers took Indigenous peoples' land to grow crops such as sugarcane, tobacco, rice, and coffee and to mine for gold.[22]

In most of these new colonies, natural resources and land to grow crops were common, but laborers were scarce.[23] In order to efficiently exploit these resources, Europeans first captured, enslaved, and exploited the Indigenous peoples of North and South America.[24] Because the enslavement of Indigenous people could not keep up with the demand for labor, European colonizers began to traffic enslaved people from the continent of Africa.[25]

Portuguese and Spanish colonizers brought the first enslaved Africans to North and South America to supplement forced Indigenous labor.[26] Portuguese merchants had been trafficking West Africans and selling them in Portugal for many years before the colonization of North and South America.[27] It was these captives who were first forcibly moved in small groups to European colonies across the Atlantic Ocean.[28] Portuguese and Spanish colonizers eventually started buying thousands of enslaved Africans along the coasts of West Africa and Central Africa and bringing them directly to colonies in the Caribbean and Brazil.[29] Around 500,000 enslaved people of African descent had already arrived in North and South America[30]—including Spanish settlements in present-day South Carolina (by 1526)[31] and Florida (by 1539)[32]—by the time Dutch pirates sold around 20 African captives to English colonists in Jamestown, Virginia, in 1619.[33]

Creating the American Racial Hierarchy

When these first Africans were brought by force to the English colonies that became the United States, a caste system based mostly on skin color did not yet fully exist. Instead, European colonists who wanted to exploit enslaved African American people and profit from their labor built this caste system gradually during the 1600s and 1700s.

In the very earliest years of English colonization in Virginia, European indentured servants were the most common workers.[34] Indentured servants were usually either poor people who agreed to work for wealthy people for several years in exchange for transportation to the colonies, or they were people found guilty of crimes who had to work for several years in the colonies before getting their freedom.[35]

At first, there was not much difference between the treatment of enslaved Africans and European indentured servants.[36] The major divisions in Virginia were between wealthy people and poor people who were forced to labor, not between African American and white people.[37] Wealthy white Virginians who controlled the colony and profited from the labor of both indentured white people and enslaved African people feared that rebellions by these lower-class people might undermine their power and wealth.[38]

Wealthy white colonists attempted to solve this problem by using race as a way to divide these two groups and stay in power.[39] Rich white Virginians began to grant more rights and privileges to poorer white people.[40] This move created a false sense of greater equality among rich and poor white English colonists, who began to come together around a shared idea that they were "white" people who were naturally superior to "Black" people

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'Introduction of Slavery,' probably Jamestown, Virginia, late 1610s.

of African descent.[41] The new unity between rich and poor white people in Virginia encouraged poor whites to keep Africans and their descendants enslaved and to help their wealthy neighbors squash rebellions of enslaved people.[42]

Colonial lawmakers then established new laws that made the racial caste system a permanent part of American culture and society.[43] Colonial laws aimed to control people of African descent, keep them in life-long enslavement, and keep poor whites and enslaved African-descended people divided.[44] In the late 1600s and early 1700s, these colonial laws gradually built up a legal system that treated people of African descent as permanent outsiders whose skin color made them naturally different from and unequal to all white people.[45] These Virginia laws, called "Slave Codes," did the following:

- Made enslavement permanent and automatic for most people of African descent by saying that children born to enslaved mothers would be enslaved for life[46]; that becoming a Christian would not end enslavement[47]; and that enslavers could not set enslaved people free unless they paid to take them out of the Virginia colony;[48]

- Made it easier for whites to control free people of African descent (those born into freedom or who did manage to escape enslavement) by denying them legal, political, and social rights.[49] These included the right to vote, serve in colonial military organizations, have political office, or carry firearms;[50] and

- Divided all white people from all African American people by making interracial sex or marriage a crime,[51] punishing white women who gave birth to mixed-race children,[52] and forcing these mixed-race children (and their children) into indentured servitude until they were 31 years old.[53]

Other southern colonies that depended on enslavement passed similar laws across the 1700s, sometimes copying the laws of Virginia directly.[54]These early slave codes ensured that this racial caste system became widespread across much of the area that would later become the United States.[55]

Only after enslavement became widespread and profitable and racist policies were in place, did white people develop elaborate racist ideas to explain why the racial caste system was natural and good.[56] European enslavers argued either that enslavement "civilized" Africans by introducing them to European climates and lifeways, or that the Christian Bible had automatically cursed them to suffer enslavement.[57] The overall goal of these racist ideas was to defend enslavement and white supremacy by claiming that African American people were, and always had been, inferior to white people with European ancestry.[58]

III. The Transatlantic Trafficking of Enslaved People

The Growth of Slavery

The search for profits, the unity of rich and poor white colonists, and the development of racist ideas paved the way for the massive increase of slaving voyages to Africa and the enslavement of people of African descent in the lands that would later become the United States.[59]

The enslavement of people of African descent played a major role in the population boom of English colonies in North America during the 1700s.[60] Enslaved Africans and African descended peoples made up 47.5 percent of all people who arrived in the English colonies between 1700 and 1775 (around 278,400 of the 585,800 new arrivals documented during this period).[61] This meant that the transatlantic slave trade was nearly as important to the growth of English North America as free (or indentured) immigration from Europe.[62]

The populations of the English colonies showed this change: Between 1680 and 1750, people of African descent increased from 7 percent to 44 percent of the total population of Virginia, and from 17 percent to 61 percent of the total population of South Carolina.[63] This trend was even more pronounced in the nearby British colonies of the Caribbean (known as the West Indies) where almost one million enslaved Africans were forcibly brought during the same period of time,[64] and where enslaved people made up 80 to 90 percent of the total population.[65]

To keep the profits of enslavement growing, British merchants, the British monarchy, and the British government worked together to become the leaders of the transatlantic slave trade.[66] Just one English company, the Royal African Company, forcibly brought nearly 150,000 enslaved people from Africa across the Atlantic Ocean between the early 1670s and the early 1720s.[67] This total was more than any single company in the entire history of the transatlantic slave trade.[68]

The English transatlantic slave trade of the 1600 to 1700s differed from the slave trades which existed in West Africa before or during the same period.[69] Enslavement was common in sub-Saharan Africa, including West Africa, which (in addition to Central Africa) was one of the main areas of the transatlantic slave trade.[70] In West African societies, enslaved people were usually people captured in wars or attacks on other ethnic or lineage (family ancestry) groups, people who owed debts, or people found guilty of crimes.[71] Enslaved people in West African societies also had a wide variety of social and economic roles.[72] Many, especially children, lived in the same home as their enslavers and were treated as "pawns," low-status members of the family group.[73] Some worked in agriculture or as house servants, while some became wives or concubines (involuntary sexual partners or secondary wives).[74] This enslavement was not usually permanent or passed on to the next generation.[75] Most enslaved people and their children in West Africa gradually lost their enslaved status and became part of the families and communities of their enslavers.[76]

The arrival of Europeans made enslavement along the western coast of Africa more widespread and violent.[77] European enslavers depended on African slave-trading networks for captives to send across the Atlantic Ocean.[78] But the massive demand for African captives, which kept growing as Europeans colonized more areas of the world, changed African enslavement greatly.[79] Warfare and kidnapping raids increased to capture more people to sell to Europeans.[80] The focus of the West African slave trade also shifted to the coasts and port cities where Europeans set up trading forts to buy people who had been captured.[81]

The transatlantic slave trade eventually involved capturing Africans from an enormous geographic area covering much of West Africa and Central Africa, and even extending to the island of Madagascar off the southeast coast of Africa.[82] This trafficking in human beings spanned 3,500 miles along the western African coast from present-day Senegal in the north to present-day Angola in the south, and as many as 500 to 1,000 miles into the interior of the continent.[83] Captive African people often changed hands many times and traveled long distances before they arrived at coastal ports where Europeans bought them.[84]

The Middle Passage

African captives suffered horrific physical, emotional, and mental trauma before and during the voyage across the Atlantic Ocean.[85]This journey was called the "Middle Passage" and it was so dangerous, unhealthy, and violent that almost 1.8 million people died before they ever reached the Americas.[86]

Enslaved Africans' suffering began even before the slave ships set sail for the Americas.[87] Once European enslavers purchased people who had been captured from African enslavers, they incarcerated them for days, weeks, or even months until they were ready to sail.[88] In the earlier years of the slave trade, European enslavers imprisoned enslaved people in large corrals called "barracoons."[89] The most common practice, however, was to incarcerate enslaved people on board the slave ships until it was time to sail for the Americas.[90]

During the journey across the Atlantic Ocean, enslaved Africans went through months of torture trapped inside slave ships.[91] The voyage, which was called the "Middle Passage" because it was the second leg of a triangular trade between Europe, Africa, and the Americas,[92] took 80 to 100 days (around 2.5 to 3 months or more) in the early years of the trade (although new sailing technologies cut the length of the trip to 60 to 80 days in later years).[93] Slaving ships came in many different sizes, but the average Royal African Company boat held around 330 enslaved people.[94]

Almost 1.8 million Africans died as they were trafficked across the Atlantic Ocean to slavery.

African men, who made up around two-thirds of all those captured,[95] spent almost all of the journey—sixteen hours or more every day—laying down in specially constructed rooms inside the ships.[96] Crews stripped them naked, chained them up,[97] and forced them to lay down on their sides, or to lay head to feet, so that they could fit in as many people as possible.[98] On English slave ships, each man had a space smaller than the size of a coffin.[99] On ships with "tight-packing," captains added an extra platform so that men laid in two rows stacked on top of each other with only 2.5 feet of vertical space to lay down.[100] Enslaved women and children, who were usually smaller in number, lived together in groups in small rooms inside the ship.[101]

Conditions inside slave ships were horrific and caused massive amounts of sickness and death.[102] Hundreds of people were crowded together in the blazing heat and tossed back and forth with the ship's movement, especially during bad weather.[103] Enslaved captive Olaudah Equiano, who survived the Middle Passage, wrote that "the closeness of the place, and the heat of the climate, added to the number in the ship, which was so crowded that each had scarcely room to turn himself, almost suffocated us."[104]

Captives did not have much fresh air and their rooms were covered with human waste.[105] Rats and insects swarmed around them.[106] Low-quality food, as well as scarce water, led to widespread lack of nutrition and dehydration.[107] Filthy conditions and poor nutrition caused waves of sickness, including scurvy (a lack of vitamins B and C) and "bloody flux" (amoebic diarrhea or dysentery).[108] Highly contagious diseases—especially smallpox—spread fast in the overcrowded spaces.[109] Slave ships were filled with people who were very sick, dying, or dead.

Enslaved Africans also suffered physical and sexual violence at the hands of ships' crews.[110] Crew members moved people who had been captured to the top deck of the ship on a regular basis to force them to bathe and dance for exercise.[111] They often raped and impregnated women and girls.[112] Heavily armed crew members watched enslaved people carefully, and they threatened, beat, tortured, and sometimes killed them, especially if they resisted or rebelled.[113]

There is also evidence that ship crews threw sick enslaved people overboard to prevent them from spreading disease to others and to claim insurance money for "lost" human cargo.[114] In one especially brutal case in 1781, an English slave ship captain ordered his crew to throw 132 Africans overboard because he had run out of supplies and his insurance company would only pay him if enslaved people drowned, not if they starved to death.[115] During the worst storms, crews also tried to keep from sinking by throwing enslaved people overboard to decrease the weight of the ship.[116] British insurance companies allowed this and paid ship captains for any human beings who their crews threw overboard to drown.[117]

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The transatlantic slave trade and the Middle Passage had a sickening cost in human lives. European enslavers forced around 12.5 million enslaved Africans to cross the Atlantic Ocean between 1500 and 1866.[118] More than 14 percent of these people, around 1.8 million in total, died of sickness, neglect, abuse, murder, or suicide.[119] The men, women, and children who survived the Middle Passage were then sold to local slave traders, merchants, or owners of plantations and forced labor camps.[120]

When their voyage across the Atlantic Ocean finally ended in North America, South America, or the Caribbean, enslaved Africans suffered "social death," which meant they were now permanently separated from their home communities, cultures, and families.[121] They were outsiders in an unfamiliar place, surrounded by strangers with completely different cultures, religions, and languages. Enslaved Africans had to build new families, languages, cultures, and religious practices rooted both in the pre-colonial traditions of

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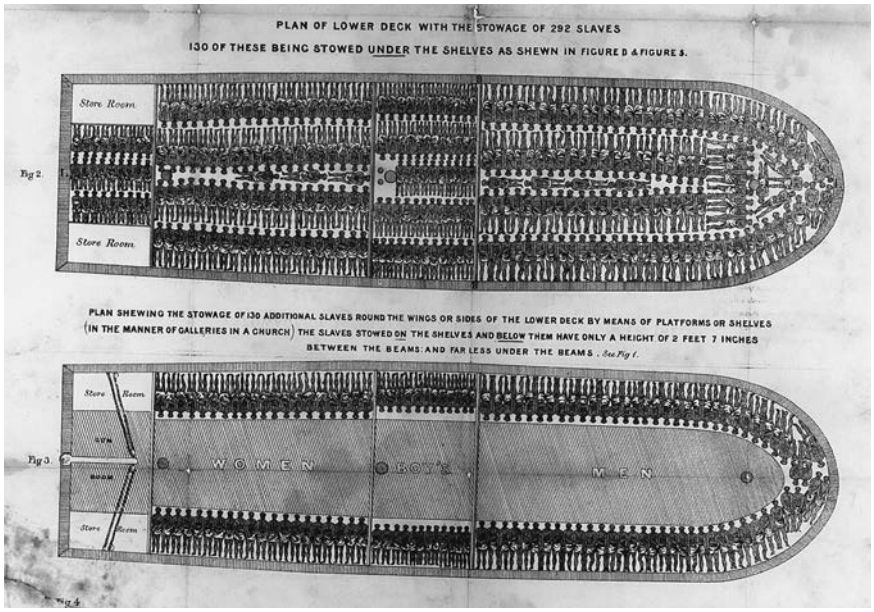

Engraving "Stowage of the British Slave Ship 'Brookes' Under the Regulated Slave Trade Act of 1788" (circa 1788)

their homelands and the new cultures that they found in the Americas.[122]

Slavery and the Founding of the United States

Starting in the late 1600s, enslaved people and the institution of enslavement became increasingly important to the colonial societies of North America that would later become the United States.[123] The southern English colonies of North America, which eventually included Maryland, Delaware, Virginia, the Carolinas, and Georgia, began trafficking more and more enslaved people as the 1700s went on. [124]

These colonies gradually built economies and societies that depended heavily on enslavement for growing cash crops to sell in international markets.[125] In the colonies of the Upper South, including Maryland, Virginia, Delaware, and North Carolina, enslaved people grew tobacco. Enslaved people in the low country and coastal plains of the Carolinas and Georgia grew rice and indigo (a plant for making blue dye).[126]

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Enslavers who forced enslaved people to labor in agricultural production exploited not only their physical strength, but also their intellect, innovation, and skill. Growing rice and indigo, for instance, required skilled labor and knowledge of specialized techniques for successful production. In fact, rice and indigo growing was already highly developed along the western coast of Africa, and, later the Caribbean, where people of African descent had already innovated several production techniques. Enslavers were eager to buy enslaved people who already had these specialized agricultural skills.

Growing rice and indigo, for instance, required skilled labor and knowledge of specialized techniques for successful production.[127] In fact, rice and indigo growing was already highly developed along the western coast of Africa, and, later the Caribbean, where people of African descent had already innovated several production techniques.[128] Enslavers were eager to buy enslaved people who already had these specialized agricultural skills.[129]

Human trafficking in enslaved people was not limited to the southern colonies.[130] Whites in northern colonies also trafficked enslaved people, and enslavement became a feature of life in every northern colony.[131] In most New England colonies, enslavement was not a major institution, but in colonies farther south, such as New York, enslavement was often a part of daily life.[132] For example, one-fifth of New York City's population was enslaved in 1746, making it the second largest slaveholding city in the 13 original English colonies behind only Charleston, South Carolina.[133]

By the time white English colonists began to complain about their mistreatment by the British government and began comparing their lack of rights in the British Empire to enslavement, the real enslavement of people of African descent was already well established in all 13 original British colonies.[134] Five hundred thousand enslaved African American people, who made up 20 percent of the entire colonial population, knew the real horrors and trauma of enslavement.[135]

The American Revolution

When white colonists declared their independence from Great Britain, they explained their actions by saying that the King of England and the British government had taken away their freedom and their rights as "freeborn Englishmen."[136] In the Declaration of Independence, Americans famously announced that "all men are created equal" and "that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[137] At the same time, these same colonists bought and sold people of African descent who had no freedom and very few rights.

People who opposed the American Revolution were quick to point out the hypocrisy of these words.[138] Thomas Day, an Englishman who opposed enslavement, said that "[i]f there be an object truly ridiculous in nature, it is an American patriot, signing resolutions of independence with the one hand and with the other brandishing a whip over his affrighted slaves."[139] Even white American colonists understood the hypocrisy of the Declaration of Independence.[140] Abigail Adams, an opponent of enslavement from New England, the wife of John Adams, and a future first lady of the United States, wondered just how strongly white colonists felt about human liberty

when they were "accustomed to deprive their fellow citizens of theirs."[141]

The founders of the United States, especially those who owned enslaved people and profited from enslavement, were well aware of these contradictions and they tried to downplay them. They knew that enslavement made them, and their independence movement, look hypocritical, but they also wanted to continue to profit from the stolen labor of enslaved people.

Thomas Jefferson, the author of the first draft of the Declaration of Independence, owned around 600 enslaved people over the course of his lifetime. He willingly freed only 10 of the 600 people who he had enslaved over the course of his life. Four of those 10 people were his own children with Sally Hemings, an enslaved woman who he owned as his property and who he never freed.

Thomas Jefferson, the author of the first draft of the Declaration of Independence, owned around 600 enslaved people over the course of his lifetime.[142] His original draft of the Declaration of Independence openly criticized the transatlantic slave trade, which he called "a cruel war against human nature itself, violating it's [*sic*] most sacred rights of life and liberty," but he blamed it almost all on King George III of England.[143] Jefferson claimed that the king not only failed to stop the slave trade, but also that the king encouraged enslaved people to rise up and kill white colonists.[144]

Embarrassment over enslavement, and the hope to keep making money from it, was clear when the Continental Congress rejected this part of the Declaration and voted to remove it.[145] Jefferson explained the rejection in his notes.[146] Representatives from South Carolina and Georgia depended on enslavement and wanted to continue in the trafficking of humans.[147] Men from the northern colonies were embarrassed by the criticism of the slave trade because they were highly involved in shipping enslaved Africans across the Atlantic.[148] The final version of the Declaration of Independence only mentioned enslavement indirectly by claiming that King George III was trying to cause "domestic insurrections" (code words for rebellions by enslaved people) in the colonies.[149]

The founders of the United States tried to dodge the issue of enslavement, but enslaved and free people of African descent would not let them. They tested the new nation's ideas of freedom during the American Revolutionary War (1775 to 1783).[150]

Around 30,000 to 40,000 people (and maybe as many as 100,000 people) escaped their enslavement during the American Revolution.[151] Virginia's colonial governor, John Murray, Earl of Dunmore, quickly took advantage of enslavement in the colonies by promising freedom to any enslaved man who fought for the British Army against the Americans.[152] Some male freedom seekers did join the British Army, but large numbers died from smallpox during their service.[153] Others, including many women and children, took advantage of wartime chaos to escape to areas where the British Army was strong.[154] The massive number of freedom seekers greatly damaged enslavement in the lower southern states.[155] For instance, around 30 percent of South Carolina's enslaved population left or died during the Revolution.[156]

Some states tried to solve this problem by promising freedom to enslaved men who fought on the side of the Americans.[157] Other states recruited free African American men to boost the size of the small American army.[158] Even though they were smaller in number than whites, free African American men were more likely to volunteer for military service and to serve longer than whites because they wanted both independence for the United States and greater rights for themselves.[159] Overall, around 9,000 free or enslaved African American men served alongside white revolutionaries in integrated military units to fight for American independence.[160]

African Americans' struggles for freedom during the American Revolution led to the end of the enslavement in most of the northern states where the enslaved population was small and local enslavement was less central to the economy.[161] Enslaved people used the revolutionary ideals of freedom to convince northern judges and the general public to end enslavement.[162]

When enslaved people in Massachusetts sued for their freedom, the state courts decided that enslavement went against the state's new constitution, which said that "all men are born free and equal."[163] Enslavement ended there in 1783.[164] Nearby, the state of Vermont approved a new constitution that outlawed enslavement completely in 1777.[165] States farther south, such as New

York and Pennsylvania, depended much more on enslavement and so passed gradual emancipation laws to cover enslavers' loss of profits.[166] These laws required children born to enslaved mothers to go through a long indenture (up to 28 years) and then be set free.[167]

Southern states that profited the most from enslavement kept and rebuilt it, but the process looked different in the Upper and Lower South.

States in the Upper South—Virginia, Maryland, and Delaware—temporarily began to relax their laws against freeing enslaved people.[168] "Manumission," the legal process by which enslavers freed enslaved people or allowed them to save money and purchase their freedom, became more common.[169] This was partly because the Revolutionary War had hurt the market for tobacco and made enslavement less profitable in the Upper South.[170] Revolutionary ideas about human freedom also motivated some of this manumission, although with limits.[171] For instance, Virginian George Washington, leader of the revolutionary army and the first president of the United States, freed all of the people he enslaved, but only upon his death.[172]

Washington, however, was not the norm. Thomas Jefferson, the next slaveholder from Virginia to win the presidency, willingly freed only 10 of the 600 people who he had enslaved over the course of his life.[173] Four of those 10 people were his own children with Sally Hemings, an enslaved woman who he owned as his property and who he never freed.[174]

Jefferson's fellow white southerners in the Upper South increasingly stopped manumission when they found that selling "surplus" enslaved people to cotton growers in South Carolina and Georgia could be a profitable replacement for tobacco.[175] Meanwhile, the Lower or Deep South states rebuilt their plantation economies by buying enslaved people from the Upper South and trafficking in large numbers of enslaved Africans from the transatlantic slave trade.[176]

Overall, the American Revolution created a new nation that was increasingly divided into three regions: The North, where enslavement was immediately or gradually ended; the Upper South, where older patterns of enslavement were changing; and the Lower South, where enslavement remained an important and growing part of the economy.

The New Cotton Economy and the Expansion of Slavery

Instead of dying out after the American Revolution, enslavement became the economic lifeblood of the United States, North and South. After winning independence, the United States built one of the largest and most profitable enslaved labor economies in the world.[177] Between the end of the American Revolution in 1783 and the start of the Civil War in 1861, roughly the length of one human lifetime, the enslaved population of the United States increased almost five times from just under 650,000 enslaved individuals to almost four million enslaved people.[178]

Two major processes made this possible. First, new technologies for producing cotton increased the value of enslaved people's labor and encouraged the expansion of enslavement into lands in the Deep South.[179] Second, white Americans adopted a national constitution that protected enslavement and gave proslavery white Americans outsized political power in the federal government.[180] This power allowed enslavers to increase the profits of enslavement and to enjoy those profits with little regulation by the federal government.

Starting in the 1790s new technologies made enslavement more profitable than ever in North America. A new machine, the cotton gin, made it much easier and faster to remove the seeds from short-staple cotton,

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a sturdy breed of cotton that could be grown in many different climates and soils in the South.[181] Cotton growing breathed new life into the institution of enslavement. Enslavers looked for new lands to the west to expand cotton plantations.[182]

To help these land-hungry cotton planters, the United States government increasingly pressured Native Americans in the Deep South to give up their homelands.[183] Native Americans in the southeastern United States, some of whom had adopted the practices of white colonizers such as growing cotton and owning enslaved African Americans, resisted this pressure.[184] The U.S. government eventually used a brutal policy of removal in which soldiers rounded up Native Americans, removed them from their land, and force marched (or sailed) them hundreds of miles to lands west of the Mississippi River.[185] People of African descent enslaved by Native Americans were also forcibly moved west with their enslavers, and some Native Americans even purchased more enslaved people to take west with them.[186] Thousands of Native Americans and an unknown number of enslaved African Americans died from disease and neglect along the way and the removal process came to be known as the "Trail of Tears."[187] As white southern cotton planters moved into Native homelands, the removal, death, and land theft suffered by Native Americans went hand-in-hand with the widespread enslavement and forced relocation of African Americans.

Slavery in the New U.S. Constitution

Around the same time that the cotton gin took off, southern enslaving states left a permanent mark on the American legal system by shaping the U.S. Constitution to meet their needs in upholding enslavement. During the Constitutional Convention in 1787, southern proslavery representatives pushed for protections for enslavement, partly by threatening not to sign onto the new Constitution.[188]

A major protection for enslavement in the Constitution came in a clause that prohibited Congress from outlawing U.S. participation in the transatlantic slave trade for another 20 years.[189] During those important 20 years, slave ships legally brought around 86,000 enslaved Africans to the United States.[190] Congress was also required, and given the power, to use military force to stop "Insurrections" and "domestic violence,"[191] which would have included rebellions by enslaved people.[192] Proslavery southerners also ensured that the Constitution included a fugitive slave law, which required the return of enslaved people who sought freedom across state lines.[193]

The most important proslavery constitutional policy was the 3/5 Clause. The Constitution was built on the idea of representative government and that Americans should elect people to represent their needs and interests in the federal government. In the U.S. House of Representatives, the number of representatives each state got was based on population with the idea that more populous states should get more representation than less populous states.[194] This part of the Constitution raised controversial questions: Was it reasonable or fair for southern states with large numbers of enslaved people to count those people toward their Congressional representation when they allowed enslaved people no vote, no political rights, and very few legal rights? If enslavers usually treated enslaved people as property, why should they suddenly be counted as people for purposes of representation?[195] People who opposed counting enslaved people toward Congressional representation came mostly from the North and they argued that the enslaved population should give little or no boost to southern states' power.[196] At the same time, enslavers demanded to count the enslaved as whole people, not because they believed enslaved people were equal to white Americans, but because they wanted more voice in Congress and to counterbalance the power of the more populous northern states.[197] The authors of the Constitution reached a compromise.[198] States would get to count each enslaved person toward their representation in Congress, but each enslaved individual would only count as 3/5 (or 60 percent) of a free white person when it came time to determine how many representatives each state received in the House.[199] This was an enormous benefit for enslavers. They could continue to treat enslaved people as property but still get to count 60% of the enslaved population toward getting more power in Congress.[200]

The Founding Fathers embedded slavery into the U.S. Constitution by:

- Protecting the transatlantic trafficking of enslaved people for another 20 years, resulting in the trafficking of 86,000 Africans.
- Giving power to Congress to use military force to stop insurrections, including slave rebellions.
- Requiring the return of enslaved people who fled towards freedom across state lines.
- Counting enslaved people as 3/5 of a person

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More Than 50 percent of U.S. Presidents from 1789 to 1885 enslaved African Americans

The first twenty-one Presidents seated together in The White House. The enslavers are shaded in red.

Representation in Congress also had a major influence on presidential elections.[201] The Constitution set up an electoral college in which a group of representatives (called "electors") voted to choose the next president. Each state got a number of electors equal to the number of senators and representatives that it had in Congress.[202] In this way, enslaving states, which gained more representatives in Congress from the 3/5 Clause, automatically gained more presidential electors, and more power to influence presidential elections, too.[203]

At the same time, some historians argue that white southerners would have gone even further to make the U.S. Constitution a proslavery document if they did not have to compromise with representatives from the northern states.[204] The words "slave" and "slavery" could not be found anywhere in the new Constitution. Instead, it used code words for enslaved people such as "Person held to Service or Labour"[205] or just "other Persons."[206] Some historians see this as a sign that white northerners who helped write the Constitution were growing less comfortable with enslavement and did not want the nation's founding document to say openly that owning human beings as property was legal.[207]

The Constitution also gave Congress the power to end U.S. participation in the transatlantic slave trade in 1808, rather than leaving it completely open, and the fugitive slave law was vague and not well enforced.[208] Finally, the 3/5 Clause probably disappointed proslavery southerners who pushed hard for enslaved people to be counted as whole people, rather than as 60 percent of a person, for purposes of representation in Congress.[209]

No matter what the Constitutional Convention intended to do, the new Constitution ended up giving proslavery southerners outsized power in the federal government, strengthening the institution of enslavement.[210] Northerners complained that the enslaving states' 60 percent boost in Congressional representation and in the electoral college, both due to the 3/5 Clause, gave enslavers too much power over national politics. Some northerners tried to get rid of the 3/5 Clause.[211]

The linking of Congressional representation to presidential electors also helped proslavery southerners control the White House. Enslavers Thomas Jefferson, in 1800, and James K. Polk, in 1846, would not have won election to presidency without the South's extra electoral votes based on counting enslaved people.[212]

The power of proslavery white southerners was evident throughout the United States' early government. Fifty percent of the nation's pre-Civil War presidents were enslavers.[213] Between George Washington's election and 1850, enslavers held the presidency for 50 years, the position of Speaker of the House for 41 years, and the chair of the House of Representatives Ways and Means Committee for 42 years. [214] Control of the presidency also meant control of the U.S. Supreme Court, where presidents chose justices to serve for life. Enslavers made up 18 of the 31 justices (or 58 percent) who sat on the U.S. Supreme Court before 1850.[215] Ultimately, throughout American history, more than 1,700 Congressmen, representing 37 states, once enslaved Black people.[216] They did not only represent the South, but also every state in New England, much of the Midwest, and many Western states.[217]

Proslavery southerners' control of Congress, the presidency, and the U.S. Supreme Court increased the lifespan of enslavement and the geographic area where it was legal. Together, proslavery officials in the federal government paved the way for enslavement's expansion into new states and territories in the West by letting enslavers move without regulation into the large geographic area south of the Ohio River.[218]

Between the ratification of the Constitution in 1788 and the start of the Civil War in 1861, Congress approved the creation of nine new enslaving states (roughly 43 percent of all 21 new states).[219] This expansion of enslavement included parts of the new territory of Louisiana, which the United States purchased from France in 1803. French Louisiana had long been an enslaving colony where sugar production based on enslaved labor was becoming a major source of wealth.[220] Louisiana became a state in 1812 and, by the time of the Civil War, produced one-quarter of the world's sugar and was the second richest state.[221] In addition to creating this major new enslaving state, enslavers won another big victory in 1820 when Congress voted, after protests by antislavery politicians, to let Missouri become a state with a constitution that both allowed enslavement and banned free African Americans from settling there.[222] The major tradeoff that opponents of enslavement got from the Missouri Compromise was the policy that enslavement would be illegal in all parts of the Louisiana Territory located north of Missouri's southern border.[223] For the time being, white Americans reached an unsteady political peace over enslavement's westward expansion.

Between 1790 and 1859, slave traders sold approximately 845,720 people within the U.S. They made enormous fortunes in this trafficking of human beings, amounting to more than $159 million between 1820 and 1860.

IV. The Lives of Enslaved People During the Height of the Domestic Slave Trade

Domestic Trafficking of Enslaved People

Cotton solidified enslavement's importance to the United States, especially in the Deep South where the crop grew the best. The demand for enslaved people in the Deep South allowed enslavers in the Upper South to profit from enslavement in a new way: the interstate trafficking of enslaved people. Enslavers on worn-out tobacco farms in Maryland, Delaware, and Virginia could not grow cotton themselves, but they could sell enslaved people to the growing cotton plantations farther south.[224]

Between 1790 and 1859, slave traders sold approximately 845,720 people within the U.S.[225] They made enormous fortunes in this trafficking of human beings, amounting to more than $159 million between 1820 and 1860.[226] Slave traders force marched, or sailed, hundreds of thousands of enslaved people to new territories along the Mississippi River or the Gulf of Mexico. Today's states of Alabama, Mississippi, Louisiana, and (later) Texas were built on the brutal forced migration of the enslaved.[227]

The trafficking of enslaved people destroyed enslaved people's families, communities, and their bodies. Enslavers and slave traders often ambushed enslaved people with a surprise sale so that they could not attempt to run away or plead to stay with their families.[228] A person "sold south" was almost always separated from their family members and home communities forever.

Parents and children, husbands and wives, brothers and sisters, and extended family members and friends never saw each other again.[229]

On top of the grief and mental and emotional trauma of family separation came physical violence. Slave traffickers usually chained the hands and feet of enslaved people and then chained several individuals together in a line (called a "coffle"). Then, traffickers force marched their captives by gunpoint to the next place of sale.[230]

Newly purchased people might be added to the coffle along the way, or enslaved people might be sold to a string of different traders as they moved South.[231] Some enslaved people might make part of their forced journey via ship or riverboat.[232] But it was common practice to march enslaved people hundreds of miles over land to their destinations.[233] Handcuffs and chains rubbed their skin raw, their feet ached and bled, and they suffered from a lack of food, clothing, shelter, and sleep.[234]

Charles Ball, an enslaved man who was bought by slave traffickers Maryland and forced to march to South Carolina, later remembered: "I seriously meditated on self-destruction, and had I been at liberty to get a rope, I believe I should have hanged myself at Lancaster... I had now no hope of ever again seeing my wife and children, or of revisiting the scenes of my youth."[235]

At the end of their forced march south, enslaved people faced the terrifying process of being sold to their new enslavers. Many of the enslaved ended up in the city of New Orleans, the human trafficking center of the Deep South.[236]

Some buyers specifically bought Black people that they could subject to sexual and reproductive violence. The "fancy trade" was the term for selling young women and girls to white men for the purpose of constant rape and/or forced sex work in brothels. Other enslavers bought young mothers (with or without their children) because a woman who had recently given birth to children showed that she was able to have more children in the future to enrich her buyer.

Enslaved people waited until their day of sale in a high-walled outdoor yard, called a "slave pen," where they were crowded together with 50 to 100 people.[237] Upon arrival, traffickers allowed enslaved people food, rest, baths, and new clothing to make them look more appealing to future buyers and bring a higher price upon sale.[238] Later, traders who trafficked in enslaved people sold them in a showroom next to the pen.[239]

As historian Walter Johnson has written, one of the great obscenities of enslavement was that enslavers forced enslaved people "to perform their own commodification."[240] Slave traders coached enslaved people on how to act and what to say to potential buyers, to hide any injuries or disabilities, and to highlight their valuable skills.[241] When sales began, enslaved people were required to line up by gender and height, separate from any family members.[242] Buyers questioned and examined them, forcing them to open their mouths to show their teeth and to undress to reveal any signs of illness, disability, disease, or scars from previous whippings (which whites saw as signs of disobedience).[243]

Enslaved people with specialized skills, such as the ability to play a musical instrument, might perform for buyers, while slave traders forced everyone to parade around and dance to show their physical well-being.[244] Women and girls often suffered the most violent inspections of their bodies. Buyers took them behind closed doors, stripped them naked, and forcibly examined their breasts and genitals to see if they would be good "breeders" and were free of sexually transmitted infections.[245]

The moment of sale was extremely painful and traumatic. Buyers purchased enslaved people based on racist stereotypes about African Americans' capabilities and skills, which were often connected to skin color, gender, and physical size.[246] Younger enslaved African American men and women, as well as teenagers, often sold at high prices as "prime" field hands to pick cotton and do other hard labor.[247] Enslaved men with specialized knowledge and skills, such as carpentry, barrel making, or driving carts, also sold for higher prices.[248] Enslavers often bought younger enslaved women to work in the cotton fields, but also valued their knowledge and skills in home-based work such as cooking, washing clothes, sewing, cleaning, and childcare.[249] Finally, elderly people and very young children usually were sold for a lot less money because white buyers viewed their labor and skills as less valuable.[250]

Some buyers specifically bought African American people that they could subject to sexual and reproductive

violence.[251] The "fancy trade" was the term for selling young women and girls to white men for the purpose of constant rape and/or forced sex work in brothels.[252] Other enslavers bought young mothers (with or without their children) because a woman who had recently given birth to children showed that she was able to have more children in the future to enrich her buyer. Pregnant and breastfeeding women could be forced to nurse all the children, African American and white, on a plantation to free up other enslaved mothers for field work.[253]

All of these factors often meant that even if an enslaved family had managed to stay together up to this point, they would now face permanent separation. Solomon Northup, a free African American man from New York who was kidnapped and sold into enslavement, remembered the case of an enslaved woman named Eliza. Eliza begged to be sold with her two children, Emily, who was seven or eight years old and Randall, who was four to five years old. Slave traders sold off Randall to another buyer and refused to sell Emily to Eliza's buyer because they hoped to sell the tiny girl as a "fancy" to a wealthy enslaver when she was a little older. Northup wrote that the sale of her children was absolutely soul crushing for Eliza. She died young from the grief of losing them.[254]

Cotton and Capitalism

Enslavers were capitalists, and like all capitalists, they strived for profit maximization. They wanted to get the most work out of enslaved people by pushing them up to, but not beyond, their physical breaking point. To do this, enslavers used violence, or the threat of violence, to make the enslaved work harder and faster and to maintain a constant, carefully calculated rate of production. The result for enslaved people was a nearly endless daily round of work under the constant threat of violence.[255]

Once enslaved people were sold to the Deep South, their new enslavers subjected them to a lifetime of brutal, backbreaking work growing cotton, which was a never-ending, year-round process.[256] Enslaved people began every spring by plowing the land and planting cotton seeds. For the next several months they hoed the fields to kill grass and weeds that might damage the fragile young cotton plants.[257] Starting in August, enslaved people worked from sunup to sundown to pick cotton, sometimes working by the light of the moon to finish. They only stopped for a 10- to 15-minute meal break per day.[258] This exhausting workday did not end when the cotton picking was done. Everyone still had to cut wood, feed farm animals, and do all of the other daily tasks that kept the plantation running. Then, enslaved people went back to their cabins, made their evening meals, and cooked food to eat in the cotton fields the next day.[259]

The cotton-picking season went on for months into the winter.[260] After the cotton season ended, enslaved people harvested the corn crop, which, according to Solomon Northup, was used for "fattening hogs and feeding slaves."[261] After the corn harvest was complete, enslaved people burned all the dead corn and cotton plants and began the process of planting the next year's crops all over again.[262]

The American colonial Slave Codes created a new type of slavery that was different than the slavery which existed in pre-modern times.

- These laws enslaved babies at birth, for their entire lives, and for the entire lives of their children, and their children's children.
- These laws denied political, legal and social rights to free and enslaved Black people alike in order to more easily control enslaved people.
- These laws divided white people from Black people by making interracial marriage a crime.

Some of these laws survived well into the 20th century. The Supreme Court only declared that outlawing interracial marriage was unconstitutional in 1967.

To make sure that enslaved people worked as hard and as quickly as possible, enslavers came up with the "pushing system." The main idea behind the pushing system was that every enslaved person should farm a certain number of acres of cotton per year.[263] This number kept increasing, from five acres per enslaved person in 1805 to double that number (10 acres) by the 1850s.[264] In fact, many of today's financial accounting and scientific management practices to increase profits had their early beginnings among enslavers in the U.S. South and the Caribbean who wanted to perfect the pushing system.[265]

To make sure that the production of cotton and profits kept increasing, enslavers intensified the physical violence.[266] Frederick Douglass remembered that sleep-deprived enslaved people who accidentally slept past sunrise were whipped for lateness.[267] Solomon Northup, the free African American man kidnapped

and sold into enslavement in Louisiana, remembered that enslavers followed enslaved people into the fields on horseback and whipped them if they stopped work or fell behind.[268] He also remembered that each adult was responsible for picking 200 pounds of cotton per day and that those who did not pick enough got whipped. Even picking less than one's own personal best daily weight record, or accidentally breaking a branch on a cotton plant, resulted in whipping.[269] Northup himself was whipped for failing to pick cotton fast enough when he was sick and exhausted.[270]

Enslavers also forced sexual intercourse between enslaved people—an act historian Daina Ramey Berry has called third-party rape—so that they could "breed" more children to make more money.

Southern slave codes, the state and local laws that enforced enslavement, became more severe to support the increased brutality and profitability of enslavement, especially in the Deep South. Many southern states outlawed all meetings of enslaved people—including religious observance—without supervision by white people, prohibited teaching enslaved people to read and write, and banned enslaved people from trading.[271] These laws also increased patrols, the police forces that enforced these laws.[272] Finally, new laws made it much more difficult for enslaved people to achieve their freedom by banning "manumission," voluntary emancipation by enslavers. Altogether, these developments in slave codes aimed to maintain the racial caste system by cracking down on all resistance by enslaved people and to prevent them from ever getting their freedom.[273]

Neglect and Violence

Living conditions for enslaved people showed enslavers' inhumane, brutal emphasis on profit maximization. Most of the enslaved lived in small, poorly built cabins. Gaps between the log walls were so big that the wind and rain constantly blew in.[274] Furniture was either rare or non-existent. Solomon Northup's bed "was a plank [of wood] twelve inches wide and ten feet long."[275]

Frederick Douglass reported that enslaved people on the Maryland tobacco plantation where he was born had no beds at all; they slept on the cold dirt floor with only a rough blanket.[276] On the coldest nights, the young Douglass would steal a sack used for carrying corn and sleep inside it with his head inside and his feet hanging out. Years later, when he wrote about his life, he remembered that "[m]y feet have been so cracked with the frost, that the pen with which I am writing might be laid in the gashes."[277]

Besides cold, one of the greatest things Douglass suffered was hunger. Douglass's enslaver fed enslaved children mashed-up boiled corn in a trough on the ground. The children were then forced to eat "like so many pigs" and "[h]e that ate fastest got most."[278] Solomon Northup remembered a similar lack of food on the Louisiana plantation where he lived for 10 years. Each person received only three and a half pounds of bacon and a peck of corn (about eight dry quarts) per week.[279]

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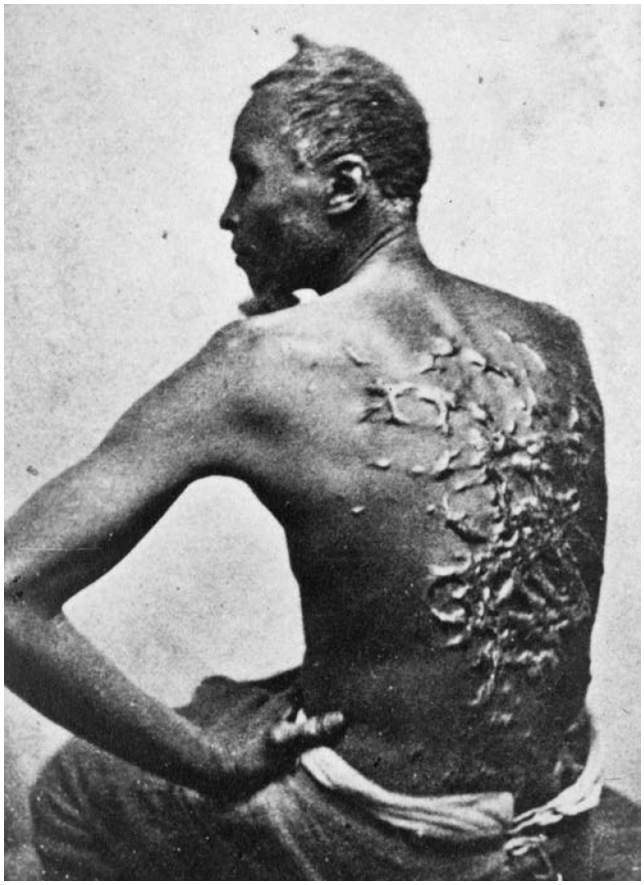

Formerly enslaved person named Gordon, also known as "Whipped Peter," showing his scarred back at a medical examination, Baton Rouge, Louisiana. (1863)

Enslaved people, particularly women and girls, also suffered sexual and reproductive violence. Enslavers frequently raped and impregnated enslaved women and girls and increased their profits by doing so.[280] Frederick Douglass pointed out that since children born to enslaved women were automatically enslaved

at birth, enslavers often owned and sold their own children as property.[281] Additionally, Douglass remembered that white women often harassed enslaved victims of rape and their mixed-race children by insisting on their sale or punishing them even more cruelly than other enslaved people.[282]

Enslavers also forced sexual intercourse between enslaved people—an act historian Daina Ramey Berry has called third-party rape—so that they could "breed" more children to make more money.[283] Frederick Douglass remembered that a poor white farmer named Edward Covey owned only one enslaved woman named Caroline and had to rent additional enslaved people from others (a practice called hiring out). To increase his own wealth, Covey forced Caroline and one of the rented enslaved men, who was already married, to have sex. Not long after, Caroline gave birth to twins. Douglass remembered that "[t]he children were regarded as being quite an addition to his wealth." Sexual violence tripled Covey's wealth—from one to three enslaved people—within just one year.[284]

Finally, enslavers also used the bodies of enslaved people, living and deceased, for medical and scientific experimentation. For an in-depth discussion of medical experimentation on enslaved people and African Americans throughout U.S. history, please see Chapter 12, Mental and Physical Harm and Neglect.

Enslaved Communities and Cultures: Resilience, Resistance, and Rebellion

Enslaved people of African descent defied enslavers' efforts to dehumanize them by creating resilient families and communities, vibrant cultures, and distinctive religious and intellectual traditions. Family ties, community ties, cultural practices, and religious traditions ensured African American survival. They were the foundation of African American resistance to enslavement and the struggle for human rights both before emancipation and long afterward.

Family life was the building block of enslaved life in the American South.[285] Although enslaved families were always in danger of being broken apart by sale, enslaved people built strong extended family ties and fought to preserve these relationships.[286] Husbands and wives struggled to have enslavers recognize their marriage ties by claiming their right to live together in their own private cabins, or to visit spouses who lived on different plantations.[287] Enslaved parents chose their children's names to honor their own family ties, not according to the will of their enslavers, and frequently named children after grandparents, aunts, uncles, and cousins.[288] Enslaved people often chose their own last names, even if enslavers refused to recognize them, and they passed down their skills to their children.[289] Enslaved people also rebelled against the sale of their family members, sometimes by fleeing to see their relatives on distant plantations.[290]

Family life was the building block of enslaved life in the American South. Although enslaved families were always in danger of being broken apart by sale, enslaved people built strong extended family ties and fought to preserve these relationships.

Enslaved people built close communities bound together by blood, marriage, and adoptive family ties. On larger plantations, multiple extended family groups lived in the same "slave quarters" and were often linked to each other through marriages or adoptive kin relations.[291] For instance, Frederick Douglass remembered that the enslaved children on the Maryland plantation where he was born referred to older enslaved men as their uncles, demonstrating both their respect for their elders and the close family-like relationships that grew between community members unrelated by blood.[292] These close ties can best be seen in cases of young enslaved children orphaned by the sale or death of their parents: extended family members and non-kin alike frequently raised these children along with their own children.[293]

Close-knit families and communities ensured that cultural practices, language, and oral histories were passed down to the next generation. "Slave quarters," the clusters of cabins where the enslaved lived, were often distant from the "big house" of the enslavers and allowed the enslaved some privacy to pray, dance, sing, tell stories, rest, and tend to their homes.[294] The lively cultural spaces that enslaved people created for themselves allowed for the persistence of elements of African language, music, medicine, and storytelling in African American culture across generations.[295]

Religious life was often the heart of family and community experience for enslaved people, creating spaces for freedom of expression, cultural resilience, and resistance. Enslaved people who were stolen from Africa continued the spiritual practices of their homelands, whether indigenous West African religions or Islam.[296] Over time, enslaved communities fused elements of

African religious practice—including song, dance, call and response, and healing practices—with Protestant Christianity.[297] They created a distinctive American religious culture that taught a message of liberation, a "gospel of freedom."[298] Enslaved preachers emphasized freedom from enslavement, both in the afterlife and on earth. They focused on Biblical liberation stories, such as Moses leading the Israelites out of bondage in Egypt, as well as stories that emphasized the power of the weak to defeat the mighty, such as David and Goliath. [299]

Enslavers tried to suppress this religious expression by prohibiting religious gatherings or by emphasizing parts of the Bible that said that "servants" should obey their "masters."[300] Still, enslaved people resisted these efforts by meeting in secret to worship.[301] As a formerly enslaved woman named Alice Sewell remembered, "We used to slip off in the woods in the old slave days on Sunday evening way down in the swamps to sing and pray to our own liking. We prayed for this day of freedom. We come from four and five miles to pray together to God that if we didn't live to see it, to please let our children live to see a better day and be free."[302]

As Alice Sewell's memory shows, religious and community life became a foundation for enslaved people's resistance to the brutal and dehumanizing conditions of their enslavement. In some cases, religious and community ties catalyzed outright rebellions against enslavement. The alleged Denmark Vesey conspiracy in Charleston, South Carolina in 1822, and the Nat Turner rebellion in Southampton County, Virginia in 1831, developed among communities of free and enslaved African Americans who believed strongly in the gospel of freedom.[303] Most often, though, enslaved communities, cultures, and spiritual beliefs made possible smaller forms of everyday resistance that pushed back against the relentless work and violence of enslavement. Enslaved people slowed down work, broke tools, or temporarily escaped to avoid abuse or brutal working conditions.[304] Everyday resistance forced enslavers to recognize enslaved people's humanity and showed their deep longings to be free.

Ultimately, enslaved people in the United States created a distinctive *American* Black culture that was different from ancestral African cultures, white European cultures, or African-diaspora cultures elsewhere in the world. Distinctive African American artistic expression—especially music and dance—literary and linguistic styles, and culinary innovations, among many other practices, would shape mainstream American culture across centuries.

For a detailed discussion of African American cultural and artistic impact on the United States, see Chapter 9, Control over Spiritual, Creative and Cultural Life.

V. Northern Complicity in Enslavement

White New Englanders, the Slave Trade, and the Textile Industry

Although enslavement itself was disappearing in the North, white northerners' participation in enslavement grew along with the southern cotton economy. White people in New England, for instance, profited from the transatlantic traffic in enslaved Africans, rum manufacturing, and cotton textile production.

Cotton grown by enslaved people in the South fed mills employing thousands of people across New England. By the time of the Civil War in 1861, New Englanders had invested more than $69 million in cotton fabric production and operated 570 separate mills. Over 81,000 Americans worked in the New England textile mills and the total profits amounted to over $79 million dollars per year.

White northerners had been involved in the transatlantic trafficking of enslaved people for a long time as shipping company owners, slave ship captains, and slave traders. For example, businessmen from the northern state of Rhode Island controlled most of the trade in captive human beings.[305] Slaving ships from Rhode Island brought rum to the coast of West Africa and traded barrels of the liquor for enslaved people, who they trafficked to North America.[306] Around 24 rum distilleries in the town of Newport, Rhode Island, fed this profitable trade.[307] By the time of the American Revolution, these Rhode Island merchants controlled two-thirds of the entire transatlantic slave trade in the Thirteen Colonies and they held onto this control after U.S. independence.[308] When added together, white Rhode Islanders were responsible for bringing 100,000 enslaved Africans to North America.[309]

Fifty thousand of these enslaved people were captives whom Rhode Island enslavers rushed to bring into the United States before Congress outlawed participation in the transatlantic trafficking of enslaved people in 1808.[310]

At the same time, textile mills, the factories which processed southern cotton into cloth, were the basis of early northern industrial growth.[311] Cotton grown by enslaved people in the U.S. South fed these mills and the mills employed thousands of people across New England.[312] By the time of the Civil War in 1861, New Englanders had invested more than $69 million in cotton fabric production and operated 570 separate mills.[313] Over 81,000 Americans worked in the New England textile mills and the total profits amounted to over $79 million dollars per year.[314]

In 2005, JP Morgan Chase, the banking giant, wrote a formal apology because two banks that it now owned had taken 13,000 enslaved people as security for loans in the state of Louisiana. When enslavers could not pay back the loans, the banks ended up taking ownership of 1,250 of these people.

Slavery and the Economic Power of New York City

New York City is a strong example of how northerners participated in and profited from enslavement. Captive Africans, enslaved by the Dutch West Indian Company, were part of the labor force that constructed the early walled street that eventually became Wall Street, the economic center of the United States.[315] Later, the street became the city's first slave market. City leaders decided in 1711 that whites who wanted to rent out enslaved African American or Native American people could only do so at the end of Wall Street next to the East River.[316]

Enslaved people became less and less common in the city after the state of New York passed a law in 1799 that gradually freed children born to enslaved mothers, and then outlawed enslavement completely in 1817.[317] But as enslavement itself was dying out, white New Yorkers were building strong economic ties to southern enslavement that brought millions of dollars in profit every year. New York City was the main destination of southern cotton and the center of the transatlantic cotton trade.[318] New York-based shipping companies gathered the cotton in southern cities and took it north to New York City where merchants packed it and shipped it to Europe.[319]

New York City was also the banking center of the United States and New York banks helped finance the expansion of enslavement in the South. Banks loaned money to enslavers to buy more land and more enslaved people.[320] Banks also accepted enslaved people as security for these loans, which meant that they could take and sell enslaved people if their enslavers failed to pay back their debts. For example, in 2005, JP Morgan Chase, the banking giant, wrote a formal apology because two banks that it now owned had taken 13,000 enslaved people as security for loans in the state of Louisiana. When enslavers could not pay back the loans, the banks ended up taking ownership of 1,250 of these people, and then most probably sold them.[321]

New York City was also strongly connected to southern enslavement through the insurance industry. Insurance companies insured the lives of enslaved, and paid enslavers if an enslaved person died.[322] Some insurance companies also insured shipments of trafficked enslaved people sold within the United States.[323] Some of these companies were the early ancestors of today's most important insurance companies, including New York Life, US Life, and Aetna.[324] American insurance companies' investment and complicity in enslavement was so widespread that the California government required all insurers who did business in the state to make their records of participation in enslavement open to the public.[325]

Corporate Manufacturing Profits

A variety of New York businesses also profited from processing and manufacturing agricultural products grown by enslaved people into goods for consumers to buy. Brooks Brothers, still a well-known New York City clothing company, made money from enslavement in multiple ways. The company made fashionable, expensive clothing woven from southern cotton grown by enslaved people.[326] It also profited from making cheap clothing that enslavers bought to dress enslaved people.[327]

At the same time, sugar refineries, factories which processed raw sugar into a usable form, became a major New York industry, especially in the borough of Brooklyn. These factories processed thousands of pounds of raw sugar grown by enslaved people in Louisiana and Cuba.

By 1855, fifteen New York City refineries were producing over $12 million of sugar per year.[328]

The profits of sugar refining can still be seen in New York City today. Columbia University's Havemeyer Hall was funded by and named after one of the city's most important sugar refining families from the 1800s whose business relied on sugar grown by enslaved people.[329] The Havemeyer family built what was once the largest sugar refining factory in the world, the Domino Sugar Refinery, which still stands beside East River in Brooklyn.[330] Although the Brooklyn location is no longer running, the Domino Sugar brand, now owned by the ASR Group, continues to be processed in factories in New York, Maryland, and Louisiana.[331]

The legacies of enslavement in the sugar industry continue in the present-day. After the Civil War and the end of enslavement, southern states such as Texas and Louisiana rented out imprisoned African Americans to white sugarcane farmers. Many died in the brutal sugar production process.[332] The Louisiana State Penitentiary at Angola and the Texas State Penitentiary at Sugar Land also supported themselves, and profited these state governments, by growing and processing sugar cane on prison grounds.[333] Incarcerated individuals at Angola continued to process sugar to sell in the prison gift shop as recently as 2014.[334]

VI. Slavery and American Institutions

Historically White Universities and Religious Organizations

A wide range of U.S. colleges and universities, both private and public, profited from enslavement or ties to enslavers, while at the same time denying admission to African Americans for most of the nation's history. Almost all Ivy League universities and colleges can be included in this category.

Harvard University Law School was created in 1817 and funded largely by land donations from a wealthy merchant named Isaac Royall, Jr. Royall, who was the son of a human trafficker in enslaved people, owned multiple sugar plantations in the Caribbean and Latin America that were worked by enslaved people.[335] Other early Harvard donors made their money by trading enslaved people or goods produced by enslaved people in the Caribbean; smuggling enslaved Africans into the United States after Congress banned American participation in the transatlantic slave trade in 1808; or running textile mills fed by southern cotton.[336]

The wealth of Brown University (formerly known as the College of Rhode Island) was greatly tied to the human trafficking activities of its home state, Rhode Island. Members of the Brown family, early donors after whom the university is named, owned enslaved people and participated in the transatlantic slave trade.[337] University Hall, the oldest building on the Brown University campus, was partially built by enslaved people and made of wood donated by one of the state's largest slave trading companies.[338] South Carolina slave traffickers and enslavers also gave money to help fund the college.[339]

Other Ivy League schools have similar connections to enslavement. The University of Pennsylvania,[340] Princeton University,[341] Columbia University,[342] Yale University,[343] and Dartmouth College[344] count enslavers, slave traffickers, and/or proslavery defenders among their early donors, founders, trustees, administrators, building namesakes, faculty, students, and alumni.

Enslavement was also strongly linked to religious life and religious organizations in colonial America and the early United States. Some churches and religious colleges owned, bought, and sold enslaved people.[345] In the southern enslaving states, some churches raised money to buy enslaved people. Anglican and Episcopalian churches in Virginia during the 1600s and 1700s attracted new ministers by allowing them use of church-owned enslaved people.[346] Some wealthy churchgoers donated enslaved people to churches so that the profits of their labor could be used to fund free schools for poor white children.[347] In the 1700s and 1800s, many Virginia Presbyterian churches hired out enslaved people so that they could use the profits to pay ministers and fund church upkeep.[348]

Colleges with religious missions also owned and profited from enslaved people. Virginia's College of William and Mary, which was originally an Anglican college to train new ministers, started owning enslaved people by around 1704.[349] Enslaved people worked in the college's kitchens, dormitories, laundries, stables, and gardens, or on the college-owned tobacco plantation to raise money for student scholarships.[350] Although the college sold off many enslaved people during the American Revolution to pay off its debts, tearing them away from their families and

communities,[351] enslavement continued on the William and Mary campus until during the Civil War.[352]

Some colleges run by the Society of Jesus, a Catholic religious group better-known as the Jesuits, also depended on the lives and labor of the enslaved. The Jesuits who operated Georgetown College (now Georgetown University) owned plantations and hundreds of enslaved people.[353] The profits of these plantations funded the school.[354] In 1838, when the college was struggling due to a lack of funding, Jesuits sold 272 enslaved African American people to Deep South plantations so that they could pay off the school's debts.[355] Even though Jesuit leaders in Rome required that the enslaved people be kept together as families and given Catholic religious education in their new homes,[356] buyers in Louisiana failed to keep these promises.[357] Altogether, the mass sale of elders, men, women, children, and infants raised $115,000 (equal to around $3.3 million in 2016) to fund Georgetown College/University.[358]

In the southern enslaving states, some churches raised money to buy enslaved people. Anglican and Episcopalian churches in Virginia during the 1600s and 1700s attracted new ministers by allowing them use of church-owned enslaved people. Some wealthy churchgoers donated enslaved people to churches so that the profits of their labor could be used to fund free schools for poor white children. In the 1700s and 1800s, many Virginia Presbyterian churches hired out enslaved people so that they could use the profits to pay ministers and fund church upkeep.

Direct Federal Government Investment and Participation

Finally, the federal government directly invested in, protected, and profited from the enslavement of African Americans. The early U.S. national banking system played an important role in funding the expansion of cotton growing and the interstate slave trade. For example, in the years 1831 to 1832, the Second Bank of the United States, the private bank that the United States used to handle all of the federal government's banking needs, gave five percent of all its loans to just one slave trading company in New Orleans.[359] By 1861, just under two percent of the entire budget of the United States went to pay for expenses related to enslavement.[360] These expenses included dealing with the illegal transatlantic slave trade;[361] colonization projects to remove formerly enslaved people from the United States and settle them in other parts of the world;[362] enforcing fugitive slave laws;[363] and renting enslaved people to build federal military sites in the South.[364]

The U.S. federal government also actively participated in upholding enslavement because it directly controlled the nation's capital at Washington, D.C. The District of Columbia was formed from lands that once belonged to the two enslaving states of Maryland and Virginia. As a result of this, Washington, D.C. had to carry over the laws of those two states, including laws supporting enslavement.[365] U.S. courts in Washington, D.C., took direct responsibility for punishing enslaved people and deciding cases involving the buying, selling, and inheritance of enslaved people.[366] Since there were no laws against moving enslaved people through D.C., and because D.C. was centrally located in the Upper South, the area also became an important location in the interstate slave trade.[367] Slave traffickers gathered and imprisoned enslaved people in D.C. "slave pens" where they waited to be moved to the Deep South and sold.[368] Solomon Northup, a free African American man who was kidnapped and sold into enslavement in 1841, remembered that he waited to be sold south in a "slave pen within the very shadow of the Capitol!"[369] That U.S. capitol building,[370] along with another major national landmark and symbol of democracy, the White House, was partially built by the labor of enslaved people.[371]

VII. Enslavement in California

Slavery's Expansion into the West

Even though large numbers of white northerners profited from the labor of enslaved people, many also began to worry about the place of enslavement in the nation's future and to question whether it should be allowed to expand west into new American territories. Some of this new concern sprung from the abolitionist movement, a northern interracial movement of African American and white antislavery activists who pushed to end enslavement immediately.[372] Across the 1830s and 1850s,

American abolitionists published thousands of texts, and gave thousands of speeches, to convince their fellow citizens that enslavement was wrong and against the will of god.[373] They also helped thousands of freedom seekers escape enslavement via a secret network called the Underground Railroad.[374]

While most white northerners disapproved of abolitionism and worried that it would tear the North and South apart, the high-profile nature of the movement and the actions of freedom seekers raised new opposition to enslavement moving west. Most white northerners' opposition to the westward expansion of enslavement was based on self-interest. They argued that new western territories should be "free soil" so that free white people could have access to inexpensive farmland and opportunities to build wealth without having to compete with wealthy enslavers and enslaved people.[375] Keeping slavery out of the West became a major goal for a growing number of northerners and it put them into conflict with proslavery southerners who wanted enslavement to keep growing westward and to create new enslaving states.[376]

The conflict over the westward expansion of enslavement caused bitter political battles and violence in the years leading up to the Civil War.[377] In the 1840s, some northerners opposed allowing Texas, an independent enslaving nation that had broken off from Mexico, to join the United States. They worried that Texas would add an enormous amount of new territory for enslavement to grow.[378] When the United States declared war on Mexico in 1846 over conflicts related to Texas, many northerners supported the idea of outlawing enslavement in any new lands that the United States might take away from Mexico.[379] In 1848, the U.S. did force Mexico to give up a massive territory that included today's states of California, New Mexico, Nevada, and Utah, as well as parts of present-day Arizona, Wyoming, and Colorado.[380]

By 1861, just under two percent of the entire budget of the United States went to pay for expenses related to enslavement. These expenses included dealing with the illegal transatlantic slave trade; colonization projects to remove formerly enslaved people from the United States and settle them in other parts of the world; enforcing fugitive slave laws; and renting enslaved people to build federal military sites in the South.

A political crisis grew over whether enslavement should be allowed into these new territories or closed out forever. This crisis intensified when thousands of people rushed to California after the discovery of gold in the state and to set up a new state government with a constitution that outlawed enslavement.[381]

Northern and southern politicians in Congress tried to hold the country together by passing a set of laws called the Compromise of 1850. Together, these laws said that California could join the U.S. as a free state and that the residents of New Mexico and Utah territories could decide for themselves whether they wanted to allow enslavement.[382]

The Compromise of 1850 also gave other important concessions to both the opponents and defenders of enslavement. It ended the slave trade in Washington, D.C.[383] It also included a harsher fugitive slave law that gave enslavers greater federal aid in chasing down enslaved people who escaped to the free states, limited freedom seekers' ability to defend themselves in court, and harshly punished people who helped freedom seekers or people who refused to participate in enforcing the law.[384]

This fugitive slave law further divided white northerners and white southerners. Northerners hated the new law for forcing them to participate in enslavement.[385] Southerners viewed northern opposition to the law as a refusal to enforce the U.S. Constitution.[386] Eventually, this conflict spread all the way to California where proslavery southerners and antislavery northerners fought over what should happen to enslaved people who escaped their enslavement once they got to the free state.[387]

Enslavers and the Enslaved in the California Gold Rush

While people in northern and southern states fought over whether enslavement should be allowed to expand west, enslavement already had moved to California. Even though California was supposed to be a free state with an antislavery constitution,[388] enslavement existed in the state.[389] More importantly, California's early state government protected the institution of enslavement and greatly limited African Americans' civil rights.[390]

The enslavement of African Americans had already started in California before the state adopted an antislavery constitution in 1849. California had been part of Mexico

before the United States took it in the U.S.-Mexico War of 1846 to 1848. Mexico had already outlawed enslavement in 1829,[391] but American enslavers began trafficking enslaved African Americans into California before, during, and after the U.S.-Mexico War, especially once the gold rush began in 1848.[392]

A gold rush source estimated that 1,500 enslaved African Americans lived in California in 1852.

The exact number of enslaved African descended people in California is difficult to estimate. Federal and state census records, which counted the number of people in California, show around 203 enslaved African descended people living in the state in 1850 and around 178 in 1852.[393] These are probably undercounts because early census records are very incomplete.[394] These incomplete records, though, do show support for the findings of historian Rudolph Lapp who estimated that at least 500 to 600 enslaved African Americans lived and worked in California during the gold rush.[395] But these numbers may be even higher because another gold rush source estimated that 1,500 enslaved African Americans lived in California in 1852.[396]

Each of these enslaved people suffered traumatic uprooting from their homes and families. Going to California meant a forced separation from family, friends, and community by a distance of thousands of miles.[397] Even though enslavers thought of the move to California as only temporary, most gold seekers spent at least two years in California—and usually many more—due to the distance and difficulty of traveling between the East and West Coast.[398] For example, an enslaved North Carolina man, known only as John, arrived in California with slaveholder Robert M. Dickson in 1852 and stayed at least three years, until Dickson suddenly died in 1855.[399] We do not know how long John remained in California or whether he ever returned to North Carolina. His journey to California may have resulted in permanent separation from his family.

Like John, more than 75 percent of the enslaved people trafficked to California were younger men or teenaged boys who ended up working as gold miners.[400] These enslaved miners faced backbreaking and often dangerous working conditions. Placer mining, the most common type of mining in the earliest days of the California gold rush, involved digging up soil from the beds and banks of rivers and creeks. Sometimes, miners dammed up these bodies of water to get at soil deep in the beds. These practices often required standing knee- or waist-deep in cold water for several hours each day in the broiling summer heat.[401]

Overwork, exposure to bad weather, unclean working and living environments, a lack of nutritious food, and the absence of medical care often resulted in long-term illnesses or death by disease.[402] For instance, several enslaved men from western North Carolina died from cholera, a disease caused by contaminated food or water, along with their enslaver, in Tuolumne County in 1852.[403] Accidents and injury were also common, as seen in the life of an enslaved man from Kentucky, known only as Rheubin. He drowned in the American River while working in a mining area in 1851.[404]

COURTESY OF PHOTO12/UNIVERSAL IMAGES GROUP VIA GETTY IMAGES

Enslaved people working in California Gold Mines. (1852)

Not all enslaved people worked directly in mining. Women and girls, who made up less than one quarter of all recorded enslaved people in California,[405] often worked as servants, cooks, or laundry workers in private homes, hotels, restaurants, or boarding houses.[406] People with these skills were so scarce, and their work was so valuable, that enslavers often hired out both enslaved women and men as servants. Enslavers then pocketed all or most of the enslaved people's wages from their rented labor.[407]

Violence Against the Enslaved and Resistance to Enslavement in California

Much like enslaved people in the South, those in California also faced brutal violence. In 1850, one slaveholder beat an enslaved man in the town square of San Jose for disobeying him. The police arrested both men, but ultimately determined that the slaveholder was not guilty of assault because his victim was legally his property.[408]

In another case from 1850, an elderly enslaved couple ran away near the town of Sonora. When the slaveholder caught them, he whipped the elderly man until his blood flowed so heavily that it filled his shoes. The couple later escaped with the help of a free African American neighbor.[409] One of the worst violent events also happened in 1850, this time in Los Angeles. A group of white southerners chased, shot at, and captured a handful of escaped enslaved people and then beat them until one almost died.[410]

In another case from 1850, an elderly enslaved couple ran away near the town of Sonora. When the slaveholder caught them, he whipped the elderly man until his blood flowed so heavily that it filled his shoes. The couple later escaped with the help of a free Black neighbor.

The forced journey to California had different outcomes for the enslaved people who survived it. Many people probably worked in California for a few years before returning to enslavement in the South. Others, especially those who were allowed to keep a small portion of their wages from hiring out or digging gold, saved enough money to buy their freedom.[411] Finally, some enslaved people worked under formal or informal "indenture" agreements by which they promised to work for a certain number of years in California, or to earn a certain amount of money, in exchange for their freedom.[412] Enslaved people who bought their own freedom might then also earn enough money to free their family members.[413]

Large numbers of enslaved people also saw California as a place where they could take their own freedom or challenge their enslavement. The California gold mining country was large, rural, and full of diverse people, including antislavery African American and white Northerners. It was much easier to run away, hide, and find allies in California than in the Southern enslaving states.[414] But it is important to remember that all enslaved people who went west were forced to leave their family members and communities behind in the South. For this reason, escape was not a good option for many enslaved people because staying with enslavers was their only way to keep in touch with their families.

In this way, enslavers used their control over enslaved people's family members to force them to cooperate. For this reason, enslaved people may have been more likely to resist in other ways besides running away. For example, some refused to work or escaped temporarily until they were allowed to keep more of their earnings.[415] This might have been a safer path to freedom than running away if they could earn enough money to buy themselves and their family members out of enslavement.

California Legislature's Complicity

California's 1849 antislavery state constitution did little to stop the violence and exploitation that enslaved people suffered. The new constitution said that "neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State."[416]

The problem was that enslavement already existed in the state and was already being tolerated there. The constitution also said nothing about what should happen to those enslaved people who already lived in California or those who came after statehood. The California constitution could say that the state would not tolerate enslavement, but this statement did not mean much without laws making it a crime to keep someone enslaved, laws to free enslaved people, laws to punish enslavers, or laws to protect African Americans' freedom.[417]

Proslavery white southerners took advantage of this lack of specific laws against enslavement to keep enslavement going in California. During California's 1849 Constitutional Convention, a meeting to write the state's first constitution, proslavery politicians from the South quietly accepted the law banning enslavement.[418] But after statehood, a large number of southern proslavery men ran for political office in California so that they were overrepresented in the state government compared to their overall population in California. White southerners with proslavery views had a great deal of power in the state legislature, the state court system, and among California's representatives in the U.S. Congress.[419] During the 1850s, these men used their political power to make sure that California protected

enslavers. They passed and upheld laws that skirted around the antislavery constitution.

The California government's most proslavery action was passing and enforcing a state fugitive slave law in 1852.[420] Proslavery southerners were angry when they discovered that the federal fugitive slave law of 1850, a harsh new law to help slavecatchers chase down and re-enslave freedom seekers who escaped enslavement, did not apply to most cases in California. Enslavers could only use the federal law to chase down and re-enslave people who escaped across state lines, not those who ran away inside one state's borders.[421]

In 1852, the California state legislature dealt with this issue by changing the definition of who counted as a "fugitive slave." Instead of just covering people who escaped across state lines, California's new state law said that a fugitive slave was any enslaved person who arrived before California officially became a U.S. state in September 1850 but who refused to return to the enslaving states with their enslavers. These people could be arrested, placed under the control of their enslavers, and forced to return to the South.[422]

The legal reasoning behind this law was that California's antislavery constitution did not become official until the moment of statehood. Before then, California was a federal territory controlled by the U.S. government. Proslavery southerners believed that the U.S. Constitution gave every white citizen the right to move into the federal territories and to take their property with them, including human beings who were considered property. For this reason, the law's supporters argued that the state of California had no choice except to help enslavers capture any enslaved person who they had brought in before official statehood in late 1850.[423]

Enslaved people who went west were forced to leave their family members and communities behind in the South. For this reason, escape was not a good option for many enslaved people because staying with enslavers was their only way to keep in touch with their families.

The California legislature's decision to pass this fugitive slave law made California a much more proslavery state than most other free states. In the northeastern U.S., many free states protested the federal fugitive slave law of 1850 and tried to give African Americans more legal rights to defend their freedom against slavecatchers. California did the opposite.[424]

The California fugitive slave law of 1852 allowed enslavers to use violence to capture enslaved people. The law also required state officials to help enslavers capture and arrest enslaved people. Those who refused to help could lose their jobs and/or have to pay expensive fines. Finally, the California fugitive slave law, much like the federal fugitive slave law, said that people accused of being fugitive slaves could not testify in court to defend their rights.[425] Since California had already outlawed non-white people from testifying in any court case involving whites, free African American Californians, who were usually involved in helping people escape from enslavement, could not be witnesses in any of these cases either.[426]

Instead of just covering people who escaped across state lines, California's law said that a fugitive slave was any enslaved person who arrived before California officially became a U.S. state in September 1850 but who refused to return to the enslaving states with their enslavers. These people could be arrested, placed under the control of their enslavers, and forced to return to the South.

California's fugitive slave law was supposed to be a temporary one-year policy, but it ended up lasting much longer. In 1853, California legislators extended the fugitive slave law for another year.[427] They did the same thing again in 1854.[428] This meant that for three years, from 1852 to 1855, anyone accused of being a runaway from enslavement could be chased down, dragged before a court, and sent back to lifelong enslavement in the South, even if they had been living in the free state of California for five years or more.[429]

The California Court System's Complicity

California's courts, including the California Supreme Court, also participated in the enslavement of African Americans. Free African American activists, with the

help of white lawyers, challenged the legality of the fugitive slave law because it went against the antislavery state constitution. They took a test case called *In re Perkins* all the way to the California Supreme Court in 1852.[430] The state's Supreme Court justices finally decided that three African American men—Carter Perkins, Robert Perkins, and Sandy Jones[431]—should be forced to go back into enslavement in Mississippi because they had arrived with their enslaver before official statehood.[432]

The court said that the antislavery law in the California Constitution was only a "declaration of a principle." The constitution said the state would not tolerate enslavement, but California had no laws in place to enforce it by actually setting people free.[433] The justices also agreed with the state legislature that California could not give freedom to enslaved people who arrived before official statehood. The court accepted the extreme proslavery legal view that the U.S. Constitution gave enslavers the right to bring enslaved people into the federal territories without any limits.[434] This decision came before the similar one in the much more famous case of *Dred Scott v. Sandford* five years later in 1857. In that historic decision, the U.S. Supreme Court ruled that the federal government could not outlaw enslavement in any of the federal territories.[435]

Altogether, California courts were involved in at least 10 cases, connected to the freedom of 13 people, under the state fugitive slave law between 1852 and 1855. In five of those 10 cases, the courts returned seven freedom seekers to enslavement. These numbers may seem small, but this list only includes cases that were well-known enough to make it into the newspapers, or for which court records happen to survive.[436]

The small numbers also do not accurately show the terror that all African Americans, free or enslaved, would have suffered under this law. When combined with the outlawing of African American court testimony against whites, the California fugitive slave law put every African American person at risk of being accused of running away, arrested, and enslaved without being able to defend themselves.[437]

Finally, the California fugitive slave law was important for symbolic and political reasons. In supporting the law, California's legislature and courts sent an important message: they were friendly to the southern enslaving states, they believed enslaved people should have no legal rights, and they thought that the U.S. Constitution should protect enslavers and enslavement.[438]

The California legislature finally let the state fugitive slave law expire in 1855.[439] Still, cases involving freedom seekers from enslavement continued. At least six additional cases, involving the freedom of 19 people, came before the California courts between 1855 and the official end of enslavement in 1865.[440] All of these cases—including the famous 1856 freedom case of Bridget "Biddy" Mason in Los Angeles County—eventually led to enslaved people's freedom.[441]

But in one example, the case of Archy Lee from 1857 to 1858, the proslavery California Supreme Court made every effort to return him to enslavement. Lee's enslaver, Charles Stovall, forced him to go with him to California years after the state fugitive slave law had expired. But California's supreme court justices decided that since Stovall was a young man who suffered from constant illness, and he did not know about California's laws, he should not be punished by losing his right to own Archy Lee. It took several more lawsuits by free African American Californians, and a new decision from a federal legal official, before Lee finally won permanent freedom.[442]

California's legislature and courts sent an important message: they were friendly to the southern enslaving states, they believed enslaved people should have no legal rights, and they thought that the U.S. Constitution should protect enslavers and enslavement.

California's Political Leadership and Anti-Black Oppression

During the 1850s, California's political leaders, including governors, state assemblymen, and state senators, supported other anti-Black laws. California's 1849 Constitutional Convention restricted the right to vote to white male citizens[443] and also debated (put did not pass) an exclusion law to outlaw all future African American migration to the state.[444]

Peter Burnett, California's first Governor, opposed both enslavement and the presence of African Americans, so he was angry that the new state Constitution did not have an African American exclusion law.[445] Before coming to California, Burnett had served in Oregon's provisional government and had personally helped pass a Black exclusion law, the "Lash Law," which said that African Americans who arrived in Oregon would be whipped every six months until they left.[446]

Burnett encouraged the California legislature to pass an African American exclusion law immediately.[447] He said that failing to exclude African American residents would lead to enslavers bringing more enslaved people into the state.[448] When the California Legislature failed to pass an African American exclusion law in 1850, Burnett gave another speech in 1851 demanding a law to ban African American residents.[449] This time he claimed that any free African American residents would be so poor, and so upset about not having any civil rights under California law, that they would start a race war against whites.[450] Overall, California tried to pass an African American exclusion law at least four times during the 1850s, but the state Legislature was either too politically divided to agree on a law or ran out of time before the legislative session ended.[451]

Overall, California tried to pass a Black exclusion law at least four times during the 1850s.

California legislators focused instead on limiting the rights of African Americans who were already in the state. In addition to outlawing African American court testimony in cases involving whites, the California Legislature also made interracial marriage between African American and white people illegal,[452] excluded African American people from getting homesteads (free or cheap farms) on state lands,[453] refused to offer state funding for African American children to attend public schools,[454] and would not accept petitions from African American activists who wanted to change these unjust laws.[455]

After free African American activists successfully rescued Archy Lee from enslavement in 1858, angry proslavery legislators tried to make these anti-Black laws even worse. They tried to pass another state fugitive slave law and to pass yet another African American exclusion law. Although both of these laws failed to pass before the end of the legislative session, the vicious anti-Black tone of state politics prompted many African American Californians to leave the state in search of greater freedom and equality.[456] Starting in 1858, up to 800 African American men, women, and children migrated north to the British colonies of Vancouver Island and British Columbia, in what is now Canada, where many became British subjects.[457]

VIII. The U.S. Civil War and the End of Enslavement

Political Struggles Leading up to the U.S. Civil War

Between 1850 and the start of the Civil War in 1861, the political fight over enslavement's westward expansion and African Americans' legal rights became more intense and more violent. Proslavery politicians in Congress pushed through the Kansas-Nebraska Act of 1854, a law that overturned the 1820 Missouri Compromise that had outlawed enslavement in most of the Louisiana Purchase lands.[458] This meant that white settlers in the new western territories of Kansas and Nebraska territories could allow enslavement if they wanted to do so. A bloody civil war broke out in Kansas between proslavery and antislavery settlers who had rushed there to claim the new territory for their side.[459] The Kansas-Nebraska Act and "Bleeding Kansas," as this violence came to be called, shocked many northerners who opposed enslavement moving into the West. They formed a new political party, the Republican Party, which was based mostly in the North and whose main goal was stopping the westward expansion of enslavement.[460]

As northerners became more antislavery, proslavery southerners became even louder in their defense of enslavement.[461] They falsely claimed that enslavement was a gentle and humane institution, and that enslaved people got just as many benefits from the institution as white people because they received life-long care and support in exchange for their work.[462] Proslavery people also used scientific racism, the false theory that all white people were naturally smarter and more "civilized" than African descended people, to argue that enslavement was good for people of African descent because it "uplifted" them.[463]

In the late 1850s, the U.S. Supreme Court supported these false theories that African Americans were inferior to white Americans and helped open the western U.S. to enslavement. In the 1857 case of *Dred Scott v. Sandford*, the court decided that African Americans were not citizens of the United States and did not have any of the legal rights that white Americans had.[464] Chief Justice Roger Taney, from the enslaving state of Maryland, explained that white people had always treated African American people as slaves and that African Americans were "so far inferior, that they had no rights which the white man was bound to respect."[465] In addition to denying

African Americans' claims to legal rights, the court also said that the federal government had no power to close enslavement out of the western territories.[466] The U.S. Constitution allowed slaveholding southerners to take their property, including property in human beings, into the western territories.[467]

Free African Americans resisted their legal exclusion from U.S. citizenship both before and after the *Dred Scott* decision by claiming birthright citizenship. This was the idea that birth on U.S. soil automatically made them citizens of the United States.[468] Across the first half of the 1800s, African Americans used local courthouses and everyday interactions with state and municipal governments to establish that their U.S. birth entitled them to the title and rights of citizenship.[469] The groundwork laid by free African Americans was eventually the foundation of the Civil Rights Act of 1866, and the Fourteenth Amendment to the U.S. Constitution, which made everyone born in the United States a citizen of the United States.[470]

The conflict over enslavement's westward expansion and African Americans' rights broke out into a full civil war in 1861. Abraham Lincoln, a Republican, won the presidential election of 1860 by promising to keep enslavement from moving West into any new territories.[471] Proslavery southerners claimed Lincoln's election was proof that all northerners wanted to end enslavement, give citizenship rights to African Americans, and cause a race war in the South.[472]

Less than two months after Lincoln's election, South Carolina, an enslaving state, voted to leave the United States.[473] Over the next two months, an additional six enslaving states—Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas—also left the United States. They formed the Confederate States of America, also known as the Confederacy. Once war broke out in 1861, another four enslaving states—Virginia, Arkansas, North Carolina, and Tennessee—joined the Confederacy.[474] The deadliest war in U.S. history had begun.

The Civil War, and the Emancipation Proclamation

The Confederate States of America, also known as the Confederacy, fought to create a new nation built on the enslavement of people of African descent. The Confederate Constitution was based strongly on the U.S. Constitution, except that it outlawed the national government from ending enslavement[475] and it said that white people living in any new Confederate territories had the right to own enslaved people.[476]

Alexander Stephens, the Confederate Vice-President, declared that, unlike the United States, the Confederacy was not based on the notion that all men were created equal. Instead, the "cornerstone" of the Confederacy, the foundation on which it was built, was "the great truth that the negro is not equal to the white man; that slavery subordination to the superior race is his natural and normal condition."[477]

For many white southerners in the Confederacy, keeping enslavement was even more important than winning independence from the United States. When the Confederacy lacked soldiers to fight in the later years of the Civil War, Confederate military leaders, including General Robert E. Lee, supported recruiting enslaved men as soldiers. The idea was that enslaved men would fight for the Confederacy in exchange for their freedom.[478]

In the end, recruiting enslaved men as soldiers and giving freedom to those who fought for the Confederacy was very unpopular because proslavery whites feared that it would weaken enslavement and go against the enslaving states' reason for seceding.[479] For example, Howell Cobb, a Confederate general from Georgia, said that giving guns to the enslaved was a "suicidal policy" and "[t]he day you make soldiers of them is the beginning of the end of the revolution."[480]

Since many white southerners agreed with Cobb, the Confederacy did not accept the idea of freeing and arming enslaved men as soldiers until March 1865, the last month of the Civil War. The Confederacy organized a handful of enslaved men as soldiers in these very last days of the war, but none of them fought in battle.[481]

Unlike the Confederacy, the Union made freeing the enslaved and recruiting enslaved men into the military a major part of its war strategy. Even though Abraham Lincoln and many Republican politicians were not interested in freeing the enslaved at first, the actions of enslaved people pushed the United States toward ending enslavement.[482]

Enslaved people began escaping to U.S. military sites even before the war began.[483] When the United States Army began moving into the Confederacy, large numbers of refugees from enslavement—as many as 500,000 people or 12.5 percent of the entire enslaved population—sought freedom in U.S. Army camps.[484] These freedom seekers worked as wagon drivers, laundry workers, cooks, manual laborers, and nurses for the U.S. army.[485] However, not all African Americans served in the Army voluntarily, as a small number were kidnapped and forced to enlist against their will.[486]

Congress understood that these freedom seekers would play a key role in winning the war against the Confederacy. Every formerly enslaved person working for the U.S. took away resources from the South and helped the Union.[487] In 1861 and 1862, Congress passed laws called "confiscation acts," which allowed the U.S. military to give shelter and work to enslaved people who were being forced to work for the Confederacy, and, later to any enslaved person whose enslaver supported the Confederacy.[488]

Even as the United States was dismantling enslavement, the Union could not immediately or completely abolish the institution. With the secession of 11 Southern states, the number of enslaving congressmen decreased accordingly, which did give opponents of enslavement a political advantage.[489] However, more than 20 percent of the members of Congress during the Civil War remained either current or former slaveholders, mostly from the border states that had not seceded.[490]

Even as the United States was dismantling enslavement, the Union could not immediately or completely abolish the institution. More than 20 percent of the members of Congress during the Civil War remained either current or former enslavers, mostly from the border states that had not seceded.

Abraham Lincoln was also slow to use his presidential power to free enslaved people. In September 1862, Lincoln wrote a preliminary version of the Emancipation Proclamation, which freed all the enslaved people in any area still in rebellion against the United States on the first day of the new year in 1863.[491] Lincoln's preliminary proclamation also recommended transporting newly-freed African Americans out of the United States and resettling them elsewhere[492] (a scheme that Lincoln considered seriously for years until it was clear that most African Americans refused to leave the land of their birth).[493] Then, on January 1, 1863, Lincoln signed his final Emancipation Proclamation, setting enslaved people free everywhere in the Confederacy, except the parts already controlled by the U.S. Army,[494] and making no reference to removing African Americans overseas.[495] The Emancipation Proclamation also left out the enslaving Border States that had not joined the Confederacy—Maryland, Kentucky, Delaware, and Missouri—to keep them loyal to the Union.[496]

Enslaved People Tear Down Enslavement and Fight for their Freedom

Enslaved people set the Emancipation Proclamation in motion by seeking freedom by the thousands, and they also fought for their freedom on the battlefield. Congress stopped excluding African American men from the U.S. Army in 1862[497] and the Emancipation Proclamation opened the way for African American men to join the army and navy.[498] Free African Americans in Union states quickly organized military units, including the 54th Massachusetts Volunteer Infantry.[499]

But most African American Civil War soldiers were formerly enslaved men recruited in the South as part of the United States Colored Troops (USCT). Altogether, 178,000 African American men served in 175 USCT regiments.[500] Another 29,000 Black men served in the U.S. Navy.[501] By the end of the Civil War, Black servicemen made up roughly 10 percent of the entire Union military.[502] They fought in every major Union military campaign between 1864 and 1865,[503] and participated in 39 major battles and 410 smaller armed conflicts.[504] Around 40,000 of these men (around 20 percent) died during the Civil War.[505]

COURTESY OF CORBIS VIA GETTY IMAGES

The 107th U.S. Colored Infantry stand guard during the United States Civil War. (c. 1860-1865)

The federal government and the U.S. military did not treat African American soldiers equally. Black soldiers faced doing hard labor, being fed less nutritious food than white soldiers, and having less access to medical care.[506] The federal government also paid African American soldiers less than white soldiers, and African American soldiers were closed out of opportunities to lead their units as high-ranking officers because these positions were given to white men only.[507] African American soldiers' resistance to poor treatment helped fix some of these inequalities.[508] After African American soldiers protested strongly against lower pay, Congress finally began paying African American and white soldiers equally in 1864.[509] By the end of the war, 80 African American men also won their promotion to high-ranking officer positions.[510] For a further discussion the U.S. military's discriminatory treatment of African Americans, see Chapter 10, Stolen Labor and Hindered Opportunity.

By the end of the Civil War, Black servicemen made up roughly 10 percent of the entire Union military. The federal government and the U.S. military did not treat Black soldiers equally. Black soldiers faced doing hard labor, being fed less nutritious food than white soldiers, and having less access to medical care. The federal government also paid Black soldiers less than white soldiers, and Black soldiers were closed out of opportunities to lead their units as high-ranking officers because these positions were given to white men only.

These African American servicemen fought bravely to win their freedom and to claim equal rights with white Americans. Sattira A. Douglas, a Black woman whose husband, H. Ford Douglas, fought in the war, explained that Black soldiers wanted "to strike the blow that will at once relieve them of northern prejudice and southern slavery."[511] They fought courageously because they had "everything to gain in this conflict: liberty, honor, social and political position," and losing the war would result in "slavery, [and] prejudice of caste."[512]

For instance, the 54th Massachusetts Volunteer Infantry, the most famous northern Black unit, and the one in which Frederick Douglass's two sons served, led a heroic attack on Fort Wagner, South Carolina in July 1863.[513] More than 40 percent of the men died or were wounded in the attack.[514] One of the survivors of Fort Wagner, Sergeant William Harvey Carney, eventually was awarded the Medal of Honor, the highest military honor in the United States, for saving the 54th Massachusetts flag from the enemy.[515] Carney was among 26 African American Civil War soldiers who earned this prestigious medal for bravery above and beyond the call of duty.[516]

African American soldiers also faced more violence on the battlefield than white soldiers. The Confederacy threatened to kill or enslave African American soldiers who Confederates captured as prisoners of war.[517] Abraham Lincoln tried to protect African American soldiers by warning the Confederacy that the Union would kill or force into hard labor one Confederate prisoner of war for every African American soldier that Confederates killed or enslaved.[518]

Still, some Confederates targeted African American servicemen with violence. In 1864, Confederates attacked a much smaller Union force of mostly African American soldiers at Fort Pillow in Tennessee. The Confederates entered the fort and killed 300 men, 200 of whom were African American.[519] Witnesses said that Confederates killed these African American soldiers instead of capturing them as prisoners of war.[520] After this massacre, it became popular for African American soldiers to shout "Remember Fort Pillow!" as they went into battle to fight for their lives and their freedom.[521]

The End of the Civil War and the Thirteenth Amendment

The United States won the Civil War against the Confederacy in 1865, effectively ending enslavement in all of the ex-Confederate states. Enslaved people in Texas, one of the very last places reached by the United States Army, did not hear that they had been legally freed until June 19, 1865.[522] This was two and a half years after the Emancipation Proclamation. Formerly enslaved African American Texans began celebrating June 19th as "Juneteenth," a day to remember their hard-fought battle for freedom.[523]

Six months later, on December 6, 1865, the required number of states finally approved the Thirteenth Amendment to the U.S. Constitution outlawing enslavement and making emancipation permanent.[524] The Amendment said that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted,

shall exist within the United States, or any place subject to their jurisdiction."[525] Section 2 of the Thirteenth Amendment also empowered Congress to pass "appropriate legislation" to enforce the elimination of enslavement, [526] which the U.S. Supreme Court later interpreted as the power to outlaw all "badges and incidents of slavery."[527]

IX. Reconstruction and the Lost Cause

Reconstruction Begins

After the end of the Civil War and the outlawing of enslavement, the United States went through a process known as Reconstruction, a period of rebuilding and reuniting the country.[528] Abraham Lincoln had begun this process during the Civil War.[529] But Lincoln's assassination in April 1865 put Reconstruction in the hands of his vice-president, Andrew Johnson, and Republicans in Congress.[530]

President Johnson was a former Democrat from Tennessee who remained loyal to the Union. He disapproved of the Confederacy and wanted to punish wealthy enslavers who participated in it.[531] But he also wanted to keep white people in charge of the South and opposed giving equal political rights to African Americans.[532] As Johnson wrote in an 1868 letter to the governor of Missouri: "This is a country for white men, and by God, as long as I am President; it shall be a government for white men."[533]

Johnson fought with Republicans in Congress over the direction of Reconstruction and African Americans' civil rights, which eventually led to Johnson's impeachment.[534] Congressional Republicans took over the process of Reconstruction and passed new laws aimed at giving formerly enslaved people basic legal rights.[535]

Congressional Republicans had several overlapping goals: re-growing the southern cotton economy, rebuilding the ex-Confederate states' governments before allowing them to come back fully into the United States, and making sure that formerly enslaved people could no longer be held in enslavement.[536] Some of the most progressive Republicans (known as Radical Republicans) wanted to completely change social, economic, and political life in the South to support African American equality.[537] But moderate and conservative Republicans mostly focused on laws that would give African Americans basic legal and economic rights such as making contracts to work and getting paid for their work.[538]

In every ex-confederate state, white southerners passed laws called the Black Codes. Examples include:

- Vagrancy laws that allowed police to arrest any Black person without an employer and force them to work
- Laws that forced Black parents to give control over their children to their former enslavers.
- Laws that did not allow African Americans to change employers without permission

The formerly enslaved and former enslavers in the South had their own goals. Formerly enslaved people wanted more than just basic legal rights. They wanted to be independent, out of the control of their former enslavers, and to own small farms where they could work for themselves.[539] They wanted to educate themselves and their children.[540] They wanted the ability to move around in search of family members sold away during enslavement.[541] Finally, they wanted political rights such as the right to vote and hold office.[542]

Former enslavers refused to acknowledge African Americans' new freedom. In every ex-Confederate state, white southerners passed laws called "Black Codes."[543] Black Codes included vagrancy laws that allowed police to arrest any Black person without an employer and force them to work. Black Codes in some states also forced Black parents to give control over their children to their former enslavers. State courts generally punished African Americans more harshly than white Americans charged with the same crimes.[544]

Republicans in Congress would have to force former enslavers in the South to treat the formerly enslaved fairly, equally, and with basic human dignity. Republicans briefly considered passing laws that would take away land from wealthy Confederates and give it to formerly enslaved people so that they could support themselves as independent farmers.[545]

Immediately before the end of the Civil War, Congress created the Bureau of Refugees, Freedmen, and Abandoned Lands to provide for the welfare of formerly enslaved African Americans, including through

"issues of provisions, clothing, and fuel, as [necessary] for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children," according to the statute.[546] Commonly known as the Freedmen's Bureau, the agency had the authority to supervise labor relations in the South, with the mandate to provide education, medical care, and legal protections for formerly enslaved African Americans, along with the authority to rent out and eventually sell allotments of abandoned or confiscated land to free African Americans.[547]

The original goal of the Freedmen's Bureau Act was the more radical notion of allowing African Americans the means to become self-sufficient.[548] In the closing days of the Civil War, Union General William Tecumseh Sherman issued Special Field Order No. 15, setting aside 400,000 acres of confiscated land for those who had been freed, and two months later, the Freedman Bureau's Act formalized the field order, "providing that each negro might have forty acres at a low price on long credit."[549] Many free African Americans and northern Republicans believed that land reform in the South—granting formerly enslaved African Americans access to their own land—was the true way that formerly enslaved people would be free from their enslavers.[550] The resulting independent African American farmers would provide a power base for a new social and political order in the postwar South.[551]

This new vision of social relations in the South was opposed by white southerners as well as northerners who opposed enslavement but did not believe in full equality for African Americans.[552] Most white Americans, even in the North, thought these policies were too "radical" because they took away ex-Confederates' individual property rights and set a dangerous precedent that wealth could be redistributed to poorer members of society.[553] Moreover, a large number of African American landowners would threaten plantations and disrupt the southern economy and social system.[554] White capitalists in the North and South believed that African American freedom should mean African American workers continuing to work on a plantation, although they would now be paid.[555] They did not believe that African Americans should be able to support themselves independently through subsistence farming, which would have led to less cotton being grown and posed a threat to the interests of cotton merchants and other capitalists in the South, elsewhere in the United States, and in Europe.[556] In less than a full harvest season, the land that Sherman had given to freed persons was returned to the prior owners.[557]

Although the Freedmen's Bureau tried to assert and protect the rights of the formerly enslaved, it also perpetuated racist stereotypes, paternalistic attitudes, and continued to limit African Americans' economic and social power. Bureau agents often viewed formerly enslaved African Americans as children, unprepared for freedom, and needing to be taught the importance of work and wages.[558] The Freedmen's Bureau abandoned the possibility of land reform in the South, and focused mostly on labor relations between African American and white southerners instead.[559]

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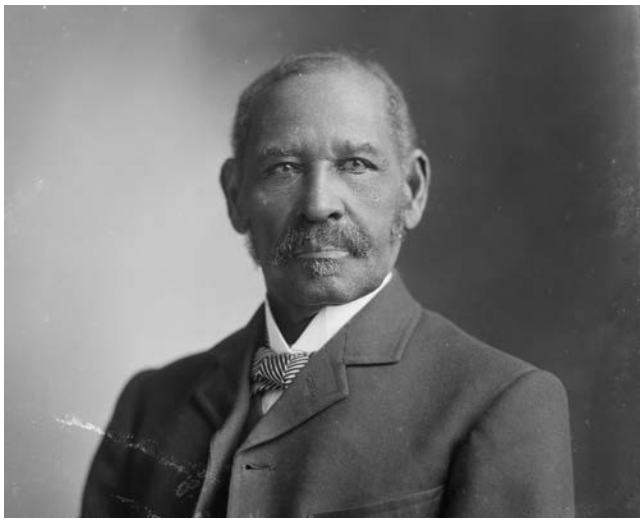

"Gibbs, Judge M.W." Judge Mifflin Wistar Gibbs (1823-1915) was a prominent civil rights and entrepreneur in San Francisco who fought against California's anti-black laws. (c. 1901-1903)

Republicans' other major Reconstruction policies focused on making sure that formerly enslaved African American Southerners had access to basic civil rights, such as rights to make contracts, own property, keep their families together, have physical safety, and be treated fairly by the courts and the criminal justice system.[560] In 1866, Congress passed a civil rights act that made anyone born in the United States a citizen, without regard to their race, color, or previous enslavement.[561] Newly freed African American citizens were supposed to have the same equality under the law "as is enjoyed by white citizens."[562]

Republicans feared that a federal law like the Civil Rights Act of 1866 could be overturned easily if another political party came into power. They pushed for a constitutional amendment that would make African American citizenship and civil rights permanent.[563]

The Fourteenth Amendment, approved by Congress in 1866 and ratified by the required number of states in 1868, said that any person born in the United States was a citizen (birthright citizenship); that state governments could not take away the life, liberty, or property of any

person (citizen or non-citizen) without due process of law (following standard legal procedures); and that the states had to treat every person equally under the law.[564] African American activists had finally won their decades-long battle for birthright citizenship, and all people born in the United States now benefitted from their work.[565]

Congress soon decided that formerly enslaved people's legal and economic rights could not be protected unless African Americans had political rights, specifically rights to vote and hold office.[566] The Fifteenth Amendment, approved by Congress in 1869 and ratified by the required number of states in 1870, made it illegal for states to discriminate against voters based on "race, color, or previous condition of servitude."[567] The intention was to stop the states from denying voting rights to African American men.[568] As with the Thirteenth and Fourteenth Amendments, the Fifteenth Amendment gave Congress the power to pass future legislation to ensure that the states followed the law.[569]

ratifying the Fifteenth Amendment in 1870.[577] Enough other states had ratified the amendments that they became part of the U.S. Constitution without California's approval.[578] Still, California would continue its resistance to Reconstruction civil rights legislation by refusing to ratify the Fourteenth Amendment until 1959[579] and the Fifteenth Amendment until 1962.[580]

California also led the way in establishing the legal defense for segregation during Reconstruction. In 1874, the Supreme Court of California made a destructive decision that the rest of the United States eventually followed. In the case of *Ward v. Flood*, California's Supreme Court justices decided that segregation in the state's public schools did not violate the Fourteenth Amendment as long as African American children and white children had equal access to similar schools and educational opportunities.[581] Twenty-two years later, the U.S. Supreme Court made a similar "separate but equal" decision in the case of *Plessy v. Ferguson*. This decision supported the segregation of public facilities in the United States for almost 60 years.[582]

In the case of *Ward v. Flood*, California's Supreme Court justices decided that segregation in the state's public schools did not violate the Fourteenth Amendment as long as Black children and white children had equal access to similar schools and educational opportunities. Twenty-two years later, the U.S. Supreme Court made a similar "separate but equal" decision in the case of *Plessy v. Ferguson*. This decision supported the segregation of public facilities in the United States for almost 60 years.

California Rejects Reconstruction Civil Rights Legislation

The Legislature and Governor of California strongly opposed Congress's Reconstruction civil rights laws and tried to stop them.[570] During the Civil War, Black Californians had fought for and won new rights, such as the right to testify in court cases involving whites.[571] This was because white Republicans controlled the legislature and governorship during the early 1860s and took power away from the proslavery Democrats who used to control the state.[572] But many white Californians opposed Congressional civil rights laws to protect formerly enslaved people and worried that these laws would apply to other non-white people in the state.[573]

Democrats came back into power in California in 1867 by promising white voters that they would fight against Reconstruction and any new law that would make African Americans, Native Americans, or Chinese Americans equal to whites or give them voting rights.[574]

California Democrats who controlled the state legislature kept this promise when it came time to ratify the Fourteenth and Fifteenth Amendments.[575] California's legislature ignored the Fourteenth Amendment and never considered it.[576] The legislature voted to reject

The Destruction of Reconstruction

African Americans fought for and took advantage of many new legal rights during Reconstruction, but this time period of growing legal equality was short. White supremacist terrorist groups, first the Ku Klux Klan and then later militias such as the White League of Louisiana and the Red Shirts of South Carolina, eventually overthrew the Reconstruction governments that African American and white Republicans had established together in the South.[583] (For a detailed discussion of African Americans' political accomplishments during Reconstruction and white supremacist terrorism in the U.S. South, see Chapters 3, Racial Terror, and 4, Political Disenfranchisement, of this report).

White southern Democrats, who wanted to keep African Americans working on plantations and out of politics, retook control of the southern states.[584] The long and expensive process of Reconstruction lost popularity with white northerners, and many of them wanted to give up on the project of trying to change the racial, legal, and economic relationships of the South.[585]

During the U.S. presidential election of 1876, white northern Republicans abandoned Reconstruction in the South in exchange for keeping control of the presidency of the United States.[586] After the election, Ohio Republican Rutherford B. Hayes and New York Democrat Samuel Tilden both claimed to be the winner.[587] It was well-known that white southerners had used violence, threats, and fraud to keep African Americans from voting for the Republican Hayes.[588] The national leadership of the Republican and Democratic parties made a secret deal: in exchange for Democrats acknowledging Hayes's victory in the presidential election, Republicans would reduce federal support for Reconstruction.[589] Soon after Hayes became president in 1877, he pulled U.S. troops out of key areas in the South where they had been protecting African Americans' political rights and Republican officeholders.[590] Hayes' action effectively ended direct federal protection of African Americans' political rights in the South.[591]

The U.S. Supreme Court played its own important role in defeating Reconstruction.[592] In the 1870s, the court made several decisions that greatly reduced the power of the Fourteenth Amendment and federal laws to protect African American equality.[593]

At the end of the 1800s and the start of the 1900s, white southerners began building thousands of monuments and statues all over the South to celebrate famous Confederates, and to name important buildings after Confederate figures. White Californians also built Confederate monuments across the state.

The last of these decisions happened in the 1883 *Civil Rights Cases*, a group of several cases that African Americans had brought under the federal Civil Rights Act of 1875.[594] That act had made it illegal for theaters, hotels, and public transportation companies such as railroads to exclude African Americans.[595]

The Supreme Court decided in 1883 that the Civil Rights Act of 1875 was unconstitutional because the Fourteenth Amendment, on which it was based, only gave Congress the power to stop state governments from discriminating against African Americans. Congress could not outlaw individual people and private business owners from discriminating against African Americans; only the state governments themselves could do that.[596]

The Supreme Court decision in the *Civil Rights Cases* legalized racial discrimination and segregation in most public places. It set the stage for the "separate but equal" decision in *Plessy v. Ferguson* (1896) and practices such as housing discrimination and education segregation.[597]

The Rise of the Lost Cause Myth

After Reconstruction ended, white southerners created the myth of the Confederate "Lost Cause" in order to downplay the horrors of enslavement and terrorize African Americans.[598] Southerners who opposed African American civil rights falsely argued that the Civil War had little to do with enslavement. The Lost Cause myth claims that the Confederacy had fought a heroic war to save the southern way of life from being destroyed by the North.[599] This untruthful history also claims that the Confederacy lost the Civil War only because the more populated, industrialized North overpowered white southerners, not because enslavement or the Confederate cause was wrong.[600]

The Lost Cause is not just a story that white southerners tell. It is a weapon of terror against African Americans and a rejection of the southern defeat in the Civil War and African American civil rights. At the end of the 1800s and the start of the 1900s, white southerners began building thousands of monuments and statues all over the South to celebrate famous Confederates, and to name important buildings after Confederate figures.[601]

In the 1910s, the Ku Klux Klan, which the federal government had broken up during Reconstruction, re-emerged and began terrorizing and murdering African Americans. The combination of violence against African Americans and the constant sight of monuments celebrating the enslaving Confederacy were terrorist tactics meant to silence African Americans and keep them from challenging white supremacy.[602]

Lost Cause symbols became especially important to white southerners who tried to stop the Civil Rights Movement in the 1950s and 1960s. White southerners who opposed African American civil and human rights

beat and murdered African American (and some white) civil rights activists. They also began regularly flying versions of the battle flag of the Army of Northern Virginia (the Confederate "Stars and Bars," popularly known as the "Confederate Flag") to threaten civil rights activists and to show that they were determined not to give equality to African Americans.[603]

Even though defenders of the Lost Cause have argued that Confederate monuments and flags stand for "heritage, not hate," and they claim that removing them erases history, this argument ignores the true history of these objects. White southerners have used them strategically as symbols of terror to try and keep African Americans from fighting for full equality.[604]

California and the Lost Cause

In California, white Americans popularized the Lost Cause mythology with national audiences. The Hollywood film industry was responsible for bringing the Lost Cause to movie screens and making it popular with many white Americans, North and South, during the first half of the 1900s.[605]

D.W. Griffith's blockbuster film, *The Birth of a Nation* (1915), falsely showed members of the Ku Klux Klan as heroes who were protecting white women and southern honor against violent African Americans (mostly played by white actors who painted their faces black). This film was the main factor behind the revival of the Ku Klux Klan in the early 1900s.[606] *Gone with Wind* (1939) celebrated the pre-Civil War South by showing a world of kindly enslavers, loyal and happy enslaved people, and heroic Confederates fighting for the southern way of life.[607]

White Californians also built Confederate monuments across the state. For example, a plaque honoring Confederate President Jefferson Davis, set up by the United Daughters of the Confederacy, stood along a Bakersfield, California, highway for almost 80 years.[608] A monument in the Hollywood Forever Cemetery in Los Angeles, California, built in 1925, celebrated all Confederates who died on the Pacific Coast.[609] Although both of these monuments have now been removed, their existence reminds us of California's complicity in the United States' long history of enslavement, white supremacist terrorism, and systemic racism against African Americans.

The Hollywood film industry was responsible for popularizing white supremacist movies, like *The Birth of a Nation*, during the first half of the 1900s. This film was the main factor behind the revival of the Ku Klux Klan in the 1900s.

X. Conclusion

In order to steal and profit from the labor of millions of human beings for 244 years, the colonial American and U.S. governments built an institution of enslavement that was markedly different from the type of slavery that the world had seen before. Americans passed laws that enshrined a racial hierarchy with white people at the top and African American people at the bottom. This hierarchy was based on the false idea that all white people were naturally superior in intelligence and morality to all African American people, and white Americans then used these ideas to justify the lifelong enslavement of people of African ancestry and their descendants. American law enslaved babies from the moment they were born, through adulthood, until the moment they died, and ensured that all their descendants suffered the same fate. During certain time periods, state governments even passed laws that made it illegal for enslavers to voluntarily free enslaved people from their bondage. Enslavement was a badge pinned on people of African descent because of the color of their skin.

When slavery formally ended in 1865, this racial hierarchy continued functioning. The end of Reconstruction and the rise of the Lost Cause brought a long period of political, social, economic, and legal inequality for African Americans that white people enforced through terrorism, violence, and exploiting legal loopholes. This period was known as "Jim Crow," after a racist stereotyped character popular with white Americans, and it lasted roughly 60 to 70 years, from the 1890s to the Civil Rights Movement of the 1950s and 1960s. Without the laws that made enslavement legal, American citizens, aided by government officials, terrorized, murdered, and abused their African American neighbors to maintain this legacy of slavery, as discussed in Chapter 3, Racial Terror. During this period, white Southerners

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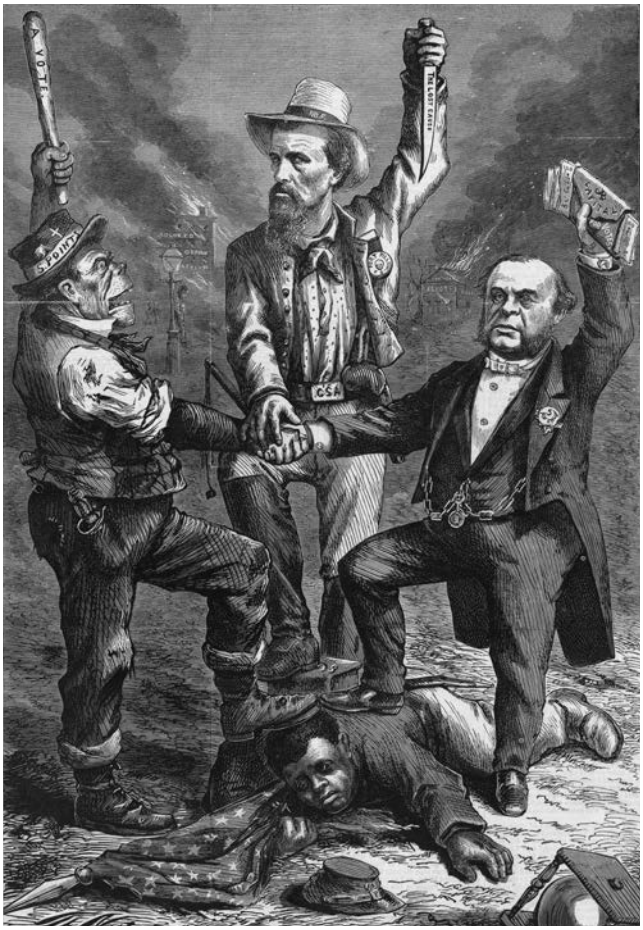

"This is a white man's government" (1868)

gradually took away African American Southerners' rights to vote by using violent intimidation against and legal loopholes such as literacy tests and poll taxes to disqualify African American voters, as discussed in Chapter 4, Political Disenfranchisement. As African American people fled violence and oppression in the rural South to find economic opportunity in the North and the West, government officials maintained the racial hierarchy by putting up barriers to prevent African American and white Americans from living in the same neighborhoods, as discussed in Chapter 5, Housing Segregation, and allowing private companies to prevent African American and white Americans from holding the same jobs, as discussed in Chapter 10, Stolen Labor and Hindered Opportunity. New systems of forced labor, such as convict leasing, sharecropping, and debt peonage kept formerly enslaved African Americans working for white Americans on cotton plantations or in other industries, as discussed in Chapter 10. Much of this forced labor rested on discrimination in law enforcement, judicial decisions, and prison sentencing that doomed African Americans to slavery-like conditions, as discussed in Chapter 11, An Unjust Legal System.

Government actions relegated African Americans to mostly urban neighborhoods with underfunded schools, as discussed in Chapter 6, Separate and Unequal Education, and menial and service jobs. U.S. Supreme Court decisions such as the *Civil Rights Cases* (1883) and *Plessy v. Ferguson* (1896) excluded African Americans from using public facilities such as schools on equal terms with white Americans and validated discrimination in housing that excluded African Americans from desirable neighborhoods. These legal decisions and violent practices caused direct physical harm to African Americans by segregating them in polluted, unhealthy neighborhoods, as discussed in Chapter 7, Racism in Environment and Infrastructure, and denying them equal access to quality healthcare, as discussed in Chapter 12, Mental and Physical Harm and Neglect.

The racial hierarchy that laws created during enslavement also created deeply harmful and untrue racial stereotypes, which have followed African Americans throughout American history, as discussed in Chapter 9, Control over Spiritual, Creative and Cultural Life. Inequalities in the criminal justice system, child welfare laws, housing, and healthcare harmed the survival of African American families, as discussed in Chapter 8, Pathologizing the African American Family, while discriminatory, predatory banking practices and employment discrimination prevented many African Americans from accumulating generational wealth to pass down to their children, as discussed in Chapter 13, The Wealth Gap.

Four hundred years of discrimination has resulted in an enormous and persistent wealth gap between African American and white Americans, as discussed in Chapter 13 The Wealth Gap, and continuous and compounding harm on the health of African Americans, as discussed in Chapter 12, Mental and Physical Harm and Neglect.

As the following chapters will show, these effects of slavery continue to be embedded in American society today and have never been sufficiently remedied. The governments of the United States and the State of California have never apologized to or compensated African Americans for these harms.

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[112] *Id.* at pp. 82–90.

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[158] *Id.* at pp. 254–256.

[159] *Id.* at p. 254–255.

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[425] An Act Respecting Fugitives; Freedom's Frontier, *supra*, at pp. 67–69.

[426] Freedom's Frontier, *supra*, at pp. 71–72.

[427] An Act to Amend an Act respecting Fugitives from Labor and Slaves Brought to this State prior to her Admission into the Union, Act of April 15, 1853, ch. 67, Cal. Stat., at 94.

[428] An Act Amendatory to an Act to Amend an Act respecting Fugitives from Labor and Slaves Brought to this State prior to her Admission into the Union, Act of April 13, 1854, ch. 22, Cal. Stat., at 30.

[429] Freedom's Frontier, *supra*, at pp. 71–72.

[430] *In re Perkins*, 2 Cal. 424 (1852); Freedom's Frontier, *supra*, at pp. 70–71.

[431] The three men had arrived in California in 1849 with Charles Perkins, the son of their enslaver. When Charles Perkins went back to Mississippi in 1851, he informally emancipated the men. Once he heard about the new California fugitive slave law, Perkins decided to use it to reclaim the men and force them to return to Mississippi as slaves.

[432] *In re Perkins*, 2 Cal. 424 (1852).

[433] *Id.* at pp. 455–457.

[434] *Id.* at pp. 452–455.

[435] *Dred Scott v. Sandford* (1857) 60 U.S. 393; In fact, one California antislavery attorney asserted that the lawyers for Dred Scott's enslavers cited the California case of *In re Perkins* as a precedent to support Scott's continued enslavement. For this evidence, see Cornelius Cole, "Judicial Influence--Politics upon the Bench, no. 3," scrapbook no. 1, box 38, Cole Family Papers, Charles E. Young Research Library,

Department of Special Collections, University of California-Los Angeles.

[436] These include: 1) the *Lathrop* case, described in Lapp, *supra*, at pp. 141–142; 2) the *Perkins* case, described in *In re Perkins*, 2 Cal. 424 (1852); 3) the case of Harriet Jordan, described in *Another Fugitive Slave Case* (Sept. 22, 1852) Daily Alta California p. 2, col. 2 and *A Fugitive Slave Case* (Sept. 22, 1852) Placer Times and Transcript p. 3, col. 1; 4) an anonymous enslaved woman in El Dorado County, described in *Fugitive Slave Case* (Oct. 2, 1852), Sacramento Daily Union p. 2, col. 3; 5) the case of Lucy Brown, described in *Fugitive Slave* (April 20, 1853) Daily Alta California, p. 2, col. 2; 6) the *O'Neil* case, described in *Habeas Corpus* (Jan. 19, 1854) Sacramento Daily Union p. 3, col. 2; 7) the case of an anonymous enslaved boy in Marysville, described in *Kidnapping* (March 31, 1854), Daily Alta California p.2, col. 2 and *The Kidnapping Case* (April 1, 1854) Placer Times and Transcript p. 2, col. 4; 8) the case of Stephen Spencer Hill, described in Johnson, Roaring Camp: The Social World of the California Gold Rush (2000), pp. 67 – 68, 191 (Roaring Camp); 9) the *Kibbe* case, described in untitled article (April 7, 1855) Daily Alta California, p. 2, col. 4; and 10) the case of *George Mitchell*, described in Lapp, *supra*, at p. 147.

[437] Freedom's Frontier, *supra*, at pp. 71–73.

[438] *Remaking Slavery*, *supra*, at pp. 49–50.

[439] Freedom's Frontier, *supra*, at pp. 75–76.

[440] These include: 1) The case of Bridget "Biddy" Mason, Hannah, and their enslaved children and grandchildren, described in Taylor, In Search of the Racial Frontier: African Americans in the American West, 1528 – 1990 (1998), pp. 79–80 (Taylor); 2) the case of Archy Lee, described in Freedom's Frontier, *supra*, at pp. 76–78; 3) the *Mathews* case, described in *Alleged Abduction Case* (Jan. 21, 1859) San Francisco Bulletin, p. 3, col. 2; 4) the case of Nathaniel Rice, described in *Almost an 'Archy Case'* (Aug. 20, 1860) San Francisco Bulletin, p. 3, col. 5; 5) the case of John Turner, described in *Attempt to Kidnap* (Jan. 25, 1861) Sacramento Daily Union p. 3, col. 2; and 6) the case of Ada (Edith) Blue, described in Smith, *California's Last Slave Case* (March 5, 2014) New York Times (as of Jan. 26, 2022).

[441] Taylor, *supra*, at pp. 79–80.

[442] Freedom's Frontier, *supra*, at pp. 76-78.

[443] Cal. Const. of 1849, art. II, § 1.

[444] Richards, The California Gold Rush and the Coming of the Civil War (2007), pp. 73–77.

[445] Freedom's Frontier, *supra*, at p. 61.

[446] Greg Nokes, *Black Exclusion Laws in Oregon*, Oregon Encyclopedia (as of December 7, 2021).

[447] Freedom's Frontier, *supra*, at p. 61.

[448] *Ibid.*

[449] State of California, Journal of the Senate, 2nd sess. (1851) 19 – 21.

[450] *Ibid.*

[451] Freedom's Frontier, *supra*, at pp. 61–63.

[452] An Act Regulating Marriages, April 22, 1850, ch. 140, § 3, Cal. Stat., at 424.

[453] An Act extending the Privileges of the Homestead Law to certain Persons, and to Regulate the Creation of the Same, March 18, 1860, ch. 120, § 2, Cal. Stats., at 87-88.

[454] Smith, Dred Scott on the Pacific: African Americans, Citizenship, and Subjecthood in the North American West (Spring 2018) 100 S. California Hist. Q. 50 (Dred Scott on the Pacific).

[455] Lapp, *supra*, at pp. 196–197.

[456] *Id.* at pp. 239–245.

[457] Dred Scott on the Pacific, *supra*, at p. 46.

[458] Forever Free, *supra*, at pp. 30–31.

[459] McPherson, *supra*, at pp. 145–149.

[460] Forever Free, *supra*, at pp. 30–32.

[461] McPherson, *supra*, at pp. 56–57.

[462] *Ibid.*

[463] Kendi, *supra*, at pp. 179 – 180.

[464] *Id.* at pp. 203–204.

[465] *Ibid.*

[466] *Id.* at p. 203.

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[468] Jones, Birthright Citizens: A History of Race and Rights in Antebellum America (2018), p. 1 (Jones).

[469] *Id.* at pp. 1, 9 – 10, 12 – 13.

[470] *Id.* at p. 14.

[471] Kendi, *supra*, at p. 212.

[472] *Id.* at p. 214.

[473] Baptist, *supra*, at pp. 389–390.

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[476] *Id.* at Article IV, section 3, clause 3.

[477] Alexander H. Stephens, 'Cornerstone' Speech, March 21, 1861 <> (as of Apr. 25, 2022).

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[479] *Id.* at pp. 40–49.

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[481] Martinez, *Black Confederates* (April 23, 2021) Encyclopedia Virginia (as of March 15, 2022).

[482] Forever Free, *supra*, at pp. 42–44.

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[491] *Who Freed the Slaves?*, *supra*, at p. 117.

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[493] Forever Free, *supra*, at p. 48.

[494] *Emancipation Proclamation,* Jan 1. 1863 (as of Apr. 25, 2022).

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[543] *Id.* at pp. 95–96.

[544] *Id.* at pp. 95–96.

[545] *Id.* at pp. 112, 141–42.

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industry and after the government had given away land to white settlers).

[560] *Id.* at pp. 113–115.

[561] *Ibid.*

[562] An Act to Protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication (the Civil Rights Act of 1866), US Statutes, Chapter 31, sec. 1

[563] Forever Free, *supra*, at pp. 117–118.

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[566] Pildes and Smith, *Common Interpretation: The Fifteenth Amendment*, National Constitution Center (as of March 15, 2022) (*Common Interpretation*).

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[584] Forever Free, *supra*, at pp. 195–197, 200–203.

[585] *Id.* at pp. 190–193, 197.

[586] *Id.* at p. 198.

[587] *Id.* at pp. 197–198.

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[589] *Id.* at p. 198.

[590] *Id.* at p. 198–199.

[591] *Ibid.*

[592] *Id.* at p. 194.

[593] *Ibid.* The key cases in the 1870s were the *Slaughter-House Cases*, 83 U.S. 36 (1873) and *United States v. Cruikshank*, 92 U.S. 542 (1876).

[594] *Civil Rights Cases*, 109 U.S. 3 (1883).

[595] An Act to protect all Citizens in their Civil and Legal Rights, 18 US Stat. 335-337.

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[597] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[598] Janney, *The Lost Cause* (Feb. 24, 2022) Encyclopedia Virginia (as of March 15, 2022) (Janney).

[599] *Ibid.*

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[602] *Ibid.*

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[605] Boyd, *Gone with the Wind and the damaging effect of Hollywood racism* (June 13, 2020) The Guardian (as of March 15, 2022) (Boyd).

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[608] Knight, *Commentary: A Fitting End to the Last Confederate Monument in Southern California* (July 8, 2020) Los Angeles Times (as of Jan. 26, 2022).

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CHAPTER 3 — Racial Terror

COURTESY OF JACK BENTON/ARCHIVE PHOTOS VIA GETTY IMAGES

Ku Klux Klan members. (c. 1920)

I. Introduction

Enslavement was followed by decades of violence and intimidation intended to subordinate African Americans across the United States.[1] Racial terror, and lynchings in particular, pervaded every aspect of pre- and post-enslavement African American life.[2] African Americans faced threats of violence when they tried to vote, when they tried to buy homes in white neighborhoods, when they tried to swim in public pools, and when they made progress through the courts or in legislation.[3] Led and joined by prominent members of society, and enabled by government officials, ordinary citizens terrorized African Americans to preserve a caste system that kept African Americans from building the same wealth and political influence as white Americans.[4] Racial terror also continued the generational trauma that began during enslavement.[5]

While lynching, mob violence, and other forms of racial terror are no longer socially acceptable, the threat and legacy of terror continue to haunt African American communities.[6] Such violence has found a modern form in extrajudicial killings of African Americans by police and vigilantes.[7] Racial terror targeted at successful African Americans has contributed to the present wealth gap between African Americans and white Americans.[8] Today, the monitoring of polling places by white supremacist groups evokes a history of violent suppression of Black voters.[9]

This chapter chronicles the racial terror inflicted on African Americans, including in California, and the lasting impact of racial terror. First, this chapter addresses the overarching purpose of racial terror as a method of social control. Second, this chapter will identify the perpetrators of racial terror, most notably the Ku Klux Klan (KKK), and their objective of preserving their dominance in society. This chapter pays special attention to the KKK's history and spread in California. Third, this chapter will discuss the various forms of racial terror, such as lynching, mob violence, and sexual violence. The chapter also identifies numerous instances of racial terror in California. This chapter shows how racial terror allowed white Americans to politically, economically, and socially subordinate African Americans. Finally, this chapter will discuss the consequences of racial terror, such as intergenerational trauma and the racial wealth gap, which continue to this day.

II. Objectives of Racial Terror: Social, Political, and Economic Oppression

The practice of racial terror began during enslavement and has continued ever since, developing through Reconstruction, Jim Crow, the 20th century, and today. A critical key to understanding the widespread use of racial terror is recognizing how its perpetrators sought to oppress African Americans socially, psychologically, politically, and economically in order to maintain a racial hierarchy.

As the journalist Isabel Wilkerson argues, a caste system is a social hierarchy created by people in a community that separates groups of human beings based on ancestry, skin color, or other characteristics that cannot be changed.[10] In a caste system, one group of human beings is believed to be superior, while other groups are believed to be inferior and treated as less than human.[11] In the racially ordered caste system of the United States, white people occupy this higher social position.[12] One pillar holding up the American racial caste system is the use of physical and psychological terror, which serves to control African Americans and prevent resistance.[13] For this caste system to continue functioning, the rest of society, including government officials, only need to look the other way.[14] For state and local government officials, this is a neglect of their duty to protect.[15] In America, for centuries, the perpetrators of racial terror have rarely been held accountable for their violence, and so they have continued to enforce their dominant caste position.[16]

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The system of racial terror in America started during enslavement, when whipping was a tool to control enslaved people and break their spirit.[17] Enslavers openly publicized their use of violence.[18] When an enslaved person sought freedom by escaping, enslavers sometimes turned to torture, or invited others to kill the freedom seeker.[19] White enslavers could thus use a public display of violence to demonstrate their power over African American enslaved persons, scare enslaved persons into submission, and uphold the institution of enslavement.[20]

Rebellions of the enslaved were also violently suppressed.[21] For example, white officials purportedly discovered an extensive conspiracy of insurrection in Charleston, South Carolina in 1822.[22] The enslaved, led by the free African American carpenter Denmark Vesey, allegedly plotted to take over the city and kill all of its white residents, including women and children.[23] After the discovery of the alleged conspiracy, Vesey was arrested, along with dozens of enslaved persons.[24] Confessions and testimony against the alleged conspirators were procured in at least some instances by coercion and torture.[25] The prosecution had no physical evidence to support its case.[26] In the end, Vesey and thirty-four others were executed, although no insurrection ever occurred and no white person was actually killed.[27] Indeed, there is significant doubt as to whether any such insurrection plot ever existed.[28] Then-governor of South Carolina Thomas Bennet condemned the trial as hasty and unreliable; his brother-in-law, Supreme Court Justice William Johnson, described the proceedings as perjury and "legal murder."[29]

After the formal end of enslavement, African American Southerners began to gain political and economic influence. As discussed in Chapter 2 on Enslavement, the Reconstruction Acts of 1867 gave voting rights to African Americans, and following the laws' enactment, African American voter turnout reached nearly 90 percent in many jurisdictions.[30] During Reconstruction, approximately 2,000 African American men held a public office, including 600 African American state legislators, 18 African American state executive officials, 16 African American representatives elected to Congress, and two of the nation's first African American senators.[31] Nearly 20 percent of all public officials in the South were African American between 1870-1876.[32] In spite of violence and other obstacles, African American Southerners began owning land, particularly in the Upper South (Delaware, Kentucky, Maryland, Missouri, North Carolina, Tennessee, Virginia, and Washington, D.C.).[33] Black land ownership grew to such an extent that by 1910, nearly half of the Black farmers in the Upper South owned land.[34] In addition, African American literacy rates surged from approximately 20 percent in 1870 to approximately 70 percent in 1910.[35]

In 1876, partially as a result of a disputed presidential election, Reconstruction came to an end. In exchange for Democrats not blocking the certification of Republican Rutherford B. Hayes as President, Hayes and other Republicans agreed to remove federal troops from key locations of political conflict in the South.[36] With the

end of Reconstruction, supporters of white supremacy returned to power.[37] They regained political, social, and economic control, and prevented African Americans from voting.[38] After federal troops no longer had a strong presence in the South, white southerners intensified the violent oppression of African Americans.[39] As shown in detail below, racial terror took on many forms throughout American history: lynchings, massacres, intimidation, murders, beatings, and police killings. Today, extrajudicial killings of African Americans by police and vigilantes represent a modern form of racial terror.[40]

According to the then-governor of Louisiana, *Cruikshank* "establish[ed] the principle that hereafter no white man could be punished for killing a Negro."

White Americans feared that newly empowered African Americans would destroy the racial hierarchy.[41] The Ku Klux Klan and other white supremacists beat, burned, and killed African Americans.[42] Terror pervaded every aspect of Southern life and had a devastating effect on the psyche of African Americans.[43] The perpetrators' principal goal was to use violence and intimidation to prevent African American people from voting, achieving equality,[44] and amassing political and economic power.[45] For example, white supremacists murdered African American political activists in the 1873 Colfax massacre and African American military members in the 1876 Hamburg massacre.[46] The Supreme Court's 1876 decision in *United States v. Cruikshank* enabled such violence to continue by making it more difficult to prosecute.[47] According to the then-governor of Louisiana, *Cruikshank* "establish[ed] the principle that hereafter no white man could be punished for killing a Negro."[48]

White supremacists often targeted the greatest perceived threats to the caste system: African American political, economic, and social activities, and those perceived to be accomplished members of the African American community. After the end of Reconstruction, government actors in the South did little to correct the view that African American people did not deserve human dignity or basic legal and political rights.[49] Across the country, white people often rejected the idea that African Americans were equal to white Americans,[50] and used violence to preserve America's racial caste system.[51]

As explained below, racial terror advanced three main goals: maintaining the superior social position of white people; destroying African American economic competition and stealing African American wealth; and limiting the political influence of African American people while advancing white supremacy through government offices.

III. Perpetrators of Terror: Private Citizens, Government Support

Throughout American history, from enslavement to the present day, private citizens and government actors have perpetrated and enabled racial terror. Ordinary people committed heinous acts of violence, while others did nothing, watched, or obstructed investigations.[52] Meanwhile, government officials often did nothing to prevent or prosecute racial terror—and sometimes encouraged or assisted the perpetrators.[53] Indeed, white supremacists and Ku Klux Klan members have held positions in all levels of American government.[54]

Among the numerous perpetrators of racial terror, the Ku Klux Klan was especially prominent. The KKK is not the only hate group in American history, and oftentimes racial violence was and is committed by individuals unassociated with an organized group.[55] But because the KKK has been active and influential for several intervals during its long history, it is centrally important to the history of racial terror in the United States.[56] Throughout its history, the Klan has targeted members of all racial groups, as well as Jews, Catholics, and others, but its origins were anti-Black.[57]

The KKK was especially powerful during three periods. The first iteration of the KKK lasted from 1866 until 1869. After several decades of dormancy, the second iteration of the KKK lasted from 1915 until about 1944. The third version of the KKK arose in the 1950s and 1960s and went into decline in the 1980s. Each of these iterations will be discussed in greater detail below.

Origins of the Ku Klux Klan

The first iteration of the Ku Klux Klan took shape in early 1866, during Reconstruction, and formally disbanded

in 1869.[58] After the Civil War ended, many white southerners resented Reconstruction and its policies, which threatened their superiority.[59] Reconstruction policies led to social, political, and economic gains by formerly enslaved people.[60]

Around this time, the KKK emerged to oppose Reconstruction, led by former Confederate General Nathan Bedford Forrest and a group of Confederate veterans in Pulaski, Tennessee.[61] This first version of the KKK consisted of ex-Confederates and other white southerners, and it was tacitly supported by most white southerners.[62] Their hooded costumes were intended to represent the ghosts of Confederate soldiers and evoke the history of slave patrols.[63] Their hoods also allowed KKK members to remain anonymous as they spread fear and violence.[64] In order to re-exert control over the African American labor force and maintain white supremacy, the KKK used fear tactics and violence, such as robbery, rape, arson, and murder.[65] The KKK was effective at targeting its violence and intimidation tactics at African American voters, including hanging and beating African American officeholders.[66] It is unknown how many African American people were killed by white supremacists during Reconstruction, though it is estimated to be in the high thousands, if not tens of thousands.[67]

In the late 1860s, the KKK began to decline as it succumbed to infighting and increased federal scrutiny.[68] The federal Enforcement Acts of 1870 and 1871, in conjunction with federal policing, helped weaken the KKK.[69] When the KKK formally disbanded by the end of Reconstruction, the KKK had achieved its objectives, as white southerners were able to openly revive many aspects of life during enslavement.[70] Having effectively intimidated and suppressed African American voters, and without the presence of federal troops to protect African American voters, white southerners were successful in retaking control of state governments.[71] Once in control, white supremacists passed laws to take away the rights that African American Southerners had gained during Reconstruction.[72] It also became less necessary to wear a mask to commit violent crimes against African Americans, as public lynching became an openly accepted part of Southern culture and was tolerated by law enforcement.[73]

State and local governments often looked the other way or supported the KKK. Although state governments passed laws in response to the KKK's violence, these laws were seldom locally enforced.[74] Sheriffs, prosecutors, local witnesses, and jurors were sympathetic to white supremacy or afraid of retaliation.[75] Some attacks were even led by local police.[76] Thus, few KKK members ever went to prison for their crimes.[77] And while the federal Enforcement Acts of the early 1870s helped lead to the dissolution of the KKK, the Supreme Court largely nullified the Enforcement Acts with its 1876 decision in *United States v. Cruikshank*, which hindered federal prosecutions and enabled white supremacist violence.[78]

It is unknown how many Black people were killed by white supremacists during Reconstruction, though it is estimated to be in the high thousands, if not tens of thousands.

Second Iteration of the Ku Klux Klan

The second iteration of the Ku Klux Klan began in 1915, continued through the late 1920s and 1930s, and disbanded by 1944.[79] After the end of Reconstruction, the KKK remained dormant until 1915, when the California film industry played a unique role in reviving the KKK. That year, celebrated filmmaker D.W. Griffith released *The Birth of a Nation*, which was based on Thomas Dixon's novel *The Clansman*.[80] Made in and around Los Angeles, *The Birth of a Nation* is acknowledged both as one of the most pioneering and most racist films in cinematic history.[81] President Woodrow Wilson praised *The Birth of a Nation* and showed the film at the White House—a federal government endorsement of white supremacy and anti-Blackness.[82]

In writing *The Clansman*, Dixon openly wished to depict the "suffering" of white Southerners during Reconstruction and to advocate

COURTESY OF SCHOMBURG CENTER FOR RESEARCH IN BLACK CULTURE/THE NEW YORK PUBLIC LIBRARY

"Armed crowds searching for a negro," Chicago. (1922)

white supremacy.[83] *The Birth of a Nation*, recognized as historically inaccurate racist propaganda, adhered closely to the source material's racism.[84] For instance, the film portrayed lynching as rightful retribution against an African American man accused of sexually assaulting a white woman.[85] Griffith would later say that the heroic depiction of the KKK coming to rescue the South from African American advancement during Reconstruction "was needed to serve the purpose."[86]

The Birth of a Nation was a nationwide blockbuster, and its popularity led directly to the KKK's revival just months after its release.[87] During a five-year national roadshow of the film from 1915 to 1919, a scholar found that the film incited significant increases in racial violence.[88] The counties where the film was shown were five times more likely to have a lynching or race riot, and three times more likely to have a KKK chapter after the movie's arrival.[89] As a result of this surge in recruitment, there were four to five million KKK members by the mid-1920s.[90] The film remained a KKK recruiting tool for decades.[91]

Having supporters and members in prominent positions of power allowed the KKK to act with impunity. For example, the KKK was able to commit lynchings in front of a public audience and leave bodies on display—all without intervention by law enforcement.

Unlike the first iteration of the KKK, this version had a broader geographic base of support beyond the South, including in California.[92] This second version of the KKK was generally considered to be less violent, as it focused on gaining influence through the political process.[93] In this regard, it succeeded: during the 1920s, the KKK's membership included state government officials in Alabama, Colorado, Georgia, Indiana, Louisiana, Oklahoma, Oregon, and Texas.[94] Neither major political party was willing to formally repudiate the KKK out of fear of political repercussions.[95]

Regardless of its political turn, the second iteration of the KKK remained violent. In the summer of 1921, the KKK engaged in whippings and tar-and-feather raids.[96] According to the Southern Poverty Law Center, the KKK also "use[d] acid to brand the letters 'KKK' on the foreheads of [African Americans], Jews, and others" whom the KKK considered to be anti-American.[97] In the mid-1920s, the KKK launched a terror campaign including lynchings, shootings, and whippings against African Americans, Jews, Catholics, Mexicans, and other immigrant groups.[98]

Eventually, after a series of scandals, in-fighting, and a change in public perception of its image, the second iteration of the KKK lost credibility, and its membership declined in the late 1920s and 1930s.[99]

Third Iteration of the Ku Klux Klan and Hate Groups Today

A third version of the Ku Klux Klan arose in the 1950s and 1960s.[100] While the KKK still exists today, it has been in decline since the late 1980s.[101] This time, the KKK returned to its anti-Black roots to counter the social and political gains sought by the Civil Rights Movement.[102] This version of the KKK was particularly violent against African Americans and civil rights workers in the South.[103] For example, in 1963, the KKK detonated a bomb at a Birmingham Baptist church that killed four African American girls and injured several more.[104] KKK members also murdered three civil rights workers in Mississippi in 1964.[105] As recently as 1981, Klansmen in Mobile, Alabama lynched African American 19-year-old Michael Donald.[106] His mother brought a civil suit against the KKK and won a $7 million award after one of the perpetrators admitted he was carrying out an organization-wide directive to harass, intimidate, and murder African American people.[107]

An essential part of the success of the KKK is that their actions and ethos were sanctioned by white society—a recurring theme in the history of racial terror.[108] Rarely did the perpetrators face punishment, as ministers, editors, sheriffs, police officers, judges, and elected officials ignored or participated in the violence.[109] Having supporters and members in prominent positions of power allowed the KKK to act with impunity.[110] For example, the KKK was able to commit lynchings in front of a public audience and leave bodies on display—all without intervention by law enforcement.[111] Witnesses often obstructed any investigation or prosecution for these acts by refusing to give information.[112] Police not only refused to intervene, but also gave the KKK information about potential targets.[113] Thus, where the KKK led, white society followed, participated, and looked on.

While the KKK no longer enjoys the degree of sociopolitical power it once held,[114] contemporary white supremacist groups have taken up the KKK's mantle to threaten the dignified existence of African Americans and others. The 2017 white nationalist rally in Charlottesville,[115] the Proud Boys,[116] and a 2021 "White Lives Matter" rally in Orange County[117] have variously invoked the symbols, propaganda, and ideology of the KKK.

California

Neither racial terror nor the Ku Klux Klan were confined to the South.[118] During Reconstruction, the federal government did not send troops to California, as a non-slave state.[119] This allowed white supremacy groups to flourish in the West.[120] The western KKK complemented their southern counterparts by violently asserting white superiority against the perceived threat of racial outsiders.[121] As the African American population in California was relatively small at the time, the KKK and other hate groups mainly terrorized Chinese communities.[122]

In 1922, for example, Democrat Thomas Lee Woolwine lost his bid for California governor, suggesting that his fight against the KKK was a political liability. The KKK backed winning candidate Republican Friend Richardson—who was believed to have been a KKK member, and which he never denied.

During the second iteration of the KKK, California became a "strong Klan state" with a sizable and violent Klan resurgence in the 1920s.[123] Shortly after the release of *The Birth of a Nation*, the KKK emerged in San Francisco, establishing a KKK presence in California for the first time.[124] KKK chapters in Los Angeles, Oakland, Fresno, Riverside, Sacramento, Anaheim, and San Jose soon followed.[125]

The KKK's national magazine, *Imperial Night-Hawk*, shows that California ranked 11th out of all 48 states in terms of the number of KKK events held between March 1923 and November 1924.[126] By hosting 89 events in that 20month period, California even outranked the old enslavement states of Mississippi, Louisiana, North Carolina, and Tennessee.[127]

California's KKK consisted of prominent individuals who held positions in civil leadership and police departments.[128] Its members were largely middle-class, educated Protestants who, in socioeconomic terms, were not much different from their neighbors.[129] These KKK members registered to vote (in higher percentages than non-members), joined civic organizations like the Chamber of Commerce and rotary club, and sought political power by running for elected office or supporting candidates who sympathized with the KKK.[130]

The California KKK exerted significant political influence in the 1920s, winning seats on city councils, gaining control of the press and airwaves in some towns, and pressuring other public officials.[131] In 1922, for example, Democrat Thomas Lee Woolwine lost his bid for governor, suggesting that his fight against the KKK was a political liability.[132] The KKK backed winning candidate Republican Friend Richardson—who was believed to have been a KKK member, and which he never denied.[133]

While the KKK declined on a national scale in the 1930s with the Great Depression, and after the 1925 trial and conviction of the KKK's then-leader, California's KKK remained active through the 1940s and into the 1950s.[134] As detailed below, the KKK had branches—and spread terror—throughout the state, and exercised significant power in local governments.

The Ku Klux Klan in Southern California.

Los Angeles was the epicenter of Ku Klux Klan activity in California.[135] Prominent and numerous city government

COURTESY OF BETTMANN VIA GETTY IMAGES

About fifty members of the Ku Klux Klan held a cross burning ceremony on a small ranch outside of Sacramento. Gun-toting guards wearing Klan outfits and helmets surrounded the ranch, while members made speeches and paraded around the burning cross. (May 3, 1980)

officials were KKK members or had KKK ties, including the mayor, district attorneys, and police officers.[136] Due to aggressive recruitment efforts beginning in 1921, several KKK branches formed in Los Angeles.[137] KKK chapters also formed in the nearby communities of Santa Monica, Huntington Park, Redondo Beach, Hermosa Beach, Long Beach, Glendale, San Pedro, and Anaheim.[138]

By the 1920s, the Los Angeles Police Department (LAPD) was "a den of corruption" that was infiltrated with KKK members who practiced retaliatory policing in the city's African American neighborhoods.[139] "In speaking to the police, you are frequently talking to the Klan," warned the *Eagle*, an African American Los Angeles newspaper.[140] Los Angeles Deputy Sheriff Nathan Baker regularly recruited KKK members to the Los Angeles Police Department (LAPD) and was thought to be a member of the KKK himself.[141]

On April 22, 1922, more than 100 armed and hooded Klansmen broke into the Inglewood home of Spanish immigrants.[142] The Klansmen forced the couple's two teenage daughters to disrobe and ransacked the house.[143] The Klansmen then brutally beat, bound, and gagged the father and his brother, dragged them to a car, and dumped them six miles away.[144] Thirty-seven Klansmen were indicted for the Inglewood raid, but in a trial that the National Association for the Advancement of Colored People (NAACP) called a "farce," all were acquitted.[145]

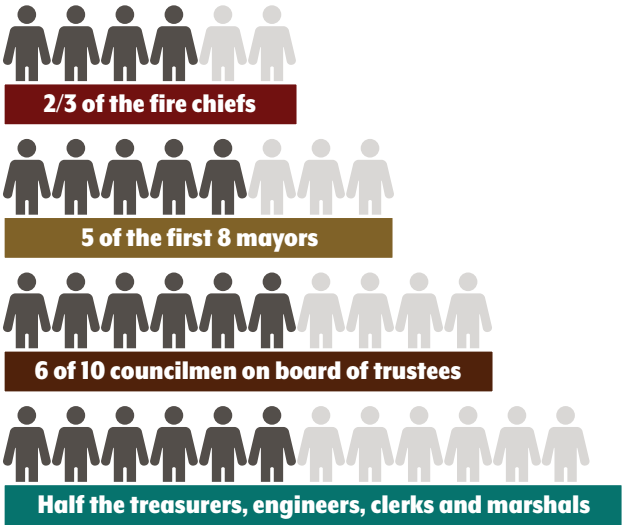
The raid prompted an investigation by the District Attorney, who obtained membership lists revealing that the KKK had infiltrated all levels of state and local government.[146] There were 3,000 KKK members in Los Angeles County, over 1,000 in the city limits, and three KKK members on the District Attorney's own staff.[147] LAPD Chief Louis D. Oaks and County Sheriff William I. Traeger were also identified as members.[148] Law enforcement from nearly every city in California appeared on the list, including 25 San Francisco police officers.[149]

Even after the Inglewood raid exposed the breadth of KKK membership, and after the Legislature passed an anti-KKK bill, the KKK still proceeded to hold nine events in Los Angeles between March 1923 and April 1924.[150] The raid and its aftermath inspired KKK members and caused the KKK to redouble its efforts.[151] In 1929, KKK supporters helped elect John C. Porter, who had a past with the KKK, as mayor of Los Angeles.[152] And in the 1930s, even after enthusiasm for the KKK began to subside, the KKK still remained active in Los Angeles and the surrounding community, with rallies attended by thousands of people and cross-burnings.[153]

In December 1939, the KKK ceremoniously marched through downtown Los Angeles burning crosses in full view of thousands of people.[154]

Beyond Los Angeles, the KKK was active throughout Southern California, including in Orange County, Riverside, and San Diego.[155]

KLANSMEN IN THE TOWN OF BREA 1924-1936



In Anaheim, by 1923, the KKK had almost 900 members,[156] out of a total city population of about 6,000.[157] Its members generally held more prestigious jobs than the rest of the white population and were politically and civically active.[158] The Anaheim KKK burned crosses and held rallies drawing thousands of people.[159] One such event, an initiation in July 1924, attracted 20,000 people and included a parade of Klansmen with a marching band, airplanes, and fireworks.[160] By spring 1924, the KKK dominated the Anaheim city council, which had initiated a program to replace non-KKK city employees with its own members. Their plan succeeded: ten new policemen, out of 15, were members of the KKK.[161]

In Brea, five of the town's first eight mayors were Klansmen, as were six of the 10 councilmen who sat on the board of trustees, half of the city's treasurers, half of the city's engineers, half of its city clerks, half of its city marshals, and two-thirds of its fire chiefs between 1924

In the 1920s, Los Angeles Deputy Sheriff Nathan Baker regularly recruited KKK members to the Los Angeles Police Department and was thought to be a member of the KKK himself.

and 1936.[162] And in Fullerton, from 1918 to 1930, seven of 18 city councilmen were Klansmen.[163]

The Riverside KKK were successful recruiters, claiming over 2,000 members in the 1920s.[164] In Riverside, the KKK held mass events that attracted thousands of people and included parades with marching bands, floats, and KKK members in full regalia.[165] The Riverside KKK prioritized policing interracial contact, which meant monitoring African American residents' activities.[166] For example, the KKK was preoccupied with the City's 1922 settlement with the NAACP to desegregate a white-only pool.[167] In response, they targeted African American swimmers with humiliation and violence.[168] The Riverside KKK gained political influence, and in 1927, helped elect a mayor, Edward M. Deighton, who openly boasted about his support from the KKK.[169] In the 1930s, Riverside Sheriff Carl Rayburn openly sympathized with the KKK, and "KIGY," meaning "Klan I Greet You," was painted on streets and sidewalks throughout the county.[170] The KKK's membership in Riverside decreased in the 1930s, but they still made appearances and burned crosses.[171]

The San Diego KKK, in the 1920s and 1930s, focused on using violence and other intimidating tactics to "chas[e] the wetbacks across the border."[172] The KKK in the 1930s also merged with other racist and fascist groups, such as the Silver Shirts League, that were focused on attacking African Americans, Latino Americans, and Jews.[173]

The Ku Klux Klan in the Central Valley

The Ku Klux Klan had an active presence in Fresno and Kern County.[174] As of 1922, a local Fresno newspaper reported over 240 alleged Klansmen in Fresno County, and the KKK held public events and parades with as many as 600 attendees during the early to mid-1920s.[175] The investigation in the aftermath of the Inglewood raid also revealed that a number of Fresno officials were KKK members.[176]

In the early 1920s, the KKK actively recruited in Kern County and developed what was considered the most violent KKK chapter in California.[177] In Kern County, in 1922 alone, there were over 100 cases of KKK violence, which included extrajudicial beatings, kidnappings, and tar-and-feathering.[178] In 1922, a local newspaper reported that several high-ranking officials in Kern County were associated with the KKK, including the deputy sheriff, the police chief, the Board of Supervisors chair, and a former assistant district attorney.[179] Although the KKK's influence started to decline in the 1930s,[180] white supremacist culture persisted in Kern County in the decades that followed.[181] As recently as the 1960s, a sign across the Kern River between Oildale and Bakersfield read "Nigger, Don't Let the Sun Set on You in Oildale."[182] There were also unconfirmed reports that a similar sign was spray painted on the same bridge as recently as the late 1990s.[183] In 1981, three KKK members were arrested for burning a cross on the front lawn of an African American family in the Kern County town of Boron, and KKK rallies were reported as recently as 1987.[184] In the early 1990s, African American motorists were attacked on the streets of Oildale by whites hurling racial slurs and epithets.[185] In the 2000s, members of the white supremacist group the Peckerwoods were involved in multiple violent attacks against African American, Hispanic, and Asian American residents that involved the use of racial slurs.[186]

During the 2000s in the California Central Valley, members of the white supremacist group the Peckerwoods were involved in multiple violent attacks against Black, Hispanic, and Asian American residents that involved the use of racial slurs.

The Ku Klux Klan in Northern California and the Bay Area.

The Ku Klux Klan established a presence in the Bay Area during the 1920s.[187] By 1922, there were KKK chapters in San Francisco, Oakland, and San Jose.[188] In addition to burning crosses, KKK chapters in the Bay Area held rallies, initiation events, and public parades, which were attended by thousands.[189] In Oakland, the politically active KKK took control of the city government to create policy that would limit African American home ownership, including by embracing restrictive covenants.[190] Between 1921 and 1924, the Oakland KKK grew to at least 2,000, and the chapter enjoyed political success well into the 1920s, winning an election for county sheriff in 1926 and city commissioner in 1927.[191] The Oakland KKK also operated as a vigilante group, accompanying federal agents on prohibition raids.[192]

IV. Forms of Racial Terror: Violent Tools of Social Control

Racial terror has taken many forms throughout its long history. Although the primary component of racial terror is physical violence, perpetrators of racial terror have also destroyed and repossessed African American property. And given the public nature of racial terror, overt action has often been unnecessary. Threats and intimidation have often successfully kept African Americans from voting, living in certain neighborhoods, and exercising other civil rights. As one scholar has argued, "fear of physical death not only hinders the possibility of freedom, but also limits productive and meaningful living.... [A]s [the oppressed] submit to oppression and preserve biological life, they invariably suffer a degree of *psychological* and *social* death."[193]

From Reconstruction onward, racial terror undermined African Americans' legal rights, with lasting social repercussions. By attacking African Americans who were never found guilty in a court of law, racial terror popularized the idea that African American people bear a presumption of guilt—contrary to the presumption of innocence, which the Supreme Court has described as "foundation[al]" to "our criminal law."[194] Many white lynch mobs killed African American criminal suspects who were later found to be innocent.[195] Some African American men were even lynched after a jury found them innocent of their alleged offense.[196] White people justified racial terror as a mode of self-defense against African Americans, as a tactic to deter future perpetrators, regardless of whether a crime had actually been committed.[197] This history of racial terror reinforced a view that African Americans were dangerous criminals who posed a threat to white society.[198]

Lynching

Key Features of Lynching

The most gruesomely iconic form of racial terror was lynching: violent and public acts of torture, which were largely tolerated by officials at all levels of government.[199] Such violence traumatized African American people throughout the country, although it most frequently occurred in the South.[200] Although lynchings were carried out against individual victims, the practice of lynching was ultimately aimed at the entire African American community.[201] Indeed, historians have described the trauma of lynching as a "contagion" that has a "multiplier effect" across families, communities, and generations.[202] Much like Jim Crow laws and racial segregation, lynching was primarily a method of enforcing the political, economic, and cultural exploitation of African Americans.[203] For instance, after Booker T. Washington visited the White House to meet with President Theodore Roosevelt, South Carolina Senator Benjamin Tillman remarked, "now that Roosevelt has eaten with that nigger Washington, we shall have to kill a thousand niggers to get them back to their places."[204]

Lynching was often carried out as a public spectacle. It did not simply involve hanging; rather, public lynching often featured the prolonged torture, mutilation, dismemberment, and/or burning of the victim.[205] These events attracted large crowds of white people, often numbering in the thousands, which included elected officials, prominent citizens, and entire families, including children.[206] Children were given front-row views of the victim, imprinting upon their minds for the rest of their life the concept that African American people do not deserve human dignity.[207] The white press justified and promoted these carnival-like events, while vendors sold food, and printers produced postcards featuring photographs of the lynching and corpse.[208] Spectators would fight over fingers, ears, toes, sexual organs, and other body parts as souvenirs.[209] The physical objects associated with a lynching were prized mementos for the crowd.[210]

COURTESY OF LIBRARY OF CONGRESS

Large crowd looking at the burned body of Jesse Washington, 18 year-old African American, lynched in Waco, Texas. (May 15, 1916)

The publicity of lynchings not only terrorized African Americans, but also allowed white communities to economically and politically benefit. The terror of being lynched prevented African Americans from achieving political power, and preserved them as a compliant, intimidated workforce.[211] This, in turn, largely maintained the Southern economy as it was during enslavement.[212] And while lynching was overwhelmingly (though not exclusively) a Southern phenomenon,[213] its effects were felt throughout the United States—just as white supremacists intended to victimize and oppress all African Americans.[214]

Lynchings to Maintain White Supremacy

Lynchings were based on a broad range of perceived violations of the racial caste system. Hundreds of African American people were lynched after being accused of murder or rape, though almost none were legally convicted of their alleged crimes.[215] Regardless, lynching is never an acceptable form of punishment. Many lynchings were based on weak or contrived evidence.[216] For example, white men perpetuated the myth of the "unbridled, brutish, black rapist" to justify lynching African American men for allegedly sexually assaulting white women.[217] The lynchings of African American men accused of rape or sexual assault often involved castration, which underscored how white men felt threatened by African American men and used lynching to attack African American manhood.[218]

Judges contributed to these outcomes by presiding over a process that systematically excluded African Americans from juries, mistreated Black witnesses, and held trials in jurisdictions with a racist bias.

Many lynchings were based on much more minor accusations. According to the Tuskegee Institute, approximately 30 percent of lynching victims were accused of nonviolent "offenses."[219] Some victims were lynched only for minor social transgressions, or for demanding basic rights and fair treatment. African American victims were lynched for referring to a white police officer by name, associating with white women, accidentally bumping into a white woman, "passing" as white, speaking out about racial equality, testifying on behalf of an African American defendant, and refusing to take off an Army uniform after returning from World War I.[220]

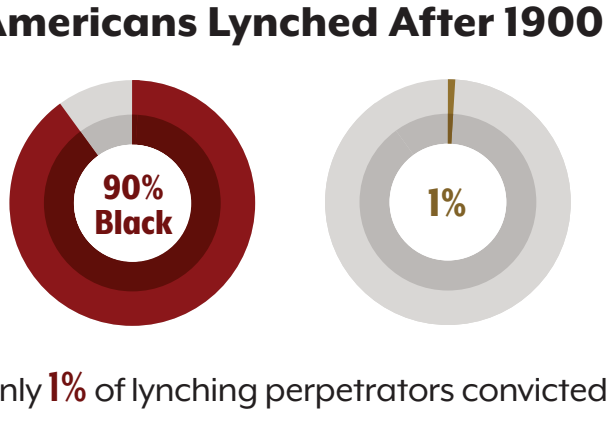
African Americans were also lynched for asserting their labor rights and economic rights. For example, in 1918, an African American man in Earle, Arkansas refused to work on a white-owned farm without pay.[221] In response, the white citizens of the city cut him into pieces with butcher knives and hung his remains from a tree.[222] In numerous instances, African Americans were also lynched after disputes over wages or debts: in such disputes, if a white person became violent and an African American person reacted in self-defense, the African American person was often lynched for murder or assault.[223] By killing African Americans for seeking fair treatment or for trivial social disputes, white Americans continued to assert the total control they had held over African American lives during slavery.

Apart from responding to specific accusations, lynchings were used to drive African American residents from a community. For example, after a 1912 lynching in Forsyth County, Georgia, white vigilantes distributed leaflets demanding that all African American people leave the county or suffer deadly consequences.[224] As a result, the African American population dropped from 1,100 to 30 in eight years.[225] And in 1918, in Unicoi County, Tennessee, after lynching an African American man, a group of white men rounded up 60 African American residents—including children—and forced them to watch the corpse burn.[226] The white people told the African American people in the town to leave the county within 24 hours.[227]

Lynchings also united white Americans of all socioeconomic levels. The public violence of lynchings portrayed the white population as strongly allied against the perceived threat of African Americans.[228] White mobs asserted their racial superiority by publicly torturing and killing African American victims.[229] Through the Jim Crow period, white Americans experienced divisions along political, economic, and social lines.[230] Although poor white Americans may have lived in conditions more similar to those of poor African Americans, lynching helped prevent interracial class-based alliances by unifying white Americans around a core purpose and identity.[231]

Complicit Government Officials

Government actors, including police officers, prosecutors, judges, and elected officials, tacitly approved of or assisted in lynchings.[232] Law enforcement officers released African American people who had been incarcerated to mobs, placed African American prisoners in areas where lynch mobs were known to gather, joined mobs to find African Americans, and assisted with lynchings.[233] Prosecutors and law enforcement regularly failed to identify and



try lynchers for their crimes.[234] Only one percent of all lynchings after 1900 resulted in a conviction.[235] Judges contributed to these outcomes by presiding over a process that systematically excluded African Americans from juries, mistreated African American witnesses, and held trials in jurisdictions with a racist bias.[236] Local coroners and coroners' juries refused to indict lynchers and made impossible conclusions—such as ruling a death was a suicide after an African American farmer was found riddled with bullets.[237]

Throughout the South, state and local politicians protected the perpetrators of violent acts instead of protecting African American Southerners from extrajudicial violence.[238] Some governors, rather than condemn lynchings, made statements that focused on the accused crime of the lynched African American person—suggesting that the lynching was justified—and in other cases, affirmatively supported the lynching.[239] And government officials outside the South did little to stop the campaign of widespread lynching.[240] National leaders, for their part, failed to pass even one of more than 100 anti-lynching bills that were proposed in Congress between 1852 and 1951.[241]

While there is no conclusive evidence proving that the death penalty replaced lynching in the South, data shows that executions increased as lynchings declined. Indeed, Southerners themselves referred to these executions as "legal lynchings," and Southern leaders argued that African Americans could be intimidated and controlled just as effectively with the death penalty.

The public was also complicit. Studies show that thousands of white people, at all levels of class and educational status, participated directly in lynch mobs. Many more participated as spectators, and millions did nothing.[242] Participants, meanwhile, were protected by a code of silence.[243] Because witnesses refused to cooperate with law enforcement, criminal investigations were thwarted, and the perpetrators of lynchings were able to avoid accountability.[244]

The Prevalence of Lynching over Time

Despite numerous efforts, it is impossible to know how many African American people were killed by lynching. In the late 19th century, Ida B. Wells started the Red Record Efforts to identify incidents of extreme racial violence for research, advocacy, and public policy purposes.[245] Other researchers and activists have followed Wells' lead, but there is disagreement on figures among those who study racial terror. Researchers use different criteria of what counts as a lynching, and perpetrators hide their crimes—to list just two reasons that there is no definitive number of African American lynching victims.[246] By any measure, however, lynching occurred in every region of the United States, with victims of all races and genders.[247] And despite disagreement over exact numbers, there is a consensus that between the Civil War and World War II, thousands of African Americans were lynched in the United States and were the primary targets of lynch mobs.[248] The nonprofit organization Equal Justice Initiative, for example, counts nearly 6,500 lynchings nationwide between 1865 and 1950.[249] Any count of lynchings, however, will fall short of the true number, as a result of inadequate reporting at the time, lack of documentation, cover-ups by perpetrators and local officials, and other gaps in the evidence.[250]

Equal Justice Initiative estimates 6,500 lynchings nationwide between 1865 and 1950, although any count is an underestimate because of gaps in the evidence like inadequate reporting at the time, lack of documentation, and cover-ups.

In the 1890s, when the frequency of lynchings peaked, an average of 104 African American people were estimated to have been killed each year by lynch mobs.[251] Then, as African American Southerners moved north and west, lynching rates steadily declined during the 1930s, 1940s, and 1950s, and lynchings eventually became extraordinary events.[252] Thus, when 15-year-old Emmett Till was lynched in 1954 for allegedly whistling at a white woman,[253] and when a white mob abducted Mack Charles Parker from his jail cell and lynched him in 1959,[254] the killings provoked national public outrage.[255] However, the decline in lynchings did not correspond with an end to the racial caste system that led to lynchings in the first place.[256] Rather, the decline can be attributed to strict segregation laws, tactics of disenfranchisement, and the surge of the death penalty.[257]

Beginning in the early 1900s, white Southerners began to fear that the barbaric imagery of lynching would harm the Southern economy.[258] The death penalty offered a more respectable form of violence and the appearance

of the rule of law.[259] As early as the 1930s, lynchings were often avoided when government actors made clear that the accused would receive a swift judicial conviction and execution.[260] While there is no conclusive evidence proving that the death penalty replaced lynching in the South, data shows that executions increased as lynchings declined.[261] Indeed, Southerners themselves referred to these executions as "legal lynchings," and Southern leaders argued that African Americans could be intimidated and controlled just as effectively with the death penalty.[262] And "legal lynchings," like actual lynchings, disproportionately victimized African Americans.[263] From the 1890s to the 1950s, between 53 and 81 percent of lynchings and executions were of African Americans, although African Americans represented approximately only 10 percent of the entire U.S. population.[264]

By 1915, court-ordered executions outpaced lynchings in the former slave states for the first time, and by the 1930s, two-thirds of those executed were African American—a trend that would continue.[265] While African American people were executed for allegedly killing white people, the reverse was not true. As lynchings declined from 1930 to 1970, there was a sharp increase in the number of African Americans who were executed for rape, but there is no evidence that a white person was executed for raping an African American woman.[266] According to one study, out of more than 11,000 executions in the United States, only two white men were executed for killing an African American person.[267] Another study of approximately 15,000 executions, from colonial times to the 1990s, found that white people were executed for killing African American people in only 29 cases—and in most of those cases, the defendants had also killed white people.[268] These trends in executions reinforce a central theme of lynching: that the lives of African American people were worth less than those of white people.[269]

Postcard depicting the lynching of Lige Daniels, Center, TX. A mob of over 1,000 men stormed the county jail and took the young man who was both charged with and confessed to the murder of a local farmer's wife. (1920)

Mob Violence

Whereas lynching involves group action against a person as a response to that person's alleged wrongdoing, mob violence involves assaults by civilians of one ethnic group on members of another ethnic group on the basis of their ethnicity.[270] These tactics were often used together against the African American community.[271] Lynchings were sometimes followed by mob violence, with white mobs burning Black homes, devastating African American neighborhoods, and forcing African American residents to relocate.[272] Mob violence was motivated by the same objectives as lynchings, including extinguishing African Americans' political influence and economic gains, and maintaining social control over African Americans.[273]

A study of approximately 15,000 executions, from colonial times to the 1990s, found that white people were executed for killing Black people in only 29 cases—and in most of those cases, the defendants had also killed white people.

The racial hierarchy benefited from mob violence. Mob violence was a ritual that built a sense of community among white people and helped the South to sustain a cohesive culture of white supremacy and enforce legal segregation.[274] (As discussed above, mass participation was a typical element of lynchings, which drew upwards of thousands of spectators.[275]) But mass violence was not strictly a Southern phenomenon. White mob violence occurred in several Northern states prior to 1865, including New York, Pennsylvania, and Ohio.[276] These Northern white mobs, which numbered in the hundreds or thousands, attacked and killed African American people and set fire to African American properties.[277] The violence was often accompanied by inaction or inadequate response by law enforcement.[278] Virtually none of the perpetrators were prosecuted or convicted; those that were, received extremely lenient punishments.[279]

When white Americans felt African Americans threatened their superiority, mob violence sometimes escalated into massacres, destroying cohesive African American communities and the prosperity that they built.[280] Historically, these attacks have often been called "riots" or "race riots,"

but these terms obscure the nature of this violence. Throughout Reconstruction, segregation, and the civil rights era, so-called riots were actually massacres. In these attacks, white mobs proactively killed African Americans and destroyed African American property, though the African American victims were often blamed for inciting the violence in the immediate aftermath.[281] This pattern of violence has evolved and continued through the 20th and 21st centuries, as is discussed in greater detail in Chapter 11 An Unjust Legal System.

Massacres inflicted tremendous damage upon African American lives and property.[282] It is estimated that over 100 such massacres occurred between the end of the Civil War and the 1940s.[283] Among several notable examples,[284] the 1921 Tulsa Race Massacre is especially prominent. In Tulsa, Oklahoma, in 1921, an African American man was arrested for allegedly assaulting a white woman.[285] In response, a white mob looted, burned homes and businesses, and murdered at least 300 Black people in Greenwood, a prosperous Black neighborhood known as "Black Wall Street."[286] Over the course of 24 hours on May 31 and June 1, the mob destroyed 35 square blocks, more than 1,200 Black-owned homes, over 60 businesses, a hospital, a public library, and a dozen African American churches.[287] Thousands of African American Tulsans were left homeless and placed in internment camps.[288] Lawyer and reparations advocate Eric J. Miller has testified that, in addition to death and destruction, the massacre inflicted catastrophic mental and emotional trauma upon the African American survivors and their descendants.[289] The destruction remained over generations as the city, state, and chamber of commerce worked to prevent rebuilding and turned away funding that could have benefited Greenwood.[290]

The Tulsa Race Massacre Commission confirmed that Tulsa officials not only did nothing to prevent the massacre, but also participated in the violence and provided firearms and ammunition to the mob.[291] Indeed, the city and county police deputized hundreds of white people to participate in the massacre, and the Oklahoma National Guard joined the massacre as well.[292] The Commission's report confirmed that no one prosecuted or punished any of the perpetrators for the violent acts that occurred, despite overwhelming evidence of their guilt.[293] Instead, the all-white grand jury falsely blamed African American people for the massacre.[294] As stated in the grand jury report: "There was no mob spirit among the whites, no talk of lynching and no arms. The assembly was quiet until the arrival of the armed Negros, which precipitated and was the direct cause of the entire affair."[295]

This example also highlights the role of the government, at all levels, in mob violence, just as government had once enforced the legal regime of slavery. By looking the other way, declining to prosecute mob members, or by actively fomenting and assisting mob violence, government officials enabled violent white mobs to devastate African American communities.

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Photograph shows destroyed houses and billowing smoke during the Tulsa Race Massacre, when a white mob attacked the predominantly African American Greenwood neighborhood of Tulsa, Oklahoma. (1921)

Torture

Southern lynchings often included torture of the victim before death, in addition to burning, mutilation, and decapitation after death.[296] The torture preceding public killings usually lasted hours, and could involve shoving a hot poker iron down the victim's throat and pressing it against their body; gouging out eyes; castration; cutting off hands and feet; tearing into the flesh with a large corkscrew; and burning the victim alive.[297] As historian Leon F. Litwack explains: "The story of a lynching . . . is the story of slow, methodical, sadistic, often highly inventive forms of torture and mutilation."[298]

Torture was thus another method with which white people sought to punish African American people for stepping beyond their relegated social roles.[299] Victims

were often tortured even if they were not convicted of any crime, such as when two brothers in Paris, Texas were tortured for trying to escape abusive work conditions.[300]

Like slave patrols, police violence during Jim Crow was intended to intimidate Black communities and subordinate African Americans within the segregated social order.

As lynching became less common, so too did the accompanying torture. But just as lynching was replaced with the "legal lynching" of state executions, the police used torture to extract confessions from African American suspects.[301] The police objective was to quickly convict the suspects.[302] Thus, even facing the death penalty, African American suspects were frequently denied a fair and impartial trial.[303]

For example, in 1938, Dave Canty, an African American man, was arrested for killing a white woman and wounding another in the course of a robbery in Montgomery, Alabama.[304] After hours of police questioning, Canty signed a written confession, admitting responsibility for the attack.[305] At trial, however, Canty testified from the witness stand that the police had forced him to confess by torturing him.[306] He gave detailed information about the torture and his torturers, and he showed his wounds and scars to the jury.[307] Police officers and prison staff, however, denied Canty's account of his torture, and at the conclusion of his three-day trial, Canty was sentenced to death.[308] After a new trial reduced his sentence to life in prison, Canty died in the same prison in which he claimed to have been tortured.[309]

Unlike lynching, this form of torture was not public.[310] In fact, hiding it was critical to supporting a racist system.[311] It was difficult for victims and advocates to realize the prevalence of torture, and denials and secrecy made it more difficult to fight the practice.[312] When torture was reported and individuals tried to bring charges, allegations and evidence were ignored and invalidated by white judges, prosecutors, and other officials.[313] While this practice occurred throughout the country, it was especially prevalent in large cities like Chicago and New York City, as well as the American South.[314] There were very rarely any consequences for violence used by police in coercing confessions.[315] Police officers often denied the use of such violence, while claiming that regulating police work would lead to an increase in crime.[316] Thus, the decline of lynching and public torture was not a sign of enlightenment.[317] Rather, lynching and torture developed into more modern forms of racial violence—namely, swift executions and coerced confessions.[318] Evidence suggests that police continue to coerce confessions from suspects, including Black suspects, leading to wrongful convictions and years of undeserved jail time.[319] From the early 1970s to the early 1990s, for example, then-Chicago Police Commander Jon Burge led officers in torturing over 125 suspects into confessing to crimes, most of whom were African American, and many of whom have said their confessions were false.[320] Burge was convicted for lying under oath about the torture.[321]

Police Killings and Vigilantism

State-sanctioned violence against African Americans continues today in the form of extrajudicial violence by police officers and vigilantes.

Police Violence as a Modern Form of Lynching

Throughout American history, including the present day, the police have held the power to strip African American people of their rights and lives for any reason—or for no

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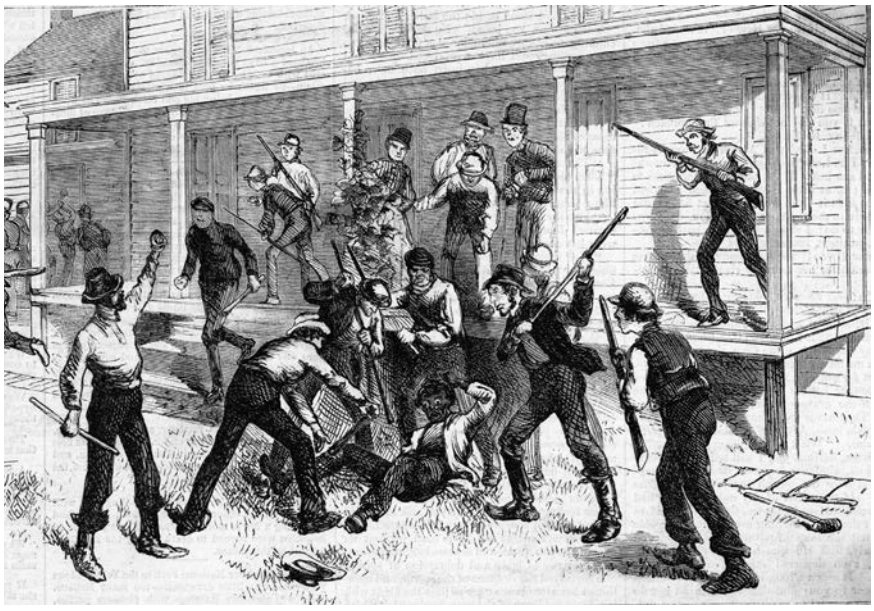

Print shows a scene during a riot between Irish American and African American railroad workers employed by the Easton and Amboy Railroad to build the Musconetcong Tunnel, in which Denis Powell, an African American man, is beaten to death by a mob of white men, during the Pattenburg Massacre, Pattenburg, New Jersey. (1872)

reason at all. Police violence is a leading cause of death for African American people in America.[322] Today's extrajudicial killings have historical roots in the social control of slave patrols,[323] the lynchings of the late 1800s and early 1900s, and police violence against African American Southerners during legal segregation.[324] Slave patrols, which began in the early 1700s, were made up of white volunteers.[325] Patrollers were empowered to forcibly discipline enslaved persons, crush potential uprisings, and return enslaved persons who had escaped to their enslavers.[326] Like slave patrols, police violence during Jim Crow was intended to intimidate African American communities and subordinate African Americans within the segregated social order.[327]

From the end of the Civil War through the early 20th century, racialized policing was often tailored to local concerns.[328] In urban areas, in response to growing economic competition between white workers and African American workers moving to cities, the police targeted African American residents with curfews, high incarceration rates, and violence—often deadly violence.[329] In rural areas, sheriffs and deputy sheriffs enjoyed essentially unchecked power from their white constituents.[330] As a result, the police violently enforced the racist social order against African American citizens, even for seemingly minor transgressions.[331]

As recognized by the United Nations Working Group of Experts on People of African Descent, "contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching."[332] Recent incidents of police violence demonstrate this connection. The British Broadcasting Company has collected a list of recent high-profile killings of African Americans by police,[333] highlighting just a fraction of the more than 1,500 African Americans killed by police since 2015.[334] In 2016, after a Minneapolis police officer killed Philando Castile during a traffic stop,[335] Castile's sister said, "It's just like we're animals. It's basically modern-day lynching that we're seeing going on, except we're not getting hung by a tree anymore—we're getting killed on camera."[336] Similarly, in 2020, George Floyd was stopped for allegedly using a counterfeit $20 bill, which could have been handled with a ticket.[337] Instead, Floyd was killed by an officer kneeling on his neck for nine minutes and 29 seconds.[338] Historian Arica Coleman described Floyd's death as "a modern-day lynching."[339]

Vigilantism Continues Today

In addition to extrajudicial police violence, our country's history of lynching is reflected in the vigilantism taken against African American people, even when they have not committed any offense.[340] The Southern Poverty Law Center has compiled a list of African Americans (and white activists) killed during the Civil Rights Movement.[341] More recent examples of this violence are the killings of Trayvon Martin and Ahmaud Arbery. In 2012, George Zimmerman shot and killed the unarmed, 17-year-old Trayvon Martin, who Zimmerman described as a "suspicious person" in his neighborhood.[342] After Zimmerman was acquitted for the shooting, in the tradition of lynching, he auctioned his gun as a souvenir.[343]

In 2020, while Ahmaud Arbery was out for a jog, he was chased, attacked, and killed by three white men who claimed he resembled a suspect in local break-ins (although no police reports were filed about the alleged break-ins). Arbery was unarmed, and as he lay dying on the ground, one of the white men called him a "fucking nigger."[344] Arbery's family called the killing a lynching.[345] The three men attempted to use a citizen's arrest provision added into the Georgia Code of 1863.[346] The men argued that the 1863 provision allowed them to arrest another person if a crime was committed "within his immediate knowledge."[347] The Georgia Code was drafted in part by Thomas R.R. Cobb, a legal scholar who claimed that an African American mother "suffers little" when her children are stolen from her, since she lacked maternal feelings.[348] Cobb helped write principles of white supremacy into Georgia law, including a provision that presumed African Americans were enslaved people unless proven otherwise.[349] The citizen's arrest provision was significantly weakened in 2021 in the wake of Arbery's murder.[350]

As with lynchings, a lack of accountability appears to exist for police violence and vigilantism. The Guardian reports that out of 1,136 killings registered in 2015, only 18 law enforcement officers were charged with crimes.[351] Moreover, the United Nations found that federal, state, and county regulations on use of force and firearms do not comport with international standards, which makes it more likely that extrajudicial violence against African American individuals will continue.[352]

Moreover, the United Nations found that federal, state, and county regulations on use of force and firearms do not comport with international standards, which makes it more likely that extrajudicial violence against Black individuals will continue.

Sexual Violence and Eugenics

As further discussed in Chapter 12, Mental and Physical Harm and Neglect, the African American female body has been brutally and routinely compromised in the absence of legal protection. African American women faced forced procreation during enslavement, while after enslavement, African American women were forcibly sterilized.[353] As with other forms of racial terror, sexual violence served the social, economic, and political goals of white supremacy.

As discussed in Chapter 2 Enslavement, enslavers used sexual violence and the threat of sexual violence as a way to control enslaved African American people. Enslavers also used sexual violence and forced procreation to grow their fortunes.

While the end of enslavement as an institution may have removed an economic incentive for sexual violence, African American women have continued to suffer from the violence that arises from stereotypes projected upon them. During the Jim Crow era, white men used rape and threats of rape to oppress African Americans, and particularly African American women.[354] Throughout their daily routines, African American women and girls faced the threat of sexual violence by white men.[355] Rapes during Jim Crow were intended to maintain white domination and for white men's sexual gratification.[356] Some rapes also took place during other instances of racial violence, such as attacks to steal African American land and destroy African American property.[357] White men were rarely punished for committing sexual violence against African American women and girls, while African Americans frequently faced retaliation for reporting such attacks.[358]

As discussed in Chapter 11 An Unjust Legal System, Black women continue to be depicted through tropes of hypersexuality, creating a myth that Black women cannot credibly claim to be victims of sexual violence.[359]

African American women also suffered a different kind of sexual violence as a result of the eugenics movement. During the early 20th century, the eugenics movement, which claimed to be acting according to "scientific" principles and for the good of human society, scrutinized African American sexual behavior and reproduction. The result was that African American people, and especially African American women, were disproportionately forced into sterility.[360] This is discussed in detail in Chapter 12, Mental and Physical Harm and Neglect.

Family Separation and Violence Against Children

The threat of selling non-compliant enslaved people away from their families was one of the most terrifying tools of coercion that enslavers wielded to control enslaved persons and suppress rebellions.[361]As discussed above, under the laws of slave states, the status of a newborn followed the status of their mother.[362] Separation was horrifying and traumatic to the parents and their children.[363] Children and their parents were treated not as people, who loved and cared for each other, one generation after another, but as bodies used exclusively for labor.[364] Frederick Douglass said that he began to understand himself as a slave following the separation from his mother, as in the absence of nurturing kin, he was completely subjected to the will of others.[365] The practice of selling away infants was so common that it was a focus of the northern abolitionist movement, and according to Professor Laura Briggs, in the 1850s, many Southern states outlawed taking infants from their mothers in an effort to prove that slavery was not as bad as antislavery northerners claimed.[366]

After enslavement, Southern states re-enslaved African American children, removing them from their parents, and forcing them into so-called apprenticeships to white former enslavers.[367] The children, sometimes as young as six, worked for white families as if they were enslaved.[368] Throughout the 20th century, government officials disproportionately separated African American children from their families to threaten and coerce mothers into withdrawing from welfare programs.[369] A detailed discussion of family separation is in Chapter 8, Pathologizing the African American Family.

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"Whites stoning Negro to death," Chicago. (1922)

Mass incarceration, another tool of racist social control, has also had the consequence of breaking up African American families. The war on drugs, beginning with Richard Nixon's 1968 presidential campaign,

was explicitly designed to target the antiwar left and African Americans.[370] Due to these policies, by 2015, one in nine African American children had at least one parent in prison.[371] At the same time, African American families were targeted by racist policing of parenting.[372] African American children were increasingly placed in the child welfare system due to parental neglect—but in reality, this "neglect" was often only poverty.[373] These two forms of racist policing combined to double and then triple the rate of incarceration of African American women during the 1980s.[374] Eighty percent of these women had children living with them at the time of the arrest, many of whom were then placed in foster care.[375] As a result, between 1985 and 1988, the number of children in out-of-home placement—foster care, psychiatric institutions, and the juvenile justice system—increased by 25 percent.[376]

Hundreds of white people were responsible for looting, killing, and destroying property, enabled and assisted by Tulsa government officials. The massacre caused $1.8 million in property damage—$25 million in today's dollars, though others estimate that the damage totaled $50 to $100 million in today's dollars. However, no one, except one white pawnshop, was given any compensation for the damage.

Finally, African American children have faced disproportionate police violence. As discussed above, law enforcement continues to treat Black people as a dangerous criminal group; Black children are no exception.[377] A 2020 study led by Children's National Hospital researchers found that Black youth are six times likelier than white youth to be shot and killed by police.[378] A detailed discussion of the criminalization of African American children is in Chapter 11, An Unjust Legal System.

Economic Terror

White people have used various types of racial violence in order to erase African American economic gains, allowing the unrestricted theft of African American labor during enslavement to carry on in new forms. In the 1890s, the prominent journalist and anti-lynching advocate Ida B. Wells conducted a detailed study of lynchings and found that the vast majority were not in response to sexual crimes, but were rather motivated by economic or political concerns.[379] For example, perpetrators initiated attacks as a form of economic intimidation against African Americans who disputed labor contracts.[380] Employers also whipped and lynched African American freedmen who argued with them or left the plantations where they were contracted to work.[381]

Once African Americans became successful, ran businesses, and owned homes, they were even more targeted. In the South, even before the Civil War, the Associated Press reports that 24,000 acres of land were stolen from 406 African American landowners, including by means of racial terror.[382] The success of African American neighborhoods and African American individuals triggered white mobs to initiate violence,[383] as white Americans felt threatened by the growing economic power and independence of African American communities.[384]

There are numerous historical examples of economically motivated violence against prosperous African American communities.[385] Perhaps the most significant example is the 1921 Tulsa massacre, discussed above in relation to mob violence, in which a white mob devastated the prosperous Black neighborhood of Greenwood.[386] In 1997, the Oklahoma legislature formed the 1921 Tulsa Race Riot Commission (recently renamed the Tulsa Race Massacre Commission[387]), which was tasked with investigating the Tulsa massacre and recommending methods for reparations.[388] The Commission confirmed that hundreds of white people were responsible for looting, killing, and destroying property, enabled and assisted by Tulsa government officials.[389] The Commission found that the massacre caused $1.8 million in property damage—$25 million in today's dollars, though others estimate that the damage totaled $50 to $100 million in today's dollars.[390] However, the Commission found that no one, except one white pawnshop, was given any compensation for the damage to their property, and there was no other benefit or restitution for victims.[391]

Economically motivated violence was also directed at prosperous African American individuals, not just communities and neighborhoods. An illustrative case is that of Elmore Bolling, a successful African American man in Lowenesboro, Alabama.[392] He owned a small fleet of trucks that ran livestock and made deliveries, and he also leased a plantation where he had a general store with a gas station and a catering business.[393] At the peak of his business, Bolling employed 40 other African American people.[394] In December 1947, a group of white men showed up at Bolling's home where he lived with his

wife and seven children, shot him seven times, and left him in a ditch to die.[395] At the time of Bolling's death, the family had $40,000 in the bank and more than $5,000 in assets (approximately $500,000 in today's dollars), but creditors (or those who purported to be creditors) took the money, leaving the family with nothing.[396] As someone told the local newspaper at the time, "He was too successful to be a Negro."[397]

In addition to attacks on successful African American business owners, white people also committed racial violence against African American individuals who moved into white neighborhoods.[398] Their goal was to pressure the new African American residents to move away and maintain housing segregation, as discussed in Chapter 5, Housing Segregation.[399] Such violence consisted of pelting homes with rocks, throwing bricks and firebombs at homes, setting garages on fire, and beating African American neighbors in the streets.[400]

Political Terror

Just as groups of white people responded violently to African American economic gains, they also resorted to violence to set back African American political gains. African American voters, and political candidates favored by African American voters, were intimidated and sometimes murdered.[401] By using violence, white Americans kept their grip on political power. They used this power to oppress African Americans and prevent African Americans from achieving equal levels of wealth and political influence. In this way, even after slavery ended, African Americans were often prevented from achieving political power and influence.

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Ku Klux Klan parade on Pennsylvania Avenue, Washington D.C. with the U.S. Capitol Building in the background. (1926)

Reconstruction—and the resulting political gains made by African Americans—provoked violent backlash from white southerners.[402] Violence typically soared right before elections, as the Ku Klux Klan and other white supremacist groups strategically targeted their violence to deny African American voters access to the polls, or to sway election results by forcing African American voters to vote for Democrats.[403] As white supremacists killed thousands of African Americans over numerous attacks during Reconstruction,[404] the balance of power began to shift against Reconstruction and Republicans.[405]

For example, in 1868, in response to growing African American support for Republican candidates in St. Landry Parish, Louisiana, white people terrorized the African American community.[406] Over the course of two weeks, the attacks left more than 100 African American people dead—and by some estimates, over 200.[407] The white attackers achieved their intended effect: although the parish gave 5,000 votes to the Republican governor in the spring 1868 election, there was not a single Republican vote counted in the fall 1868 election in the parish.[408] The Republican Party was unable to recover in the parish for the remainder of Reconstruction.[409]

White supremacists also assassinated political figures. On the eve of the 1868 election, KKK members murdered James Hinds, a white Republican member of the U.S. House of Representatives who advocated for African American civil rights.[410] This was the first-ever assassination of a U.S. congressman.[411] When Benjamin Franklin Randolph, an African American state senator from South Carolina, was assassinated in 1868, the Ku Klux Klan was suspected of his murder, though no one was convicted of the crime.[412] Similarly, in 1875, election results split the Florida legislature evenly between Republicans and Democrats.[413] White supremacist assassins broke the tie by killing E.G. Johnson, an African American state senator, to give the Democrats a majority.[414]

After Reconstruction, Southern white politicians sought to advance white supremacy in state governments and to push back against federal laws protecting African American voting rights.[415] They relied on lynching and vigilante violence to achieve these political goals.[416] As the national lynching rate soared, in 1892, the Southern-dominated Democratic Party was able to win the White

BECAUSE OF POLITICAL TERROR

BLACK VOTING IN SOUTH CAROLINA DECLINED 97% 1876-1900

IMAGE SUPPLIED BY BETTMANN/BETTMANN VIA GETTY IMAGES

House and a majority of Congress.[417] In response, the Republican Party abandoned racial equality as part of its platform.[418] White supremacists were thus able to take control of state governments and pass laws that, in combination with racial terror, suppressed African American voters.[419] For instance, while more than 90,000 African American citizens voted in South Carolina in 1876, by the end of the 19th century, less than 3,000 African American citizens voted.[420] While African American people represented a majority of registered voters in Mississippi in 1868, only six percent of eligible African American people were registered to vote in Mississippi in 1890.[421] And in Louisiana, the number of African American registered voters dropped from 130,344 to 5,320 between 1896 and 1900.[422]

Voter suppression was not always enough for white supremacists. In one instance, they also directly overthrew the local government. After the 1898 election in Wilmington, North Carolina, armed white men overtook the Republican-led city government.[423] A months-long voter suppression agenda culminated on Election Day, when armed white men patrolled Wilmington to intimidate African American voters and their allies, and white supremacists threatened poll workers as they counted ballots.[424] In one precinct, a group of 150 to 200 white men caused a scuffle, and in the process, stuffed ballot boxes to secure their party's victory.[425] After the election, African American people were massacred in the street.[426] A mob of nearly 2,000 white people indiscriminately murdered between 30 and 100 African American men, women, and children, and forced 2,000 other African American residents off their property.[427]

Meanwhile, a mob of over 100 white men occupied the Wilmington city hall and forced city officials to resign under threat of violence.[428] All of those elected officials resigned and were replaced by men selected by an all-white committee.[429] The new city leadership fired all African American municipal employees, and banned prominent African American leaders, African American businessmen, and white Republicans from the city.[430] There was no state investigation of the violence in Wilmington, and the federal investigation produced no indictments.[431] To date, this has been the only successful coup d'état of a U.S. American government.[432]

Similar political violence continued into the 20th century. In Ocoee, Florida, on Election Day 1920, a mob of 250 white people, including KKK members, killed dozens of African Americans, set fire to their homes, and drove them out of the city to prevent them from voting.[433] This massacre has been called the "single bloodiest election day in modern American history."[434]

Due to this extensive history of violence and political repression, it was not always necessary for the KKK or other white supremacists to take direct violent action to intimidate African American voters from the polls.

After the 1898 election in Wilmington, North Carolina, armed white men overtook the government, murdered between 30 and 100 Black men, women, and children, and forced 2,000 other Black residents off their property. To date, this has been the only successful coup d'état of a U.S. American government.

Threats were often just as effective. For example, in August 1922, just a year after the Tulsa massacre, the KKK reportedly flew over Oklahoma City in airplanes, dropping cards into Black neighborhoods, warning people to be cautious before heading to the polls.[435] That same year, the Topeka State Journal reported that the KKK committed to staking out polling places in Texas to "take careful note of the voting procedure."[436]

Racist voter intimidation continues in contemporary times. During the 2016 election, neo-Nazi and white supremacist groups, including the KKK and the Oath Keepers, organized poll watchers in all 50 states, focusing on urban areas.[437] In the 2020 presidential debate, President Trump told his supporters to "go into the polls and watch very closely," and told a white supremacist organization, the Proud Boys, to "stand by."[438]

The racist overtones that surrounded the 2020 election culminated in the January 6, 2021 Capitol Riot, where armed white people violently stormed the U.S. Capitol while Congress was counting the electoral vote.[439] The rioters shouted racist epithets at African American Capitol Police officers, paraded around the Capitol waving a Confederate flag,[440] and built a gallows to hang a noose in front of the Capitol building.[441] This was the first time the Confederate flag was brought into the Capitol as an act of insurrection, something that was not even done during the Civil War.[442]

Further discussion of the use of violence and terror to suppress the development and rise of African American political power is in Chapter 4, Political Disenfranchisement.

Cross-Burning and Other Forms of Intimidation

Even when not physical in nature, the perpetrators of racial terror used the threat of violence to intimidate African Americans and preserve the American racial hierarchy. The Ku Klux Klan, for example, often conducted masked rides through towns at night to frighten African American residents, an intimidation technique that mirrored antebellum slave patrols.[443] As discussed above, slave patrols used violence to discipline enslaved persons, prevent uprisings, and capture enslaved persons who managed to escape.[444] Furthermore, the KKK's disguises were designed to capitalize on the superstitions of formerly enslaved people, and their activities resembled plantation scare tactics.[445]

The KKK also frequently burned crosses.[446] While the cross-burning itself may not have physically harmed anyone, it undoubtedly became a well-known symbol of racial terror to intimidate minorities.[447] During oral argument in *Virginia v. Black*, a 2002 case contemplating whether a state could criminalize burning a cross, Justice Thomas made a point of connecting the "symbol" of cross-burning to its terrorizing effect: the burning cross is "unlike any symbol in our society . . . . There's no other purpose to the cross, no communication, no particular message."[448] As he explained, the burning cross "was intended to cause fear and to terrorize a population."[449] In his opinion in the case, Justice Thomas observed that a cross-burning could serve only to "terrorize and intimidate": "In our culture, cross burning has almost invariably meant lawlessness and understandably instills in its victims well-grounded fear of physical violence."[450]

Government entities have also used tactics of racial intimidation to subjugate African American citizens and enforce white supremacy. The State of Mississippi, for example, created the Mississippi State Sovereignty Commission, which formally existed from 1956 to 1977, and was funded from the state budget.[451] The Sovereignty Commission was an intelligence organization targeting civil rights activists and engaged in spying, intimidation, false imprisonment, and jury tampering.[452] The Sovereignty Commission served as a model for similar agencies fighting to oppose racial justice in other states.[453] The Sovereignty Commission's activity was involved in the false imprisonment of Clyde Kennard.[454] Kennard, an African American man, attempted to integrate a segregated local college in Hattiesburg, Mississippi.[455] Files of the Sovereignty Commission reveal that state officials openly discussed that they would prefer to kill or frame Kennard rather than allow him to enroll.[456]

California

Western Vigilantism

In its first decades of statehood, California had a reputation for vigilantism, including extralegal executions by hanging.[457] For example, the lynching of people who committed crimes was a common method of "justice" in gold mines,[458] and Placerville was originally known as "Hangtown."[459] As in the South, California lynchings involved active participation by law enforcement.[460]

Ken Gonzales-Day, an expert in California lynchings, found evidence of 352 lynchings that occurred between 1850 and 1935, including of eight African Americans, but mostly of Native, Chinese, and Latino Americans.[461] (As discussed above, counts of lynchings are lower than the true number, due to lack of documentation and cover-up efforts.[462]) As was the case elsewhere in the United States, African American Californians were often lynched in response to labor disputes or alleged crimes.[463] In the 1871 Chinese massacre, 10 percent of Los Angeles (500 people) formed a mob and lynched 17 Chinese men and boys because they believed that Chinese people had killed a white saloon owner.[464] Barely anyone was held accountable for these and the other many murders of people of color.[465]

A 1933 lynching of two white kidnappers in San Jose put a stamp of approval on lynching nationwide.[466] The lynching received more attention than any other lynching in U.S. history, partly because the victims were white—an

anomaly for lynchings.[467] Then-California Governor James Rolph praised the lynchers and vowed to pardon them if they were charged.[468] Although the victims in the San Jose lynching were white, anti-lynching activists understood at the time that African Americans, who were the typical target of lynchings, would face the repercussions for the glorification of the San Jose lynching.[469] As such, they swiftly and widely condemned the lynching and the Governor's response.[470]

Fearful of a growing Black population, and emboldened by the silence and cooperation of police and government officials, the KKK initiated a new wave of violent activity in the late 1930s and 1940s to stem the influx of Black populations—or to keep Black people entirely out of white communities.

The anti-lynching activists were correct: mobs in other parts of the country followed the Governor's enthusiastic endorsement to perpetrate their own lynchings, mostly of African Americans.[471] The fact that the San Jose lynching occurred in the West underscored that lynching was a national, not solely Southern, problem.[472] But the lynching and the subsequent praise of the mob by the Governor also lent credibility to the practice of lynching and decoupled its exclusive association with Jim Crow.[473] The *New York Times* reported in 1933 that southerners widely reacted to the San Jose lynching by remarking, "California's my address from now on," or "those Westerners are learning how the South handles 'em."[474] The *Times* concluded that, by endorsing the practice of lynching, the Governor of California had gone *further* than some Southern governors who had sought to prevent lynchings.[475]

Backlash against African American Prosperity

As was the case elsewhere in the country, the Ku Klux Klan and other perpetrators of racial violence in California focused their attacks against those who threatened the system of racial and socioeconomic subjugation of African Americans—those African American people who found well-paying jobs, amassed wealth, bought homes, used public pools and parks, and otherwise engaged in civil society.

The surge of KKK activity, and its accompanying violence, was connected to the migration of over a quarter million African Americans to California during World War II—the state with the largest increase in its African American population during that time.[476] The "Great Migration" was inspired, at least in part, by the recurring incidents of racial terror throughout the South, as well as the poor economic, political, and social conditions that African American Southerners experienced.[477] California, which was experiencing a dramatic increase in manufacturing jobs during World War II, was an appealing destination.[478] California's African American wartime workers, as the African American press noted, had a higher standard of living compared to African American workers in the South.[479] Simultaneously, new KKK members moved to California during World War II just as African American homeowners renewed their offensive against restricted housing.[480]

The comparative freedoms that African American Californians enjoyed motivated white supremacists to organize against African American workers and homeowners (as well as other non-white veterans, such as Mexican and Japanese veterans, returning from the war).[481] White people were threatened by African Americans with good jobs who purchased property, voted, and inhabited public spaces and institutions.[482] Fearful of a growing African American population, and emboldened by the silence and cooperation of police and government officials, the KKK initiated a new wave of violent activity in the late 1930s and 1940s to stem the influx of African American populations—or to keep African American people entirely out of white communities.[483] For instance, the KKK's resurgence in the Inland Empire and Southern California in the 1940s was linked to the gains made by African American workers, homeowners, and civil rights activists.[484]

Throughout California, the revived KKK had one primary goal: to enforce racial segregation and maintain the social inferiority of African Americans.[485] They aimed to keep neighborhoods, schools, pools, parks, and beaches all-white and monitor people of color who transgressed racial boundaries.[486] For further discussion of residential segregation, see Chapter 5, Housing Segregation.

Violence Against African American Homeowners

Violence to stifle and reverse African American advancement was perhaps most evident in the attacks on African American homeowners during the 1940s. As new African American migrants were able to afford homeownership, white supremacist backlash grew.[487] The Ku Klux Klan sought to promote segregation and prevent the integration of African American residents into white neighborhoods.[488] Violence against African American homeowners in California peaked in the 1940s.[489] The KKK mainly relied on arson and physical attacks on homeowners to intimidate people of color from buying in majority-white neighborhoods.[490] This

practice dates back to 1909, when white Pasadena residents set fire to the homes of African American arrivals in the neighborhood.[491]

This violence was thoroughly racist. The violence against African American homeowners was not caused by concern over a "lower social class of neighbors," as the African American homeowners were often of a higher occupational and social status than the white attackers.[492] Similarly, when African American homeowners moved into a neighborhood, they took better care of their homes and lawns than their white neighbors.[493]

The murder of O'Day Short, a refrigeration engineer, is emblematic of the racial terror perpetrated against African American communities during the 1940s in California. After he and his family moved into the white neighborhood of Fontana in 1945, Short was threatened by police, and a local vigilante group said it wanted the Shorts out of the neighborhood.[494] On December 6, 1945, two weeks after they moved in, the Shorts died in a house fire that killed the family of four.[495] As with much of the violence against African Americans, state officials failed to hold anyone accountable for the murder, and inexplicably blamed the fire on the Shorts.[496] ThenCalifornia Attorney General Robert W. Kenny investigated the murder, but the report failed to confirm that vigilantes caused the fire or that there was any vigilante activity in the community.[497] The NAACP called the report a "white wash."[498]

Violence against Black homeowners in California peaked in the 1940s. The KKK mainly relied on arson and physical attacks on homeowners to intimidate people of color from buying in majority-white neighborhoods. This practice dates back to 1909, when white Pasadena residents set fire to the homes of Black arrivals in the neighborhood.

The murder of the Shorts, and the subsequent failure to hold the perpetrators accountable, confirmed to the power of white supremacy in California. A Los Angeles Sentinel editorial said: "Jim Crow had kept Short from finding a home in Los Angeles; Jim Crow had cast him in the role of a violator of Community traditions if he built a house on the lot he purchased; Jim Crow had warped the sense of duty of deputy sheriffs to the extent that they themselves had joined in a plan to deprive an American citizen of his constitutional rights...All the Shorts are dead. Only Jim Crow is alive."[499]

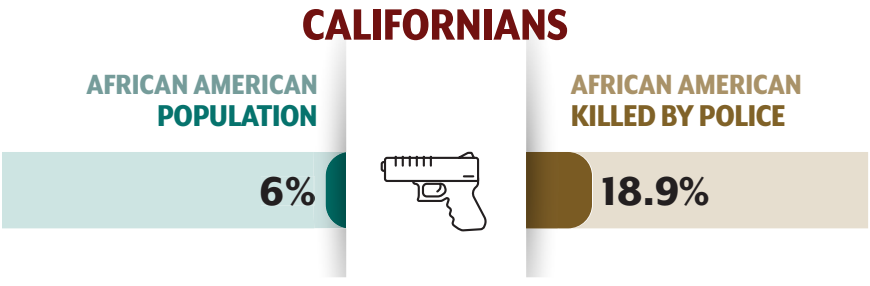
Within months following the explosion at the Shorts' home, African American homeowners were increasingly under attack by the KKK in Southern California.[500] For example, the KKK staged a comeback in Big Bear Valley focused on restrictive covenants, violence, and cross burnings.[501] The KKK's stated goal was to achieve a "One Hundred Per Cent Gentile Community."[502]

Coercive Sterilization

As discussed in Chapter 12, Mental and Physical Harm and Neglect, California was one of the first states to begin forcibly sterilizing people in the early 1900s, and conducted by far the most sterilizations in the United States (one third of the nationwide total).[503] From 1909 to 1979, under the state eugenics law, California state institutions forcibly sterilized approximately 20,000 people deemed "unfit to produce."[504] While men made up the majority of sterilizations at first, by the 1930s, women were more frequently the subject of sterilizations, and in the middle of the century, nearly all of the operations were performed on women.[505] African American people were also disproportionately sterilized in California.[506] They constituted just over one percent of California's population in the 1920s, yet they accounted for four percent of total sterilizations by the State of California.[507]

Extrajudicial Police Violence

Scholars have argued that extrajudicial violence by police officers represents a modern form of lynching. In California, since 2015, 158 African American people were shot and killed by police, at least 16 of whom were known to be unarmed.[508] Among those whose race and ethnicity were known, African American people represent 18.9 percent of those killed by the police, despite representing only six percent of the population.[509] Those responsible for these killings have largely never been found to be



criminally liable.[510] The Los Angeles Times reports, for example, that since 2001, Los Angeles County law enforcement has killed over 900 people—nearly 80 percent of whom were African American or Latino.[511] On average, one police shooting occurred every five days.[512] Out of all of those cases, only two officers were charged as a result of a civilian shot on duty, and in virtually all of the cases, the Los Angeles County District Attorney deemed the use of force legally justified.[513] Similarly, officers with the Vallejo Police Department killed 19 people from 2010 to 2020, but no Vallejo police officer has been found to be criminally liable for killing a civilian while on duty.[514]

Below are only a few examples of the hundreds of incidents where police have used extrajudicial violence in California to inflict pain or cause death, a topic that is discussed in greater detail in Chapter 11 An Unjust Legal System. In general, these acts of violence were often the result of officers enflaming or failing to de-escalate the situation, and sometimes occurred in a manner that appeared to show little regard for the African American lives harmed or killed. Taken together, these incidents can be understood to perpetuate the myth of African American criminality and function as a threat to the overall well-being of African American people, whom law enforcement may often consciously or unconsciously view as dangerous criminals.

- In 1991, four LAPD officers repeatedly beat Rodney King on the ground with batons for 15 minutes while a dozen officers stood by and watched.[515] He was unarmed.[516] The officers had used racial slurs to refer to King over the LAPD communications systems.[517] The officers who committed the beating—three of whom were white—were acquitted, which sparked local unrest.[518]

- In 1998, four officers were called to help Tyisha Miller, who had locked herself in the car and fallen asleep.[519] When the officers failed to wake her from outside, they broke her window to grab the firearm that was sitting in her lap.[520] That caused Miller to bolt upright, and the officers shot her out of fear—firing 24 bullets and shooting her 12 times in the chest.[521] While the officers were fired, the U.S. Justice Department's civil rights division—as well as the California Department of Justice, which was conducting a civil investigation into the police department as a whole—declined to bring charges against the individual officers.[522]

- On New Years' Day 2009, Bay Area Rapid Transit police officers responded to a report of fighting on a train.[523] One officer pinned Oscar Grant down with a knee on his neck.[524] While Grant was lying face-down, the other officer purportedly mistook his gun for a Taser and shot Grant.[525] The officer who shot Grant was convicted of involuntary manslaughter.[526]

- In November 2013, Tyler Damon Woods was shot by police while on his knees after fleeing a traffic stop by foot.[527] The officers believed he was armed, which was inaccurate, and shot at Woods approximately 39 times.[528] Nineteen bullets hit him, six of which were each individually enough to kill Woods.[529] The police continued to shoot him, claiming he exhibited superhuman resilience.[530]

- In 2019, Vallejo police responded to a wellness request for Willie McCoy, a 20-year-old African American man who was asleep in his car in a Taco Bell parking lot.[531] Six officers surrounded the cars when McCoy started to wake up.[532] The police claimed that McCoy was reaching for a firearm—which did not appear to be supported by the police video—and six police officers fired 55 shots at McCoy, killing him.[533] All of the officers involved in the shooting returned to their regular duties. McCoy's family said McCoy was "executed by a firing squad."[534]

In the 1990s, a federal district court found that a group of deputies in the Los Angeles County Sheriff's Department, known as the Lynwood Vikings, was "a neo-Nazi, white supremacist gang" that engaged in "terrorist-type tactics" with the knowledge and acquiescence of their superiors. The court found that these gangs committed "systemic acts of shooting, killing, brutality, terrorism, house-trashing, and other acts of lawlessness and wanton abuse of power," particularly against Latinos and Black people.

- In August 2020, the Los Angeles County Sheriff's Department stopped Dijon Kizzee for "riding a bicycle on the wrong side of the road" and "splitting traffic."[535] Kizzee refused to stop, abandoned his bicycle, and fled on foot.[536] The Sheriff's office claims that deputies fired when Kizzee reached back to pick up a gun he dropped, but video evidence appears to contradict this claim.[537] An independent autopsy concluded that Kizzee was struck 15 times by two deputies' 19 rounds.[538] After they fired, the deputies called for backup, and Kizzee bled to death on the street.[539]

There have also been incidents where law enforcement officers in California have participated in racist, nativist, and sexist social media activity online; showed white supremacist sympathies; or worse, systematically carried out attacks against minority members of the community.[540] In the 1990s, a federal district court found that a group of deputies in the Los Angeles County Sheriff's Department, known as the Lynwood Vikings, was "a neo-Nazi, white supremacist gang" that engaged in "terrorist-type tactics" with the knowledge and acquiescence of their superiors.[541] The court found that these gangs committed "systemic acts of shooting, killing, brutality, terrorism, house-trashing, and other acts of lawlessness and wanton abuse of power," particularly against Latinos and African American people.[542] In 1996, the Sheriff's Department paid $9 million in fines and training costs to settle the matter.[543] Despite that settlement, according to independent reports, law enforcement gangs still allegedly thrive in low-income, high-minority areas of Los Angeles, where they have allegedly committed excessive force against minority members of the communities, sometimes using racial epithets while doing so.[544]

V. Legacy: Devaluing African American Lives

As discussed above, racial terror played a critical role in white efforts to subjugate African American people to an inferior economic, political, and social stature and maintain the caste structure that was established during enslavement. As such, racial terror has contributed to many racial inequities in America today.[545] While African American communities have remained resilient in the face of numerous structural, social, economic, and political barriers, the threat of racial violence continues to harm African Americans.[546]

Criminal Justice

The legacy of the Ku Klux Klan's infiltration of law enforcement continues today. Law enforcement officers in at least 14 states, including California, have been tied to white supremacist groups and far-right militant activities.[547] Advocates and scholars have argued that police killings of unarmed African American people should be understood as the modern-day equivalent of lynching. Just as the threat of lynching controlled African Americans, the threat of murder by police imposes controls on the lives of African Americans. Today, some African American parents feel compelled to educate their children early on about how to interact with racialized targeting by the police.[548] As was the case with lynchings, those involved in these extrajudicial killings are only rarely held accountable for their actions.[549]

Created during enslavement in order for white enslavers to control African American enslaved people, and perpetuated through lynchings, the racist myth that African American people are criminals continues today. As discussed in Chapter 11, An Unjust Legal System, this myth of African American criminality still contributes to racial disparities between African Americans and white Americans in arrests, convictions, and imprisonment.[550] The death penalty, which scholars argue is a vestige of racialized violence against African Americans, also discussed in Chapter 11 An Unjust Legal System, disproportionately kills African Americans.[551] Death penalty lawyer Stephen B. Bright argues that capital punishment in the United States is so thoroughly compromised by bias and racial disparities that it must be understood as "a direct descendent of lynching."[552]

Economic Effects

Violence and terror targeting African Americans has directly destroyed African American wealth—which has a compounding effect over time to prevent African Americans from amassing more wealth and thus contributing greatly to the wealth gap.[553] The disparities are stark: white Americans have seven times the wealth of African Americans.[554] Although African American people make up nearly 13 percent of the U.S. population, they hold less than three percent of the nation's wealth.[555] The median family wealth for white people is $171,000, compared to $17,600 for African American people.[556] And 19 percent of African American households have zero or negative net worth, compared to nine percent of white families.[557]

The effect of violence by the Ku Klux Klan, buttressed by the support of law enforcement, real estate brokers, and federal loan programs, paved the way for segregated neighborhoods with unequal city services for Black neighborhoods.

Lynchings, police brutality, and other forms of violence and intimidation were used to seize land from African American farmers, rendering African Americans landless and unable to accumulate generational wealth.[558] Although African American farmers collectively increased their land holdings at a greater rate than whites between 1900 and 1920, African American farm owners lost 57 percent of their land, whereas white farm owners lost 22 percent of their land, from 1900 to 1978.[559]

Images of mutilated bodies on public display or dragged through the streets traumatized the psyche of African Americans. These images left an especially indelible impression on Black children, framing their view of the world as a dangerous and unpredictable place, and causing lifelong damage.

Similarly, rates of African American homeownership have stagnated and declined. In 1909, 36 percent of African American residents of Los Angeles were homeowners before the implementation of policies and carrying out of violent acts designed to prevent African American home ownership.[560] By 2021, the rate of African American homeownership had declined to 34 percent.[561]

The effect of violence by the Ku Klux Klan, buttressed by the support of law enforcement, real estate brokers, and federal loan programs, paved the way for segregated neighborhoods with unequal city services for African American neighborhoods.[562] In Los Angeles, for example, African American residents were pushed to neighborhoods like Watts, while the city stopped running street cars that would have transported African American workers to shipyard and aircraft jobs in other parts of the city, limiting African American employment opportunities.[563] Even though KKK activities declined after the 1940s, the KKK had already succeeded in restricting African American opportunities for wealth and homeownership at a time of significant economic opportunity after the end of World War II.[564]

Although the 1968 Fair Housing Act made violence to prevent neighborhood integration a federal crime, and the U.S. Department of Justice prosecuted several cases, frequent attacks on African Americans attempting to move into predominantly white areas continued into the 1980s, with 130 cases of move-in violence in 1989 alone.[565] Not until the late 1980s were a majority of these crimes prosecuted.[566] The broad lack of enforcement sent a message that these crimes were tolerable, which emboldened perpetrators to continue their violent actions.[567]

Impact on Health and Family Life

Fear of racial terror, past and present, has also resulted in trans-generational trauma for African Americans. African American families and communities were profoundly affected by lynchings.[568] The constant threat of lynching affected interpersonal interactions.[569] Family members of victims could not obtain justice out of fear that they too would be lynched, and they were often frightened to even attend a funeral of their lynched loved one.[570] Images of mutilated bodies on public display or dragged through the streets traumatized the psyche of African Americans.[571] These images left an especially indelible impression on African American children, framing their view of the world as a dangerous and unpredictable place, and causing lifelong damage, including sleep disturbances, flashbacks, and emotional detachment.[572]

These psychological traumas have extended across generations. Violence has reinforced white supremacist cultural and institutional systems, while the arbitrary nature of lynching socialized African American people to understand that any act of perceived insubordination could be a matter of life or death.[573] In this way, racial terror was a powerful tool for social, educational, and political control, as it encouraged African American people to change their own behavior and avoid opportunities for advancement, lest they risk being the victim of violence.[574] African Americans continue to experience the effects of trauma induced by racial terror today, including heightened suspicion and sensitivity to threat, chronic stress, decreased immune system functioning, and greater risks of depression, anxiety, and substance use.[575]

The history of racial terror has influenced the use of violence by both white people and African American people in the present day.[576] For example, in Mississippi and North Carolina, studies show that African American people are killed at a higher rate in counties that had more lynchings and anti-civil-rights violence.[577] The legacy of racial terror encourages vigilante violence among white communities.[578] And, in African American communities, the government's failure to protect African Americans from lynching has fostered the use of violence for self-help.[579] As a result, criminologists have linked higher rates of African American involvement in crime with the violent racial subordination of African Americans.[580]

VI. Conclusion

As a badge of slavery, racial terror has enforced the domination of a racial hierarchy set in place in service of slavery. After the formal end of slavery, racial terror became a method by which white Americans and the nation as a whole sought to keep African Americans as poor and powerless as they had been while enslaved. From slavery through to the present day, racial terror has gravely harmed African Americans mentally and physically.

Racial terror often takes direct forms, such as physical assault, threats of injury, and destruction of property. It also inflicts psychological trauma on those who witness the harm and injury.[581] Lynchings and other forms of racial terror occurred in communities where African Americans today remain marginalized, disproportionately poor, overrepresented in prisons and jails, and underrepresented in positions of influence. The traumatic experience of surviving mass violence creates insecurity, mistrust, and alienation—psychological harms that were amplified by the dangers inherent in navigating Southern racial boundaries.[582] Lynchings in the American South were not isolated hate crimes committed by rogue vigilantes. Lynchings were targeted racial violence that formed part of a systematic campaign of terror perpetrated in furtherance of an unjust social order. Selective public memory compounds the harm of officials' complicity in lynching and maintains the otherness of African American people.[583]

The same is true of other forms of racial terror such as mob violence, torture, extrajudicial violence, sterilization and sexual violence, and economic and politically influenced terror. Racialized terror is woven into the fabric of America, and although many racial groups have been victims, perhaps no racial group has been targeted more than African Americans. From the violence of enslavement to contemporary police killings, both actual and threatened violence against African Americans has functioned to establish and maintain white supremacy.[584] Federal, state, and local governments have been complicit in the infliction of terror through silence, failure to hold the perpetrators accountable, and even on some occasions, endorsement of the actions. California is no exception; the state, its local governments, and its people have played a significant role in enabling racial terror and its legacy to persist here in California.

The tactics of white supremacy at any time in history are simultaneously overtly violent and subversively traumatic for African Americans. Racial terror remains the constant backdrop and tool for other forms of discrimination intended to exert control of African Americans—from redlining and segregated schools to disparate healthcare and denial of bank loans—that has prevented many African Americans throughout history from living a dignified life of equal opportunity.

Endnotes

[1] See Equal Justice Initiative (EJI), *Lynching in America: Confronting the Legacy of Racial Terror* (2015), p. 3 (as of April 4, 2022) (EJI 2015).

[2] *Ibid.* at p. 3.

[3] Coates, *The Case for Reparations*, The Atlantic (June 2014) (as of April 4, 2022) (Case for Reparations); Byman, *The Failure of Counterterrorism After the Civil War*, Lawfare (Aug. 22, 2021) (as of April 4, 2022) (Lawfare); Niraj Chokshi, *Racism at American Pools Isn't New: A Look at a Long History*, N.Y. Times (Aug. 1, 2018) (as of April 4, 2022).

[4] EJI 2015, *supra*, at p. 3, 7; EJI, *Lynching in America: Confronting the Legacy of Racial Terror: Third Edition* (2017), pp. 48-50, 65, 73 (as of April 4, 2022) (EJI 3d ed.); Wilkerson, *Caste: The Origins of Our Discontents* (2020), p. 151 (Caste); Lee, *How America's Vast Racial Wealth Gap Grew: By Plunder*, N.Y. Times, (Aug. 14, 2019) (as of April 4, 2022) (Lee); *Case for Reparations*, *supra*; *Lawfare*, *supra*.

[5] EJI 3d ed., *supra*, at pp. 65, 68-69.

[6] EJI 2015, *supra*, at pp. 19-20, 22-23; EJI 3d ed., *supra*, at p. 65.

[7] Niedermeier, *The Color of the Third Degree* (2019), pp. 17-19 (Third Degree); United Nations General Assembly, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America* (Aug. 18, 2016), p. 16 (U.N. Working Group Report); Love, *The Trayvon Martin case reveals a vigilante spirit in the US justice system*, The Guardian, (Apr. 7, 2012) (as of April 4, 2022) (Trayvon Martin).

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[9] Bump, *The long history of black voter suppression in American politics*, The Washington Post, (Nov. 2, 2016) (as of April 4, 2022) (Bump); Buhl, *Donald Trump's Call to Militia to 'Watch' Polling Places Raises Fears of Voter Intimidation*, Newsweek, (Oct. 17, 2020) (as of April 4, 2022).

[10] Caste, *supra*, at p. 17.

[11] *Ibid.*

[12] *Id.* at pp. 19, 52.

[13] *Id.* at p. 151.

[14] *Ibid.*

[15] U.S. Const., 10th Amend.; *United States v. Morrison* (2000) 529 U.S. 598, 618.

[16] Caste, *supra*, at pp. 151, 153; EJI 2015, *supra*, at p. 18.

[17] *Id.* at pp. 152, 154.

[18] *Id.* at pp. 153-55.

[19] *Ibid.*

[20] *Id.* at pp. 151-154.

[21] See, e.g., Thomas Wentworth Higginson, *The Story of Denmark Vesey* The Atlantic (June 1861) (as of April 4, 2022) (Higginson).

[22] *Ibid.*

[23] *Ibid.*

[24] *Ibid.*

[25] *Ibid.*; see also Michael P. Johnson, *Denmark Vesey and His Co-Conspirators* (Oct. 2001) 58(4) William and Mary Quarterly 915, 919, 945-48 (Johnson).

[26] Johnson, *supra*, at p. 949.

[27] Higginson, *supra*.

[28] See generally Johnson, *supra*.

[29] Philip D. Morgan, *Conspiracy Scares* (Jan. 2002) 59(1) William and Mary Quarterly 159, 163.

[30] EJI 3d ed., *supra*, at p. 10.

[31] Foner, *South Carolina's Forgotten Black Political Revolution* Slate (Jan. 31, 2018) (as of April 4, 2022); EJI 3d ed., *supra*, pp. 10-12.

[32] Lawfare, *supra*; Ifill, *Creating a Truth and Reconciliation Commission for Lynching* (Summer 2003) 21 Law & Ineq. 263, 273 (Ifill).

[33] Hinson, *Land Gains, Land Losses: The Odyssey of African Americans Since Reconstruction* (May-Sept. 2018) 77(3-4) Am. J. of Economics and Sociology 893, 909-10 (Hinson).

[34] *Id.* at p. 911, citing Schweninger, Black Property Owners in the South, 1790-1915 (1990), p. 176.

[35] National Center for Education Statistics, *120 Years of American Education: A Statistical Portrait* (Jan. 1993), p. 21, tbl. 6 (as of April 4, 2022).

[36] Lawfare, *supra*.

[37] Third Degree, *supra*, at p. 16.

[38] *Ibid.*

[39] Case for Reparations, *supra*; Caste, *supra*, at p. 155; Third Degree, *supra*, at p. 17.

[40] U.N. Working Group Report, *supra*, at p. 16; Trayvon Martin, *supra*.

[41] Caste, *supra*, at p. 228.

[42] Ifill, *supra*, at p. 274.

[43] Lawfare, *supra*.

[44] Ifill, *supra*, at pp. 273-74; Lawfare, *supra*.

[45] Ifill, *supra*, at pp. 273-74; Lawfare, *supra*.

[46] Martha T. McCluskey, *Facing the Ghost of* Cruikshank *in Constitutional Law* (Nov. 2015) 65(2) Journal of Legal Education 278, 280-81 (McCluskey); see generally Michael S. Smith, The Lost Freedmen's Town of Hamburg, South Carolina (2021); see also Renetta DuBose, *The Untold Story of Hamburg, SC*, WJBF (Feb. 22, 2021) (as of April 4, 2022).

[47] McCluskey, *supra*, at pp. 280-81.

[48] *Ibid.*

[49] EJI 2015, *supra*, at p. 7.

[50] *Ibid.* at p. 7; EJI 3d ed., *supra*, at p. 27.

[51] Caste, *supra*, at pp. 90-91, 151, 155; Third Degree, *supra*, at p. 20; Jordan, *A History Lesson: Reparations for What?* (2003) 58 N.Y.U. Ann. Surv. Am. L. 557, 593 (Jordan); Ward, *Critical Race Theory and Empirical Methods: Microclimates of Racial Meaning: Historical Racial Violence and Environmental Impacts* (2016) 2016 Wis. L. Rev. 575, 607-08 (Ward); Ifill, *supra*, at pp. 267, 279-80, 284.

[52] EJI 2015, *supra*, at p. 7; EJI 3d ed., *supra*, at p. 73; Case for Reparations, *supra*; Klanwatch Project of the Southern Poverty Law Center, *Ku Klux Klan: A*

History of Racism and Violence (2011), pp. 14, 18 (as of April 4, 2022) (SPLC History); Eckstrand, The Ugliness of Trolls: Comparing the Strategies/Methods of the Alt-Right and the Ku Klux Klan (2018) 10(3) Cosmopolitan Civil Societies: an Interdisciplinary J. 41, 46, (as of April 4, 2022) (Eckstrand).

[53] EJI 2015, *supra*, at pp. 3, 7; EJI 3d ed., *supra*, at pp. 48-50, 73; Case for Reparations, *supra*; SPLC History, *supra*, at pp. 14-15, 18; Eckstrand, *supra*, at pp. 46-47; Lawfare, *supra*; Human Rights Watch, The Case for Reparations in Tulsa, Oklahoma: A Human Rights Argument, at p. 6 (May 2020) (as of April 4, 2022) (Human Rights Watch).

[54] See, e.g., Tara McAndrew, The History of the KKK in American Politics, JSTOR Daily (Jan. 25, 2017) (as of April 4, 2022).

[55] SPLC History, *supra*, at p. 4.

[56] *Id.* at pp. 4-5, 7, 25-26, 51.

[57] See generally SPLC History.

[58] *Id.* at pp. 9, 15.

[59] *Id.* at pp. 8, 10.

[60] Ifill, *supra*, at pp. 272-274; Balleck. *Hate Groups and Extremist Organizations in America: An Encyclopedia* (2019), at pp. 179-180 (Hate Groups); Lawfare, *supra*.

[61] Hate Groups at p. 179.

[62] SPLC History, *supra*, at pp. 8, 10, 12, 14.

[63] *Id.* at pp. 10-11.

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[197] EJI 3d ed., *supra*, at p. 61.

[198] EJI 2015, *supra*, at p. 21.

[199] *Id.* at pp. 3, 7. The Task Force recognizes that "lynching" has been defined differently at various points in history by the entities who recorded incidents of lynching. This has presented challenges in terms of tracking lynching data and assessing the complete impact of racial terror. Hudson, *supra*, at p. 135. For the purposes of this section, the Task Force uses "lynching" to refer to acts of terrorism, specifically the murder of one or more individuals by hanging, where the public or community supported the action. Hudson, *supra*, at p. 135. Lynchings are distinct from other forms of racial violence and hate crimes that were prosecuted as criminal acts.

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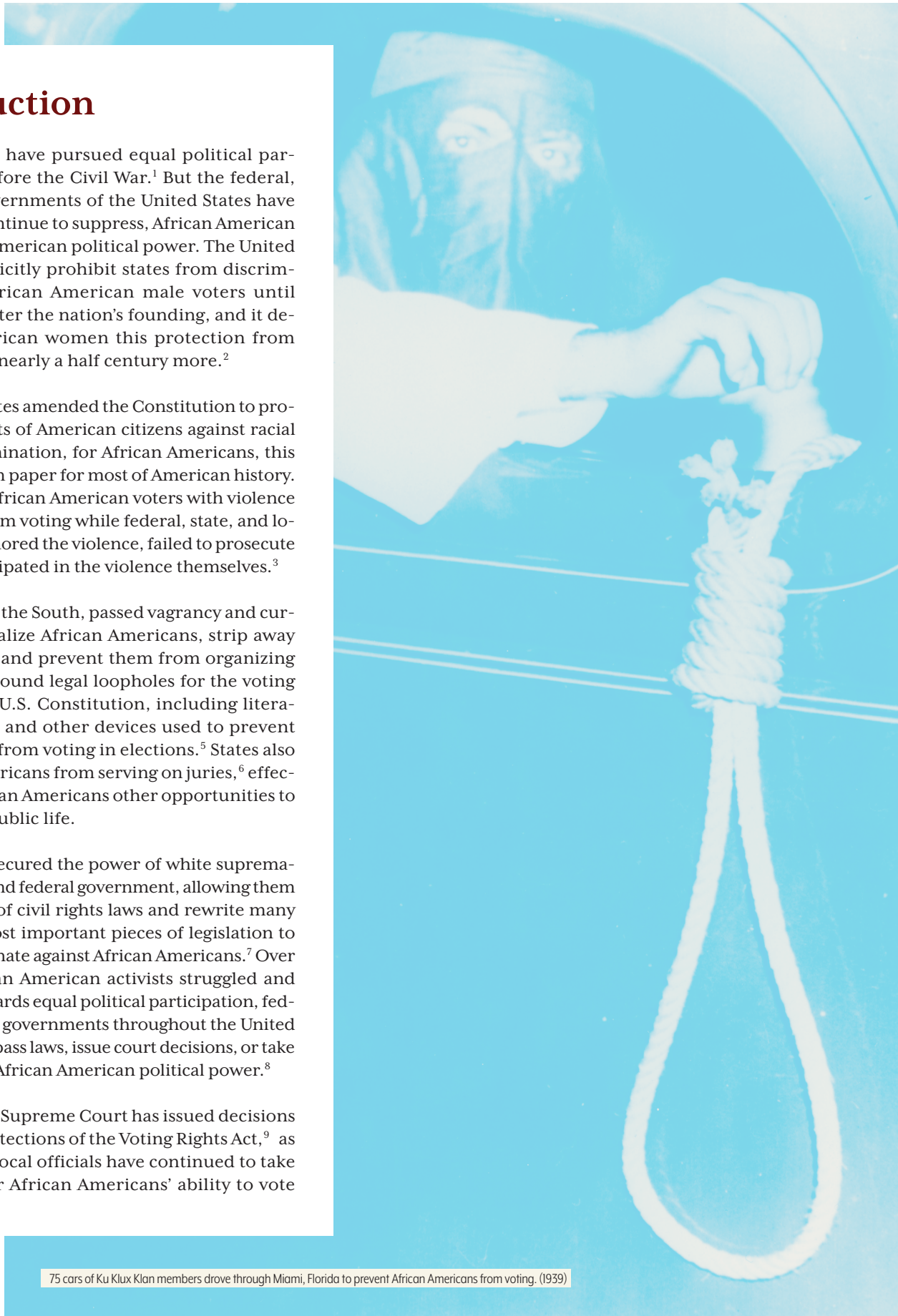
CHAPTER 4 Political Disenfranchisement

COURTESY OF IMAGNO/HULTON ARCHIVE VIA GETTY IMAGES



I. Introduction

African Americans have pursued equal political participation since before the Civil War.[1] But the federal, state, and local governments of the United States have suppressed, and continue to suppress, African American votes and African American political power. The United States did not explicitly prohibit states from discriminating against African American male voters until almost a century after the nation's founding, and it denied African American women this protection from discrimination for nearly a half century more.[2]

After the United States amended the Constitution to protect the voting rights of American citizens against racial and gender discrimination, for African Americans, this right existed only on paper for most of American history. Whites terrorized African American voters with violence to prevent them from voting while federal, state, and local governments ignored the violence, failed to prosecute offenders, or participated in the violence themselves.[3]

States, especially in the South, passed vagrancy and curfew laws to criminalize African Americans, strip away their right to vote, and prevent them from organizing politically.[4] States found legal loopholes for the voting protections in the U.S. Constitution, including literacy tests, poll taxes, and other devices used to prevent African Americans from voting in elections.[5] States also barred African Americans from serving on juries,[6] effectively denying African Americans other opportunities to serve in civic and public life.

These restrictions secured the power of white supremacists in local, state, and federal government, allowing them to block hundreds of civil rights laws and rewrite many of the country's most important pieces of legislation to exclude or discriminate against African Americans.[7] Over centuries, as African American activists struggled and made advances towards equal political participation, federal, state, and local governments throughout the United States continued to pass laws, issue court decisions, or take actions to smother African American political power.[8]

In recent years, the Supreme Court has issued decisions eliminating the protections of the Voting Rights Act,[9] as federal, state, and local officials have continued to take actions that impair African Americans' ability to vote

75 cars of Ku Klux Klan members drove through Miami, Florida to prevent African Americans from voting. (1939)

and express their political voice. Despite the historical advancements African Americans have made in political participation, African Americans remain underrepresented, both in elected office[10] and in the policies enacted to meet African American communities' needs.[11]

California imposed similar restrictions on African American political participation throughout its history.[12] Though California professed to be a free state when it joined the union, white and African Americans did not possess the same freedoms. California refused to ratify the Fourteenth and Fifteenth Amendments for nearly a century,[13] and it built many of the same barriers to African American political participation as those used in the South, such as poll taxes, literacy tests, and the disenfranchisement of people convicted of felonies.[14] The state also enacted other legal barriers, such as its law banning any non-white person from testifying in any court case involving a white person.[15] While California eventually eliminated many of these restrictions,[16] its adoption of these discriminatory practices has had longstanding effects on Black political participation, representation, and the current inequalities that persist within the state.[17]

This chapter begins in section II by discussing the long history of white officials portraying African American political participation as a threat to undermine African American political power and maintain racial subordination. Section III discusses the early history of African American political participation, from America's founding to the end of Reconstruction. Section IV and V describes the many devices that local, state, and federal official have used to suppress African American political power, as well as the voting rights legislation that the United States and California have enacted after centuries of African American sacrifice and struggle. This chapter ends in Section VI by describing the consequences of both past and present efforts to suppress African American political participation, and how the exclusion of African Americans from political power have produced deep inequalities in the policies that shape America and the lives of African Americans.

Senator Richard Nixon promised "law and order" during the presidential campaign of 1968, preying on white fears of social upheaval amidst the civil rights movement. Nixon's victory in 1968 began what became known as the Republican "Southern Strategy": winning votes from the South by appealing to racial prejudice.

II. Political Demonization of African Americans

White politicians have long portrayed African American political participation as a threat in order to undercut African American political power and maintain the racial hierarchy of enslavement, even after Emancipation.[18]

During and after Reconstruction, white southern Democrats used fears of African American political power to propel themselves into office.[19] For example, in 1870, West Virginia Democrats used the ratification of the Fifteenth Amendment to provoke fear that African Americans would threaten the "white man's government."[20] After Democrats won the governor's seat and control of the state legislature in West Virginia, one Republican observed that "[h]ostility to negro suffrage was the prime element of our defeat."[21] In 1901, the President of the Alabama Constitutional Convention warned against the "menace of negro domination" to justify the state's efforts "to establish white supremacy in this State."[22]

White politicians continued to employ the same tactics throughout the 20th century and into the 21st century. Despite the nonviolent protests led by Dr. Martin Luther King, Jr. and others during the civil rights movement in the 1950s and 1960s, white Americans portrayed African American civil rights activists as violent rioters and criminals.[23] Exploiting this racist imagery, then-Senator Richard Nixon promised "law and order" during the presidential campaign of 1968, preying on white fears of societal upheaval amidst the civil rights movement.[24] This move contributed to Nixon's victory in the 1968 election, beginning what became known as the "Southern Strategy": the Republican strategy to win votes from the South by appealing to the racial prejudice of white southerners.[25]

In 1981, Republican campaign strategist Lee Atwater described the evolution of the Southern Strategy, shifting from express racial discrimination to more indirect dog whistles: "You start out in 1954 by saying, 'Nigger, nigger, nigger.' By 1968 you can't say 'nigger'—that hurts you, backfires. So you say stuff like, uh, forced busing, states' rights, and all that stuff, and you're getting so abstract. Now, you're talking about cutting taxes, and all these

things you're talking about are totally economic things and a byproduct of them is, [B]lacks get hurt worse than whites.... 'We want to cut this,' is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than 'Nigger, nigger.'"[26]

Lee Atwater continued this strategy in the presidential election of 1988. With George H.W. Bush trailing his rival by 15 points in the polls, Atwater convinced the campaign to shift gears and go on the attack.[27] The weapon they would use: an African American man named Willie Horton.[28]

Released from penitentiary in the state governed by Bush's rival, Willie Horton was convicted and incarcerated for sexually assaulting a white woman.[29] Preying on stereotypes and fears of African American criminality and African American assault on white womanhood, Atwater and the Bush campaign played television ads prominently displaying Horton's African American face over ominous warnings, to great success. In focus groups, half of prospective voters almost immediately switched to supporting Bush after seeing the ad.[30] In practice, the ad helped transform Bush's 15 point deficit into a presidential victory, 426 electoral votes to 111.[31] When critics pointed out the racial fearmongering of the Horton ad, the Bush campaign tried to distance itself from it.[32]

The federal government erased the humanity of enslaved Black people in many ways. The 1850 and 1860 federal censuses did not list most enslaved people by their own name, but by the name of their enslavers.

Today, the same stereotypical imagery persists in American politics. Echoing the language of elections past, Donald Trump declared himself the "law and order candidate."[33] After the police murder of George Floyd in the summer of 2020, Trump called protesters in Minnesota "thugs" and said that "when the looting starts, the shooting starts," using the exact same phrase that a white Miami police chief repeated in response to African American protestors in 1968.[34] When peaceful protesters marched in D.C., the Trump administration met those protests with tear gas, smoke bombs, and beatings.[35]

III. Reconstruction and the Constitution

Nationally

From its beginning, the United States excluded enslaved African American people from American citizenship, declining to count them as full people.[36] As discussed in Chapter 2, Enslavement, in 1789, the U.S. Constitution included a "Three Fifths Clause," counting enslaved African American persons as "three[-]fifths of all other persons" for the purpose of establishing the number of representatives each state would have in Congress, as well as the number of electoral votes each state would cast in a presidential election.[37]

On the one hand, the Three-Fifths Clause dehumanized enslaved African Americans by not counting them as a full person. On the other hand, by allowing proslavery southerners to partially count enslaved people toward their total number of electoral votes and representatives in Congress, even though enslaved people could not vote or express any political voice, the Constitution gave the states that enslaved them much more power than they would have had otherwise.

For example, southerner Thomas Jefferson would not have won the presidential election in 1801 without the additional electoral votes given to southern states based on the number of African Americans they enslaved within their borders.[38] Further, the manner in which the federal government counted the enslaved population of African Americans erased their humanity. The 1850 and 1860 federal censuses did not list most enslaved people by name, as they did for white Americans, but by the name of their enslavers.[39]

While denying enslaved African Americans their citizenship, the United States also denied free African Americans the right to vote. When the Framers signed the Constitution in 1787, they left voting laws to the states—whose laws protected the right to vote only for white, male property owners.[40] Though a few northern states would eventually extend the right to vote to African Americans, by the time of the American Civil War, most states, including every southern state, prohibited African Americans from voting.[41]

During Reconstruction (1865 to 1877), the federal government aimed to give newly freed African Americans access to basic civil rights. The Civil Rights Act of 1866 granted citizenship to anyone born in the United States regardless of color, or previous enslavement.[42] The Fourteenth Amendment made birthright

citizenship and civil rights permanent.[43] By achieving these changes, African Americans not only redefined their own citizenship—they redefined citizenship for all Americans.[44] Birthright citizenship might not have come into existence in the United States without African Americans' struggle against slavery, and it helped open the door to citizenship for all immigrants and their U.S. born children.[45]

Congress also recognized that political rights were essential to African American civil and economic rights,[46] so the Fifteenth Amendment was ratified in 1870 which prohibited states from discriminating against voters based on "race, color, or previous condition of servitude."[47]

However, the Fourteenth and Fifteenth Amendments had limitations. The Fourteenth Amendment did not protect African Americans' right to vote.[48] Instead, the Fourteenth Amendment only punished states that legally denied male citizens the right to vote by reducing their number of representatives in Congress,[49] a penalty that has never been enforced.[50] While the Fifteenth Amendment prohibited states from denying a person's right to vote based on race, it contained no enforcement mechanism without an act of Congress.[51]

In 1870 and 1871, Congress passed several Enforcement Acts, giving the federal government the authority to prosecute violations of the Fifteenth Amendment.[52] But in 1875, the U.S. Supreme Court held that because the Fourteenth and Fifteenth Amendments only empowered the federal government to prohibit discrimination by the states, it did not empower the federal government to prosecute the private white militants who used racial terror to suppress African American voting.[53] And to the extent that the Fifteenth Amendment protected African American men in the right to vote, it did not extend the same protection to African American women, who would have to wait another half century for the Nineteenth Amendment in 1920.[54]

African Americans responded by taking full advantage of their new political rights. African Americans held conventions across the country[55] and participated in state constitutional conventions to secure their voting rights.[56] Republicans in Congress increasingly began to believe that they needed to overhaul southern governments and ensure that ex-Confederates did not return to power.[57] As a result, Congress passed a series of laws from 1867 to 1868 called the Reconstruction Acts, which required most ex-Confederate states to hold constitutional conventions and write new state constitutions acknowledging African American civil rights.[58]

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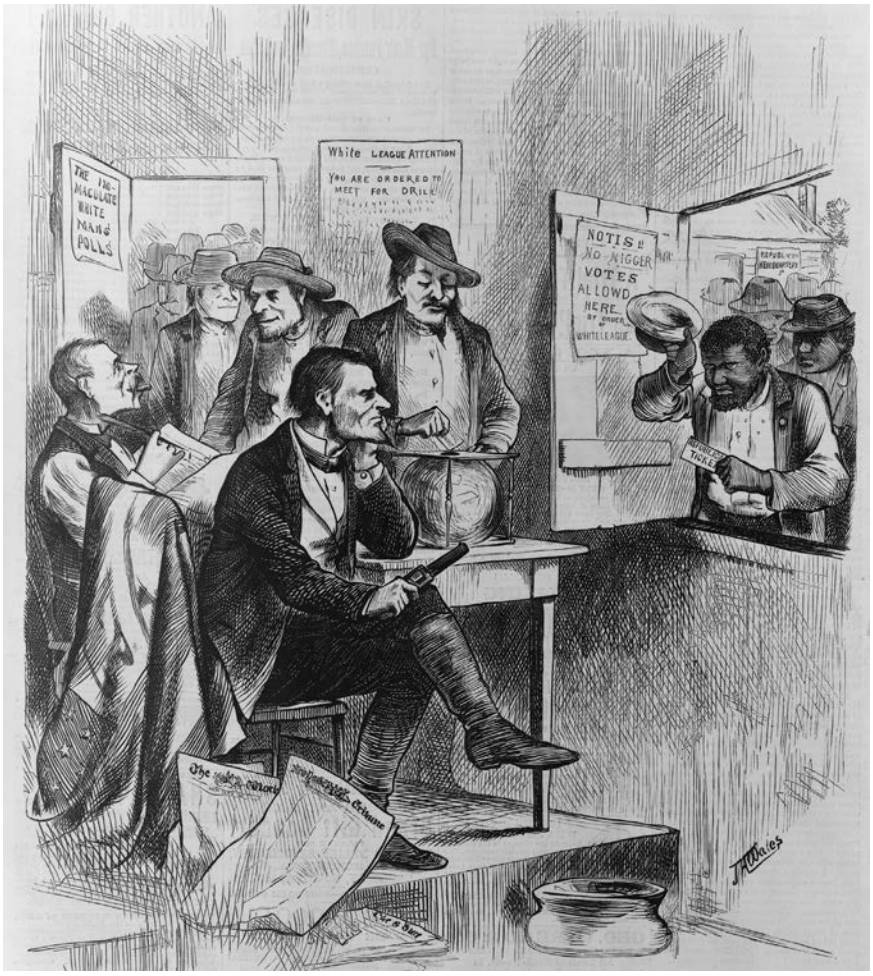

"Every thing points to a democratic victory this fall" (Oct. 31, 1874)

The Reconstruction Acts guaranteed African American men the right to vote for constitutional delegates and on the new constitutions.[59] Across the South in 1867, African American turnout ranged from 70 percent in Georgia to 90 percent in Virginia.[60] African American votes were nearly unanimous in support of ballot measures to hold constitutional conventions to amend their state constitutions to guarantee equal rights.[61] Hundreds of African American men served in the southern state constitutional conventions under the Reconstruction Acts, and they participated alongside white Republicans in writing new constitutions which protected equal

voting rights, civil rights, and educational rights (although usually in segregated facilities) for African Americans.[62] By 1868, more than 700,000 African American men were registered to vote in the South.[63] One white Republican in Alabama said that African Americans "voted their entire walking strength—no one stayed at home that was able to come to the polls."[64]

With African American voters came African American elected officials. During Reconstruction, over 1,400 African Americans held federal, state, or local office, and more than 600 served in state assemblies.[65] Many of these new African American officials were formerly enslaved, and many took seats formerly held by men who had enslaved others.[66] The ranks of elected African American officials included 16 African American men elected to Congress, 14 to the U.S. House of Representatives and two to the U.S. Senate.[67]

White politicians—including Republicans who had favored Emancipation and Black enfranchisement—treated Black elected officials as junior partners in government. In 1874, 16 Black politicians in Louisiana publicly complained of being excluded from "any knowledge of the confidential workings of the party and government" and "not infrequently humiliated in our intercourse with those whom we have exalted to power."

The election of African Americans into office, however, did not translate to full political representation. African Americans took a lower share of elected seats in both state and federal office relative to their proportion of the electorate, and rising presence in office did not always carry greater power at the highest levels of state government.[68] White politicians—including Republicans who had favored Emancipation and African American enfranchisement—treated African American elected officials as junior partners in government.[69] In 1874, 16 African American politicians in Louisiana publicly complained of being excluded from "any knowledge of the confidential workings of the party and government" and "not infrequently humiliated in our intercourse with those whom we have exalted to power."[70]

Over time, white northern support for Reconstruction collapsed. Southern Democrats intensified violent insurrection, and white northerners tired of the economic and military costs necessary to enforce equal rights.[71] An economic depression in the 1870s further weakened the federal government's resolve and undermined support for pro-Reconstruction officials in the south.[72] To regain support, President Ulysses S. Grant shared power with southern Democrats who opposed Reconstruction, causing one northerner to complain that the government was filling "every Dep[artment]" with southern Democrats to "placate the rebels and get their votes."[73]

These pressures came to a head in the presidential election of 1876, when both the candidates—Republican Rutherford B. Hayes and Democrat Samuel Tilden—claimed to have won due to contested votes in the southern states where election violence and fraud was high.[74] Southern Democrats contested the results, threatening revolt.[75] To avoid another civil war, the Republicans and Democrats reached a compromise: the Democrats stopped contesting the presidential election and the Republicans agreed to withdraw federal troops from key locations in the south, effectively ending Reconstruction.[76] As the chairman of the Kansas state Republican committee wrote, "I think the policy of the new administration will be to conciliate to the white men of the South. Carpetbaggers to the rear, and niggers take care of yourselves."[77] An article published in *The Nation* predicted, "[t]he negro… will disappear from the field of national politics. Henceforth, the nation, as a nation, will have nothing more to do with him."[78]

California

The State of California entered the union in 1850, and its constitution proclaimed that "neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State."[79] But that very same document gave only "white male citizen[s]" the right to vote.[80] From the beginning, freedom in California meant something different for white and African American Californians. As detailed in Chapter 2 Enslavement, despite California's prohibition on slavery, enslavers forced hundreds of enslaved African Americans into the state.[81] California became one of the few free states to pass a fugitive slave law, authorizing and even enforcing the ability of white Californians to kidnap and traffic African American Californians to southern enslaving states.[82]

Meanwhile, free African American Californians faced other restrictions on their ability to participate in civic life. California banned African Americans and other nonwhite people from testifying in court against a white person.[83] In

some cases, this law allowed a white man to get away with murder. In 1854, the California Supreme Court overturned the murder conviction of a white man because he was convicted based upon the testimony of Chinese witnesses.[84]

Admitting that California designed the law to protect white defendants from justice, California's Supreme Court defended the law as a matter of public policy, warning that allowing any non-white person to testify "would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls," a prospect that the Court viewed as an "actual and present danger."

Reversing the murder conviction, the California Supreme Court explained: "In using the words, 'No Black, or Mulatto person, or Indian shall be allowed to give evidence for or against a White person,' the Legislature... adopted the most comprehensive terms to embrace every known class or shade of color, as the apparent design was to protect the White person from the influence of all testimony other than that of persons of the same caste."[85] Admitting that California designed the law to protect white defendants from justice, California's Supreme Court defended the law as a matter of public policy, warning that allowing any non-white person to testify "would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls," a prospect that the Court viewed as an "actual and present danger."[86]

One case drew public attention to the law and its effects on African American Californians. In 1861, a white man named Rodney B. Schell robbed a Black-owned business.[87] When George W. Gordon, an African American barber, complained to the police, Schell shot and murdered Gordon in his shop.[88] At Schell's murder trial, his attorneys used California's ban on non-white testimony to exclude the prosecution's key witness, hiring two "hairologists" who examined the witness's hair under a microscope and claimed that the witness had "African blood in his veins."[89] Consequently, the court excluded the key testimony, resulting in Schell's conviction for second-degree murder, rather than first-degree murder.[90]

A Black-owned local newspaper called the case a "Mockery of Justice" in "one of the most deliberate and cold-blooded murders that ever disgraced California, even in her rudest and most lawless days."[91] One California legislator observed that Schell had murdered Gordon, knowing that African American testimony against him would be barred in court.[92] Another legislator proclaimed that the law banning African American testimony served as "a legislative license for the commission of crimes."[93] Though the Schell trial generated a firestorm of controversy, California's Legislature refused to change the law that year.[94]

Many other African American Californians suffered crimes without recourse to testimony and justice in court. When Jim Howard, a white man, stole from an African American laundryman named Albert Grubbs, Grubbs testified and helped secure Howard's conviction for grand larceny.[95] On appeal, the Chief Justice of the California Supreme Court, Stephen J. Field—who would later become a Justice on the U.S. Supreme Court—overturned the conviction, declaring that California's law categorically barred any African American testimony, even if "crime may go unpunished."[96]

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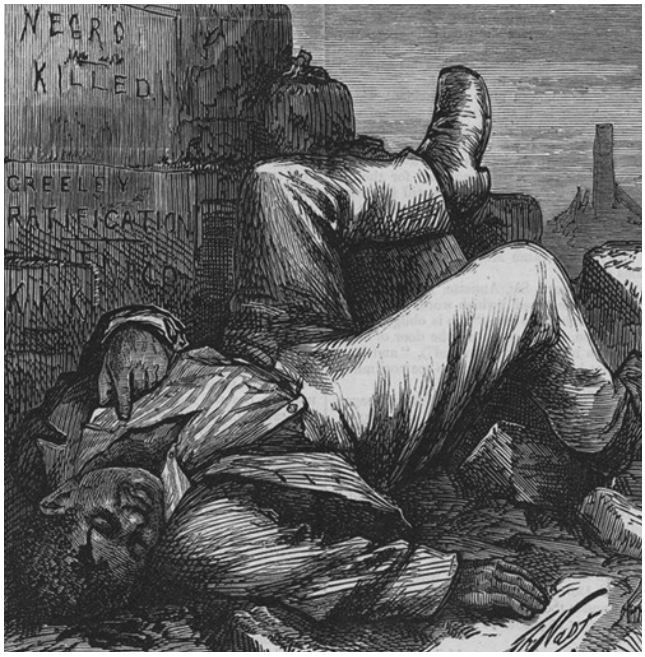

"One vote less" (1872)

Discriminated against by both the laws and those who would break it, many African American Californians, like Peter Lester—who was assaulted and robbed in his store but unable to testify against the perpetrators—left the state.[97] From San Francisco alone, some 200 African American families, a substantial portion of the 4,000 total African Americans who had settled in California

between 1850 and 1860,[98] left during the 1850s in a mass exodus to British colonies in what is now Canada.[99]

Other African American Californians organized in response to these restrictions. African American citizens formed the Colored Executive Committee and founded their own weekly newspaper, *Mirror of the Times*.[100] Drawing from African American activism in other parts of the nation, African American Californians held the first of four "Colored Citizens' Conventions" in 1855 at the St. Andrews African Methodist Episcopal Church in Sacramento.[101] At this convention and later meetings, they advocated against slavery, urged repeal of California's law barring African American testimony against whites in state courts, and petitioned for the right to vote.[102]

After an eight-year campaign, convention delegates convinced the California Legislature to repeal its ban on African American testimony in 1863.[103] As soon as the ban on African American testimony ended, African American Californians spearheaded legal efforts to protect their rights in court. African American women organized legal efforts to file charges against streetcar drivers who refused to pick up African American riders or harassed them on the car.[104]

In other cases, African American testimony proved crucial to preventing African American Californians from being enslaved. Thirteen years after California entered the union as a free state, in 1863, an enslaver purchased and trafficked a 12-year-old African American girl, Edith, selling her to a farmer in Sacramento County.[105] But a free African American man named Daniel Blue intervened on her behalf, filing a case in court.[106] With his testimony and the testimony of other African American citizens, he persuaded the Sacramento probate judge to remove Edith from the enslaver's custody.[107]

After the repeal of the ban on African American testimony in 1863,[108] and the abolition of slavery in 1865,[109] African American activists in California turned their attention to voting rights. The California Colored Citizens' Convention of 1865 petitioned the state legislature for a constitutional amendment to give African Americans voting rights.[110] But when a Republican State Senator presented the petition to the state legislature, its members never discussed it.[111]

In the following two years, African American activists drafted another petition asking the state Legislature to grant voting rights to African American men, if approved by a two-thirds vote by the state assembly and the state senate.[112] But by then, the Democrats had taken over the legislature after campaigning on anti-African American and anti-Chinese platforms.[113] African American activists could not find a single member of the state legislature who would agree to present the petition for the state legislature's consideration.[114]

California continued to deny equal rights for its African American citizens. When the United States adopted the Fourteenth Amendment to the United States Constitution in 1868, guaranteeing the equal protection of law to African Americans, the California Legislature ignored the Amendment and never ratified it.[115] Similarly, California later refused to ratify the Fifteenth Amendment, which prohibited states from discriminating against voters on the basis of race.[116]

California continued to deny equal rights for its Black citizens. When the United States adopted the Fourteenth Amendment to the United States Constitution in 1868, guaranteeing the equal protection of law to African Americans, the California Legislature ignored the Amendment and never ratified it. Similarly, California later refused to ratify the Fifteenth Amendment, which prohibited states from discriminating against voters on the basis of race.

Nevertheless, enough states voted for the Fifteenth Amendment to make it the law of the country in 1870, and upon its ratification,[117] African American Californians registered to vote in droves.[118] But California officials openly refused to abide by the Fifteenth Amendment.[119] California's Attorney General Joseph Hamilton instructed county clerks not to register African American voters until Congress passed legislation commanding them to do so.[120]

When African American Californians and their allies protested in response, in some areas, county clerks caved to public pressure and eventually permitted African American Californians to vote.[121] Others resisted more firmly. In southern California, Louis G. Green was the first African American Californian in Los Angeles who tried to register to vote.[122] When the Los Angeles County Clerk refused to allow him to do so, Green filed suit in court.[123] The County Judge—who was the brother-in-law of the County Clerk being sued—upheld the Clerk's refusal to register Green.[124]

Recognizing the resistance to African American voting in California and other states, Congress enacted the Enforcement Act of 1870, a federal law imposing penalties for states who violated the Fifteenth Amendment.[125] Only after the passage of this law did California officials submit and allow African American men to register to vote.[126] It would take California nearly another decade to change its constitution to partly conform to the Fifteenth Amendment's requirements in 1879,[127] and nearly another century to formally ratify the Fourteenth and Fifteenth Amendments to the U.S. Constitution in 1959 and 1962, respectively.[128]

IV. Devices Used to Suppress African American Political Participation

Though African Americans strove to build and maintain the promise of African American citizenship after Emancipation, the end of Reconstruction left them unprotected against the white supremacists who had previously enslaved them. After Reconstruction, white Americans in both the North and South employed a host of devices to reassert white supremacy and suppress African American political power. As a result, African Americans who had already been voting for many years were barred from voting.

Racial Terror to Suppress African American Political Power

As Chapter 3 Racial Terror details, white Americans resorted to kidnapping, mass murder, and other forms of racial terror to reassert white supremacy and destroy African American political power all across the southern states.[129] The federal and Republican-run state governments tried to suppress this violence, but white local officials and law enforcement across the South often turned a blind eye or even participated in the violence themselves.[130] Federal and state officials themselves have used their power to target and terrorize civil rights leaders.[131]

As violence intensified in the South President Grant's cabinet urged him to "wash the hands of the Administration entirely of the whole business." For much of America history, the federal government sacrificed the lives and rights of African Americans in exchange for political stability.

Even during Reconstruction, about 10 percent of African American political officials reported receiving violent threats and suffered physical assaults.[132] At least 35 African American officials were murdered by the Ku Klux Klan or similar terrorist organizations.[133] Though the federal government intervened to stop early violence in Louisiana, white Americans in both the North and South began to protest federal military intervention in local affairs.[134] According to one historian, "[t]he spectacle of soldiers 'marching into the Hall... and expelling members at the point of bayonet' aroused more Northern opposition than any previous federal action in the South."[135]

President Grant's cabinet urged the President to "wash the hands of the Administration entirely of the whole business," referring to the repeated white insurrections in Louisiana, and white political backlash made Congressional Republicans wary of further military intervention in the south.[136] When the Republican Governor of Mississippi, a member of Grant's own party, requested federal aid against white supremacist insurrection, President Grant wrote, "[t]he whole public are tired out with these annual autumnal outbreaks in the South... [and] are ready now to condemn any interference on the part of the Government."[137]

For much of American history, then, the federal government sacrificed the lives and rights of African Americans for political stability while white Americans in the South wrought racial violence to oppress African Americans.

Despite the many threats to their lives, African American activists organized in response to these campaigns of racial terror. They formed organizations like the National Association for the Advancement of Colored People (NAACP), a group of African American intellectuals and activists who partnered with white liberals to pursue African American civil rights and equality, pursuing legal challenges against many of the devices described throughout this chapter.[138] State governments sought to sabotage these efforts. Mississippi, for instance, created the Mississippi State Sovereignty Commission, an agency created to resist the civil rights movement and preserve racial segregation.[139] The Commission planted clerical

workers in the offices of civil rights attorneys, spied on civil rights organizations, obstructed African American voter registration, and encouraged police harassment of African Americans.[140]

The federal government, at times, targeted and terrorized civil rights leaders as well. During the 1950s and 1960s, for instance, when Dr. Martin Luther King, Jr. urged nonviolent protest to pursue racial justice, Federal Bureau of Investigation (FBI) Director J. Edgar Hoover viewed Dr. King as a communist threat and ordered the electronic surveillance of Dr. King and his staff.[141] While doing so, the FBI produced reports claiming that one of Dr. King's advisors was a communist, suggesting that international communists might be controlling Dr. King.[142] Though the FBI's surveillance uncovered no evidence of communist influence, it uncovered evidence of Dr. King's extramarital affairs, and used this information not only to try and discredit Dr. King as a leader of the civil rights movement, but also to attempt to convince Dr. King to take his own life.[143] "They are out to break me," Dr. King confided to a friend, "[t]hey are out to get me, harass me, break my spirit."[144]

The federal government continued to surveil and sabotage other African American activists and organizations. In the 1960s and 1970s, the federal government took extensive measures to surveil the Black Panther Party, using undercover agents to infiltrate the group and sow discord, contributing to its collapse.[145] Though public exposure of the FBI's surveillance activities forced the government to enact several reforms, those reforms weakened over time, and the FBI has reportedly resumed similar programs surveilling African American activists, including those in the Black Lives Matter movement.[146]

Black Codes and Vagrancy Laws

As discussed later in Chapter 11 An Unjust Legal System, southern states passed a series of laws between 1865 and 1866—which historians refer to collectively as the "Black Codes"—to criminalize freed African Americans for engaging in ordinary activity and force them back into forms of enslaved labor.[147] During Reconstruction, Republicans in Congress managed to remove these Black Codes with the Civil Rights Act of 1866 and the Fourteenth Amendment.[148] But after the end of Reconstruction, former Confederate states began passing a flurry of laws similar to the post-Civil War Black Codes, that while racially neutral on their face, added up to slavery-like conditions in practice.[149] Every former Confederate state except Tennessee enacted vagrancy laws, between 1890 and 1909, which criminalized "idle" behavior and forced African Americans back into conditions of enslavement,[150] limiting the formation of African American businesses and spaces that provided the foundation for African American community and political consciousness.[151] By criminalizing African Americans for everyday conduct, these laws suppressed African American political participation in two ways: African Americans convicted of a crime could not vote or serve on juries, and African Americans were prevented from organizing to protest these laws, because these laws made such gatherings illegal.[152]

When Mississippi adopted literacy tests, among other voting restrictions, in its 1890 constitutional convention, the president of the convention declared: "Let us tell the truth if it bursts the bottom of the Universe. We came here to exclude the negro."

Literacy Tests

Because the Fifteenth Amendment to the United States Constitution declared that a person's right to vote shall not be denied "on account of race, color, or previous condition of servitude,"[153] states created many laws designed to block African American voting without referring to race.[154] One of these methods was the literacy test: voting registrars or poll workers would test a person's reading or writing capabilities before permitting them to register or vote. Usually, these tests required a prospective voter to either write down a certain piece of text (such as a part of the Constitution) or to write down answers to written questions.[155] Following Reconstruction, at least 21 states in both the North and South used literacy tests to deny African Americans their voting rights.[156]

As described in Chapter 6 on Separate and Unequal Education, states and local governments deprived African Americans of educational resources and opportunities during enslavement and after Emancipation.[157] Consequently, states adopted literacy tests knowing that such barriers would primarily exclude African American voters.[158] At the South Carolina constitutional convention of 1895, Senator Ben Tillman explained that the literacy test was intended to take the vote away from "ignorant [B]lacks."[159] When Mississippi adopted literacy tests, among other voting restrictions, in its 1890 constitutional convention, the president of the convention declared: "Let us tell the truth if it bursts the bottom of the Universe. We came here to exclude the negro."[160]

Even when many African Americans were well-equipped to pass ordinary literacy tests, states excluded African American voters by requiring them to satisfy more complex requirements than those required for white voters;[161] asking subjective questions that gave white officials the discretion to exclude African American voters;[162] or requiring African American voters to answer impossible questions, such as "how many bubbles are in a bar of soap?"[163] One Georgian official boasted, "I can keep the President of the United States from registering [to vote], if I want to. God, Himself, couldn't understand that sentence [in the literacy test]. I, myself, am the judge."[164]

African Americans challenged these literacy tests in court but met with little success. In 1898, the United States Supreme Court upheld Mississippi's literacy test in a case called *Williams v. Mississippi*.[165] After an all-white jury convicted Henry Williams, a African American man, of murder, Williams appealed, arguing that he did not receive a fair trial because African Americanss were excluded from the jury.[166]

Because the jury list was drawn from the state's voter registries, the Court examined whether Mississippi's literacy tests had illegally blocked African Americans from registering to vote.[167] The Court approved of the literacy tests, holding that the literacy test did not mention race and therefore did not discriminate based on race.[168] The strategy pursued by Mississippi and other states worked: states could pass racist laws designed to deny African American votes, and so long as the laws did not mention race, those laws would be upheld in court.

With the Supreme Court's approval, states continued to use literacy tests to restrict African American voting through the 20th century.[169] It took 100 years after the end of Reconstruction for the federal government to permanently ban literacy tests nationwide through an amendment to the Voting Rights Act in 1975.[170] Despite this federal prohibition, some states, like North Carolina, still have unenforceable literacy tests on the books today.[171]

Thus, while states enacted literacy tests after Reconstruction in the late 1800s, these voting restrictions lasted well until the late 20th century, shaping the lives of Americans who currently live and serve in public office. President Joseph Biden, and at least 80 out of the 100 current U.S. Senators, were alive when literacy tests were still legal in the United States.[172]

Property Requirements and Poll Taxes

States also used property requirements and poll taxes to prevent African Americans from voting.[173] Beginning in early American colonial history, states required individuals to own a certain amount of land or property before they could vote.[174] After American independence, more states removed or relaxed these laws, and many new states never adopted them at all.[175] But to prevent free African American men from voting, many states began limiting voting only to white men.[176] The Fifteenth Amendment forced states to eliminate this express racial discrimination, but with the end of Reconstruction, states in both the North and South reenacted these property restrictions or created new ones, imposing poll taxes to require potential voters to make a payment before they could cast their ballot.[177]

While these laws had the effect of excluding all poor voters—white and African American alike—the law specifically exploited the fact that African Americans, newly freed from slavery, often began their free lives without any wealth, preventing them from affording the costs of the poll tax. Additionally, some states, such as Alabama, required a person to pay poll taxes for prior elections in which they had not voted, a penalty that directly targeted African Americans, who could not have voted until after Emancipation.[178]

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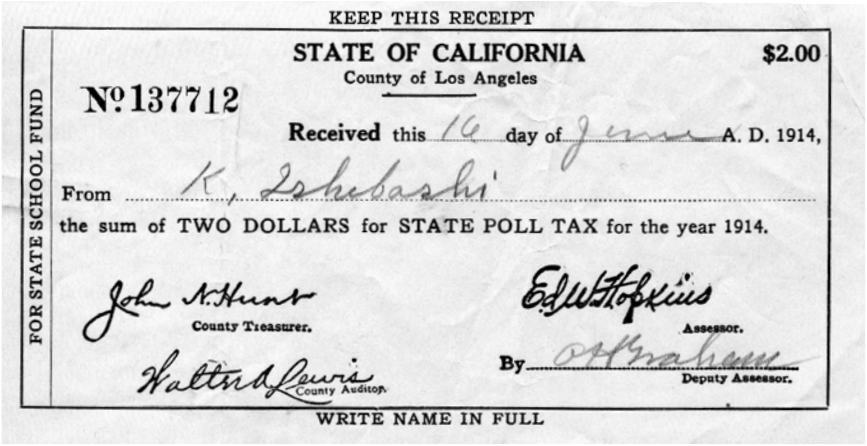

KEEP THIS RECEIPT

STATE OF CALIFORNIA $2.00

County of Los Angeles

No 137712

Received this 14 day of June A. D. 1914,

From K. Ishibashi

the sum of TWO DOLLARS for STATE POLL TAX for the year 1914.

John A. Hunt County Treasurer.

Edw. Hopkins Assessor.

Walter A. Lewis County Auditor.

By O. H. Graham Deputy Assessor.

FOR STATE SCHOOL FUND

WRITE NAME IN FULL

The receipt of Kumekichi Ishibashi's payment of $2 for the State Poll Tax in year 1912.

Despite repeated challenges from civil rights activists, poll taxes remained a persistent barrier to the right to vote until 1965.[179] In 1937, the U.S. Supreme Court upheld the use of state poll taxes, declaring that poll taxes did not deny any constitutional right because the "[p]rivilege of voting is... conferred by the state and... the state may condition suffrage as it deems appropriate."[180]

Recognizing the effects poll taxes had on voting, Congress attempted to ban poll taxes in some fashion in 1942, 1943, 1945, and 1947.[181] None of those laws passed the

Senate due to southern senators' use of the filibuster—a Senate rule requiring a two-thirds majority before debate could end and a vote could be taken on a bill.[182] The southern senators' reasoning behind their defense of the poll tax was simple: the poll tax was one of the devices used to suppress African American voters and keep the senators in power.

Although the poll tax affected whites more than African Americans, the southern senators believed that repeal of the poll tax would provide momentum to removing other barriers blocking African American voting in the South.[183] It took decades more of activism and litigation before Congress prohibited poll taxes in 1965[184] and the Supreme Court ruled poll taxes to be unconstitutional in 1966.[185]

Virginia enacted its first challenger law in 1870, a few months after the end of Reconstruction. The state reenacted the law in 1904, following its 1901 to 1902 constitutional convention, which the state held "mainly for the purpose of disenfranchising the Negro voter."

Challenger Laws and Witness Requirements

To exclude African American voters, states also used "challenger laws" and laws requiring witnesses to attest to a voter's qualifications.[186] Challenger laws allow private citizens to contest another person's qualifications to vote, usually by making a complaint before the local or state officials charged with registering voters or administering the polls during election day.[187] Many states enacted such laws before the Civil War, some as far back as the American Revolution.[188] Following Reconstruction, however, states in both the North and South used these laws to allow white supremacists to challenge, intimidate, and suppress African American votes.[189]

Virginia enacted its first challenger law in 1870, a few months after the end of Reconstruction.[190] The state reenacted the law in 1904, following its 1901 to 1902 constitutional convention,[191] which the state held "mainly for the purpose of disenfranchising the Negro voter."[192]

In Florida, lawmakers enacted laws in 1877 requiring voters challenged at the polls to produce two witnesses "personally known" to at least two polling officials.[193] Because Florida's polling officials were almost exclusively white, few African American citizens could provide witnesses known to them, meaning that Florida's challenger law allowed any white citizen to block an African American voter from casting their ballot.[194] Though many of these challenger and witness laws have been modified through time, they remain prevalent today: as of 2012, 46 states have laws that permit private citizens to challenge other citizens' voting eligibility.[195]

Grandfather Clauses

Many southern states understood that the onerous voting requirements they imposed, if applied fairly, could exclude white voters, too. To ensure that these restrictions primarily excluded African American voters, a half-dozen states in the South created so-called grandfather clauses.[196] Grandfather clauses allowed voters to vote, even if they could not pay the poll tax or otherwise would not have passed a literacy test, as long as they had been entitled to vote prior to 1866 or 1867, or were descended from someone who had been entitled to vote prior to 1866 or 1867.[197]

In effect, this meant that African Americans—who had not been eligible to vote prior to 1866 or 1867 in most of these states—would be the ones subject to the new voting restrictions. The Supreme Court ruled these grandfather clauses to be discriminatory and unconstitutional in 1915.[198] While grandfather clauses had a relatively shorter lifespan than literacy tests or poll taxes, they presented one of many tools used in combination with others to prevent African Americans from exercising their right to vote, revealing how states enacted many of their supposedly race neutral laws with the purposeful design of disenfranchising African American voters.

Exclusion from State Primary Elections

White Americans also prevented African American voters from participating in state party primary elections.[199] Since the late 1890s, political parties in the United States have held primary elections to allow voters to determine the candidates from their party who would run for office.[200] In 1910, state legislatures and state Democratic party chapters in the South created the "white primary," excluding all African American voters from the state primary election process.[201]

For states dominated by a single political party, determining who would run from that party essentially determined who would ultimately hold office. Because Democrats dominated state elections in the South in the late 1800s and early 1900s, the exclusion of African American voters from Democrat state primaries in the South during this period essentially

excluded African Americans from having any say in their elected representatives.[202]

The NAACP brought legal challenges against the white primary and won a case in 1927 when the U.S. Supreme Court held it unconstitutional under the Fourteenth Amendment for a state government to pass laws excluding African American citizens from a state primary election.[203] However, because the Fourteenth Amendment applied only to state actions, southern Democratic party leaders skirted around the Supreme Court's decision by excluding African American voters through the rules of its political party, which was considered a private organization.[204]

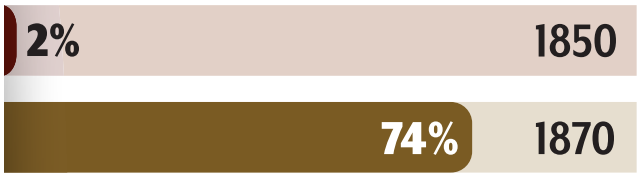
In 1944, the Supreme Court closed the loophole and ruled that states could not allow private political parties to exclude African Americanss from voting in state primaries.[205] Following the end of the all-white primary, a record 35,000 African Americans voted in the 1948 Democratic primary in South Carolina.[206]

Laws Disqualifying People Convicted of Felonies from Voting

States throughout the country have long disqualified people convicted of felonies from voting. Together with America's discriminatory criminal justice system, described in Chapter 11, An Unjust Legal system, states throughout America have used these laws to prevent African Americans from voting and continue to do so today.[207]

Laws denying people convicted of felonies their right to vote have existed since at least the colonial period of American history, finding roots in earlier English, European, and Roman law.[208] Although early U.S. state constitutions gave their legislatures the power to pass laws disenfranchising people who had committed crimes, many states—including Alabama, Arkansas, Georgia, Florida, and South Carolina—only passed such laws after the Civil War to deny African Americans their newly gained right to vote.[209]

NONWHITE PRISON POPULATION ALABAMA



Following Reconstruction, state governments sought to maintain white supremacy by using vagrancy laws, curfews, and other restrictions to target African Americans with criminal laws as a form of social control.[210] Because states targeted African Americans for prosecution, and because convicted African Americans were stripped of their ability to vote, states effectively used criminal laws to not only control African Americans, but also to deprive them of their right to vote.

Because states targeted African Americans for prosecution, and because convicted African Americans were stripped of their ability to vote, states effectively used criminal laws to not only control African Americans, but also to deprive them of their right to vote.

After the Civil War, in many southern states, the percentage of nonwhite people imprisoned nearly doubled between 1850 and 1870.[211] In Alabama, for example, two percent of the prison population was nonwhite in 1850, but by 1870, 74 percent of the prison population was nonwhite, even though the total nonwhite population increased by only three percent.[212] Ever since the Civil War era, states have imprisoned African Americans at higher rates than white Americans.[213] One study examining historical data found that when more of the people imprisoned by a state are African American, the state is significantly more likely to enact laws removing their right to vote if they have been convicted of a felony.[214]

Many states made clear that they targeted African Americans with their laws removing the right to vote from people convicted of felonies. According to the North Carolina Democratic Party's Executive Committee Handbook in 1898, North Carolina's restriction originates from the state's efforts "to rescue the white people of the east from the curse of negro domination."[215] The Mississippi constitutional convention in 1890 changed its disenfranchising provision from one that included "any crime" to one affecting only certain offenses like burglary or theft, a change that the Mississippi Supreme Court explained as one made "to obstruct" African American voting by targeting certain crimes the state believed that African American residents committed more frequently.[216]

Other southern states expressly tied disenfranchisement to "furtive offenses... peculiar to the Negro's low economic and social status."[217] Some scholars suggest that because denying the vote for those convicted of crimes was narrower in scope than literacy tests or poll taxes, and easier to justify than grandfather clauses, states used criminal disenfranchisement laws as "insurance"

if courts decided to strike down other, more blatantly discriminatory laws.[218]

Most of these disenfranchisement laws continue to exist across the country in some form to this day. Though the Supreme Court has recognized that "[c]itizenship is not a [right] that expires upon misbehavior,"[219] the Supreme Court has not extended that same logic to the right to vote.[220]

In 1974, the Supreme Court upheld California's law disenfranchising people convicted of felonies, concluding that the removal of their voting rights is consistent with the Fourteenth Amendment.[221] Though the Supreme Court eventually struck down a part of Alabama's disenfranchisement law a decade later, it only struck down a specific provision—applying to crimes of "moral turpitude"—that it found had the specific intent and impact of preventing African American citizens from voting.[222] In that limited decision, the Court expressly declined to reconsider its decision in *Richardson v. Ramirez*, which continues to generally permit the disenfranchisement of people convicted of felonies.[223]

Today, people convicted of felonies—a disproportionate number of whom are African American—represent the largest single group of Americans disqualified from voting.[224] For example, although the majority of illegal drug users and dealers nationwide are white, three-fourths of all people imprisoned for drug offenses are African American or Latino.[225] Another study found that states with greater African American and Latino prison populations are more likely to ban formerly incarcerated and returning citizens from voting than states with proportionally fewer nonwhites in the criminal justice system.[226]

As of 2020, approximately 5.2 million Americans are barred from voting due to laws that disenfranchise citizens convicted of felony offenses.[227] All states but Maine and Vermont have some restriction tied to felony conviction, probation, and parole.[228] And while some states restore the right to vote once people have completed their sentence, these states condition that restoration of rights upon a person paying all fines and fees associated with their sentence, an economic burden that scholars and voting rights advocates have described as a modern day poll tax.[229] In a country that professes a commitment to freedom, the country's rates of mass incarceration and the corresponding increase in disenfranchisement reflect a conflict between its democratic ideals and its actual practice.

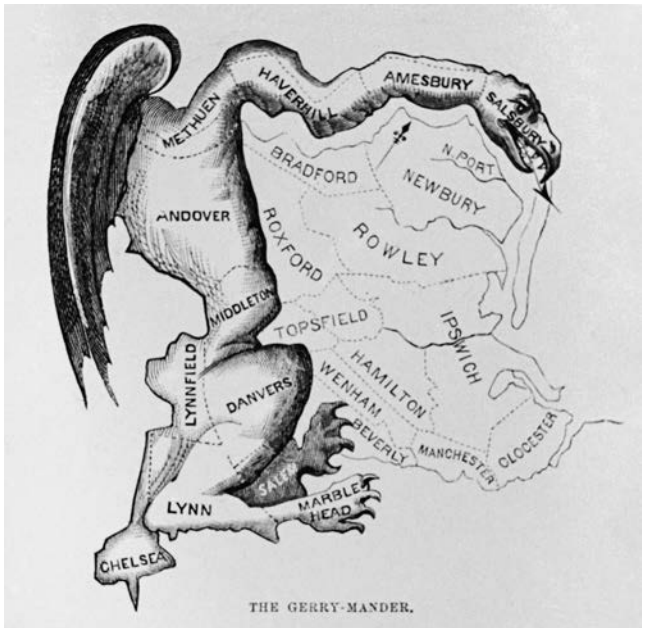
Gerrymandering

States also manipulated the shape of voting districts, through a process called gerrymandering, to dilute the voting power of African Americans.[230] Generally, states divide their regions into districts for the election of certain local, state, and federal representatives.[231] States can redraw those areas from year to year,[232] and government officials have used this process to substantially dilute and weaken the political power of African Americans.[233]

Ordinarily, states draw electoral districts by drawing generally oval or square-shaped districts of neighboring communities with borders based on geographic barriers, like rivers and highways.[234] However, politicians began manipulating this process by drawing electoral districts in more unnatural shapes to include more voters from a certain race or political party to ensure that group's victory in an election.[235]

This process, known as "gerrymandering," is named after Elbridge Gerry, an American vice-president who, as Massachusetts Governor in 1812 redrew voting districts in a way that caused the Boston-area district to resemble a salamander.[236] Or, as one local newspaper dubbed it, a Gerry-mander.[237] Gerrymandering has existed since this nation's infancy, and politicians have used it nearly as long to deny African American communities representation in government. After the end of Reconstruction, white government officials drew gerrymandered districts to purge African American politicians from state legislatures all across the south.[238]

COURTESY OF BETTMANN VIA GETTY IMAGES



The term "gerrymander" stems from this Gilbert Stuart cartoon of a Massachusetts electoral district twisted beyond all reason. Stuart thought the shape of the district resembled a salamander, but his friend who showed him the original map called it a "Gerry-mander" after Massachusetts Governor Elbridge Gerry, who approved rearranging district lines for political advantage. (1812)

For example, although African Americans made up a majority of South Carolina's population in the 1870s and 1880s, white government officials redrew the state's electoral map to pack nearly all of the state's African American neighborhoods into one of the state's seven districts that had a African American majority, and it included nearly all of the state's African American neighborhoods in the awkward shape of a snake.[239]

Drawing the map this way had the effect of ensuring that only one of the state's seven legislators were African American, despite African Americans making up more than 60 percent of the state's total population. White government officials drew similarly gerrymandered congressional districts across the south, including in North Carolina, Alabama, and Mississippi.[240] The Mississippi government drew the African American electoral district in the shape of what one newspaper called a "shoestring."[241]

Gerrymandering continued in the 20th century. After World War II, a thriving African American community began organizing politically in Tuskegee, Alabama.[242] But white segregationists responded by proposing a bill to redraw the boundary lines of Tuskegee to exclude all neighborhoods with African American residents and exclude African American voters from having any input into the city's elections.[243] African American residents fought back, bringing a case that reached the Supreme Court in 1960, where the Court struck down the racially gerrymandered map as a violation of the Fifteenth Amendment[244] A few years later, Congress enacted the Voting Rights Act in 1965, which prohibits states from diluting the voting strength of African Americans, including through redistricting plans that dilute the voting strength of African American communities.[245]

Gerrymandering has existed since this nation's infancy, and politicians have used it nearly as long to deny Black communities representation in government.

Despite prohibitions by both Congress and the Supreme Court, states continued to try and find ways to gerrymander state maps to limit African American representation. In the 1980s, Georgia State Representative Joe Mack Wilson declared, "I don't want to draw nigger districts."[246] A little more than a decade later, the Supreme Court would strike down North Carolina's efforts to gerrymander on the basis of race, stating it was "unsettling how closely the North Carolina plan resembles the most egregious racial gerrymanders of the past."[247] Meanwhile, states continue to engage in two other forms of legally sanctioned racial gerrymandering: partisan gerrymandering and prison gerrymandering.

Political, or partisan, gerrymandering refers to the process of drawing districts to benefit one political party over another.[248] As of September 2021, 38 states allow partisan actors—state legislatures or their appointees—to redraw their districts.[249] While those who engage in partisan gerrymandering claim not to directly target African American voters, the fact that most African American voters register to vote as Democrats, today, means that partisan gerrymandering often affects African American representation as well.

Though African Americans had historically supported the Republican party through post-Reconstruction due to the party's role in Emancipation and Reconstruction, the Republican party's apathy and mistreatment toward African Americans during the Hoover Administration opened the door to their entry into the Democratic party during the New Deal, as northern Democrats like President Franklin Roosevelt promised economic aid amidst the Great Depression.[250]

African American support for the Democratic party then surged in the 1960s, when Democratic President Lyndon B. Johnson ushered in the Civil Rights Act of 1964 and the Voting Rights Act of 1965.[251] President Johnson's embrace of civil rights legislation caused many of the southern white supremacists in the Democratic party to defect to the Republican party, cementing African American support for Democrats to this day.[252] From 1994 to 2019, over 80 percent of African American registered voters have leaned toward or identified as Democrats.[253]

Because most African American voters today register to vote as Democrats, partisan gerrymandering harms African American representation. In the last decade, more than two dozen African American officials have had their districts redrawn in ways that could cost them their seats, leading the former chair of the Congressional Black Caucus to declare partisan gerrymandering a "five-alarm fire" for African American representation.[254]

Moreover, unlike earlier forms of racial gerrymandering, neither Congress nor the U.S. Supreme Court have prohibited partisan gerrymandering.[255] As scholars and advocates have observed, the Supreme Court's refusal to strike down political gerrymandering permits legislators to get away with racial gerrymandering in places where race and party are highly correlated, simply by claiming

that they made their redistricting decisions for partisan reasons, rather than racial ones.[256]

Prison gerrymandering refers to the practice of counting incarcerated people as part of the population in the region imprisoning them, rather than the location of their actual community.[257] Because the government allocates greater numbers of political representatives and resources to places with greater populations, prison gerrymandering benefits districts that engage in mass incarceration, skewing resources and representation to areas with prisons at the expense of the communities to which those imprisoned people belong.[258]

This process particularly affects African Americans, who are disproportionately imprisoned. In 2019, African Americans made up about 33 percent of the United States's imprisoned population,[259] despite representing about 14 percent of the total population.[260] Given the effects of prison gerrymandering, advocates describe it as akin to or worse than the Constitution's Three-Fifths Clause, which counted enslaved people in the Census for the purpose of allowing states to amass more pro-slavery representatives, despite the fact that enslaved people were not allowed to vote and had no basic legal rights.[261]

Because most Black voters today register to vote as Democrats, partisan gerrymandering harms Black representation. In the last decade, more than two dozen Black officials have had their districts redrawn in ways that could cost them their seats, leading the former chair of the Congressional Black Caucus to declare partisan gerrymandering a "five-alarm fire" for Black representation.

The Myth of Voter Fraud and Voter ID Laws

Claims of voter fraud have also been used to justify laws that suppress African American voting—most prominently, voter identification (ID) laws. While voter fraud has long been invoked throughout American history to justify restrictions on voting, such claims have made a recent resurgence, including in the 2020 election, despite the lack of any evidence to support allegations of widespread fraud.[262] In recent years, states have used this claim to enact a number of strict ID laws that disproportionately impact African American and other nonwhite voters, hindering their ability to vote.[263]

States and politicians have invoked the specter of voter fraud since at least the late 1800s to justify the various rules they imposed disenfranchising African American and other nonwhite communities.[264] The Ku Klux Klan and other white supremacists claimed voter fraud to justify the violence they inflicted upon African Americans. One southern historian claimed in 1901 that "the white man of the lately dominant class in the South… saw his former slaves repeating at elections," and quoted with favor a white supremacist leader and his announcement that he and his militants had violently suppressed African American voters such that "[f]ew negroes voted that day; none twice."[265] Thus, white supremacists have long used accusations of voter fraud as an excuse to justify the suppression of African American political participation.[266]

More recently, the idea of voter fraud and voter identification laws became popular following the 2000 election.[267] The U.S. Attorney General at the time, John Ashcroft, pushed the U.S. Department of Justice to prioritize voter fraud as an issue,[268] even though the U.S. Department of Justice itself found only a 0.00000132 percent rate of voter fraud.[269]

Congress enacted the Help America Vote Act in 2002, which required voter identification to register to vote and deferred to states' requirements for voter identification.[270] Many civil rights organizations opposed the bill for its discriminatory impact, arguing that the requirement would mirror a poll tax.[271] In 2005, Georgia and Indiana became the first states to enact photo identification voting laws, opening the floodgates for similar laws throughout the country.[272] In 2000, only 11 states required all voters to show some form of identification; this increased to 18 states in 2008,[273] and, as of 2021, 35 states have laws requesting or requiring voters to show identification at the polls.[274]

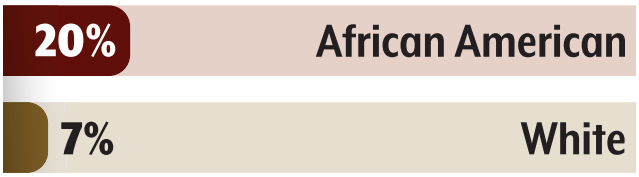
Although voter identification laws may appear race neutral, they disproportionately burden African American voters due to disparities in both access and enforcement. According to one nationwide study, 20 percent of African Americans did not possess a valid photo ID, compared to seven percent of whites.[275] Due to segregation and unequal access, many elderly African American voters were not born in hospitals, resulting in many never being issued a birth certificate—and this fact, in turn, limits their ability to obtain other forms of photo identification.[276]

Additionally, states disproportionately enforce voter ID laws against African American voters. National studies have found that 70 percent of all African American

voters were asked to show photo identification at the polls during the 2008 election, as opposed to only 51 percent of white voters.[277] These disparities in enforcement forced African American voters to file provisional ballots at four times the rate of white voters.[278] Provisional ballots, in turn, are more likely to go uncounted.[279] In 2016, nearly 700,000, or 28.5 percent of all provisional ballots went uncounted; in 2018, nearly 790,000, or 42.6 percent of all provisional ballots were not counted.[280]

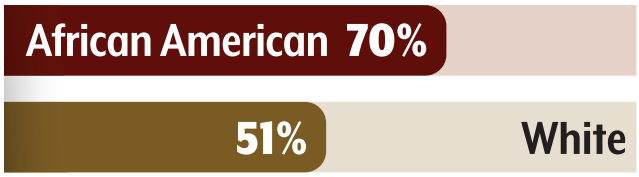
VOTER IDENTIFICATION BY RACE

Percent of voters who do not have a valid photo ID



Additionally, citizens with ready access to voter identification might underestimate the burdens that voter ID requirements impose. But as the American Civil Liberties Union has calculated, for those who need to procure a voter ID, the combined cost of time, travel, and documentation ranges from $75 to $175,[281] a steep cost to consider when poll taxes "of as little as $1.50 have been deemed an unconstitutional burden on the right to vote."[282] Even obtaining "free" identification cards may require a person to not only purchase a birth certificate,[283] but to travel to a DMV, which in some regions could be as far as 250 miles away.[284]

2008 ELECTION
REQUEST FOR PHOTO IDENTIFICATION BY RACE



In many cases, states intentionally use voter ID laws to discriminate against African American voters and people with lower incomes, perpetuating America's legacy of creating barriers to African American voting.[285] For example, when crafting North Carolina's voter identification laws, one state representative expressly asked a university official to provide information "about the number of Student ID cards that are created and the [percent] of those who are African American," and a federal appeals court characterized these restrictions as targeting African American voters with "almost surgical precision."[286]

As one scholar points out, it is no coincidence that the states with the most rigid voter identification laws also happen to be states with substantial African American populations and a history of post-Reconstruction-style discrimination at the polls.[287] Multiple Republican strategists have admitted that voter ID laws have nothing to do with voter fraud, and are instead part of a strategy of ensuring that Democrats cannot vote.[288] Because African American voters identify overwhelmingly with the Democratic Party,[289] political strategists openly seeking to disenfranchise Democrats will necessarily target African American voters.[290] Ultimately, scholars have found that strict voter ID laws substantially decrease voting turnout for African American and Latino voters, doubling the voting gap between white and African American voters.[291]

Exclusion from Juries

In addition to barring African Americans from voting, post-Reconstruction states in both the North and South also excluded African Americans from serving on juries. The Sixth Amendment to the United States Constitution guarantees criminal trials by an "impartial jury."[292] Juries serve the essential role of balancing government power by giving citizens the authority to determine a just outcome in a case of law.[293]

In the 1800s, many states, such as Tennessee and West Virginia, expressly allowed only white men to serve on juries.[294] While many states in the North did not have laws excluding African American jurors, one historian observed that "[i]n most of the North, custom and prejudice... combined to exclude Negroes from jury service."[295] During Reconstruction, Congress partially undid these restrictions with the Civil Rights Act of 1875, which prohibited states from expressly discriminating based on race in the selection of juries in state court.[296]

However, the Act did not address the many other methods that states used to exclude African American jurors.[297] For example, states ordinarily required a jury decision to be unanimous to determine whether someone is guilty or innocent of a crime.[298] But this meant that the presence of a single African American juror could prevent a white jury from convicting an African American defendant. To get around this, states like Louisiana and Oregon passed laws allowing a jury to convict a defendant if only 10 of the 12 jurors voted to convict.[299]

As the U.S. Supreme Court observed in *Ramos v. Louisiana* (2020), states like Louisiana and Oregon removed jury unanimity requirements after Reconstruction "to ensure that African-American juror service would be meaningless," since one or two African American jurors could not outvote a white majority.[300] In many states, only registered

voters can serve on juries, so because these states denied African Americans the ability to register to vote, they denied them access to the jury box as well.[301] Finally, many states excluded African American jurors through various state rules that allowed judges, court officials, and local prosecutors to prevent a person from serving on a jury without giving a reason.[302] As discussed in Chapter 11, An Unjust Legal system, these methods produced deep disparities in the number of African Americans convicted of crimes, including wrongful convictions.[303]

California

Though California amended its constitution in 1879 to allow nonwhite men to vote, the state adopted many laws similar to those adopted by northern and southern states to suppress the political participation of African Americans.[304] California added a poll tax into its constitution in 1879, requiring payment of an average half-day's wage before someone could vote.[305] The poll tax continued until repealed in 1914.[306] In 1894, California added a literacy test for voting to its constitution to prevent Chinese residents from voting.[307] Unsurprisingly, anti-Chinese and anti-Black racism in California frequently intertwined. The California state Democratic party, for instance, pledged in 1867 to establish "no Negro or Chinese suffrage,"[308] and its racist pledge enabled Democrats to sweep state elections that year.[309]

In the years after World War II, the African American population in California rose dramatically.[310] With a growing presence in the state, African American communities in California continued pushing for greater political representation. But they faced resistance and retaliation along the way. California, like the federal government, frequently treated African American activism as a threat.[311] In 1966, when civil rights protesters used the slogan of "Black power" to advocate for racial equality, the Republican Candidate for Lieutenant Governor, Robert Finch, declared that "it's wrong, if... any minority, including the Negro people, think they can blackmail or blackjack their way into acceptance into our society, they're just dead wrong, and the American people will not tolerate this kind of thing."[312]

That same year, Huey P. Newton and Bobby Seale formed the Black Panther Party in Oakland, California, seeking African American economic empowerment and the end of police brutality.[313] To pursue these goals, the Panthers adopted a number of community service programs, including health care clinics, a free breakfast program for school children,[314] and police observation patrols.[315]

As with Dr. Martin Luther King, Jr., the federal government and California viewed the Black Panthers as a threat.[316] Vice President Spiro Agnew labeled the Black Panthers an "anarchistic group of criminals."[317] Federal Bureau of Investigation Director Hoover declared that the Black Panther Party "without question, represents the greatest threat to the internal security of the country."[318] Through its counterintelligence program (COINTELPRO), the FBI surveilled and sabotaged the Black Panthers.[319] The FBI sent anonymous, inflammatory letters to restaurants, grocery stores, and churches to dissuade them from providing food or facilities for the free breakfast program.[320]

To suppress the Black Panthers' newsletter activities, the FBI ordered the Internal Revenue Service to audit the organization and any income they received from distributing newsletters.[321] Further, the FBI infiltrated the group with undercover agents and spread misinformation, paranoia, conflict, and distrust within the party.[322] Californian law enforcement also repeatedly arrested Black Panther members on harassment and public disorder charges, disrupting the organization and sapping resources away from its community service initiatives.[323] These efforts contributed to the organization's collapse in 1982.[324]

Like many states in the North and South, California also stripped individuals of their right to vote when they were convicted of a felony, embedding such a provision in its constitution since 1849.[325] It took 125 years before California eventually changed this wholesale denial of voting rights in 1974, amending its constitution to allow individuals convicted of felonies to vote if they had completed their sentence and parole.[326] In 2016, the state legislature restored voting rights to people convicted of a felony offense housed in jail, but not in prison.[327]

Californian law enforcement also repeatedly arrested Black Panther members on harassment and public disorder charges, disrupting the organization and sapping resources away from its community service initiatives. These efforts contributed to the organization's collapse in 1982.

Still, in 2020, approximately 243,000 Californians were barred from voting due to felony convictions.[328] Of that number, 50,000 (or about 20 percent) are African

American.[329] Only recently, in 2020, did California voters approve Proposition 17, which amended the state's constitution to restore the right to vote to all individuals who have completed their prison term, even if they are still on parole.[330]

V. Voting Rights Legislation

As African American Activists Fought for Civil Rights, White Americans Reacted with Violence

After the end of Reconstruction, African Americans, facing increased threats to their liberty, organized and mobilized to assert their equal rights. Groups like the National Association for the Advancement of Colored People (NAACP) used protest and litigation to advance the civil rights of African Americans and secure the rights guaranteed by the Fourteenth and Fifteenth Amendments.[331] Much of the NAACP's legal work focused on defending African Americans from wrongful convictions and bringing lawsuits to hold white perpetrators of racial terror accountable for their crimes.[332] The NAACP also brought legal challenges to end many of the devices states used to suppress African American political power, such as the all-white primary.[333]

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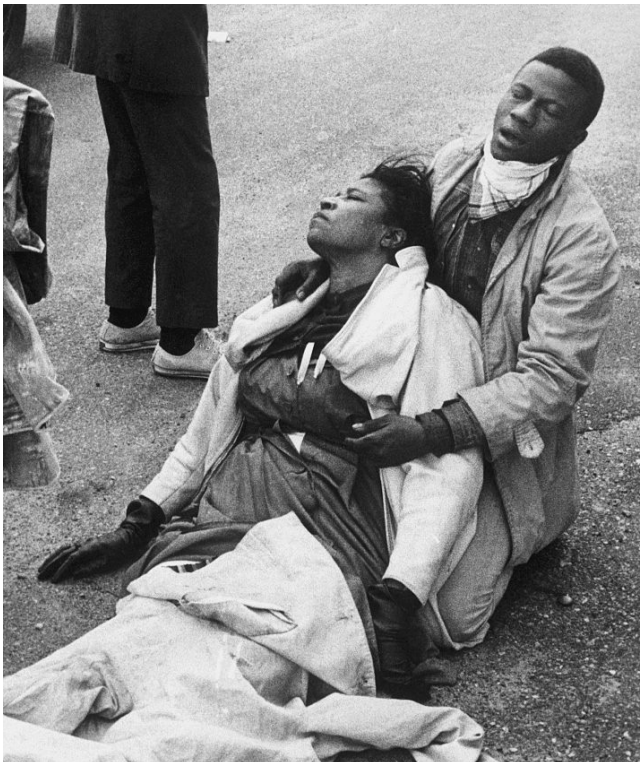


A civil rights marcher suffering from exposure to tear gas, holds an unconscious Amelia Boynton Robinson after mounted police officers attacked marchers in Selma, Alabama as they were beginning a 50 mile march to Montgomery to protest race discrimination in voter registration.(1965)

In these efforts, NAACP lawyers played a critical role in using litigation to end racial segregation, most famously through *Brown v. Board of Education*, where the NAACP convinced the U.S. Supreme Court to strike down racial segregation in public schools as unconstitutional.[334] In addition to its litigation, the organization lobbied the federal government to enact civil rights legislation, including anti-lynching laws, voting rights laws, and other civil rights laws that would ensure the equal protection of African Americans.[335]

African American women, too, played a critical role in early African American activism. During the 1896 election in North Carolina, for instance, Sarah Dudley Pettey canvassed the African American sections of Raleigh to urge African American women to persuade their husbands, brothers, and sons to vote.[336] In 1898, the "Organization of Colored Ladies" in Wilmington declared that for "Every Negro who refuses to register his name… that he may vote, we shall make it our business to deal with him in a way that will not be pleasant. He shall be branded a white-livered coward who would sell his liberty."[337]

When the United States ratified the Nineteenth Amendment in 1920, African American women registered in large numbers to vote.[338] For instance, in Kent County, Delaware, one local paper reported "unusually large" numbers of African American women who showed up to vote, though officials would prevent many of them—and many others across the country—from voting.[339]

World War II contributed to a surge in African American civil rights activism.[340] The service and sacrifice of African Americans—both abroad in the military and at home in factories and fields—underscored the moral imperative for equal treatment, especially given America's war against the Nazism and white supremacy abroad.[341]

With renewed energy, African American organizations pushed to secure voting rights, continuing efforts to organize, educate, and register African American voters, despite the threats of violence and the other barriers that states had created after Reconstruction.[342] African American women like Ella Baker led and directed civil rights campaigns and voter registration drives for some of the nation's largest civil rights groups, including the NAACP, Southern Leadership Conference, and Student

Nonviolent Coordinating Committee.[343] In addition, interracial labor unions in the South played a part in registering African American voters.[344] In 1947, Local 22 of the Food and Tobacco Workers in Winston-Salem, North Carolina helped register 3,000 African American residents in the city, helping elect the first African American alderman to the city's board since Reconstruction.[345]

But African American veterans demanding equal treatment returned home to fierce resistance.[346] In Decatur, Mississippi, a white senator, Senator Theodore Bilbo, warned African American residents to stay away from the polls for the Democratic primary in 1946, calling for "every red-blooded white man to use any means to keep the niggers away from the polls."[347]

A mob of white people waving pistols turned five returning World War II veterans away from voting during that primary.[348] A group of civil rights organizations complained to the U.S. Senate about Senator Bilbo's intimidation tactics, prompting a Senate committee to hold four days of hearings in Jackson, Mississippi.[349] Two hundred African Americans, most of them veterans, packed the federal courtroom in Jackson to share their experience of violence and voter suppression.[350]

African Americans faced similar threats in other places. In March 1948, the Ku Klux Klan paraded around Wrightsville, Georgia, warning that "blood would flow" if African Americans tried to vote in the forthcoming election.[351] Seven months later, two whites threatened Isaac Nixon, an African American veteran, telling him not to vote.[352] He refused to heed their warning, cast his ballot shortly after sunrise, and by nightfall he had been murdered.[353] Though Nixon's murderers later stood trial, an all-white jury acquitted them.[354]

In Florida, on the Christmas Eve of 1951, the KKK bombed the home of the state's NAACP director, murdering Harry T. Moore and his wife.[355] During the 1963 civil rights protests in Birmingham, Alabama, white policemen and firefighters unleashed hounds and blasted protestors with high pressure water hoses that stripped the clothes off their backs.[356]

In Greenwood, Mississippi, white citizens and officials responded to African American voter registration efforts by cutting off food supply to African American communities, imprisoning African American people for "breach of peace," setting fire to African American businesses, and firing gunshots at African American activists in their cars, their offices, and their homes.[357] When African American activists organized the Freedom Vote and the Freedom Summer of 1964 in Mississippi,[358] local sheriffs arrested three activists and turned them over to KKK members, who proceeded to murder the activists, burn their car, and bury their remains.[359]

On March 7, 1965, future Congressman John Lewis led some 600 protestors on a march from Selma to Montgomery, Alabama.[360] That "Bloody Sunday," Alabama state troopers attacked.[361] Awaiting the protestors on the Edmund Pettus Bridge, state troopers rushed into the crowd with nightsticks.[362] Troopers beat and bloodied protestors, knocking many unconscious.[363] Troopers fractured Lewis's skull in the assault.[364] "I thought I was going to die on that bridge," he later recalled.[365] The bloodshed at Selma prompted outrage across the nation, becoming the tipping point that spurred the federal government to enact the Voting Rights Act that year.[366]

When Black activists organized the Freedom Vote and the Freedom Summer of 1964 in Mississippi, local sheriffs arrested three activists and turned them over to KKK members, who proceeded to murder the activists, burn their car, and bury their remains.

The Voting Rights Act of 1965

The centuries-long African American struggle for freedom led to the passage of the Voting Rights Act, a landmark law that prohibited many of the barriers described in this chapter, allowing millions of African Americans to vote.[367] In 1964, prior to the protections of the Voting Rights Act, 57 percent of eligible African Americans remained unregistered to vote.[368] The passage of the Voting Rights Act resulted in a 21 percent increase in African American voter registration—the largest gains were recorded in the south, where the percentage of registered African American voters increased from below 31 percent to over 66 percent by 1984.[369]

The Voting Rights Act empowered the United States Department of Justice to enforce voting rights, authorized individual voters to sue in federal court to enforce their voting rights, and authorized the federal government to send examiners to register voters.[370] Among the Act's most important provisions:

- Section 2 of the Voting Rights Act prohibits any voting restriction that "results in" the denial of the right to

vote based on race, regardless of whether a state intended to discriminate;[371]

- Section 4 of the law identified certain state and local governments that had a history of discrimination against African Americans. State and local entities that demonstrated such past discrimination were "covered jurisdictions" subject to greater oversight from the federal government;[372] and

- Section 5 provided that "covered jurisdictions" were required to obtain approval—or "preclearance"—from the Department of Justice or a federal court in Washington, D.C. before passing any voting rights related law. The covered jurisdiction had to demonstrate that the proposed voting change did not have a discriminatory purpose or a discriminatory effect on African American or other nonwhite voters.[373]

Altogether, these provisions represented what the United States Department of Justice called "the most successful piece of civil rights legislation ever adopted by the United States Congress," due to its role in eliminating many of the devices that had been used to deny Americans their right to vote.[374]

Within the last decade, however, the United States Supreme Court has removed or weakened key pillars of the Voting Rights Act.[375] In *Shelby County v. Holder* (2013), the Supreme Court struck down section 4 of the Act as unconstitutional.[376] And because section 5's preclearance requirements only applied to areas identified through Section 4, the Supreme Court effectively eliminated Section 5 as well. Though admitting that "voting discrimination still exists," the Court felt that enough had been done because 40 years had passed and minority voting rates had improved.[377]

Thus, the Court found Section 4 to no longer be necessary, despite Congress's renewal of Section 4 in 2006 by an overwhelming majority (the House voted 390 in favor to 33 opposed; the Senate passed it unanimously), and despite Congress's finding that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment[.]"[378] The Court's decision prompted Justice Ruth Bader Ginsburg to protest in dissent that striking down this provision of the Voting Rights Act "when it has worked and is continuing to work" is "like throwing away your umbrella in a rainstorm because you are not getting wet."[379]

Eight years later, the Court weakened Section 2 of the Voting Rights Act as well.[380] Though Section 2 prohibits any voting law that "results in" the denial of voting rights based on race, the Court, in *Brnovich v. Democratic National Committee*, rewrote the law to limit its reach.[381] While Section 2 speaks only to voters' rights, and the need to protect them against racial discrimination, the Supreme Court created a new requirement for courts to consider the "strength of the state interests."[382] By inserting the state's goals into the equation, the Supreme Court flipped the Voting Rights Act from a civil rights act into a balancing act, allowing voting rights to be sacrificed if a court believed the state's goals to be worthy enough.[383]

The Court also declared that the legality of a voting restriction should be evaluated partly based on whether the law "has a long pedigree" or was in "widespread use" as of 1982, the year Congress amended the Voting Rights Act to prohibit laws that "result in" racially discriminatory denials of the right to vote.[384] But, as detailed in this chapter, many racially discriminatory voting restrictions have had a long and widespread pedigree in this nation's history. Poll taxes and literacy tests existed for almost 100 years—some restrictions even longer.[385] By considering a voting restriction's use in the past as a basis for accepting it, the Supreme Court's decision enables discriminatory restrictions to remain in place, simply because they had been used previously.

The Supreme Court's elimination or weakening of the anti-discrimination protections in Sections 2, 4, and 5 of the Voting Rights Act has opened the floodgates for laws restricting voter access across the nation. Hours after the *Shelby County v. Holder* decision, Texas implemented a strict photo ID law that had previously been rejected under Section 5.[386]

Within the last decade, however, the United States Supreme Court has removed or weakened key pillars of the Voting Rights Act. In *Shelby County v. Holder* (2013), the Supreme Court struck down Section 4 of the Act as unconstitutional.

That summer, the North Carolina legislature also passed a sweeping law that instituted a stringent photo ID requirement, eliminated same-day voting registration, and cut back on early voting.[387] Over the four years following *Shelby County*, jurisdictions previously covered under Section 5 closed 1,173 polling places, many in districts with majority Latino and African American voters.[388] States also limited voting hours, limited the ability to vote via mail-in ballots, and purged voter registration rolls.[389]

While these restrictions limited voting access for all Americans, they also targeted or specially affected African Americans. The removal of polling places in Ohio ensured that "African Americans in Ohio wait[] in line for fifty-two minutes to vote, while whites wait[] only eighteen minutes."[390] After record turnout of African American voters in Georgia helped flip federal elections in favor of Democrats in 2020, Georgia's Republican state legislature passed a law limiting drop boxes for mail ballots, introducing more rigid voter identification requirements for absentee ballots, and criminalizing the act of providing food or water to people waiting in line to vote.[391] In a recent lawsuit filed in federal court, the U.S. Department of Justice asserts that Georgia enacted these restrictions specifically to target African American voters.[392]

As one Virginia Senator explained, these restrictions were meant "to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without impairing the numerical strength of the white electorate."

Overall, states across the country introduced 389 restrictive voting laws from January to May 2021, alone.[393] With the Supreme Court's recent limitations of the Voting Rights Act, laws like Georgia's are becoming the new norm across the country.[394]

California

In the latter half of the 20th century, California began taking steps to expand voting access. California encouraged county and volunteer voting registration efforts in the 1950s and 1960s, and it amended its constitution to eliminate its literacy test in 1970.[395] In the 1970s, California relaxed its rules for requesting absentee ballots and for remaining on the voter registries from year to year.[396] More recently, the state enacted the California Voting Rights Act in 2001, which permits citizens to file suit in state court to challenge racially discriminatory restrictions in at-large elections without having to demonstrate the higher evidentiary standards required under the federal Voting Rights Act.[397]

Despite the state's efforts to advance voting access, the federal government has observed that California and some of its cities and counties have continued to engage in voting discrimination throughout the late 20th century. The U.S. Attorney General determined that California's use of a statewide literacy test to restrict voting during the November 1968 election violated the federal Voting Rights Act.[398]

From 1968 to 1976, the United States Department of Justice also identified Kings County, Monterey County, and Yuba County as engaging in discriminatory practices, monitoring these counties and objecting to various new voting restrictions proposed by these counties well into the 2000s.[399] As another example, the United States Department of Justice objected to Merced County's redistricting plan in 1992, a plan opposed by both African American and Latino communities because it would have denied them the opportunity to elect their preferred candidate.[400] Thus, while California has enacted laws expanding voting rights, equal access to the ballot box continues to be an ongoing challenge in parts of the state.

VI. Effects of Restrictions on African American Political Participation

Before the Voting Rights Act of 1965

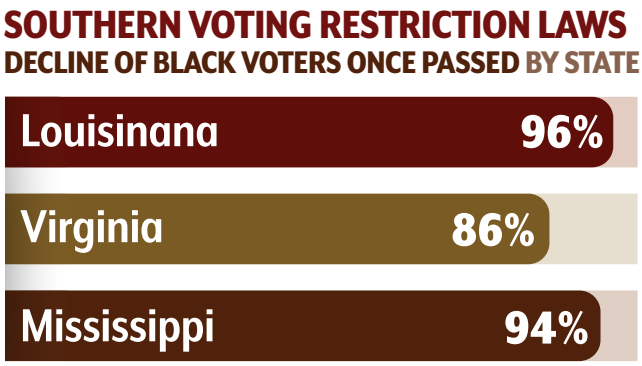
When adopting the numerous voting restrictions described in this chapter, states made their intent clear. As one Virginia Senator explained, these restrictions were meant "to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without impairing the numerical strength of the white electorate."[401]

These methods proved effective. Once Louisiana adopted a number of these restrictive rules in its 1898 constitution, the number of African American voters in Louisiana plummeted from 130,000 to 5,000.[402] In Virginia, the number dropped from 147,000 to 21,000.[403] Mississippi's constitutional convention cut African American voter enrollment from about 147,000 to around 8,600.[404]

In 1906, five years after Alabama designed its exclusionary rules, only two percent of African American voters

remained on the state's voter registries.[405] With the suppression of African American votes, African American representation in Congress quickly dwindled. During Reconstruction, 16 African American men held seats in Congress.[406] From 1887 to 1901, just five members of Congress—in either the House of Representatives and Senate—were African American.[407] From 1901 to 1929, not a single African American served in Congress.[408] No African American congressman would be elected again from the South until the 1970s.[409]

These barriers prevented African Americans from governing, while securing the power of southern white supremacists in Congress, who voted down civil rights legislation and embedded racism into federal laws that built modern America. Near the end of Reconstruction in the 1870s, white southerners formed the "Southern Bloc" in the Senate—a unified front of white Democratic Senators from the former confederate states.[410] After the passage of the Fifteenth Amendment in 1870, progressive senators proposed hundreds of pieces of civil rights legislation to remedy discrimination against African Americans in education, employment, housing, transportation, public accommodations, and voting.[411] But for 87 years, every attempt but one died in Congress, many blocked by the white "Southern Bloc" of the Senate, who vigilantly thwarted any effort to advance African American civil rights.[412]



Not only did white southern lawmakers vote down civil rights legislation, they also rewrote watershed pieces of legislation to exclude African Americans. Many historians and economists consider the New Deal responsible for creating the modern middle class and many of the programs that Americans depend upon today, such as Social Security.[413] But the New Deal excluded African Americans from many of its benefits.[414] At the time, 90 percent of the southern Black workforce, and 60 percent of nation's total Black workforce, worked as farm laborers or domestic servants.[415]

During the legislative process to pass various parts of the New Deal, southerners on the Senate Finance Committee excluded farm laborers and domestic servants from programs providing Social Security, minimum wage, unemployment insurance, and workers' compensation.[416] As several historians explain, the exclusion of farm laborers and domestic servants was "racially coded . . . Southern politicians, reported one architect of the new law, were determined to block any 'entering wedge' for federal interference with the handling of the Negro question."[417] Thus, southern politicians rewrote the New Deal to exclude African Americans from its benefits, fearing that federal benefits would discourage African American workers from taking low-paying jobs in their fields, factories, and kitchens.[418]

In one of the final parts of the New Deal, the government spent $95 billion in the Servicemen's Readjustment Act of 1944 (GI Bill) to give millions of veterans returning from World War II the ability to attend college, receive job training, start businesses, and purchase homes.[419] Yet, one report from the 1940s observed that it was "as though the GI Bill had been earmarked 'For White Veterans Only.'"[420]

During drafting, the chair of the House Veterans Committee, a white supremacist Congressman from Mississippi, ensured that the GI Bill was administered by states instead of the federal government to guarantee that states could direct its funds solely to white veterans.[421] Similar results arose in housing and healthcare. For both the Hill Burton Act, which underwrote the creation of a modern health care infrastructure,[422] and the Housing Act of 1949, Congress included segregation clauses or rejected anti-discrimination clauses to avoid southern lawmakers' opposition, which otherwise would have doomed the legislation.[423]

Thus, by barring African American political participation after Reconstruction, white supremacists seized state, local, and federal power, perpetuated discriminatory policies, blocked efforts to redress discrimination, and excluded African Americans from most of the major economic legislation that produced the modern economy of the United States.[424]

After the Voting Rights Act

Since the passage of the Voting Rights Act, African American voters have been among the most stable voting blocs, despite historic and ongoing efforts to restrict their ability to vote.[425] African American support has proved critical, in particular, in modern elections. In the last three presidential elections, African American voter turnout was 67 percent in 2012, 60 percent in 2016, and 63 percent in 2020.[426] African American voter turnout in each of these elections was higher than Latino and Asian Americans, and higher than whites in 2012.[427]

Though African Americans represent about 12.4 percent of the U.S. population today,[428] many political pundits recognized that the African American electorate played a significant role in determining the outcome in the presidential election in 2020.[429]

Nevertheless, these longstanding limitations on African American political participation have deeply shaped the lives of African Americans. If the goal of political participation is to ensure a government is responsive to the needs of its citizens, African American political participation is particularly important to serve the needs of African American communities who experience the persisting effects of slavery and segregation. But the suppression of African American political participation has prevented African Americans from exercising their democratic voice, perpetuating policies that entrench racial inequalities.

When African Americans gain greater representation, African Americans have a greater ability to request and enact policies that meet their economic and educational needs. One recent study—the first to examine the effects of African American politicians on public finances during Reconstruction—found that Reconstruction-era communities with more Black politicians had higher local tax revenue, as well as higher Black literacy rates.[430] In other words, the study suggests that communities with more African American politicians increased their tax revenue, which in turn increased investment in local education and African American education.

Another study found that the passage of the Voting Rights Act led to some reduction in racial wealth disparities, especially in covered jurisdictions subject to greater federal oversight.[431] Comparing neighboring counties—where one county was a covered jurisdiction subject to heightened oversight under the Voting Rights Act and the other was not—the study found that the Voting Rights Act narrowed the Black-white wage gap 5.5 percent between 1965 and 1970, a change driven primarily by increases in African American wages.[432]

By protecting African American voting rights, the Act helped drive increases in wages by giving African Americans greater voice to seek public employment opportunities and enabling African Americans to ask for public funds to be invested in their communities.[433] The Act also allowed African American communities and their representatives to implement affirmative action and anti-discrimination laws to protect African Americans and their ability to access equal employment opportunities and equal wages.[434] According to the study, the Voting Rights Act contributed to about one-fifth of the overall decline in the wage gap between African American and white Americans in the South between 1965 and 1970.[435]

Yet, African Americans can secure the benefits of political participation only to the extent that government policies respond to their voices. Despite modern gains in political participation and representation—including Barack Obama, the first African American man to be elected President in 2008, and Kamala Harris, the first African American woman to be elected Vice President in 2020—African Americans have not seen a similar rise in policies responsive to their needs.[436]

Studies show that Black support for a policy actually decreases the chances that the government will enact it. Scholars have found evidence that members of Congress are less responsive to their Black voters than to their white voters.

Studies examining more recent years have shown that not only do African Americans hold less political sway than white Americans when it comes to influencing the government, African American support for a policy actually decreases the chances that the government will enact it.[437] Scholars have found evidence that members of Congress are less responsive to their African American voters than to their white voters.[438]

Recent events underscore the government's failures to heed African American voices. For example, despite national and bipartisan support for police reform following the murder of George Floyd, Congress failed to enact any police reform legislation.[439] Similarly, Congress failed to pass any voting rights legislation—including bills with bipartisan support—to counteract the slew of state laws increasing voting restrictions after the 2020 election.[440]

Likewise, Congress has consistently failed to pass legislation redressing the economic disparities faced by African Americans. African American households, on average, still earn one-tenth that of white households.[441] Chapter 13, The Wealth Gap delves into the wealth gap between African American and white families and its causes. Many of these problems can be traced to the discriminatory laws and policies that continue to be felt today. Take, for example, housing segregation. Laws that historically enforced or sanctioned racial housing segregation have produced neighborhood segregation

that persists today.[442] Because modern life revolves around a family's neighborhood—including access to employment, credit scores, housing values, the amount of funding for local schools or parks, and policing—the racist policies that produced neighborhood segregation have created a discriminatory foundation upon which other laws have been built.[443]

Although increased political representation can allow African American communities to try to change these systems, undoing these discriminatory systems is not a matter of flipping a switch. Discriminatory policies have piled over decades and centuries, and undoing these systems is much like undoing the literal concrete underlying a city and its streets and sidewalks.[444] It requires many years, if not decades, of durable and long-term commitment to both change the old system and design a new one. The sustained, long-term commitment required for change means that the election of any one or several Black politicians is not enough to fix the problematic policies at the root of racial inequalities.[445] Political participation therefore represents just one piece of the puzzle when it comes to identifying the ongoing legacies of slavery, systemic discrimination, and what needs to be done to redress them.

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California

During California's early history, African American Californians struggled to gain representation in political office or to have a voice in party politics. Beginning in 1870, most Black Californians belonged to the Republican Party, the party that had abolished slavery.[446] But the white members of California's Republican Party ignored Black Californians' requests to serve in elected or appointed political offices.[447] Some Black voters protested by joining the Democratic Party in the 1880s.[448] But Democrats, too, refused Black men the offices that they had promised in order to lure Black voters to their side.[449] Though Black men secured the formal right to vote in 1870, it would take nearly a half century before California's first Black legislator, Frederick M. Roberts, was elected to the California State Assembly in 1918.[450] From 1918 to 1965, only six Black male Californians were elected to the California Legislature.[451] California did not elect its first Black female legislator, Yvonne Brathwaite Burk, until 1966.[452]

In more recent years, California has made many strides in expanding voting rights access. As of January 2022, the number of Black elected officials in California's legislature is now proportional to the state's Black population.[453] But as described in later chapters of this report, the state still has not addressed many of the socioeconomic disparities that have resulted from these longstanding barriers, disparities that profoundly shape the lives of Black Californians. While Black Californians may have a greater ability to vote in the ballot box today, Black Californians also have voted with their feet: many have left the state for opportunities elsewhere, reflecting continued failure to address their needs.[454]

VII. Conclusion

Despite the promise of American democracy, the United States has excluded African Americans from equal participation in self-government. By doing so, government officials and private parties sought to recreate the racial hierarchy that existed during enslavement. Though African Americans organized to pursue their equal citizenship, government officials resisted, retaliated, and undercut Black political power through the many means and methods described in this chapter. Many of these methods persisted for nearly a century—others persist to this day. But all of these methods have limited the country's efforts to redress the legacy of slavery and racial discrimination, producing deep inequalities in the politics and policies that shape America and the lives of African Americans today.

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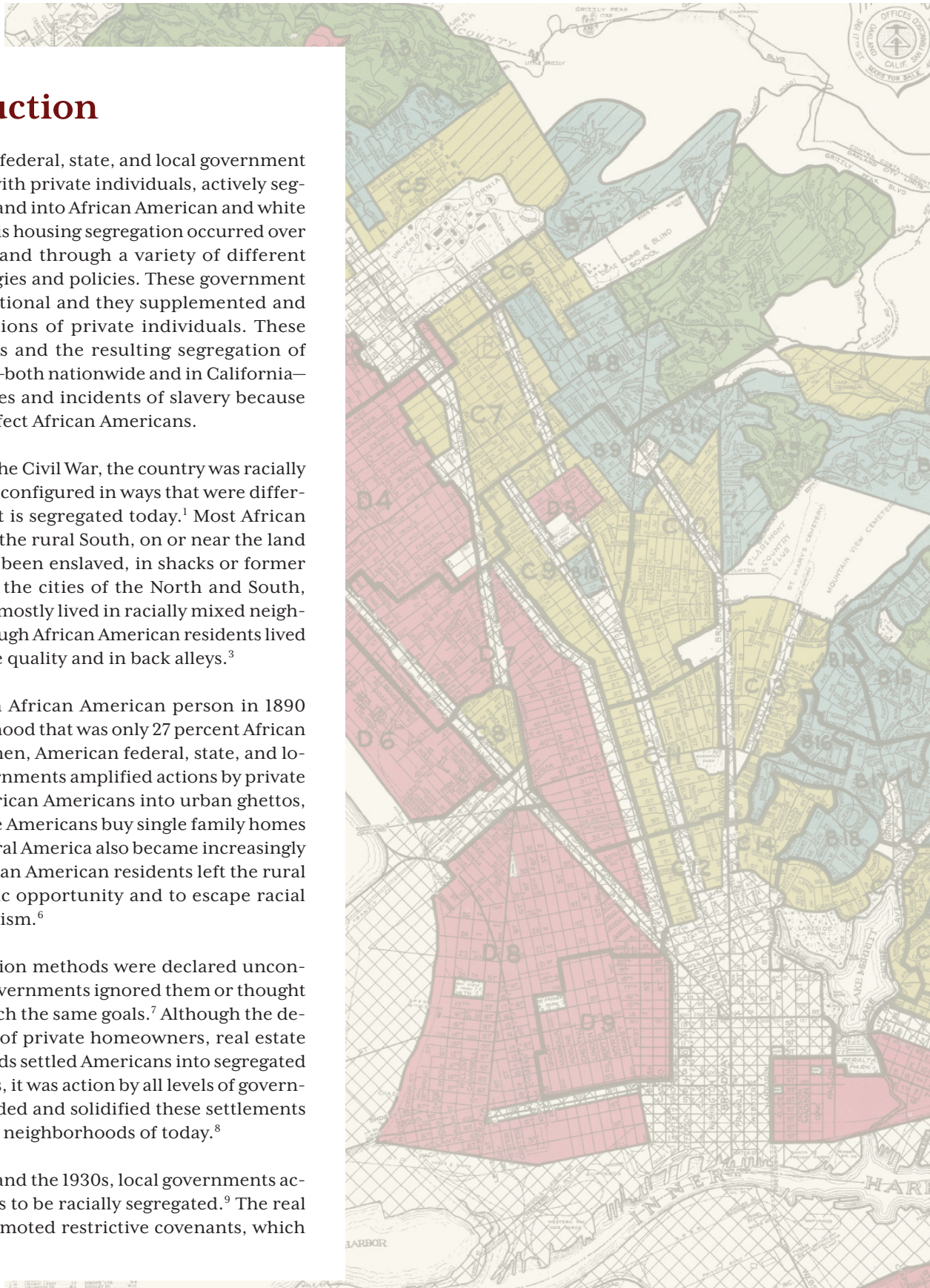
CHAPTER 5 Housing Segregation

COURTESY OF "NOT EVEN PAST: SOCIAL VULNERABILITY AND THE LEGACY OF REDLINING"/ HTTPS://DSL.RICHMOND.EDU/SOCIALVULNERABILITY



Homeowner's Loan Corporation map of Oakland, CA. (1939)

I. Introduction

After the Civil War, federal, state, and local government officials, working with private individuals, actively segregated American land into African American and white neighborhoods. This housing segregation occurred over almost 200 years, and through a variety of different government strategies and policies. These government actions were intentional and they supplemented and intensified the actions of private individuals. These widespread actions and the resulting segregation of African Americans—both nationwide and in California—are enduring badges and incidents of slavery because they continue to affect African Americans.

Immediately after the Civil War, the country was racially and geographically configured in ways that were different from the way it is segregated today.[1] Most African Americans lived in the rural South, on or near the land on which they had been enslaved, in shacks or former slave quarters.[2] In the cities of the North and South, African Americans mostly lived in racially mixed neighborhoods, even though African American residents lived in housing of worse quality and in back alleys.[3]

The average urban African American person in 1890 lived in a neighborhood that was only 27 percent African American.[4] Since then, American federal, state, and local municipal governments amplified actions by private citizens to force African Americans into urban ghettos, while helping white Americans buy single family homes in the suburbs.[5] Rural America also became increasingly segregated, as African American residents left the rural South for economic opportunity and to escape racial violence and terrorism.[6]

As certain segregation methods were declared unconstitutional, local governments ignored them or thought up new ways to reach the same goals.[7] Although the decisions of millions of private homeowners, real estate agents, and landlords settled Americans into segregated residential patterns, it was action by all levels of government which expanded and solidified these settlements into the segregated neighborhoods of today.[8]

Between the 1900s and the 1930s, local governments actively planned cities to be racially segregated.[9] The real estate industry promoted restrictive covenants, which

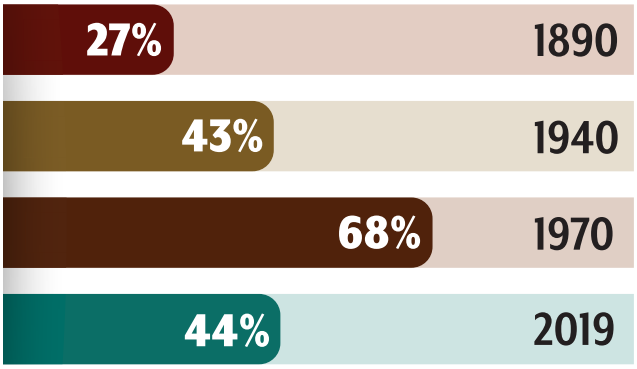
were clauses written into deeds that prohibited non-white residents from living in the house.[10]

By 1940, the average urban African American person lived in a neighborhood that was 43 percent African American.[11] From the 1930s to the 1970s, the United States federal government built public housing for white Americans, but not African Americans. The federal government helped white Americans, but not African Americans buy houses in the suburbs. Throughout American history, up until the 1970s, white residents terrorized their African American neighbors by destroying their property, bombing their houses, and burning crosses on their lawns to scare them away from living in white neighborhoods.[12] For a more detailed discussion, please see Chapter 3, Racial Terror.

By 1970, the average urban African American person lived in a neighborhood that was 68 percent African American.[13] Even after the passage of the Federal Housing Act, which outlawed housing discrimination, urban renewal and other uses of local government actions funded by the federal and state governments maintained residential segregation.[14]

The problem of segregation has never been corrected. America is as segregated in 2019 as it was in the 1940s, with the average urban Black person living in a neighborhood that is 44 percent black.[15]

INTENSITY OF SEGREGATION IN AMERICA



In California, the population of African Americans remained small until World War II, when African Americans moved to the state to find jobs in the war industry.[16] On the one hand, Southern California is an African American success story.[17] As W. E. B. Du Bois wrote of Los Angeles and Pasadena in 1913, "Nowhere in the United States is the Negro so well and beautifully housed, nor the average efficiency and intelligence in the colored population so high."[18]

In 1910, 36 percent of African Americans in Los Angeles owned homes, far more than most cities at the time.[19] On the other hand, all success is relative. Federal, state, and local government in California helped create segregation through discriminatory federal housing policies, zoning ordinances, decisions on where to build schools and a discriminatory federal mortgage policy called redlining.[20] As Robert Joseph Pershing Foster, a migrant from the small town of Monroe, Louisiana who moved to Los Angeles in the 1950s said of his first days in California, "I came all this way running from Jim Crow, and it slaps me straight in the face[.]"[21]

Like elsewhere in the country, the effects of these government policies at all levels continue to this day. In 2021, in Los Angeles and Orange counties, only 34 percent of Black households owned homes,[22] *less than in 1910*.

LOS ANGELES
PERCENT OF AFRICAN AMERICANS WHO OWNED HOMES

Section III of this chapter describes the history of U.S. Supreme Court decisions which allowed residential segregation to intensify over the last 170 years. Section IV describes the state of residential segregation at the end of the Civil War, before government and private action segregated the American landscape. Section V, VI and VII explains how migration patterns across the country led states, cities and communities to exclude African Americans, how African Americans establish their own communities in response and the racism that they faced in doing so. Sections VIII – XIII details the various mechanisms used by federal, state and local governments to segregated America throughout history. Sections XIV and XV describes the state of housing segregation today and its effects. Section XVI concludes that residential segregation in America is a result of white supremacist beliefs created to support enslavement and is the root of many modern-day racial disparities. Section XVII is an appendix of relevant data for reference. Each of these sections show the persisting effects of slavery in the context of housing.

II. Constitutionally Sanctioned Housing Discrimination

The reason housing segregation has never been fixed in America is due in part to the Supreme Court. As discussed in Chapter 2, Enslavement, and Chapter 4, Political Disenfranchisement, although the Civil Rights Act of 1866 and the Fourteenth Amendment to the U.S. Constitution banned actions that continued the effects of slavery, the Supreme Court of the United States decided in 1883 that the federal government could not prohibit racial discrimination by individual business owners and private parties.[23] This ruling later applied to housing.[24] As a result, government and private actors essentially ignored the Civil Rights Act of 1866 and Fourteenth Amendment protections against racial discrimination until Congress passed the Fair Housing Act in 1968.[25]

The story did not end here. At the height of segregation in the 1970s, the U.S. Supreme Court popularized the myth that the American government had no role in creating housing segregation, and therefore should not and could not fix the personal choices of millions of private citizens.[26]

III. The End of the Civil War

Immediately after the Civil War, the country was racially and geographically configured in ways that were different from the way it is segregated today.[27] Immediately after the Civil War, between 1860 and 1900, almost 90 percent of African Americans lived in the South,[28] and 80 percent of those who lived in the South lived in rural areas.[29] Many African American workers lived in former slave quarters, on the same plantation on which they had been enslaved.[30]

Most modern-day scholars agree that white and African Americans lived in the same geographic area in the cities at this time, although in unequal quality of housing.[31] White families lived in front streets and broad avenues and African American families generally could only live in backyards, alleys, side streets, or their houses were separated by physical barriers.[32] Impoverished shanty towns of unemployed African Americans also appeared around southern cities in undesirable areas like swamps, near city dumps, and next to cemeteries and railroad tracks.[33] "Ghettos were built up in nearly all Southern cities, not always sharply defined but pretty definite, and in these, Negroes must live," wrote Du Bois.[34]

At the same time, less than 10 percent of African Americans lived in the North and less than 0.4 percent lived in the western states.[35] Most lived in urban areas[36] that were much more segregated by neighborhood than in the South,[37] and in worse housing conditions than white Americans.[38]

In 1899, W. E. B. Du Bois's landmark sociological study of Philadelphia summed up the situation: "[H]ere is a people receiving a little lower wages than usual for less desirable work, and compelled, in order to do that work, to live in a little less pleasant quarters than most people, and pay for them somewhat higher rents."[39] Some families used up to 75 percent of their income on rent, as real estate agents raised the rent for African American tenants because they knew many landlords did not rent to African American tenants.[40] Most African Americans living in the North were only able to find jobs serving white families, and thus were forced to pay higher rents in the more expensive neighborhoods close to their employers.[41]

In California around the end of the Civil War, African Americans were few in number compared to other racial groups: the 1860 census counted 4,086 "[t]otal free colored," 17,798 "Indian," and 34,933 "Asiatic" people in California.[42] As a result of their small numbers, African American Californians at the time generally lived in multiethnic communities[43] and occasionally also lived in small predominantly African American communities.[44] For example, a group of 44 settlers, half of whom were of African descent, who traveled from Sinaloa, Mexico, established a settlement that later became Los Angeles in 1781.[45] During the Mexican War, from 1846 to 1848, Los

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An old farm house with slave house in the foreground.

Angeles had a significant African American population as former enslaved African Americans were brought to the area.[46] In Northern California, there was also a concentrated African American population along the banks of the Sacramento River in a neighborhood comprised of Mexican and Chinese settlers.[47] In that neighborhood, "rowdy young men and boys" attacked all three groups and vandalized African American and Chinese businesses.[48] African Americans also lived and worked in multiethnic mining communities such as Little Negro Hill near Folsom Lake, California.[49] California had four counties with fewer than 10 African American residents in 1890.[50] By 1930, California had eight counties with fewer than 10 African American residents, which author James Loewen argues is the result of intensified segregation[51] Author Richard Rothstein argues that after the large influx of African Americans to the state in World War II, government actions in California imposed racial segregation where it had not previously existed.[52]

Many towns across the country became known as sundown towns, where African Americans were not allowed to stay after dark. Although these rules were often unwritten, local sheriffs and armed, white mobs enforced them. According one scholar, California had more sundown towns than the entire South.

IV. The Great Migration

Between 1870 and 1900, many African Americans moved from rural to urban areas in the South, looking for better paying jobs.[53] Over the next seven decades, as violence targeting African Americans intensified in the South, and as Southern states passed laws that relegated African Americans in nearly every aspect of life to worse conditions than white Americans, the promise of better jobs and the illusion of racial equality pulled African Americans out of the South to the North and the West.[54] This is called the Great Migration and, at its peak, 16,000 African American people left the South each month.[55]

Historians have identified three migration paths out of the South (though not all African Americans followed these paths exactly).[56] The eastern path carried people from Florida, Georgia, the Carolinas, and Virginia to Washington D.C., Philadelphia, New York, and Boston.[57] The Midwest path carried people from Mississippi, Alabama, Tennessee, and Arkansas to Cleveland, Detroit, Chicago, Milwaukee, and Pittsburgh.[58] The western path carried people from Louisiana and Texas to California and the rest of the West Coast.[59] More African American people moved to California in the 1940s than in the entire previous century of statehood combined.[60] The African American population of California mushroomed form 124,306 in 1940 to 1,400,143 in 1970.[61] By the end of the Great Migration in the 1970s, 47 percent of African Americans lived outside of the South.[62] Although many African Americans left the South to escape discrimination, the lingering legacy of slavery, reinforced by government actions at all levels, followed them across the country. Historians have argued that the Great Migration led to an increase in racial violence in the North and West, and an intensification of residential segregation.[63]

V. Exclusion or Destruction of African American Communities

Nationally

As African Americans left the South, entire states like Indiana and Oregon outright banned African Americans from living in the state.[64] Peter Burnett, who later became the first governor of the State of California, was involved in passing these Oregon laws to ban Black residents from living in Oregon.[65]

In addition to entire states, many towns across the country became known as sundown towns, where African Americans were not allowed to remain after dark.[66] Although these rules were often unwritten, local sheriffs and armed, white mobs enforced them.[67] Sundown towns were created largely between 1890 to 1940 and they legally continued to exist through 1968.[68] The sociologist James Loewen argued that most suburbs in America began as sundown towns and that the hometowns of nine out of the 32 candidates for president in the 20th century were sundown towns.[69] For example, Harry Truman grew up in Lamar, Missouri, a legal segregation town of 3,000 without a single African American family.[70] George W. Bush lived in Highland Park, a

sundown suburb of Dallas that only welcomed its first African American homeowners in 2003.[71]

California

Much like Indiana and Oregon outright banned African Americans from living in the state as they left the south,[72] California also tried to pass laws banning African Americans from settling in the state.[73] Although the laws did not pass, the California legislature, dominated by white southerners at the time, sent the clear message that African Americans were not welcome.[74] (For further discussion, see Chapter 2, Enslavement.)

Later, as residential segregation reached its height between 1940 to 1970, local governments and residents created scores of sundown towns and suburbs in California,[75] some by ordinance and some by force.[76] Loewen found evidence that eight California counties effectively excluded African American people.[77] White Californians rioted to expel African American residents from California towns.[78] According to Loewen's research, California had more sundown towns than the entire South, which Loewen attributes to the culture of racism in the South preferring to exploit rather than exclude African American residents.[79]

California sundown towns included most of the suburbs of Los Angeles and San Francisco, and most of Orange County.[80] Some of these places gained a national reputation as sundown towns.[81] Loewen has collected research on numerous sundown towns throughout California.[82] A list of the sundown towns identified by Loewen is included in Table 3 in the Appendix to this chapter.

Fliers for the Maywood Colony, a suburban development surrounding Corning, California, announced: "GOOD PEOPLE - In most communities in California you'll find Chinese, Japs, Dagoes, Mexicans, and Negroes mixing up and working in competition with the white folks. Not so at Maywood Colony. Employment is not given to this element."[83]

In South Pasadena, in the late 1940s, the city administration, local civic leaders, and realtors tried to cover South Pasadena with racially restrictive covenants.[84] A 1947 newspaper article noted the unusual and extreme extent of this effort; the goal was to blanket the entire city with racially restrictive covenants.[85]

As a matter of official policy, African Americans and other nonwhite persons were only allowed to work in South Pasadena if they left by dusk.[86] Limited exceptions were made for live-in servants and caretakers, but they could not live in the city on their own, and often could not bring their children to live with them.[87] This campaign to exclude all nonwhite residents from South Pasadena only failed after the Supreme Court ruled that racially restrictive covenants could not be enforced.[88]

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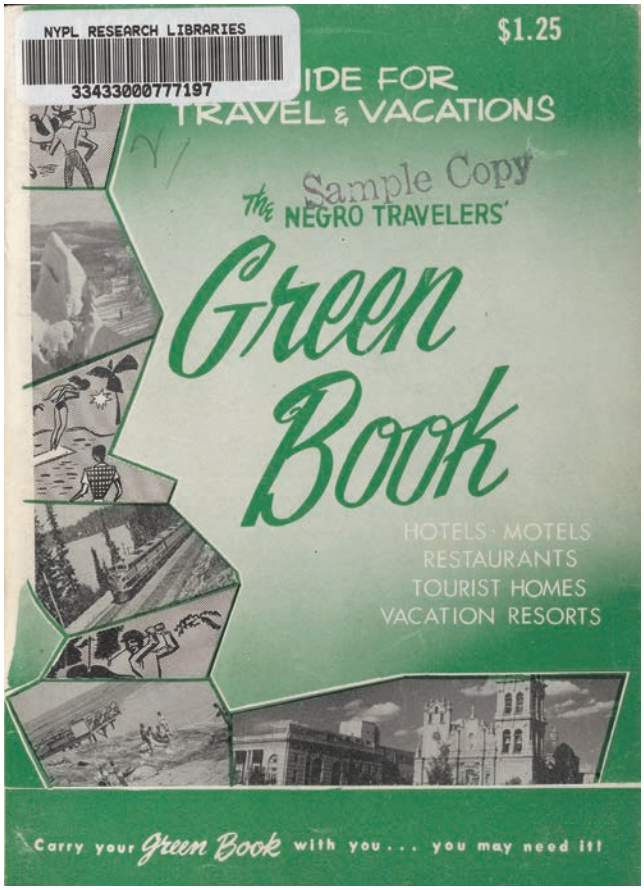

The Negro Travelers' Green Book. The annual guide is for services and places relatively friendly to African-Americans. (1959)

VI. Freedmen's Town

Nationally

Banned from settling in entire geographic areas, and escaping discrimination and racial violence, African Americans began building all African American towns in the 19th Century in the Southwest, Midwest, and West.[89] Also known as Freedmen's Towns, these towns developed in order to, in the words of one Black town newspaper editor, exercise freedom "as freedom was understood by

[African Americans]."[90] Approximately 100 such towns were built between early-1800s and mid-1900s.[91] A particularly large number of African Americans migrated to Kansas.[92] Oklahoma had over 30 all-African American towns.[93] Other states with such towns included Texas, Iowa, New Mexico, and Michigan, as well as some in the former enslavement states of Alabama, Mississippi, Kentucky, and Tennessee.[94]

California

Although there is not much research on this topic, some records suggest that there were at least 15 African American towns in California between 1850 and 1910.[95] The best known and most successful was Allensworth, 40 miles north of Bakersfield.[96] Allen Allensworth, a formerly enslaved Lieutenant Colonel from the U.S. Army, founded Allensworth with others in 1908.[97] The town attracted disillusioned African American migrants who had fled the South, but found a different type of discrimination in California.[98]

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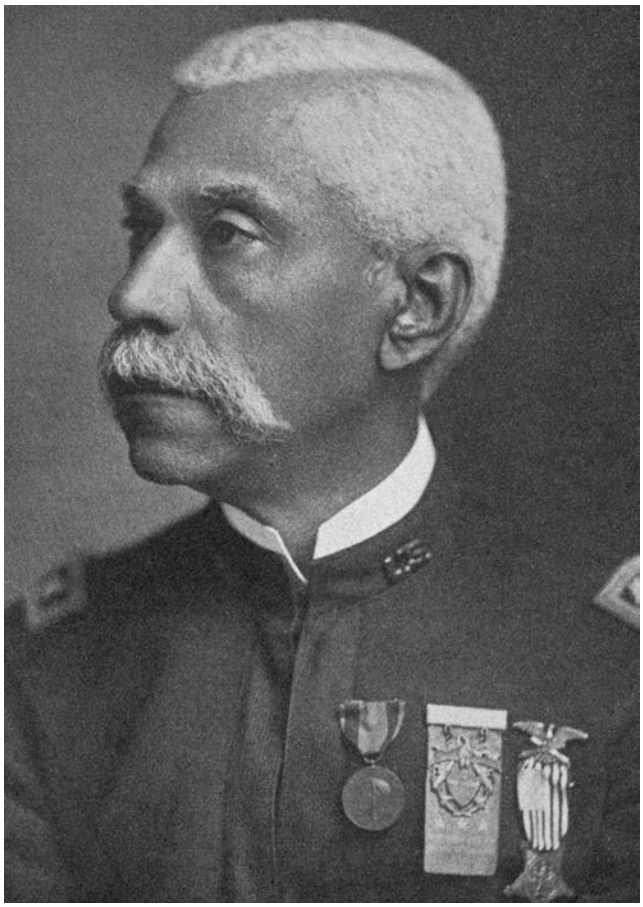

Lieutenant Colonel Allen Allensworth founded an all Black town outside of Bakersfield with four other settlers. Today, Allensworth is a California State Park. (1926)

Unlike other African American towns in California, Allensworth was self-governing, and at the height of its success before the Great Depression, over 300 families constructed churches, a library, a school, and a general store.[99] African American midwives cared for the health of the community, as most doctors in nearby towns refused to take African American patients unless the patient was employed by a white rancher.[100]

Allensworth spent more money on its schools than its neighboring school districts.[101] Cornelius Pope, who lived in Allensworth and attended school there as a child, remembered that his teacher Alworth Hall "welcomed [him] to the Allensworth School and with open arms and asked, 'Learn something for me today.'"[102] When Pope left Allensworth, he said, "it didn't take me long to find out that I was equal to the very best. I was just as powerful, could think just as good, there was nothing inferior about me. I was pretty hard to stop from there on in."[103]

Despite Allensworth's success, it was never truly independent; it had to rely on the government and white-owned companies that controlled the water, the railroad, and job markets.[104] In testimony to the Task Force, Terrance Dean argues that water, land, and railroad companies discriminated against the town, leading to its demise.[105] The Pacific Farming Company, after first selling land plots to the African American settlers at inflated prices, then prohibited land sales to African Americans, which limited the town's growth.[106] Despite its promises, the Pacific Water Company built only four water wells for Allensworth, compared to the 10 wells it built in a neighboring white town.[107] The water dried up within two years and was contaminated with alkaline at first, then arsenic in 1967.[108] The founders maintained that the settlers were victims of a racist scam and were sold land that would never have enough water.[109]

When it was founded, Allensworth was on the Santa Fe railroad's main line, which allowed the town to derive revenue from the rail stop.[110] In 1914, the rail line was diverted away from Allensworth.[111] Not being able to earn revenue from the railroad stop or farming alone, residents worked multiple jobs in the surrounding, discriminatory white communities.[112] Young people left the town to find jobs elsewhere, and Allensworth slowly died and disappeared as economic opportunities decreased and the water calcified.[113] It was established as a state park in 1974, but remained critically underfunded and unbuilt until the 2000s.[114]

VII. City Planning for Segregation

Nationally

Anti-Black Zoning Ordinances

From the Civil War into the 1960s, as local governments planned the layout of their cities, they used planning regulations called zoning ordinances to prevent African Americans from living in certain neighborhoods.[115] First, city officials in southern cities in the early 1900s passed African American and white zoning ordinances to ban African Americans from living in white neighborhoods.[116] When the U.S. Supreme Court found that these explicitly race-based zoning ordinances violated the federal Constitution in 1917, city officials used other zoning ordinances as proxies for race in order to maintain all-white neighborhoods.[117]

From the 1860s to 1900s, when African Americans first left the rural South for the urban South, racial violence escalated, leading to a number of large scale race violence and massacres across the South.[118] Soon after, anti-Black zoning ordinances were enacted in the South and nearby cities..[119] In 1910, Baltimore enacted the city's anti-Black zoning ordinance, making it illegal for African American people to move to blocks that were more than half white, and vice versa.[120] Edgar Allan Poe, Baltimore's city attorney and grandnephew of the famous poet, declared that the zoning was constitutional, and the city's mayor stated, "Blacks should be quarantined in isolated slums in order to reduce the incidents of civil disturbance, to prevent the spread of communicable disease into the nearby White neighborhoods, and to protect property values among the White majority."[121]

Numerous other southern cities followed Baltimore's example, including Winston-Salem, Atlanta, Oklahoma City, Miami, Birmingham, Dade County (Miami), Charleston, Dallas, Louisville, New Orleans, Richmond, and St. Louis.[122] Although only about 10 percent of African Americans lived in the North at this time, anti-Black ordinances were popular nationwide.[123] In 1915, the *New Republic* argued for residential racial segregation until "Negroes ceased wanting to 'amalgamate' with whites..."[124]

Although the U.S. Supreme Court declared racial zoning ordinances unconstitutional in 1917, states and cities ignored the decision for years.[125] In 1927, Texas passed a law authorizing cities to pass ordinances segregating African Americans and whites.[126] Other cities, like Atlanta, Austin, Kansas City, and Norfolk, made discriminatory zoning decisions based on official city planning maps that explicitly labeled neighborhoods African American, until as late as 1987.[127]

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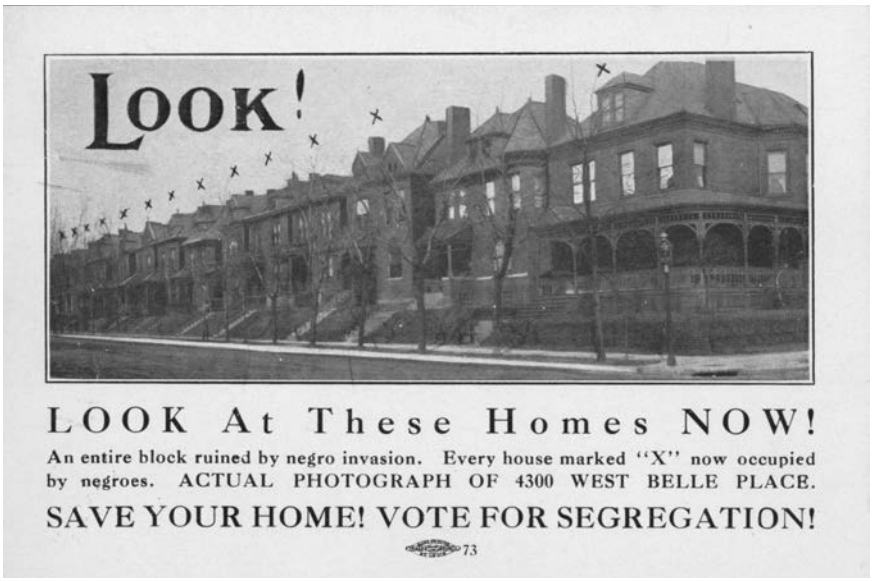


Leaflet distributed in St. Louis Missouri advocating residents to vote for more stringent racial voting laws. Those homes marked with an "x" represent where Black families lived. (1916)

Company Towns

Beginning in the late 18th century, large corporations planned and built entire towns for their workers and attracted them with benefits including housing and mortgages.[128] When companies began hiring African Americans after the Great Migration, these companies typically offered African American workers housing that was lower in quality.[129]

In company towns like Gary, Indiana and Sparrows Point in Baltimore County, Maryland, the best housing and jobs were reserved for American-born white managers.[130] The worst jobs and the smallest, shabbiest housing went to African Americans.[131] In Sparrows Point, Maryland, the site of Bethlehem Steel, African American residents were segregated from white residents.[132] Two room bungalows with outhouses originally constructed for African American workers, were given to white immigrants when there was a housing shortage.[133] African Americans workers were forced to rent bunks in shanties that were originally intended as temporary housing.[134]

Racialized Neighborhood Zoning

After the Supreme Court declared explicit racial zoning unconstitutional in 1917, city officials developed new strategies to segregate African American residents from white residents by neighborhood.

The federal government joined this effort. In 1933, President Franklin D. Roosevelt's appointment to the National Land Use Planning Committee, Alfred Bettman, explained that cities and states needed to establish planning commissions for zoning to "maintain the nation and the race."[135] These new zoning strategies included:

- City officials zoned neighborhoods for single family homes, without change for decades.[136] This prevented apartment complexes from being built, which effectively kept out African Americans who were less likely to afford single family homes.[137] Influential experts like Columbia Law School professor Ernst Freund stated that "the coming of colored people into a district" was the "more powerful" reason for the use of zoning, rather than the creation of single family neighborhoods.[138] The United States Supreme Court decided that this type of zoning law was constitutional in 1977.[139]

- City officials relaxed or did not enforce zoning laws against white residents, but strictly enforced them against African Americans and other people of color and effectively chased African Americans out of certain neighborhoods.[140]

- City officials zoned African American residential communities as commercial or industrial regardless of their residential character.[141] This created a vicious cycle. African American residential communities zoned as commercial or industrial attracted polluting industries and lowered property values.[142] White families would be less likely to move into the industrial zone, as white families generally had more money.[143] As a result, it became increasingly difficult to remove the commercial or industrial zoning for these African American residential communities.[144]

- City officials limited new buildings by banning or imposing large fees on new construction, apartment buildings, mobile homes, or factory-built houses,[145] a practice known as "snob zoning."[146] Cities also demanded development or architectural specifications.[147] These ordinances had the effect of keeping poor people, large families, older residents, single individuals, and people of color out of particular areas.[148]

- City officials used dead-end streets, highways, cemeteries, parks, industrial spaces, and rail lines to create boundaries between African American and white neighborhoods.[149] African American people were even prohibited from burying the dead in white cemeteries[150] and from using parks.[151]

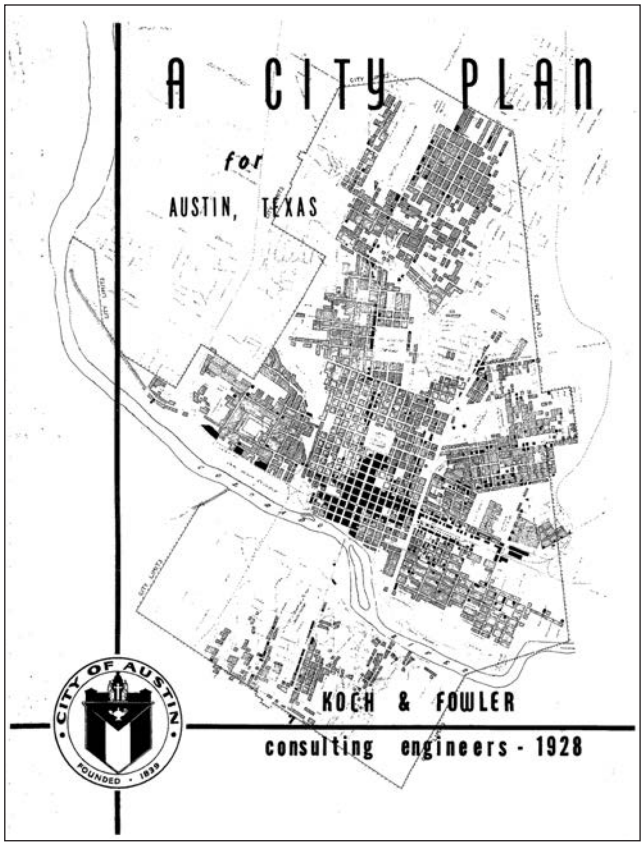
These strategies were often used in combination to maintain the segregated nature of a neighborhood. For example, in the St. Louis metropolitan area where 18-year-old Michael Brown was shot in 2014, city officials used a planning map that listed the race of each building's occupants to zone African American neighborhoods and the land next to African American neighborhoods for industrial development in 1919.[152] The author of the city planning map explained that the goal was to prevent the movement into "finer residential districts . . . by colored people."[153] In order to navigate the racial hostility that this segregation caused, African Americans created their own maps, travel guides, and other publications.[154] For more information on this form of counter-mapping, see Chapter 11, An Unjust Legal System.

White neighborhoods were zoned as residential, and the single family homes in those neighborhoods used restrictive covenants, as discussed below, to prevent African American residents from moving in.[155] This ensured that the neighborhood stayed white.[156] The African American neighborhoods were zoned to permit polluting industry, liquor stores, and brothels, which were banned in white neighborhoods.[157] Later, the federal government cited the fact that African American neighborhoods were close to industry and vice as a risk to property values.[158] Based on the federal government's analysis, private banks refused mortgages to African Americans in a process called redlining.[159]

In 1928, the city of Austin, Texas, adopted a master plan to create a "negro district." The mechanism worked well. In 1930, Wheatsville, a racially mixed community in Austin founded by a formerly enslaved person, was 16 percent Black. In 1950, the Black population of Wheatsville was one percent.

School Siting Policy

City officials used the decision of where to build a school as a way to concentrate African Americans in poor neighborhoods with underfunded schools.[160] This strategy is referred to as a school siting policy.[161] Cities first banned African American families from sending their children to white schools, then moved the only school that African American students were allowed to attend into designated African American neighborhoods and did not pay to transport African American students who lived outside the African American neighborhoods.[162]



The adopted 1928 city plan of Austin, Texas created a "negro district" as "the nearest approach to the solution of the race segregation problem.

In 1928, the city of Austin, Texas, adopted a master plan to create a "negro district," in order to implement segregation, which the plan warned "cannot be solved legally under any zoning law known to us at present."[163] The mechanism worked well. In 1930, Wheatsville, a racially mixed community in Austin founded by a formerly enslaved person, was 16 percent African American.[164] In 1950, the African American population of Wheatsville was one percent.[165]

After city officials segregated Austin, the "negro district"[166] on the east side had more unpaved streets, broken sewers, and fewer public transportation.[167] The city did not enforce the residential zoning ordinances, so the neighborhood became increasingly industrial.[168]

City officials in Atlanta used segregation maps to guide the school board's decisions on which schools to close and where to build new schools.[169]

California

Some scholars have argued that the first known attempt by an American city to segregate on the basis of race was in 1890, when the San Francisco Board of Supervisors voted unanimously to move all Chinese people within San Francisco to a neighborhood set apart for Chinese residents and businesses.[170] As African Americans arrived in California during the Great Migration, California used segregation to reinforce the racial hierarchy created by slavery.

Northern California

In 1953, when the Ford Motor Company moved its plant to Milpitas, California, and the labor union tried to build housing for its African American workers, the city rezoned the site for industrial use.[171] The city also adopted a zoning ordinance banning apartment buildings.[172] Anaheim, Costa Mesa, Orange, and Santa Ana zoned African American residential communities as industrial to maintain neighborhood segregation.[173]

In 1958, the Sequoia Union High School District built a high school in segregated East Palo Alto, further entrenching segregation in Palo Alto.[174]

Southern California

In California, the then-prosperous Los Angeles neighborhood of Sugar Hill is another example of the effects of racialized zoning. Prominent African Americans like Hattie McDaniel, the first African American to win an Oscar for her role as Mammy in *Gone with the Wind*, and Norman Houston, co-founder of what became the largest African American-owned insurance company in the West lived and singer Ethel Waters lived in the neighborhood.[175] Waters remembered the day she moved into her house: "During the day the moving men had brought my things, and when I saw that they had placed each chair and table exactly where I wanted, I burst into tears[.] 'My house,' I told myself. The only place I've ever owned all by myself ... I felt I was sitting on top of the world. I had a home at last."[176]

In 1945, the white neighborhood association sued to apply its restrictive covenant and evict the African American families living there.[177] When the white neighbors lost their lawsuit, the Los Angeles City Council stepped in and rezoned the neighborhood for rentals despite the protests of the affluent African American families living there.[178] In 1954, the city built the Interstate 10 Santa Monica Freeway through Sugar Hill and succeeded, finally, in destroying the African American community.[179]

When South Central Los Angeles became an African American community in the 1940s, it had a mix of industrial plants and residential homes.[180] The City of Los Angeles rezoned much of the neighborhood for commercial use.[181] A plant explosion killed five local residents, 15 white workers, and destroyed more than 100 homes.[182] When the pastor of an African American church protested the industrial zoning near his church, a city official replied, "Why don't you people buy a church somewhere else?"[183]

VIII. Eminent Domain

From the 1855 construction of iconic Central Park in New York City to urban renewal in the 1970s, America built parks, highways, and new economic developments that destroyed African American or integrated neighborhoods. Government officials used a legal concept called eminent domain to confiscate private land owned by African Americans for these public uses.[184] The U.S. constitution demands that the government pay the landowner "just compensation," which is usually fair market value, but often a disputed sum.[185]

These government decisions evicted African Americans from their homes and destroyed African American wealth.[186] It shuttered thriving businesses[187] and severed community ties.[188] Alfred Johnson, the executive director of the American Association of State Highway Officials and a lobbyist who worked on the 1956 Highway Act, put it this way: "Some city officials expressed the view in the mid-1950s that the urban Interstates would give them a good opportunity to get rid of the local niggertown."[189]

When South Central Los Angeles became a Black community in the 1940s, it had a mix of industrial plants and residential homes. The City of Los Angeles rezoned much of the neighborhood for commercial use. A plant explosion killed five local residents, 15 white workers, and destroyed more than 100 homes. When the pastor of a Black church protested the industrial zoning near his church, a city official replied, "Why don't you people buy a church somewhere else?"

Scholars disagree over whether federal, state, and local governments racially targeted African American neighborhoods for destruction, or whether these public works projects were situated in the area of least political resistance, which were incidentally African American neighborhoods.[190] Regardless of intention, the effect is clear: one study in 2007 found that between 1949 and 1973, 2,532 eminent domain projects in 992 cities displaced a million people, two-thirds of whom were African American.[191] African Americans made up only 12 percent of the American population at the time, and so they were five times more likely to be displaced than they should have been when considering their portion of the population.[192]

From 1949 to 1973, compared to white Americans, African Americans were

5x MORE LIKELY to be displaced by eminent domain

These government actions destroyed the social, political, cultural, and economic networks created by a neighborhood.[193] Evicted African American residents struggled to find a new place to live, as the compensation offered by the government was often not high enough to buy or rent in other parts of the city.[194] Evicted African American businesses lost their location and client base and were not usually compensated.[195] Urban renewal displaced cultural centers, and in certain industries like jazz venues, it threatened the entire industry.[196] Forced evictions also are associated with increased risk of stress-related diseases like depression and heart attack.[197]

Park Construction

The construction of parks in the United States has been used to harm African American people in many different ways. Parks have been used to destroy African American or integrated neighborhoods and act as a barrier between African American and white neighborhoods.[198] The residents of these destroyed integrated neighborhoods were then resettled into segregated neighborhoods.[199] African American neighborhoods themselves lacked green spaces, as discussed in Chapter 7, Racism in Environment and

Infrastructure, leading to negative health effects. African Americans were often banned from public spaces, as discussed in Chapter 9, Control over Spiritual, Creative, and Cultural Life.

Central Park in Manhattan was one of the most prominent examples of racial segregation by park construction. Cities across the country copied Central Park's policies, regulations, and design.[200] In 1855, about 1,600 people lived in the area in mixed race neighborhoods called Seneca Village, Yorkville, and Pigtown.[201] Even though state law at the time prevented African American New Yorkers from owning land, more than half the African American households owned their homes in Seneca Village.[202] The community included two African American churches and one racially mixed Episcopal church, a cemetery, and an African American school.[203] City officials destroyed all of it by 1857 to build Central Park with an all-white, male workforce.[204]

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In California, at least one current park is on the site of a formerly thriving African American neighborhood. On the land that is currently Belmar Park in Santa Monica, the City of Santa Monica took away and burned down the homes and businesses of people in the African American neighborhood of Belmar Triangle through eminent domain for the construction of the city's expanded civic center, auditorium, and the Los Angeles County Courthouse.[205] Now there is a park commemorating the neighborhood.[206]

The 1938 Underwriting Manual issued by the U.S. Federal Housing Administration (FHA) states: "A location close to a public park or area of similar nature is usually well protected from infiltration of business and lower social occupancy coming from that direction."[207]

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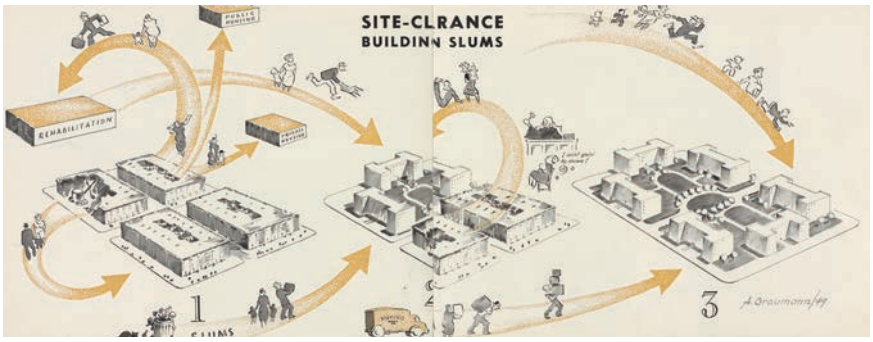

New York City Housing Authority. (January 1946- July 1949)

Slum Clearance

Throughout American history and across the country, government officials, who are often white (see discussion in Chapter 4, Political Disenfranchisement), labeled African American communities as slums, regardless of what the neighborhood was actually like.[208] This allowed government officials to demolish so-called "slums" to make way for commercial development, upscale residences, parks, universities, hospitals, and corporate headquarters.[209]

The federal government funded this strategy with the 1934 Housing Act,[210] and then again, comprehensively, with the 1949 Housing Act, which provided $13.5 billion for slum clearance and urban redevelopment between 1953 and 1986.[211] At the height of urban renewal in 1967, the government destroyed 404,000 housing units, but only built 41,580 as replacements.[212]

For example, in 1953 the Memphis Housing Authority declared that 46 acres of middle-class Black-owned single-family homes was a slum and replaced it with 900 units of public housing.[213] Homeowners had paid off their mortgages, improved their homes, and created a neighborhood; "[t]he home owners are sick and distressed beyond measure," pleaded one resident in a letter to city authorities.[214]

In another example, after African Americans rebuilt in Tulsa following the 1921 Tulsa massacre, city officials declared the Greenwood community to be a slum, and destroyed it again.[215] Highway construction and urban renewal also appear to have compounded the economic collapse of the Greenwood community.[216]

Freeway Construction

The Federal Aid Highway Act of 1956 built 41,000 miles of interstate highways and was the largest American public works program at the time.[217] By the 1960s, highway construction was destroying 37,000 urban housing units per year.[218] From 1956 until 1965, the federal government did not provide any assistance to people whose homes were destroyed.[219] During the first 20 years of interstate highway construction, more than a million people were displaced.[220]

In 2021, the U.S. Secretary of Transportation acknowledged there is "racism physically built into some of our highways" because the federal highway system was built specifically to cut through neighborhoods where property values were lowest.[221] In most cities, federal highways were routed through African American neighborhoods.[222] For example, between 1948 and 1956, 86,000 people were displaced in Chicago, 66 percent of whom were African American, even though at the time, African American people only made up approximately 20 percent of the city's population.[223]

In 1962, Detroit razed African American communities to build the Interstate 75 expressway, a plan that the U.S. Commission on Civil Rights warned in advance would displace 4,000 families, 87 percent of whom were African American.[224] U.S. Department of Housing and Urban Development officials knew that they would destroy African American homes and did nothing to help these African American families.[225] The government did little to help these mostly African American families, businesses, churches, and schools.[226]

COURTESY OF ROY H. WILLIAMS/MEDIANEWS GROUP/OAKLAND TRIBUNE VIA GETTY IMAGES

Interstate 980 severed the predominantly Black neighborhoods of West Oakland from the rest of the city, setting the stage for underfunding of municipal projects in the area. Excavation site of Interstate 980. (1976)

The formerly-thriving African American neighborhood of Greenwood in Tulsa, Oklahoma—infamous for the deadly anti-Black massacre of 1921—is now divided by Interstate Highway 244.[227] Greenwood now has one block of businesses today.[228] Before the highway's construction, the neighborhood had 35 blocks of businesses and homes.[229] Whenever affirmative infrastructure of this sort is constructed in African American neighborhoods, the initial construction-related harms created are compounded by the environmental pollution that is created and generated on an ongoing basis.[230]

From 1956 until 1965, the federal government did not provide any assistance to people whose homes were destroyed. During the first 20 years of interstate highway construction, more than a million people were displaced.

Highway construction not only destroyed African American neighborhoods, government officials also used it to fence African Americans into certain neighborhoods.[231] A federal manual recommends that "[a] high-speed traffic artery or a wide street parkway may prevent the expansion of inharmonious uses to a location on the opposite side of the street."[232] The term "inharmonious racial or nationality groups" was used by the federal government to describe communities of color.[233]

In Chicago, 28 identical 16-story apartment buildings known as the Robert Taylor Homes were a national symbol of failed public housing and concentrated poverty.[234] The project housed 27,000 residents, nearly all of whom were African American.[235]

The City of Chicago used the Day Ryan expressway to cut off the Robert Taylor Homes from the surrounding neighborhoods.[236] Studies have shown that interstate highways also fenced in African American neighborhoods in Memphis, Richmond, Kansas City, Atlanta, Tulsa, and Charleston.[237]

California

In California, eminent domain was used against African American communities, as well as other communities of color. As in the rest of the country, California used park construction, slum clearance, and freeway construction to destroy African American communities.

On September 23 and 24, 2021, California residents Jonathan Burgess and Dawn Basciano testified before the Task Force that state officials built the Marshall Gold Discovery State Historic Park in Coloma, California on their family's land without just compensation.[238] They also testified that the California Department of Parks and Recreation has not appropriately commemorated the history of the African American families who owned the land.[239]

In Southern California, the city of Manhattan Beach destroyed a racially integrated beach front neighborhood.[240] Willa Bruce, who was Black, had purchased the beach front property in 1912 to run a lodge, café, and dance hall.[241] White people in the area tried to push her out by slashing her tires, setting fire to a mattress under her deck, and posting "No Trespassing" signs and fake parking restrictions to chase away Black customers.[242]

In 1924, Manhattan Beach city officials confiscated the beach front property of several African American and white families, including the Bruces, citing an urgent need for a public park.[243] The Bruces sued for $120,000 and received $14,500.[244] The other families, African American and white, received between $1,200 and $4,200 per lot.[245] According the Bruce family lawyer, the city did not pay for years and barred them from purchasing new land in the area, forcing the Bruces to leave without any income.[246]

The land lay vacant for decades until a park was built in the 1950s.[247] The family moved to South Los Angeles and eventually left California.[248] Having lost their property, Willa and her husband Charles worked for other business owners for the remainder of their lives.[249] Estimates of the fair market value today of the Bruce family land is in the millions.[250] In the fall of 2021, the state of California authorized Los Angeles County to transfer the land back to the Bruce family after nearly 100 years.[251]

African Americans were pushed out of other beach cities, as described by Dr. Alison Rose Jefferson to the Task Force on December 8, 2021.[252] Initially, Santa Monica was not only home to a African American community; it was also a tourist destination for African Americans throughout the Los Angeles area.[253] But, in 1922, an African American investment group was blocked from developing a resort and amusement facility along the oceanfront.[254] After the African American investors could not build the facility, white developers purchased the land and constructed the Casa del Mar and the Edgewater clubs in the area.[255] African American investors were also unable to build a planned African American membership-based club in Santa Monica in 1958 because the city took over the land through eminent domain proceedings for a purported parking lot.[256] These investors asserted racial discrimination and attempted to stop the cities proceedings in court but lost.[257] Now, the upscale Viceroy hotel is located at the site.[258]

In 1945, California passed the Community Redevelopment Act, which allowed for the redevelopment of "blighted areas" in urban and suburban communities.[259] The law defined a "blighted area" as a social or economic liability that needed redevelopment for the "health, safety, and general welfare" of the communities in which they existed.[260] An area was deemed "blighted" if one of the following conditions was present:[261]

- Areas with buildings that had "faulty interior arrangement and exterior spacing," or housed a "high density population," leading to overcrowding and infectious disease outbreaks;[262]
- Areas with buildings that had "inadequate provision for ventilation, light, [or] sanitation, open spaces and recreation facilities" or dilapidation;[263]
- Areas with economic deterioration or underuse of valuable land;[264]
- Areas with "depreciated values" that could generate more tax revenue to fund public services for the residents;[265] and
- Areas that were "beyond remedy" and contributed "substantially" to problems of crime.[266]

Each of these conditions described the harms of residential segregation. As discussed above, buildings in African American neighborhoods are generally more likely to be overcrowded and are in poorer condition. As discussed in Chapter 7, Racism in Environment and Infrastructure, the effects of redlining made land in African American

City agencies declared that the Western Addition was blighted in 1948 and began tearing it down in 1956. The plan was one of the largest projects of urban renewal on the West Coast. The City of San Francisco closed 883 business, displaced 4,729 households, destroyed 2,500 Victorian homes and damaged the lives of nearly 20,000 people.

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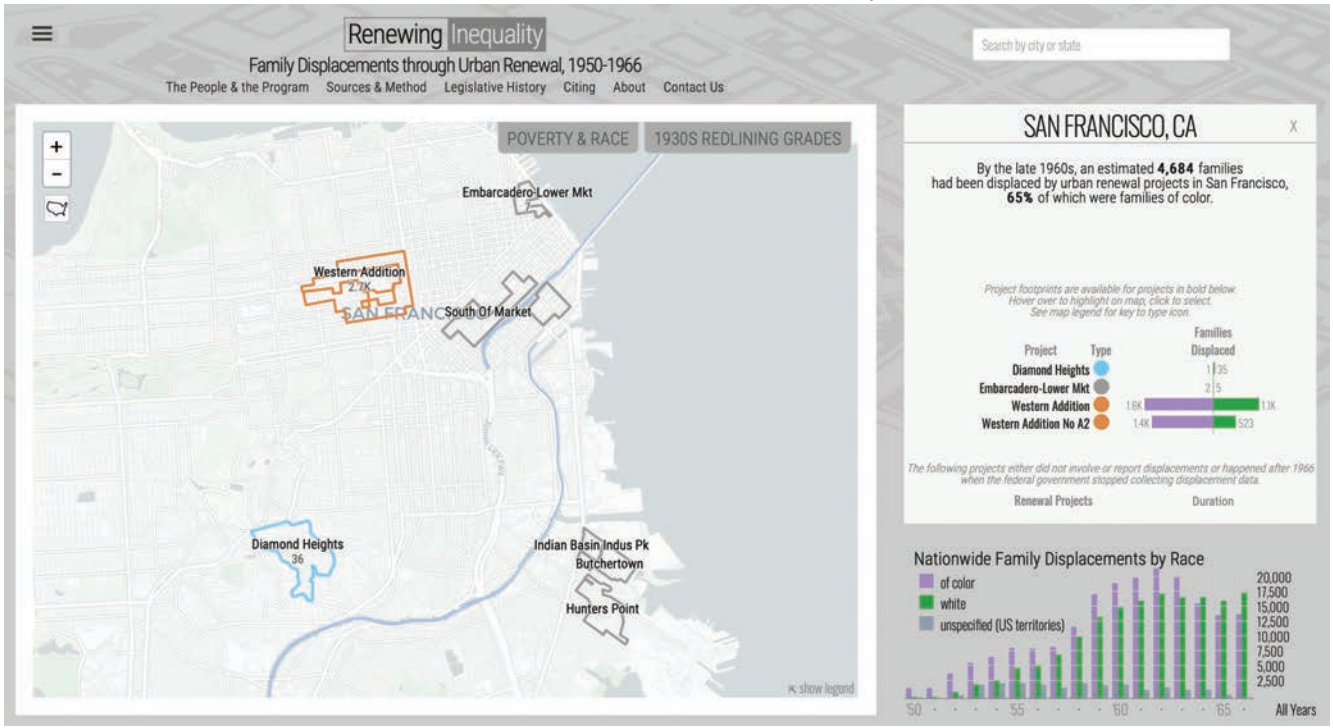

Map of San Francisco depicting where family displacement occurs due to urban renewal. (Accessed April 2022)

neighborhoods less valuable than they actually were and local governments intentionally slowed and deprived these communities of services. Redlining concentrated poverty and crime into African American neighborhoods and implicit biases based in racist beliefs created during enslavement have, to this day, led the American public to associate African Americans with crime, and contribute to the over- and under-policing of African American communities.

In Northern California, this law was used to demolish the Fillmore, which was San Francisco's most prominent African American neighborhood and business district.[267] Known as the Harlem of the West, the Fillmore was an integrated neighborhood[268] that was famous for its jazz venues that hosted Ella Fitzgerald, Billie Holiday, Charles Mingus, and Louis Armstrong.[269]

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Another example of a predominantly African American community in Northern California that urban redevelopment destroyed is Russell City. Founded in 1853 along the Hayward shoreline in Alameda County, Danish immigrants initially lived in Russell City.[276] By World War II, Russell City became primarily African American and Latino.[277]

"We were left to fend for ourselves. We had no public sewer system, so you saw many homes with outhouses, we had wells with no running water, the electrical grid was so unstable that many times we were in the dark," said former Russell City resident Marian "Edie" Eddens, who stated that living in Russell City was "the major challenge of [her] life."[278]

While Russell City lacked basic infrastructure and was economically poor, it was a culturally rich community.[279] "Music and literature were my saving graces," recalled Gloria Bratton Sanders Moore, former resident of Russell City.[280] Blues legends like Ray Charles and Etta James were known to perform at Russell City clubs when touring the west coast.[281]

By the 1950s, Russell City was declared a "blight" by neighboring Hayward officials.[282] In 1963, the local governments of the City of Hayward and Alameda County forcibly relocated all Russell City residents, bulldozed the community, and rezoned the land for industrial use.[283] Descendants of Russell City residents claim that displaced homeowners were forced to sell their land without fair compensation.[284]

In 2021, the Hayward City Council passed a resolution formally apologizing to former Russell City residents for its participation in racially discriminatory housing practices such as racial steering and redlining.[285]

In Southern California, in 1950, the Los Angeles City Planning Commission planned to demolish 11 blighted areas; all but one were majority Mexican American or African American neighborhoods.[286]

Many of California's freeways were routed through African American neighborhoods. As noted above, the City of Los Angeles destroyed the prosperous African American neighborhood of Sugar Hill in 1954 by building the Interstate 10 freeway.[287] Former residents said that the amount that the government paid for their homes was inadequate, and below market value.[288] Los Angeles did it again in 1968 by building the Century Freeway through the African American neighborhoods of Watts and Willowbrook, displacing 3,550 families, 117 businesses, parks, schools, and churches.[289]

The Interstate 210 freeway destroyed an African American business district and racially diverse communities in Pasadena in the 1950s.[290] The city offered residents $75,000 for their homes, less than the minimum cost of purchasing a new home in Pasadena.[291] The freeway forced 4,000 African American and Mexican American residents to move back to inner-city Los Angeles.[292]

In Oakland, a total of 503 homes, 22 businesses, four churches, and 155 trees were demolished to construct Interstate 980.[293] Once completed in 1985, the highway severed the predominantly African American neighborhoods of West Oakland from the rest of the city, setting the stage for underfunding of municipal projects in the area.[294]

In Fresno, the construction of highways 41 and 99 destroyed blocks of homes where African American families lived.[295] In San Diego, much like in other parts of the state, the construction of freeways such as Interstate 5 disrupted African American communities.[296]

IX. Public Housing

The construction of government funded housing, or public housing, has contributed to housing segregation in two major ways throughout American history. First, from World War I until the 1950s, the federal government built high quality housing.[297] Generally, federal practices did not allow African Americans to live in these high quality buildings, often building separate, low quality units for African Americans.[298]

Then, from 1950s, as the federal government subsidized mortgages for white families to move to the suburbs and paid local governments to demolish racially integrated neighborhoods, it also built high-rise apartment buildings in urban neighborhoods that were cut off from the richer, white suburbs.[299] These high-rise public housing projects concentrated poverty in African American neighborhoods in the inner city.[300]

In 1937, the federal government revised its strategy and created the U.S. Housing Authority (USHA), which gave federal money to local governments to build public housing. Although the USHA manual stated that government housing projects should not segregate what were previously integrated neighborhoods, it also warned local officials not to build housing for white families "in areas now occupied by Negroes."

High Quality Public Housing for White Americans

Private real estate development stalled during the Great Depression due to the lack of available credit.[301] During the world wars, all available raw materials were directed towards military use and private housing construction was banned.[302] By the end of World War II, these conditions created severe housing shortages for all Americans, regardless of race.[303] In response, the federal government built low-rise buildings for middle-class Americans that were scattered throughout the city, but did not subsidize the rent or maintenance.[304] Instead, tenants paid full market price and for the building's maintenance, so the quality of public housing was high.[305] Federal agencies funded public housing, which either barred African Americans, or the housing available to African Americans was segregated and in worse condition.[306]

During World War I, the federal government-built housing for white workers in the war industries: 170,000 white

workers and their families lived in 83 government-built housing projects across 26 states.[307] The federal government did not allow African American workers to live in this federally built housing and forced African American workers into overpopulated slums.[308] In 1933, the federal government created the Public Works Administration (PWA), which cleared slums and built houses using its "neighborhood composition rule" to require federal housing projects to maintain the racial make-up of the neighborhood.[309]

All across the country, in cities like Detroit, Indianapolis, Toledo, New York, Birmingham, and Miami, the PWA segregated African American residents from white residents either by project or by concentrating African Americans into high density, low-income neighborhoods.[310] Another federal agency, the Tennessee Valley Authority, built 500 comfortable houses and leased them to its employees and construction workers.[311] The federal government banned African American federal workers from the houses who lived in low quality barracks instead.[312]

In 1984, investigative reporters found that 10 million federally funded public housing residents in 47 states were almost always segregated by race and that every housing project where the residents were mostly white was better maintained, and had decent facilities, amenities, and services.

In 1937, the federal government revised its strategy and created the U.S. Housing Authority (USHA), which gave federal money to local governments to build public housing.[313] Although the USHA manual stated that government housing projects should not segregate what were previously integrated neighborhoods, it also warned local officials not to build housing for white families "in areas now occupied by Negroes."[314]

During World War II, the federal government-built housing for white workers in the defense industry.[315] African American workers were either left to live in slums or in lower quality segregated housing.[316]

Low Quality Housing for African Americans

Beginning in the 1950s, the government began subsidizing the rent in public housing and allowed only families making less than a certain amount to live in the buildings.[317] The buildings collected lower maintenance fees as a result and the quality of public housing deteriorated.[318] The federal government helped white families move out of the city and purchase single family homes in the suburbs by subsidizing their mortgage.[319] African American families were prevented from moving into the suburbs due to the racist federal housing policies and restrictive covenants, discussed in the section of this chapter on redlining[320] and racially restrictive covenants.[321]

The federal government began funding enormous, segregated high rise projects, like the Robert Taylor Homes in Chicago;[322] at the same time, a dozen states, including California, required local city approval of public housing projects.[323] In 1971, the Supreme Court ruled that this approval process did not violate the federal constitution,[324] so middle-class white communities rejected public housing projects.[325]

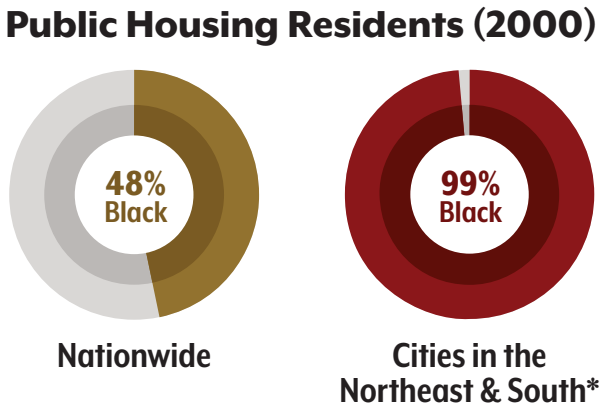
By 1973, President Richard Nixon announced that public housing projects were "monstrous, depressing places—rundown, overcrowded, crime-ridden."[326] In 1984, investigative reporters from the Dallas Morning News visited federally-funded developments in 47 metropolitan areas.[327] The reporters found that 10 million public housing residents were almost always segregated by race and that every housing project where the residents were mostly white was better maintained, and had decent facilities, amenities, and services.[328]

Although the Supreme Court of the United States decided in *Brown v. Board of Education* in 1954 that segregation was unconstitutional, Berchmans Fitzpatrick, general counsel of the federal housing agency at the time, responded to the decision by saying that the decision did not apply to housing.[329] Civil rights activists tried to bring suits against government segregation in public housing and the federal government announced anti-discrimination policies in name only. In practice, it continued to segregate.[330]

President John F. Kennedy tried to prohibit discrimination in housing by issuing Executive Order 11063, but the order only covered less than three percent of the total housing available in the United States.[331] Finally, the federal government, outlawed housing discrimination in 1964 with the passage of the Civil Rights Act, which was re-enforced by the Fair Housing Act in 1968.[332]

The Civil Rights Act and the Fair Housing Act did not change the reality on the ground, as civil rights advocates continued to file lawsuits over decades alleging that city housing authorities continued to discriminate in cities like Dallas, San Francisco, Yonkers, and

Baltimore.[333] In opinion after opinion, federal courts recognized that federal and local government created or maintained segregation.[334]



Following the recession of the 1990s, the government began to demolish these impoverished high rise public housing projects as part of multimillion dollar redevelopment efforts, often specifically choosing projects where Black families lived.[335] In 2000, 48 percent of public housing residents were Black nationwide, but in cities like Birmingham, Detroit, Memphis, New Orleans, and Washington D.C., 99 percent of public housing residents were Black.[336] Cities where housing prices have risen the fastest have been the most aggressive in tearing down public housing.[337]

These redevelopments have resulted in mostly white, but sometimes African American middle-class residents moving into and displacing low-income African American neighborhoods.[338] These government funded public housing demolitions not only displace the African American residents in the demolished buildings, but they speed up the gentrification of the surrounding neighborhood, and displace more African American residents.[339] Although scholars are unsure if these government demolitions cause the neighborhood to gentrify, research has shown that they are an important factor in the neighborhood's continued gentrification.[340]

The redevelopments usually have fewer units of public housing, so residents generally move to other low-income neighborhoods.[341] This approach has produced mixed results.[342] Although former residents report that they are more satisfied with the quality of their new housing and the reduction in crime, their children continue to attend racially and economically segregated schools, and their health and financial self-sufficiency reportedly did not improve.[343]

California

Segregation in California of African Americans intensified during World War II when African Americans arrived to work in the war industries. Unlike on the East Coast and in the Midwest, in California, because the African American population in California had been so small, there were no preset housing segregation patterns: Federal and local governments created segregation from a blank slate.[344]

Carey McWilliams, who had been California's housing commissioner in the early years of World War II, later wrote that "the federal government [had] in effect been planting the seeds of Jim Crow practices throughout the region under the guise of 'respecting local attitudes.'"[345]

In Northern California, one of the largest shipbuilders in the country during World War II was located in Richmond.[346] From 1940 to 1945, Richmond's population increased from 24,000 to 100,000 with defense industry workers.[347] Richmond's African American population increased from 270 in 1940 to 14,000 in 1945.[348]

As with the rest of the country, the federal government paid for segregated housing to be built for defense workers during World War II.[349] Housing available only to white workers was more likely to be better constructed, permanent, and further inland.[350] The federal government issued low interest loans for white homeowners to remodel and subdivide their houses, and leased spare rooms for white workers to move in as tenants.[351]

While white workers lived in rooms paid for by the federal government, Black war workers lived in cardboard shacks, barns, tents, or open fields. By 1947, half of the 26,000 Black residents of Richmond were living in temporary housing.

African American housing was close to the shipbuilding site, badly constructed, and there simply was not enough of it.[352] While white workers lived in rooms paid for by the federal government, African American war workers lived in cardboard shacks, barns, tents, or open fields.[353] By 1947, half of the 26,000 African American residents of Richmond were living in temporary housing.[354]

The federal government then helped white families finance suburban homes and leave temporary apartments near the shipyard.[355] For example, the federal government contracted with a private developer to build a new suburb called Rollingwood and forbade the developer from selling any of Rollingwood's 700 houses to African Americans.[356] In 1952, Wilbur Gary, an African American war veteran bought a house in Rollingwood, angering his white neighbors.[357] Three hundred white residents gathered in front of his house, shouted racial slurs, threw a brick through the window, and burned a cross on his front lawn.[358]

Some African American workers bought land in unincorporated North Richmond, but could not get construction loans because unlike for white Americans, the federal government refused to insure bank loans for African Americans.[359] Other African American families moved into the housing projects that white families had left behind.[360] By 1950, more than three-quarters of Richmond's African American population lived in the housing projects built during the war.[361]

In 1942, the United States Navy demanded that the San Francisco Housing Authority segregate housing built for the 14,000 workers and their families at the Hunters Point Naval Shipyard.[362] The San Francisco Housing Authority announced in 1942: "In the selection of tenants . . . [we shall] not insofar as possible enforce the commingling of races, but shall insofar as possible maintain and preserve the same racial composition which exists in the neighborhood where a project is located."[363]

San Francisco built five other segregated projects during World War II, four for whites only.[364] Apartments earmarked for white workers only sat empty as African American workers waited on long waiting lists.[365]

One of the few integrated neighborhoods where African Americans could live was the Western Addition,[366] which was torn down later as part of urban renewal, discussed above in the section on condemnation and eminent domain. When the federal government sent Japanese Americans living in the Western Addition to American concentration internment camps, African Americans moved in.[367]

In 1952, the National Association for the Advancement of Colored People sued the San Francisco Housing Authority for continuing to build whites only housing.[368] The head of the agency testified that the city agency's intent was to "localize occupancy of Negroes" in the Western Addition and ensure that no African Americans would reside in projects inhabited by whites.[369] The NAACP won its legal case, but the city agency continued to build segregated housing in San Francisco.[370]

In some areas in California, the demolition of public housing occurred without replacement housing for displaced African Americans. For example, in Richmond, the city prioritized developments primarily occupied by African American families in its demolition plans.[371] The city abandoned plans to build over 4,000 permanent public housing units.[372] The demolition displaced 700 African American families from their homes in 1952 and only 16 percent of them could find a home in the private housing market.[373] By 1960, thousands of former public housing residents lost their homes.[374]

X. Redlining

Redlining refers to a federal and local governmental practice, acting together with private banks, to systematically deny home loans to African American people.[375] Redlining was accomplished at the federal level with three agencies: Federal Housing Administration, Veterans Administration (VA), and the Home Owners' Loan Corporation (HOLC).[376] The FHA helped new homeowners buy houses,[377] the VA helped veterans (World War II and others),[378] and HOLC helped prevent foreclosures as a result of the Great Depression for existing homeowners.[379]

These three federal agencies helped millions of mostly white Americans buy houses by insuring and subsidizing mortgages, while refusing the same opportunity to African Americans.[380] Or, in the words of the federal agencies, exclusion was directed at "inharmonious racial group or nationality groups."[381]

With a federally insured mortgage, the federal government protects lenders, like banks, against losing money. If the homeowner stops paying their mortgage,

African Americans received

2% **of federal home loans between 1934 and 1962**

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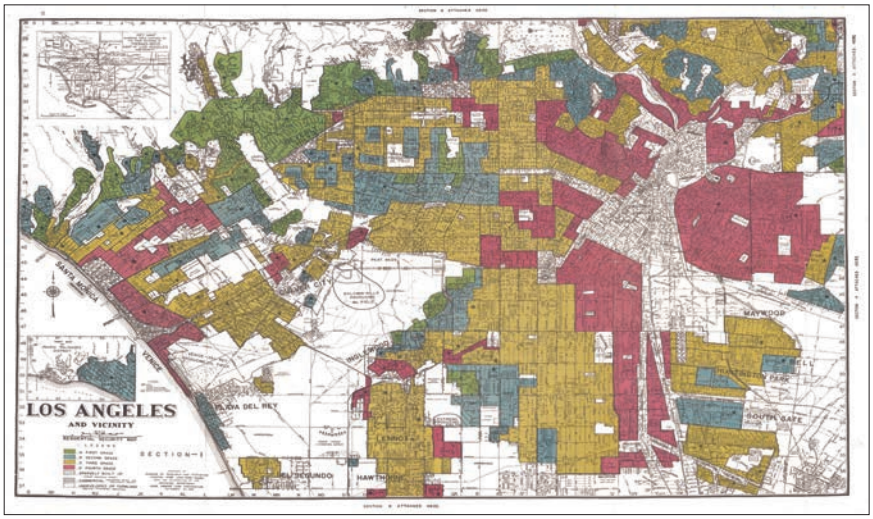

A Homeowner's Loan Corporation map of Los Angeles detailing A, B, C and D grade areas of the city. An "A" rating, shaded in green, was for the best neighborhoods that were new and all white. A "D" rating, shaded in red, was the worst category, and reserved for all-Black neighborhoods, even if it was middle class. This process was called "redlining." (1939)

the federal government would step in and pay the bank the amount of the unpaid principal in the loan.[382] As a result, banks were far more willing and likely to issue an insured mortgage to a white applicant, than an uninsured mortgage to an African American applicant.[383]

Enriched with these mortgages, white Americans moved out of America's city centers, taking with them their middle-class tax bases into the suburbs and leaving urban poverty in its wake.[384] Unable to access the same mortgages to reach the suburbs, African Americans remained in the impoverished urban centers.[385]

This practice continued legally until 1962, when President John F. Kennedy issued an executive order prohibiting the use of federal funds to support racial discrimination in newly constructed housing.[386] Between 1934 and 1962, the federal government had issued $120 billion in home loans, 98 percent of which went to white people.[387]

Although redlining is no longer legal, its effects appear to endure. One study has found associations between historically redlined neighborhoods, air pollution and cancer, asthma, poor mental health, and people without health insurance.[388] The same study also found that residents in certain historically redlined areas were close to twice as likely to have poor health when compared to areas that did not have redlining.[389]

Home Owners' Loan Corporation

The Home Owners' Loan Corporation refinanced tens of thousands of mortgages in danger of default or foreclosure and issued low-interest loans to help homeowners recover homes that were already foreclosed.[390] Between July 1933 and June 1935, HOLC used $3 billion to finance more than a million mortgages.[391]

HOLC examiners assessed real estate values and mortgage lending risks for 239 midsized cities between 1939 and 1945, and developed "Residential Security Maps" for the entire country.[392]

These maps rated neighborhoods from "A," for the best neighborhoods, to "D," the worst neighborhoods.[393] Grade "A" was shaded in green on the maps and assigned to blocks in neighborhoods that were new and all white.[394] HOLC assigned Grade "B," shaded in blue, to stable, outlying, Jewish and white working-class neighborhoods.[395] Grade "C" was for inner-city neighborhoods bordering mostly African American communities or neighborhoods that already had a small African American population and shaded yellow.[396] Grade "D" was the worst category, and reserved for all-Black neighborhoods, even if it was middle class, and shaded in red.[397] This process was called "redlining."[398]

Historians debate the level of direct influence these maps had on how banks made their decisions,[399] but generally agree that redlining resulted in the devaluation of African American homes across the entire country, making it difficult for African Americans to buy, build, or renovate their homes.[400]

Along with the 1939 Federal Housing Administration Underwriting manual, the HOLC Residential Security Maps cemented the federal government's support of the routine real estate industry practice of devaluing real estate owned by nonwhite property owners,[401] a practice that continues to this day.[402]

Californian homeowner Paul Austin testified during the October 13, 2021 Task Force meeting that a home appraiser valued the property of he and his wife at just below $1 million, which was much less than they expected because of significant improvements they had made to their home. They asked a friend to pretend to be his wife, removed anything in their house that would indicate their race, and hired a different appraiser. The new appraiser valued the property at just less than $1.5 million, which was nearly half a million more than the previous estimate. Austin also testified his grandparents

migrated from the South to the Marin City area during the 1940s to work in the shipyards, but were trapped in that area because of redlining. He also testified that his paternal grandparents secretly purchased land and built a home in Mill Valley because African Americans were not allowed to buy property in the area.

The 1947 and 1958 versions of the FHA underwriting manual did not directly mention race, but instructed mortgage lenders to consider "physical and social attractiveness[]" and whether the families living in the neighborhoods were "congenial" when evaluating the credit risk. State-regulated insurance companies, like the Equitable Life Insurance Company and the Prudential Life Insurance Company, also declared that their policy was to not issue mortgages to whites in integrated neighborhoods.

Federal Housing Administration and Veterans Administration

Congress created the Federal Housing Administration in 1934 to insure bank mortgages for first time homeowners.[403] Where the Home Owners' Loan Corporation reinforced segregation by creating the Residential Security Maps, the FHA issued the FHA Underwriting Manual.[404] The 1936 Manual warned of the increased risk that a homeowner would not pay their mortgage in a neighborhood with "inharmonious racial groups."[405]

The 1947 and 1958 versions of the FHA underwriting manual did not directly mention race, but instructed mortgage lenders to consider "physical and social attractiveness[]" and whether the families living in the neighborhoods were "congenial" when evaluating the credit risk.[406] State-regulated insurance companies, like the Equitable Life Insurance Company and the Prudential Life Insurance Company, also declared that their policy was to not issue mortgages to whites in integrated neighborhoods.[407]

Because the FHA refused to insure mortgages for African Americans, banks shouldered additional risk if they loaned to African American families rather than white families, so they essentially did not do so.[408] Between 1935 and 1950, the FHA administered 2,761,000 home mortgages and only about 50,000 were made available to nonwhite Americans.[409]

In addition to encouraging banks to discriminate against African Americans in the credit assessment process, author Richard Rothstein argues that the FHA made its biggest impact when it financed the development of entire suburbs.[410] When the FHA reviewed plans for suburban development projects it demanded that the real estate developer not sell houses to African Americans and sometimes withheld approval of the projects if African American families lived in nearby neighborhoods.[411] Once the real estate developer built the housing development to the federal government's specifications, including a prohibition on selling to African American families, qualified white buyers did not need to have their new house appraised for the federal government to guarantee their mortgages.[412] Without FHA or Veterans Administration financing, developers built inferior neighborhoods without community facilities like parks and playgrounds.[413]

Further discussion of the health impact of a lack of green space is discussed in Chapter 7 on the environment. Because African Americans could not access mortgages, many houses in these neighborhoods were rental properties instead. African American families were deprived of this opportunity to build wealth.[414] A 1967 study showed that out of 400,000 housing units in FHA-insured subdivisions, only 3.3 percent had been sold to African American families.[415]

After World War II, Congress passed the Servicemen's Readjustment Act of 1944, commonly known as the GI Bill, offering education, small business and unemployment benefits to military veterans. The GI Bill also authorized the VA to insure mortgages for veterans as the FHA did for civilians. It adopted FHA housing policies, and VA appraisers relied on the FHA's Underwriting Manual.[416] The VA guaranteed approximately five million

When the FHA reviewed plans for suburban development projects it demanded that the real estate developer not sell houses to African Americans and sometimes withheld approval of the projects if Black families lived in nearby neighborhoods.

mortgages nationally.[417] By 1950, the FHA and VA together were insuring half of all new mortgages nationwide.[418]

With Federal government approval, white veterans often did not need a down payment to buy a home.[419] Although the GI Bill itself did not contain "a single loophole for different treatment of white and [B]lack veterans[,]" reality was very different.[420] The approval of GI Bill benefits for each individual application was dependent in the South on the almost entirely white employees working at local VA centers, local banks, or public and private schools.[421] As an African American veteran in Texas wrote to the NAACP: "NO NEGRO VETERAN is eligible for a loan."[422] The VA refused to keep racial records.[423]

An *Ebony* survey of 13 cities in Mississippi showed that by mid-1947, only two of the 3,229 VA-guaranteed loans went to African American veterans.[424] In 1950, of the almost 70,000 VA mortgages issued in the New York-New Jersey area, "nonwhites" received less than 100.[425] Many African American World War II veterans never applied for GI Bill guaranteed mortgages because they knew that they would not be approved because of race.[426]

California

The Home Owners' Loan Corporation maps described many Californian neighborhoods in racially discriminatory terms. In Berkeley, the HOLC characterized an area north of the University of California, Berkeley "as High Yellow [C], but for infiltration of Orientals and gradual infiltration of Negroes from south to north."[427] In Pasadena: "This area is favorably located but is detrimentally affected by 10 owner occupant Negro families... Although the Negreos [sic] are said to be of the better class their presence has caused a wave of selling in the area and it seems inevitable that ownership and property values will drift to lower levels... The area is accorded a 'high red' solely on account of racial hazards. Otherwise a medial yellow grade would have been assigned."[428] In Oakland: "Detrimental Influences: Predominance of Negroes and Orientals. Also mixed classes of wage earners and colored professional people."[429] In San Diego: There were "servant's areas" of La Jolla and several areas "restricted to the Caucasian race."[430]

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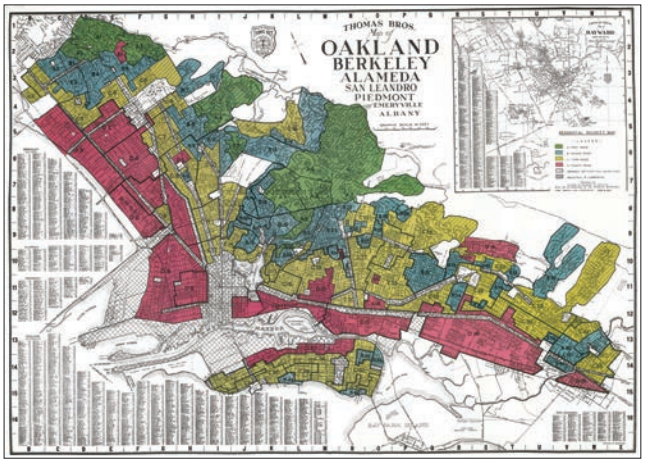

A Homeowner's Loan Corporation redlining map of Oakland in 1937 detailing A, B, C and D grade areas of the city. (1937)

<1% of Federal Housing Administration loans went to Black people in Northern California from 1946 – 1960

Accordingly, many neighborhoods financed by the federal government were for white people only: Westlake in Daly City, south of San Francisco; Lakewood, south of Los Angeles; Westchester, south of Los Angeles and developed by Kaiser Community Homes; Panorama City, in the San Fernando Valley; and the "Sunkist Gardens" development in Southeast Los Angeles.[431]

In Milpitas, the Federal Housing Administration approved subdivision plans, and real estate developers built homes that African American workers could not buy due to the restrictions demanded by the FHA, so African American families were forced to move to a segregated neighborhood or live in nearby Richmond.[432] In Ladera, a neighborhood next to Stanford University, the FHA refused to finance the construction of a co-op suburb with African American members.[433] Without the government insuring its mortgages, the co-op could not find financing to build their homes, so they gave up, and the land was sold to a private developer.[434] Shortly after, the FHA approved the private developer's plans, which contained a guarantee that no homes would be sold to African American families.[435]

In Northern California, from 1946 to 1960, 350,000 new homes were built with support from the FHA, but fewer than 100 of these homes went to African American people.[436]

Not only did federal agencies refused to insure mortgages to African Americans, they also refused mortgages to white Americans who attempted to live alongside African Americans.

In 1954, a resident of the white only neighborhood of East Palo Alto sold his house to an African American family.[437] This sparked a phenomenon called blockbusting, in which local real estate agents exploited racial fears and manipulated white residents to sell their houses at a low price, then reselling the houses at a higher price to African American families.[438] As white residents fled the neighborhood, other white homeowners became desperate to sell their houses at even lower prices.[439]

A 1970 report concluded that the average markup African American families paid in blockbusted neighborhoods was 80 to 100 percent higher than neighborhoods not undergoing racial change.[440] In response to blockbusting in East Palo Alto, the California real estate commissioner stated that the commission did not regulate such "unethical practices."[441] FHA and Veterans Administration policies discouraged white residents from moving into neighborhoods in the process of being integrated like East Palo Alto at the time, since the government did not insure mortgages for white families in integrated neighborhoods where African American families lived.[442] Within six years, the population of East Palo Alto was 82 percent African American, and housing conditions had deteriorated markedly.[443]

The FHA advised the white homeowner that because he rented his house to a Black colleague, any future application from him "will be rejected on the basis of an Unsatisfactory Risk Determination made by this office on April 30, 1959."

In another example in 1958, an African American San Francisco schoolteacher named Alfred Simmons rented a house with a FHA-guaranteed mortgage from a fellow white schoolteacher in the Elmwood district of Berkeley.[444] The Berkeley police chief requested that the Federal Bureau of Investigation investigate how Mr. Simmons came to live in an all-white community, and the FBI referred the case to the U.S. Attorney.[445] The FHA advised the white homeowner that because he rented his house to an African American colleague, any future application from him "will be rejected on the basis of an Unsatisfactory Risk Determination made by this office on April 30, 1959."[446]

XI. Racially Restrictive Covenants

Racially restrictive covenants are legally binding contracts, usually written into the deed, that prohibit nonwhite people from living on a property or in a neighborhood.[447] For example, a deed in 2010, in Fairhaven, Massachusetts included the following clause, introduced in 1946: "The said land shall not be sold, leased or rented to any person other than of the Caucasian race or to any entity of which any person other than that of said race shall be a member, stockholder, officer or director."[448] By helping preserve segregation and a system of racial hierarchy, such covenants are yet another example of the enduring effects of slavery.

Between 1923 and 1924, real estate boards in Milwaukee, Detroit, Kansas City, Los Angeles, and other cities prohibited their realtors from selling or renting property in white neighborhoods to African Americans.

Racially restrictive covenants began appearing in the late nineteenth century and were first directed against Chinese and Punjabi residents in California.[449] By 1900, developers began inserting them into the deeds of homes built in new subdivisions all across the country.[450] Minneapolis, Minnesota had racially restrictive covenants as early as 1910 and late as 1955.[451] Further, between 1923 and 1924, real estate boards in Milwaukee, Detroit, Kansas City, Los Angeles, and other cities prohibited their realtors from selling or renting property in white neighborhoods to African Americans.[452]

In 1917, racial zoning, discussed earlier in this chapter, was declared unconstitutional by the Supreme Court,[453] but the Supreme Court declared that racially restrictive covenants did not violate the constitution in 1926.[454] The Supreme Court reasoned that the covenant was a contract between private individuals not subject to state control.[455]

Government officials began promoting racially restrictive covenants as an alternative, constitutional way to maintain segregation.[456] President Herbert Hoover opened the President's Conference on Home Building and Home Ownership by declaring that single-family homes were "expressions of racial longing" and "[t]hat our people should live in their own homes is a sentiment deep in the heart of our race."[457] Conference materials then recommended that all new neighborhoods include "appropriate restrictions," such as barring the sale of homes to African Americans.[458]

Federal officials also recommended homeowners form "'[r]estricted residential districts' [which] may serve as protection against persons with whom your family won't care to associate, provided the restrictions are enforced and are not merely temporary."[459] These racially restrictive districts appeared soon afterwards and functioned like bylaws in a neighborhood association and a neighbor could sue to evict an African American family that bought a house in the neighborhood.[460]

Scholars have found that wealthy white communities used restrictive covenants, while white working class communities used a combination of violence and covenants to keep African Americans from moving into their neighborhoods.[461]

Simultaneously, government actors and real estate agents often used different mechanisms to segregate a neighborhood. The 1936 Federal Housing Administration Underwriting Manual stated that zoning regulations alone are not enough "to assure a homogeneous and harmonious neighborhood.... Recorded deed restrictions should strengthen and supplement zoning ordinances... Recommended restrictions include . . . [p]rohibition of the occupancy of properties except by the race for which they are intended [and a]ppropriate provisions for enforcement."[462] The 1938 FHA Underwriting Manual stated clearly: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."[463] The Veterans Administration also recommended and frequently demanded that racial covenants be added into the deeds of the mortgages it sponsored.[464]

As a result, racially restrictive covenants appeared all over the country. By 1940, according to news reports quoted in the 1973 U.S. Commission on Civil Rights Report, 80 percent of homes in Chicago and Los Angeles contained restrictive covenants barring African American families.[465] A survey of 300 developments built between 1935 and 1947 in the suburbs of New York City found that 56 percent of the 300 developments and 85 percent of larger subdivisions had racially restrictive covenants.[466]

The University of Chicago subsidized the home owners' associations surrounding its campus. From 1933 to 1947, it spent $100,000 on legal services to defend racially restrictive covenants and evict African Americans who moved into the neighborhood.[467]

All over the country, white neighbors sued their African American neighbors to prevent them from moving into or to evict them from their legally purchased homes.[468] In 1942, the Oklahoma Supreme Court not only declared that the property purchased by an African American buyer was void due to a racial covenant, but it also ordered the African American buyer to pay for the court costs and attorney's fees of the white neighbor who sued.[469] In Westlake in Daly City, California, the total fine of $16,000 for selling to an African American family was greater than the typical home sale price.[470]

By 1940 **80%** of homes in Los Angeles contained restrictive covenants **barring Black families**

In 1948, the Supreme Court reversed course from its 1926 decision and held that although the government had no control over whether a racially restrictive covenant can be added to a deed, it is unconstitutional for American courts to recognize and enforce the covenants.[471]

Racially restrictive covenants were so widespread by then that three of the Supreme Court justices recused themselves from the case because they owned houses covered by racially restrictive covenants.[472]

Two weeks after the Court announced its decision, FHA commissioner Franklin D. Richards stated that the decision would "in no way affect the programs of this agency," which would make "no change in our basic concepts or procedures."[473] In 1952, the FHA commissioner stated that "it was not the purpose of [the FHA] to forbid segregation or to deny the benefits of the National

Housing Act to persons who might be unwilling to disregard race, color, or creed in the selection of their purchasers or tenants."[474]

Although racially restrictive covenants were declared unconstitutional in 1948, their popularity continued for decades,[475] and racially homogenous neighborhoods continued after these covenants ceased to be enforced.[476] John F. Kennedy, Ronald Reagan, and George W. Bush all lived in neighborhoods or homes with racially restrictive covenants.[477] The home that George W. Bush bought in 2008 was located where the neighborhood association enforced a racially restrictive covenant until 2000.[478]

In Myers Park, a neighborhood in Charlotte, North Carolina, the housing association appeared to be enforcing its racially restrictive covenant in 2010, when it added the covenant to its website.[479]

California

Racially restrictive covenants and they were widely used throughout the state.[480] Like the rest of the country, although racially restrictive covenants were private contracts, they worked in conjunction with federal policy to devalue African American property and prevent African Americans from accessing home loans. The Home Owners' Loan Corporation maps for Pasadena devalued a neighborhood because its restrictive covenants had expired, potentially allowing African Americans to move in: "This district was originally much smaller but constant infiltration into other sections as deed restrictions expired has create[d] [sic] a real menace which is greatly concerning property owners of Pasadena and Altadena."[481]

In southern California, after its founding in 1903, the Los Angeles Realty Board campaigned to attach racially restrictive land covenants on as many new developments as possible.[482] Paul R. Williams, a prominent Black Los Angeles architect who designed houses for Frank Sinatra, Lucille Ball, Desi Arnaz, and Cary Grant, could not legally live in the neighborhoods he designed due to restrictive covenants.[483] Williams taught himself to draw upside down because his white clients were uncomfortable sitting next to him and toured construction sites with hands clasped behind his back to avoid the situation where someone would refuse to shake a Black man's hand.[484]

From 1937 to 1948, more than 100 lawsuits attempted to enforce covenants and evict African American families from their homes in Los Angeles.[485] In one 1947 case, an African American homeowner refused to leave the home he bought in violation of a covenant and he was jailed.[486] In Whittier, a Los Angeles suburb, the Quaker-affiliated Whittier College participated in a restrictive covenant applied to its neighborhood.[487]

John F. Kennedy, Ronald Reagan, and George W. Bush all lived in neighborhoods or homes with racially restrictive covenants. The home that George W. Bush bought in 2008 was located where the neighborhood association enforced a racially restrictive covenant until 2000.

In 1943, the city attorney of Culver City, an all-white suburb of Los Angeles, told a meeting of air raid wardens that when they went door to door to make sure families turned off the lights to avoid helping Japanese bombers find targets to also circulate documents in which homeowners promised not to sell or rent to African Americans.[488]

In 2021, AB 1466 was enacted to require county recorders to identify and redact racially restrictive covenants from California real estate records.[489]

XII. Racial Terrorism

Nationally

As discussed in Chapter 3, Racial Terror, white Americans used racial terror and vigilante violence to prevent African Americans from moving into white neighborhoods. The police often did not investigate or failed to arrest the perpetrators when crosses were burned on lawns, homes were bombed, and African American homeowners were murdered.[490]

California

Like elsewhere in the country, white Californians used violence to enforce the racial hierarchy created during slavery by preventing African Americans from moving into desirable white neighborhoods.[491] In fact, violent incidents in California rose in the 1950s and 1960s, after courts declared restrictive covenants unenforceable.[492]

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Los Angeles, CA., William Bailey and Roger Duncan look at the wreckage in Bailey's living room after a bomb exploded in the house. Duncan's house, directly across the street, was also bombed at the same time and a note was left threatening all the Black families on the street if they didn't move out. (1952)

Ku Klux Klan terror and violence reached a peak in the Los Angeles area in the spring of 1946.[493] Although KKK meetings were banned in California in May 1946 after the murder of the Short family who had been living in Fontana, California, as discussed in Chapter 3, Racial Terror, the ban had little to no effect because no one enforced it.[494] Of the 27 KKK actions (e.g., cross-burnings, fires, and threatening letters and phone calls) documented in Los Angeles in 1946, more than half occurred after the issuance of the ban.[495] In a span of two weeks in May 1946, there were four separate actions, ranging from cross-burnings to severe physical beatings.[496] One was targeted at an African American family that lived in an all-white neighborhood, and the others were targeted at other individuals who advocated against restrictive covenants.[497] Law enforcement and the mayor shrugged off the violence as "prank[s]."[498] When concerned residents and members of social justice organizations approached the mayor to address the incidents, the mayor accused them of prejudice against the KKK.[499]

Los Angeles continued to be the epicenter of the violence in California, as African American residents who moved into white neighborhoods were met with cross-burnings, bombings, rock throwing, graffiti, and other acts of violence.[500] Of the over 100 incidents of move-in bombings and vandalism that occurred in Los Angeles between 1950 and 1965, only one led to an arrest and prosecution.[501]

Los Angeles was not the only area where the KKK attacked African American homeowners. In 1946, for instance, a home built by an African American war veteran was burned down in Redwood City after threats and move-out demands.[502] In 1952, in a white Bay Area neighborhood, an African American family became the target of death threats, violence, and intimidation by white residents after the family refused a buyout of their home.[503] A KKK cross was placed on their lawn and a 300 to 400 person mob stoned their home and shouted threats.[504] Though the action happened in front of law enforcement, officers refused to make any arrests.[505] Even when the Governor, Attorney General, and local district attorney ordered the city police and county sheriff to provide the family with protection, protests and harassment continued for months without any arrests.[506] And in the 1950s, the weekend home of a San Francisco NAACP leader was mysteriously burned down.[507] The violence and subsequent silence surrounding the crimes committed against African American Californians demonstrates how white Californians viewed African American presence and homeownership as a threat to white dominance.[508]

XIII. Housing Segregation Today

Housing segregation and its effects have never been eliminated in the United States.[509] The racist housing policies and practices of the federal, state, and local governments have amplified private action and continue to shape the American landscape today.[510]

Although residential segregation between African Americans and white Americans in the United States peaked between 1960 and 1970,[511] America is about as segregated today for African Americans as it was in 1940.[512] By contrast, in 2010, the typical white person in a metropolitan region lived in a neighborhood that was 75 percent white.[513] Even though white areas have become less solidly white since 1980, they have not become significantly more African American.[514] Today, 90 percent of African Americans live in cities,[515] and 41 percent of the Black population of American metro areas live in city neighborhoods that are majority Black.[516]

Housing segregation is more intractable than other forms of segregation and discrimination.[517] Moving from an urban apartment to a suburban single family home is more difficult than registering to vote, eating at a restaurant, or even being bussed to a nearby school, and requires potentially generations of effort.[518] The Fair Housing Act of 1968 prohibited future discrimination, but did not fix the structures put in place by 100 years of discriminatory government policies.[519] Richard Rothstein argues that residential desegregation requires a massive effort of social engineering.[520]

America is more segregated today for African Americans than it was in 1940.

No such massive effort has occurred. Instead, the Supreme Court has made private lawsuits fighting housing discrimination more difficult,[521] and housing discrimination persists in new and different ways.[522] Policies that may not seem to discriminate at first glance have reinforced the structures put in place by past racist government actions.[523]

The Supreme Court

In 1977, the Supreme Court upheld a city's denial of request to rezone a tract of land in a mostly white suburb of Chicago, which banned the construction of apartment buildings anywhere except next to a commercial area.[524] The neighborhood in question had been zoned for single family houses without change since 1959.[525] This zoning ordinance had a "disproportionate impact on blacks" by effectively preventing lower income residents, who were more likely to be African American as compared to other Chicago area residents, from moving into the neighborhood.[526]

Even though the zoning decision meeting included comments from the public about the undesirability of rezoning so as to allow apartments that would "probably be racially integrated," the Supreme Court decided that the city council members themselves had no discriminatory intent when it voted for the zoning ordinance.[527] With *Arlington Heights* and the cases that followed, the Supreme Court essentially announced a rule that in order to prove that a law, regulation, or practice is unconstitutional, plaintiffs must prove that the decision makers intended to discriminate.[528]

This line of Supreme Court cases has made proving current housing discrimination and erasure of the effects of old government policies of housing segregation very difficult.[529] In other words, it very difficult to bring a successful housing discrimination lawsuit.

Continued Housing Discrimination

Mortgage and housing discrimination continues in many forms today. Researchers continue to find that African American residents are charged higher prices for identical units in the same neighborhood as white residents.[530] Lenders use predatory lending practices more often in minority neighborhoods than white neighborhoods.[531] Indeed, homeowners in segregated African American neighborhoods are more likely to have subprime mortgages.[532]

Before 2008, African American and Latino borrowers were four times more likely to receive a more expensive mortgage than white borrowers, a practice called reverse redlining.[533] Big banks across the country used reverse redlining to target communities of color with higher interest rates and fees.[534] Before 2008, banks specifically targeted African American and Hispanic homeowners to advertise toxic subprime mortgages and other predatory practices that triggered the Great Recession.[535] African American homeowners received toxic subprime mortgages at three times the rate of white mortgage lendees.[536]

Before 2008, compared to whites, African American and Latino borrowers were

4x MORE LIKELY to receive a more expensive mortgage

In Memphis, employees of Wells Fargo Bank referred to these loans as "ghetto loans," and bank supervisors targeted African American ZIP codes because they believed that residents "weren't savvy enough."[537] According to the U.S. Department of Justice in 2010, the more segregated a community, the more likely lenders targeted the homeowners for toxic loans, and the more likely the home was foreclosed.[538]

From July 2019 to June 2020, compared to white applicants, African American applicants were

2.5x MORE LIKELY to be rejected for mortgages

As a result, African American and Latino homeowners, were hit particularly hard by the 2008 crisis.[539] From 2001 to 2019, the rate of Black homeownership declined five times as much as the homeownership rate for white families,[540] erasing all the gains made since the passage of the Fair Housing Act in 1968.[541] Homes in African American neighborhoods were more likely to be foreclosed than homes in white neighborhoods.[542] By 2011, a quarter of African American homeowners had either lost their homes to foreclosure or were "seriously delinquent" on their mortgages.[543]

In settling a lawsuit against the Countrywide mortgage company, the federal Secretary of Housing and Urban Development said that due to Countrywide's discriminatory practices, "[f]rom Jamaica, Queens, New York, to Oakland, California, strong, middle-class African American neighborhoods saw nearly two decades of gains reversed in a matter of not years—but months."[544]

Before 2008, banks specifically targeted Black and Hispanic homeowners to advertise toxic subprime mortgages that triggered the Great Recession. In Memphis, employees of Wells Fargo Bank referred to these loans as "ghetto loans[,]" and bank supervisors targeted Black zip codes because they believed that residents "weren't savvy enough[.]"

Despite multiple lawsuits brought by the U.S. Department of Justice[545] and by cities like Baltimore,[546] Memphis,[547] and Cleveland,[548] the mortgage industry continues to discriminate against African American home buyers.

From July 2019 to June 2020, Black mortgage applicants were 2.5 times more likely than white applicants to be rejected for mortgages.[549] Studies continue to show that African American mortgage borrowers pay more in financing fees,[550] mortgage insurance,[551] and property taxes.[552]

Compared to white buyers, Black home buyers go into more debt for homes that are valued less.[553] Black homeowners who apply to refinance their homes are denied over 30 percent of the time, compared to 17 percent of white homeowners.[554] This makes it more difficult for African American homeowners to make necessary repairs to their homes and to move out of dilapidated homes.[555] These trends have continued even as mortgage lending has become more automated and internet based in recent years.[556]

California

California remains racially segregated,[557] although Black-white segregation has decreased since 1980 in cities like Los Angeles, Oakland, and Riverside.[558]

There is also evidence that lenders discriminate against African Americans in California. For example, one study found that in 2019, despite making up 5.5 percent of the state's population, African American Californians received only 3.28 percent of home purchase loans.[559] The magnitude of this disparity varies across metro areas in the state.[560] Another study found that in 2013, African American Californians made up 2.7 percent of all home mortgage loan applicants, received 2.4 percent of all home mortgage loans originated, and received 1.7 percent of all home mortgage loan dollars in the state.[561]

XIV. Effects

Once federal, state, and local governments, along with private actors, segregated the American landscape, they directed resources to white neighborhoods, and neglected African American neighborhoods. In 1967, President Lyndon B. Johnson appointed the National Advisory Commission on Civil Disorders to investigate the causes of the racial violence in the summer of 1967.[562] The report concluded that: "[S]egregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans."[563] The

subsequent chapters on environment and infrastructure, education, health, labor, and wealth will discuss these persisting effects of slavery in detail.

Segregated African American communities have less access to public transit and must deal with longer commute times, which contributes to higher rates of unemployment among African Americans.[564] In the past, local governments delayed providing public services like water and sewage at first.[565] Once the services were eventually provided to African American neighborhoods, they were provided less often.[566] Today, many all-African American neighborhoods depend on aging water and sewage infrastructure and unreliable supplies.[567] Local governments did not invest as much in road and street services in African American neighborhoods, and the roads are less safe for pedestrians and cyclists.[568]

Black communities pay more for energy because they live in older, energy-inefficient homes.[569] Oil and gas extractions are more likely to be in African American neighborhoods, leading to environmental pollution.[570] Segregated African American neighborhoods are less likely to have access to parks and greenspace, and are less likely to have tree cover.[571] Tree cover cools neighborhoods during the summer and absorbs air pollution. Higher temperatures during the summer results in more heat related illnesses and exposure to more air pollution results in respiratory illness, both which occur more often in segregated neighborhoods.[572] A lack of greenspace also deprives African American communities, and especially poor African American communities, of the benefits of nature, especially beneficial for child development.[573]

Segregation has concentrated poverty in African American and Latino neighborhoods in America, and is associated with worse outcomes in almost every aspect of life. Neighborhood poverty rates are three times higher in segregated communities of color than in white neighborhoods.[574] Segregation is associated with lower high school graduation, lower earnings, and single motherhood among African Americans.[575] Residents of segregated neighborhoods have more illnesses and die younger.[576] Residential segregation is a major contributing factor to the African American and white wealth gap, as discussed in Chapter 13 on wealth. Homes in segregated African American neighborhoods tend to be older, smaller, and on more densely settled lots than in disproportionately white neighborhoods.[577] According to U.S. Census Bureau, the median home value in majority African American neighborhoods is $149,217, while the median home value in neighborhoods that are less than one percent African American is $306,511.[578] School districts are funded by local tax bases, which are determined by home values, so African American and Latino segregated local districts receive less funds, fewer resources, and less experienced teachers than white school districts. Further, as Joseph Gibbons testified during the December 7, 2021 Task Force meeting, gentrification has many negative effects on African Americans beyond the obvious displacement of African Americans, such as higher rates of stress and other adverse health effects.[579]

Some researchers have argued that segregation plays an important role in the racial disparity among unhoused individuals.[580] Throughout American history, significant numbers of African Americans have been unhoused,[581] although specific data based on race is not always available.[582] The story of African Americans experiencing homelessness has often been left out, underreported, or misrepresented.[583]

In the last decade, Black Californians were less likely to own a home than in the 1960s, when housing discrimination was legal.

Many enslaved people seeking freedom became unhoused after escaping bondage.[584] After the Civil War, close to four million African Americans were unhoused.[585] African Americans were hit the hardest during the Great Depression, were excluded from many private agencies offering aid and the benefits of the New Deal, and many became unhoused.[586] During the Post World War II period, between nine to 40 percent of Skid Row residents were African American men, depending on the city.[587] However, the number of African Americans who have been unhoused is relatively small when considering the number of impoverished or unemployed African Americans.[588] Scholars have attributed this to the robust family and neighborhood support systems of African American communities.[589]

In the last 50 years, the number of African American unhoused individuals has risen.[590] African Americans now make up 39 percent of people experiencing homelessness and 53 percent of families experiencing homelessness with children.[591] Scholars have attributed this to the compounding harms of urban renewal,[592] loss of blue collar jobs,[593] the crack cocaine epidemic,[594] historical and continued housing discrimination,[595] mass incarceration,[596] lack of access to health insurance and mental health services,[597] and lack of affordable housing.[598]

Due to the effects of government segregation policy, African Americans earn less and are more likely to be renters than white Americans, making them more vulnerable to homelessness.[599] This risk of homelessness is amplified by the fact that African American households are more likely than white households to be extremely low-income renters.[600] Because government policies have historically crippled the ability of African American households to purchase houses, they are more likely to be renters than white households.[601] One study found that African American renters continue to pay more than white renters for similar housing in similar neighborhoods.[602]

Because African American families are more likely to be impoverished, the housing shortage is more likely to affect African American households.[603] In the country, there are only 37 rental homes for every 100 extremely low-income renter households, defined as households with incomes at or below the poverty level or 30 percent of the median income of the geographic area.[604] Twenty percent of African American households are extremely low-income renters, compared with six percent of white non-Hispanic households.[605]

African American families are more likely to be rent burdened, which is generally defined as a household that spends more than 30 percent of pre-tax income on rent.[606] A majority of African American renter families in 2019 still spent over 30 percent of their income on rent.[607]

California

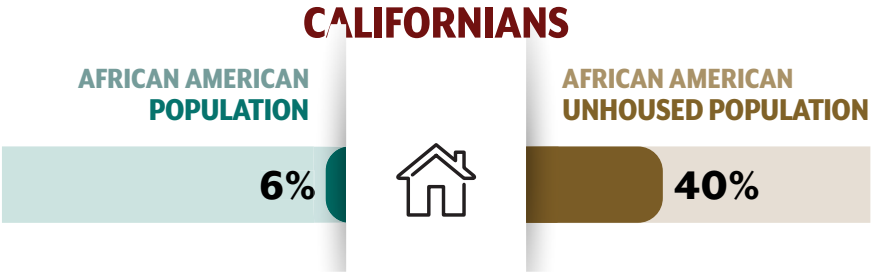
State and local urban renewal, highway construction, and gentrification have destroyed African American communities throughout the state. In the 1960s, vibrant communities like San Francisco's Fillmore district and Los Angeles's Sugar Hill have been reduced to rubble or an eight lane highway. Today, segregated neighborhoods in California are often populated by a mix of African American and Hispanic residents, and are more vulnerable to be displaced by gentrification.[608]

One study found that five of the 20 most rapidly gentrifying cities from 2013 to 2017 were in California: San Francisco-Oakland (1), San Jose (8), Sacramento (10), San Diego (14), and Los Angeles (15).[609] In many California cities today, gentrification (characterized by economic and demographic shifts in historically disinvested neighborhoods) is concentrated in formerly redlined neighborhoods.[610]

Close to 90 percent of currently gentrifying areas in San Francisco were formerly redlined or rated "definitely declining" by the Home Owners' Loan Corporation, as were 83 percent of gentrifying areas in the East Bay and 87 percent of gentrifying areas in San Jose.[611] According to the U.S. census, in the 1970s, 10 percent of San Francisco's population identified as African American, compared to five percent today.[612]

Darrell Owens testified during the December 7, 2021 Task Force meeting that census data shows that African Americans have been displaced from California for decades.[613] In particular and more recently, African Americans are leaving Alameda County and Los Angeles County.[614] In addition to the residents who leave the state altogether, many are moving inland and many Black Californians are moving away from the more costly coastal cities in search of affordable housing.[615] For example, located just south of Sacramento, Elk Grove has seen a 5,100 percent increase in African American residents since 1990.[616] Similarly, as the population of African American residents plunged 45 percent in Compton, 43 percent in San Francisco, and 40 percent in Oakland, the San Joaquin-Sacramento Delta, Southern California's Inland Empire, and the Central Valley have all seen increases in their African American population.[617] Overall, the African American population in California is projected to increase almost 40 percent between 1999 and 2040, which is slower than the projected total population increase for the state of 72 percent.[618]

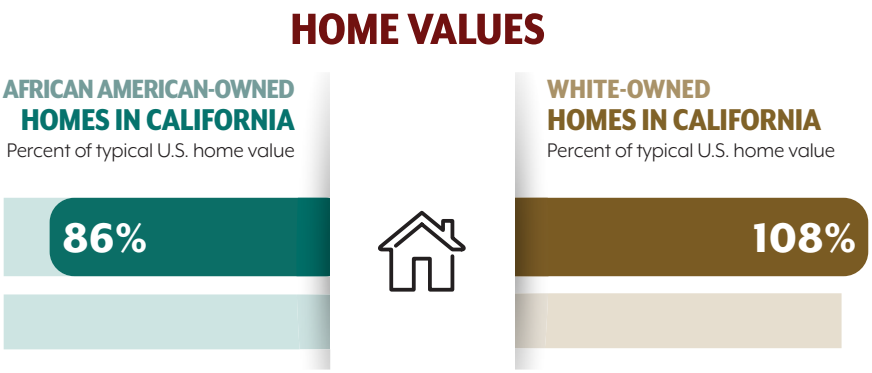
In writing about the gentrification of her historically Black neighborhood of Inglewood in Los Angeles, Erin Aubry Kaplan says, "Black presence has value — in every sense of the word, and on its own terms. That value should make the casual displacement of Black people untenable, even immoral."[619]



California has more individuals experiencing homelessness than any other state in the country.[620] Nearly a quarter of all unhoused Americans live in California.[621] African American Californians experiencing homelessness is a more acute crisis than in the rest of the country. Black people account for 6.5 percent of Californians but

nearly 40 percent of the state's unhoused individuals.[622] Nationally, African American people account for 13.4 percent of the population and are 39.8 percent of the unhoused population.[623]

In addition to experiencing homelessness, as with the rest of the country, African American Californians are more likely to be renters than white Californians.[624] By 2019, Black Californians' homeownership rate was less than in the 1960s, when certain forms of housing discrimination was legal.[625] The African American homeownership rate in California has dropped almost 10 percent since 2004 and has not recovered.[626] Sixty-eight percent of white Californians own a home, compared with 41 percent of African American Californians.[627] One study shows that Proposition 13, which limits property taxes for homeowners by essentially freezing property tax assessment at the last date of purchase, has benefited white homeowners more than African American homeowners in California.[628] Fifty-eight percent of the state's African American renters spent more than 30 percent of their household income on rent.[629] In certain neighborhoods like South Los Angeles, over half of Black households pay more than 50 percent of their income on rent.[630]



As a likely result, despite constituting six percent of the state's population, African American Californians comprise nearly 40 percent of unhoused Californians. As Brandon Greene testified during the December 7, 2021 Task Force meeting, African Americans are disproportionately represented among the unhoused population throughout California.[631] Further, according to Greene, anti-homeless laws exclude African Americans from public spaces—like legal segregation laws—by empowering police to remove unhoused individuals from public spaces.[632]

As with the rest of the country, segregated neighborhoods have fewer access to public transportation by design.[633] For example, the Bay Area Rapid Transit (BART) trains run for almost three miles without stopping through Oakland's San Antonio neighborhood, the most racially diverse and densest part of the Bay Area.[634] In contrast, Walnut Creek and Pleasant Hill are less than half as dense in comparison, but the BART stations are only 1.75 miles apart.[635] The city designed the BART in the late 1960s to carry white commuters from the suburbs to their urban jobs, bypassing poor African American neighborhoods.[636]

Segregated communities have less greenspace and are more polluted. Fifty-two percent of African American Californians live in areas deprived of nature, compared to 36 percent of white Californians.[637] Their streets and sidewalks are more dangerous.[638] Segregated neighborhoods in California are more impoverished[639] and the homes are undervalued.

The typical Californian Black-owned home is worth 86 percent as much as the typical U.S. home, while the typical white-owned home is worth 108 percent as much as the typical U.S. home.[640] And a study has found that in the Los Angeles-Long Beach-Anaheim and San Francisco-Oakland-Hayward metropolitan areas, houses in majority African American neighborhoods are devalued by 17.1 percent and 27.1 percent, respectively.[641] This makes it particularly vulnerable to gentrification.[642]

XV. Conclusion

The American government reinforced the effects of slavery by maintaining a racialized caste system and effectuating segregation. Federal, state, and local governments across the country and in California, along with private actors, created separate and unequal cities and neighborhoods for African American and white Americans. Led by the federal government, local governments passed zoning ordinances and state courts enforced racially restrictive covenants to exclude African Americans from neighborhoods. These actions were amplified by federal housing policy.

When white supremacists burned crosses, bombed houses, harassed, and terrorized African American families

moving into white neighborhoods, local governments rarely investigated and prosecuted the perpetrators. Funded by the federal government, local governments first built quality public housing exclusively for white Americans, then built and neglected enormous apartment complexes that concentrated poverty in African American neighborhoods. In the last three decades, local governments then chose to demolish these housing projects, intensifying gentrification and once again displacing African Americans.

This gentrification is part of a long history if displacement of African Americans. Erin Aubry Kaplan, a resident of the historically African American neighborhood of Inglewood, California wrote: "I thought about how fragile my feeling of being settled is. It didn't matter that I own my house, as many of my neighbors do. Generations of racism, Jim Crow, disinvestment and redlining have meant that we don't really control our own spaces. In that moment, I had been overwhelmed by a kind of fear, one that's connected to the historical reality of Black people being run off the land they lived on, expelled by force, high prices or some whim of white people."[643]

As Kaplan describes, wherever African Americans settled and prospered throughout American history, federal, state, and local governments, along with private actors, used numerous mechanisms: park and highway construction, slum clearance, and urban renewal to destroy those communities. Across the country, the federal government helped white Americans buy single family homes in the suburbs while crippling the ability for African Americans to access home loans and buy houses in the neighborhoods that white families left behind.

Almost 150 years of active, conscious federal, state, and local government action and neglect of duty have resulted in compounded harms that are unique to African Americans.[644] Housing segregation stole wealth from African Americans, while building the wealth of white Americans (discussed in Chapter 13, The Wealth Gap). Once segregated, government actors turned urban African American neighborhoods into ghettos by depriving them of public services (discussed in Chapter 7, Racism in Environment and Infrastructure), school funding (discussed in Chapter 6, Separate and Unequal Education), and encouraged polluting industries to move in (discussed in Chapter 7, Racism in Environment and Infrastructure). As a result, African Americans suffer higher rates of asthma and other diseases (discussed in Chapter 8, Pathologizing the African American Family). Housing segregation partially created the foundation and exacerbated the over-policing of African American neighborhoods, resulting in the injury and death of African Americans at the hands of police (discussed in Chapter 12, Mental and Physical Harm and Neglect).

These harms have never been adequately remedied.

Appendix

Table 1: Racial Disparities in Home Values, 2020 (Studied CA Metros)[645]

Metro Area	Value of the Typical Black-Owned Home as a Percentage of the Value of the Typical US Home (%)	Value of the Typical white-Owned Home as a Percentage of the Value of the Typical US Home (%)
Statewide	86	108
Los Angeles	81	118
Riverside	99	101
Sacramento	93	101
San Diego	81	106
San Francisco	78	107
San Jose	91	108

Table 2: Gap in Black Homeownership Rates (BHR) and white Homeownership Rates (WHR) in Formerly Greenlined Neighborhoods, 1980 vs. 2017 (Studied CA Metros)[646]

	1980			2017		
Metro Area	BHR (%)	WHR (%)	Gap	BHR (%)	WHR (%)	Gap
Fresno	31.4	71.2	39.8 points	2.5	62.6	60.1 points
Los Angeles	49.8	69.1	19.3 points	46.2	67.1	20.9 points
Oakland	76.9	82.6	5.7 points	84.1	85.9	1.8 points
Sacramento	35.7	79.5	43.8 points	16.7	73.4	56.7 points
San Diego	7.9	64.0	56.1 points	17.0	60.9	43.9 points
San Jose	9.9	58.8	48.9 points	41.1	60.5	19.4 points

Table 2c: Gap in Median Home Equity in Formerly Greenlined and Formerly Redlined Neighborhoods, 2019 (Studied CA Metros)[647]

Metro Area	Median Home Equity in Formerly Greenlined Neighborhoods ($)	Median Home Equity in Formerly Redlined Neighborhoods ($)	Gap (% difference)
Fresno	282,000	158,000	78
Los Angeles	1,111,000	587,000	89
Oakland	1,300,000	752,000	73
Sacramento	778,000	522,000	49
San Diego	1,058,000	471,000	125
San Jose	1,329,000	854,000	56

Table 3 Sundown Towns identified in California from *Sundown Towns: A Hidden Dimension of American Racism* by James Loewen

- Brea[648]
- Bishop[649]
- Burbank[650]
- Maywood Colony, Corning[651]
- Culver City[652]
- Glendale[653]
- Hawthorne[654]
- La Jolla[655]
- Numerous suburbs of Los Angeles[656]
- Palos Verdes Estates[657]
- Richmond[658]
- San Marino[659]
- South Pasadena[660]
- Taft[661]
- Tarzana[662]

Endnotes

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[25] Rothstein, *supra*, at pp. viii-ix; see generally *Civil Rights Cases*, *supra*, at fn. 23.

[26] Rothstein, *supra*, at pp. x-xi.

[27] Massey, *supra*, at p. 20; see also Cutler, *supra*, at p. 456.

[28] Black Population, *supra*, at p. 33.

[29] *Id.* at pp. 89-90.

[30] Ransom, *supra*, at p. 57; Negro American Family, *supra*, at pp. 45-51.

[31] Massey, *supra*, at pp. 20-21; see generally Grigoryeva, *supra*; *Measuring Segregation*, *supra*.

[32] Massey, *supra*, at p. 26; see generally Grigoryeva, *supra*; *Measuring Segregation*, *supra*.

[33] *Measuring Segregation*, *supra*, at pp. 5-6; Foner, A Short History of Reconstruction, 1863-1877 (2015) p. 37.

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See Stats. 1951, ch. 710, p. 1922 et. seq.; Cal. Const., art. XVI, § 16; Cal. Health & Saf. Code § 33030, et. seq.); (Stats. 1993, Ch 942 (A.B. 1290).); (Stats. 2006, Ch. 113 (A.B. 782, § 1)); (Stats. 2006, Ch. 595, § 2 (S. B. 1206)); (Stats. 2010, Ch. 665, § 1 (A.B. 1641)). Today, the original 1945 set of conditions remains basically the same, but it also includes an anti-discrimination policy regarding the undertaking of community redevelopment projects. Cal. Health & Saf. Code § 33031, subd. (a)(1), (5); subd. (b)(1), (3); Cal. Health & Saf. Code § 3305

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CHAPTER 6 Separate and Unequal Education

COURTESY OF DICK DEMARSICO/LIBRARY OF CONGRESS

Black children on their way to school pass mothers protesting integration. (1965)

I. Introduction

Nationally

A quality education is the foundation for a good job, income growth, and, in the words of the Supreme Court of California, "for the preservation of the rights and liberties of the people."[1] During slavery, the government of the United States of America at all levels, including the government of the State of California, deprived 11 generations of African Americans of the benefits of a quality education.

After slavery, governments in the United States required nearly all Black children to attend segregated schools with far fewer resources and funding than the schools white children attended.[2] In many schools today, these separate and unequal education conditions continue for African American children. The benefits of a good education—a better job and higher income—build up over generations.[3] Just as benefits mount and increase, so too, do the harms. For hundreds of years, governments at all levels in America have inflicted compounding educational harm upon African American children, and they have never made sufficient amends.

During the slavery era, in order to control the African American enslaved people who toiled to build the wealth of this country, enslaving states denied education to nearly all enslaved people.[4] Free states of the North and Midwest segregated their schools and limited or denied freed African Americans access.[5] With rare exceptions, African Americans could not go to college.[6]

After the Civil War, southern states and others on the borders denied equal education to free Black people to maintain a servant class and prevent Black people from voting.[7] Until 1945, state governments legally segregated African American children in principally one room schoolhouses with fewer resources and funding than white schools. White terrorist groups, supported by government officials, destroyed African American schools.[8] In the rest of the nation, government supported housing segregation and neighborhood-based school assignment policies sent most African American children to schools that were separate from white students and unequal with respect to both funding and resources. Most state-funded and private white colleges and universities refused to admit African American students.

The Supreme Court's landmark 1954 case, *Brown v. Board of Education*, which outlawed school segregation on paper, did not mark the end of segregation, as some Americans believe.[9] Many white government actors throughout the country aggressively resisted integration—shutting down public schools, harassing, threatening, and terrorizing Black students and parents who sought to integrate schools, and providing vouchers for white students to attend newly created private schools.[10] In the rest of the country, government actors created and preserved school segregation through housing segregation and neighborhood-based school assignment policies.

The Supreme Court's landmark 1954 case, *Brown v. Board of Education*, which outlawed school segregation on paper, did not mark the end of segregation in reality. Today, in America, the vast majority of Black children remain locked into unequal schools and classrooms, separate from their white peers.

Today, in America, the vast majority of African American children remain locked into unequal schools and classrooms, separate from their white peers. With regard to higher education, predominantly white colleges and universities slowly increased the number of African American students attending for about 40 years following the passage of the Civil Rights Act of 1964. However, in more recent years, the overall number of African American students attending college has declined.

California

Before the Civil War, California also denied education to African Americans or forced them to attend segregated schools with far fewer resources and funding than the schools white children attended.[11] For a period of time, California law provided state funding only based on the number of white children in each county, and also allowed public school districts to refuse to teach African American children even in a segregated school under certain circumstances.[12] Although California law officially ended segregated schooling for African American students in 1890, as in the rest of the nation, government officials created less obvious, but equally effective policies to keep African American children in mostly African American, underfunded schools.[13]

Today, in California many African American students continue to attend unequally funded, under-resourced, and highly segregated public schools due to government policies that continue to segregate many schools and school funding by neighborhood. Recently, California has tried to provide a more equitable funding system by providing more state money to school districts that serve our poorest students. However, the system does not ensure that the money is actually spent on those students, many of whom are African American children, and there is some evidence that this is a reason that African American students continue to be the lowest performing sub-group in California.

Section II of this Chapter describes the laws, policies, and practices during slavery which denied education to African Americans. Section III focuses on the period after the Civil War until the present and the laws, policies, and practices that created the segregated and unequal primary and secondary schooling experienced by the vast majority of African American students to this day. Section IV describes how laws, policies, and practices denied African Americans equal access to higher education. Section V of this Chapter describes how our nation excludes the experience of African Americans when educating our children and the resulting negative impacts. Section VI summarizes the ongoing and compounding harms suffered by African Americans.

II. Denial of Education During Slavery

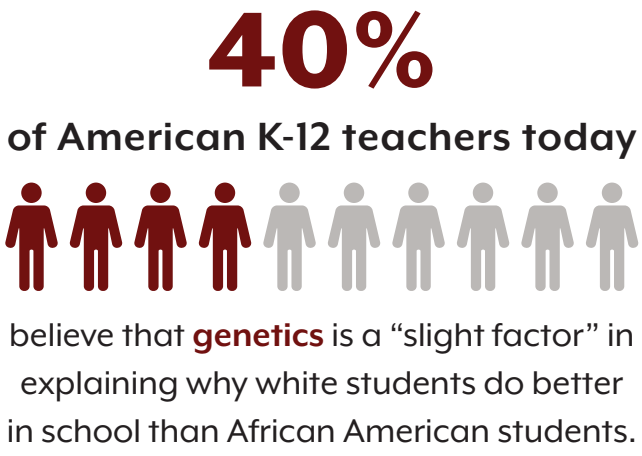
Racist pseudo-scientific theories about the false inferiority of African Americans spread in the decades before the Civil War and justified prohibiting their education. Most enslaving states formally outlawed the education of enslaved African Americans, so enslaved people who sought to learn to read and write had no choice but to do so in secret, and at great risk to themselves. While African Americans were enslaved and banned from schooling in the South, their labor helped pay for public schools in some states in the North. Schooling available to free African Americans in the North was mostly in segregated schools with fewer resources. At several schools that attempted to provide integrated education to African Americans, white Americans subjected teachers and students to threats, harassment, and terror.

In California, for a period of time, laws intended to enforce segregated schooling also withheld state money from schools that taught African American children and allowed school districts to deny education to African American children altogether, under certain circumstances. Even when local governments provided money and resources to support African American schools, white schools disproportionately received greater funding and resources.

America's Leaders Promote Racist Pseudoscience

In *Notes on the State of Virginia,* Thomas Jefferson "proposed that black inferiority—'in the endowment of both body and mind'—might be an unchangeable law of nature."[14] Some scholars argue that Jefferson's statements became an important first document of racist scientific theories that were popular in the decades before the Civil War.[15] Some of the so-called "race scientists" graduated from elite northern colleges and claimed that African American people were subhuman and not descendants of Adam and Eve to support, as one scholar argues, "the self-image of the nation's white supremacist majority."[16]

Even Abraham Lincoln also believed that white people were superior to African American people, stating in his famous debate with Stephen Douglas: "I as much as any other man am in favor of having the superior position assigned to the white race."[17] Other early leaders of America, including Thomas Jefferson, Abraham Lincoln, and Benjamin Rush, a Founding Father who has been called the father of American psychiatry, endorsed these false ideas about the inferiority of African Americans that served to justify education prohibitions.[18] Scientists later proved that these "race scientists" were wrong in the racist theories used by government officials and private citizens to justify slavery and discrimination.[19] See also Chapter 12, Mental and Physical Harm and Neglect, which discusses studies finding no biological difference between African American and white people. A recent 2019 *Education Week* survey suggests that these racist theories live on among America's teachers today.[20] The survey found that more than 40 percent of American teachers incorrectly believe that genetics is "a slight factor" in explaining why white students do better in school than African American students.[21]



The South

During more than 250 years of slavery, state governments prohibited education of African Americans, except for certain religious education.[22] In fact, the institution of slavery depended, in part, on enslaved African American people remaining uneducated.[23] Frederick Douglass' former enslaver forbade him from learning to read, as "[a] nigger should know nothing but to obey his master – to do as he is told to do."[24]

Most enslaving states formally outlawed teaching an enslaved person to read or write as early as 1740.[25] Enslaved people caught learning to read or write in states where this was outlawed could face prison, public whipping, or be threatened with having a finger or arm cut off.[26] When religious education was permitted, it generally taught enslaved people basic reading but not writing, because learning to write could help an enslaved person escape.[27] Some enslaved African Americans sought out instruction provided in secret. For example, Douglass secretly taught other enslaved people how to read, and described "[t]he work of instructing my dear fellow-slaves" as "the sweetest engagement with which I was ever blessed. We loved each other, and to leave them at the close of the Sabbath was a severe cross indeed."[28] As a result of such secret lessons taught by enslaved people, free African Americans, and some white Americans,[29] about 10 percent of African Americans in the South learned to read by 1865.[30]

The Rest of the Country

In the North, African Americans were more likely to have basic reading and writing skills. African Americans sometimes attended schools that were mostly segregated, either through government policy or local practice.[31] In some places, state and local officials prohibited African Americans from opening schools, and white Americans harassed and threatened teachers of African American students until they stopped teaching. In some places, white Americans also vandalized or destroyed schools that permitted African American students to attend.[32] For example, in 1832, when a white school master in Connecticut named Prudence Crandall, began

enrolling African American students in the small school that Crandall ran out of her home, white townspeople forced her out of her own home.[33] White parents withdrew their children.[34] Crandall eventually enrolled 20 African American students.[35]

On May 24, 1833, the Connecticut legislature passed a "Black Law," prohibiting any school from teaching African American students from outside the state without permission.[36] Local officials arrested Crandall because she kept her school open. She spent the night in jail and charges were brought against her. Then, in January 1834, vandals set the school on fire.[37] Crandall finally closed the school in September 1834 after white townspeople broke 90 panes of glass on her home using iron bars.[38] This was the second unsuccessful attempt to establish a school for African American students in the state.[39]

While African Americans were enslaved and banned from schooling in the South, their labor helped pay for public schools in some states in the North.[40] Enslaved people worked for free in the South picking cotton, and their labor in the South created great wealth for the textile manufacturers in the North. By the early 1830s, New England mills consumed such large quantities of cotton from the South—78 million pounds of cotton fiber per year—that the United States became the second largest producer of textiles in the world.[41] This textile industry in the North paid taxes. These taxes helped to fund the public schools in New England. During slavery, due to government policies and local practices, very few African American students were permitted to attend these public schools, even though the labor of African Americans enslaved in the South helped fund them. During this time, the federal government also supported enslavers kidnapping African Americans in the North who had escaped from slavery to re-enslave them in the South, where they were again denied education.[42] See Chapter 2 Enslavement for further discussion of related issues.

During the 1800s, African American students generally could not receive an education beyond high school because it was legal for colleges and universities to refuse to admit African American students.[43] In response, free African Americans, often affiliated with African American churches, established the first African American colleges and universities.[44] Until the early 1900s, these schools mostly offered middle and high school level education to African Americans who had been prohibited from attending school.[45] By the eve of the Civil War, only 28 of the nation's nearly four million newly freed enslaved people had received bachelor's degrees from American colleges.[46]

California

California became a state in 1850, a decade before the onset of the Civil War. Despite the anti-enslavement clause in California's constitution, enslavers brought several hundred African American enslaved people to California and generally denied them education.[47] The early California legislature, dominated by white southerners from enslaving states, revd the school liseaws to enforce segregated schooling.[48] See Chapter 2 Enslavement for further discussion of related issues. These state lawmakers successfully enforced segregated schools to deter racial intermixing.[49] California's State Superintendent of Public Instruction Andrew Jackson Moulder, who served from 1857 to 1862 stated: "[I]f this attempt to force Africans, Chinese, and the Diggers [Native Americans] into our schools is persisted in, it must result in the ruin of our school."[50]

As early as 1855, California enacted a law calculating how much the State of California would fund a school "in proportion to the number of white children" in each county, so that local governments would not receive any extra money from the state when they taught an African American student.[51] Superintendent Moulder later influenced a California law in 1863 that withheld state funds from schools that taught African American and Chinese children.[52] So, although California taxed African American people to pay for the state's public schools, African American Californians' taxes only paid for the education of white children, and they had no right to education for their own children.

While African Americans were enslaved and banned from schooling in the South, their labor helped pay for public schools in some states in the North.

Because of both of these laws, local governments, instead of the state, paid to educate nonwhite students. Further, those local governments that ran schools for African American students generally provided less funding and resources for African American schools in comparison to white schools. For example, six years after the first

all-Black school was established in 1854 in the basement of a San Francisco church,[53] the San Francisco School Superintendent George Tait stated to his school board that: "[T]he room occupied by this school for the past few years is disgraceful to any civilized community" and was "squalid, dark, and unhealthy."[54]

In 1864, the state changed the law to allow school districts to provide education to African American students in a segregated classroom or school if requested in writing by "the parents or guardians of 10 or more colored children."[55] This meant that if fewer than 10 students lived in the district, California law also allowed public school districts to refuse to teach African American children at all. In 1866, the state changed the law again to allow white parents to prevent African American students from attending their children's schools, if a majority of parents objected in writing.[56]

A California law passed in 1855 withheld state funds from schools that taught Black and Chinese children. So although California taxed African Americans to pay for the state's public schools, a Black Californian's taxes only paid for the education of white children, and they had no right to education for their own children.

Because of these state laws, African American children were forced into separate public schools or out of the public-school system altogether. In response, African American women in Sacramento, Oakland, and San Francisco led efforts to organize church-based schools, private schools, and separate free-standing public schools.[57]

In the mid-1860s, African American students across California were also generally denied access to public middle and high schools. Few public middle and high schools existed at the time, and California refused to fund and provide separate public middle and high schools for African American students, in part, because of the 1864 state law that permitted school districts not to provide a school where African American students were few in number.[58]

III. Unequal Primary and Secondary Education

Nationally

Formerly enslaved African Americans had a fundamental belief in the value of literate culture and this belief was expressed through their efforts to secure education for themselves and for their children.[59] For the first decade after the Civil War, African Americans and the politicians they elected, successfully fought for and built the South's public-school system, through a series of legislative and constitutional enactments.[60] Prior to the concerted leadership of freed African American leaders, none of the southern states had a universal public education system.[61] As African American political leaders passed laws and set aside funding to create a public education system for all children, African American students could attend schools in their communities.

However, government expansion of schooling for illiterate African Americans threatened white economic domination.[62] According to J.L.M. Curry, an Alabama state legislator in 1889, "[e]ducation would spoil a good plow hand."[63] So, even as educational opportunities for Black people in former enslaving states expanded, after reconstruction, white-led governments and organizations created a web of government-approved policies and tactics, including burning schools down, to continue to deny Black people education and maintain legalized school segregation.[64] So, even though African Americans led the creation of the public education system in the South, white students ultimately benefited far more than African American students.

Denying education or quality education to African Americans was also critical to denying African Americans political power and maintaining white political supremacy.[65] For example, most former enslaving states suppressed the African American vote by imposing a "literacy test" for voters and selectively enforcing it against African American people.[66] See Chapter 4, Political Disenfranchisement for a further discussion of this topic. The vast majority of the policies and practices that created unequal and segregated schools for African Americans in the South lasted another 100 years. Many continue to live on today in different forms.

African Americans Led the Creation of the Southern Public Education System

In the immediate aftermath of the Civil War, the vast majority of African American people lived in the South. Formerly enslaved African Americans identified education as essential. Black-dominated Reconstruction-era legislatures in the South passed laws to create the public education system in the South. "The whites [in the South] had always regarded the public school system of the North with contempt. The [African American] freedman introduced and established it and it stands today a living testimony to his faith that education is necessary to social welfare," said Colonel Richard P. Hallowell, Union Army and Pennsylvania Freedmen's Relief Association.[67]

African American men, recently allowed to vote and hold political office, helped draft new state constitutions in the South that mandated public education.[68] During Reconstruction, they served on federal and state legislatures that passed the bills to provide funding to the new schools.[69] African American political leaders worked in interracial political coalitions with white Republicans (generally poor whites or Northern transplants) to establish the South's universal public-school system, what historians have called "the crown of Reconstruction."[70] The Freedmen's Bureau Act of 1865 also helped set-up some schools for African American people who had been newly freed,[71] although the federal government ended the Freedmen's Bureau Act after just seven years.[72]

Despite this setback and other obstacles and even after federal troops withdrew from the South in 1877, African Americans who already knew how to read and write, shared their knowledge with others in their communities.[73] When, as described further below, African American communities did not receive the necessary funding from post-reconstruction white government officials to afford to pay teacher salaries, African Americans sought financial assistance and teacher recruitment from federal agencies and benevolent organizations in the North.[74] Given the unwillingness of white property owners to rent or sell to African Americans and the refusal of white-led post-reconstruction governments to properly fund schools, African Americans also struggled to access buildings that they could use as schoolhouses.[75] Nonetheless, African American communities worked together to overcome these obstacles. Since most African American churches were owned by African American congregations, churches were often utilized as schoolhouses.[76] Local residents often gathered together to apply liquid slate to the side walls of the church to create chalkboards to also use these buildings for schooling.[77]

From 1908 to 1968, some of one-hundred-plus Black teachers in rural communities in 13 states (whose salaries were funded by a northern philanthropist) utilized their positions not only to teach Black students but to advocate for improvements to their schools, public health, living conditions, and teacher training.[78] Influential educators such as Nannie Helen Burroughs, an African American woman who was denied a teaching position at a public school in D.C., decided that if she could not get a job as a teacher, she would start her own school.[79] Burroughs refused to rely on white donors and instead relied on donations from community members, which enabled her to establish the Training School for Women and Girls in D.C. by 1909.[80] Although Burroughs' school taught vocational skills as well, her school differed in that she assisted women in becoming politically and financially autonomous in order to empower Black women to be "public thinkers and not just public doers."[81]

The persistence and enthusiasm of African Americans created schools for African Americans within their communities when white-led southern government refused to fund them.

Racial Terror

As discussed in Chapter 3 Racial Terror, after federal troops withdrew from the South in 1877, for the next century, government officials supported private citizens who terrorized African Americans and African American institutions with impunity. White Americans burned a number of African American schools and churches housing African American schools to the ground.[82] White-American-led post-reconstruction governments closed African American public schools and fired African American teachers.[83] A unanimous Supreme Court effectively authorized the elimination of high school for African American students.[84] Hundreds of thousands of African American youth and adults were essentially re-enslaved on trumped up charges upheld by federal and local judges and police, and forced to labor for white-led U.S. companies and plantation owners under conditions that were as brutal, or even more so, than those endured during slavery.[85] A number of those re-enslaved were pre-teens and teenagers, some were children under the age of 10.[86] They were not enrolled in school. The unpaid labor of these re-enslaved African Americans also built wealth for white-led companies and plantation owners.[87] See Chapter 11, An Unjust Legal System for further discussion of related issues.

Segregation by Law

From the mid-1860s to 1954, legal segregation laws operating in 17 former enslaving states forced African

Americans into segregated and unequal schools.[88] By the 1880s, a series of U.S. Supreme Court cases had severely limited the federal government's power to enforce Reconstruction civil rights legislation intended to protect African Americans, leaving enforcement in the hands of white-led state and local governments.[89] This cleared the way for the Supreme Court in 1896 to endorse the idea that requiring African Americans to be "separate" from whites in nearly every facet of life could be consistent with equality.[90] During the long period of segregation, African Americans attended schools that were intentionally under-resourced and structured for the purpose of maintaining a servant class.[91]

In May 1911, after completing a study of the conditions of Black schools across the South, W.E.B. Du Bois concluded that the schools were in "a deplorable condition," worse off than 20 years prior "with poorer teaching, less supervision and comparatively few facilities."

Double-Taxation for African American Schools

After Reconstruction, white former enslavers created a state tax system designed to underfund education for African Americans. Some states ordered that schools for African American children be paid for exclusively by taxes on African American parents.[92] In these states, no white taxpayer paid for the education of an African American child, but African Americans paid for the education of both African American and white children.[93] This dual-tax system created huge differences in the amount of money spent to educate African American and white children.[94]

In practice, this meant that many African Americans in the early 1900s had to pay double to receive less in education.[95] In southern states, the disparity could be as high as 10 dollars per white student for a single dollar given to fund an African American student's education.[96] In the 1930s, a local school superintendent in Louisiana reported bluntly: "We have twice as many colored children of school age as we have white, and we use their money. Colored children are mighty profitable to us."[97]

The same African Americans were forced to donate additional land and money to support African American schools because the state did not send enough money for African American schools.[98] For example, when in the 1930s a fire destroyed classroom furniture and equipment in a Louisiana school, according to a local newspaper, the city refused to pay to replace any of the destroyed items. Instead, the tax dollars were given to the white school and African American parents would have to raise the money to repair the school.[99]

COURTESY OF LIBRARY OF CONGRESS

Schoolhouse for Black students near Summerville, South Carolina. (1938)

Inferior Resources, Funding, and Time

By the late 1890s, African Americans in former slaveholding states had "been shunted into their own inferior . . . schools" through an "unfettered grab by white supremacists," according to one historian.[100] The schools they attended were often in terrible condition and lacking in basic facilities, such as desks and chairs and working windows.[101] These schools generally included fewer grade levels of education.[102] White school authorities intentionally selected the least-qualified teaching applicants and pushed a curriculum focused on "industrial work," e.g., canning, sewing, and woodworking.[103] In May 1911, after completing a study of the conditions African American schools across the South, W.E.B. Du Bois concluded that the state of segregated elementary schools for African Americans in the South and in border states is in "a deplorable condition," worse off than 20 years prior "with poorer teaching, less supervision and comparatively few facilities."[104]

The disparities in funding were also severe. White schools received on average five to eight times more government funding than African American schools in nearly all former enslaving states.[105] In the 1930s in Louisiana, African American teachers and principals made on average only 43% of what white teachers and principals made—$499 a year compared to $1,165.[106] Similarly, in Mississippi, African American teachers and principals made just $215 a year, while white teachers and principals made

$630 a year.[107] For African American teachers, as Isabel Wilkerson writes in *The Warmth of Others Suns*, this meant "even the most promising of colored people, having received next to nothing in material assets from their slave foreparents, had to labor with the knowledge that they were now being underpaid by more than half, that they were so behind it would be all but impossible to accumulate the assets their white counterparts could, and that they would, by definition, have less to leave succeeding generations than similar white families."[108]

During segregation, compared to white students, African American students attended school

3-4 months LESS

than white students every year

In addition, the number of months African American students attended school was generally fewer than white students, e.g., four-to-five months in comparison to six-to-eight months for white students.[109] The causes included lack of sufficient funding for schools in rural communities, where many African Americans lived, white farm owners forcing African American children to work in the fields (or their sharecropping parents needing assistance), and government limits on the number of months that an African American school would be funded in comparison to a white school.[110]

Despite the inferior quality of African American schools, some prominent thinkers such as W.E.B. Du Bois, suggested that integrated schools would ultimately disadvantage African American students, because the discrimination they would inevitably continue to experience would prevent African Americans from receiving a proper education.[111] He wrote that separate schools were "necessary for the proper education of the Negro race."[112] Moreover, he believed that race prejudice in the United States was such that "most Negroes cannot receive a proper education in white institutions" because the proper education of any group of people required sympathy, understanding, and social equality between teachers and their students.[113]

In his 2014 article in *The Atlantic*, Ta-Nehisi Coates recounts the story of Clyde Ross, a student who was encouraged to attend a more challenging African American school outside of his community built with funds from a philanthropist and resources amassed by African American community members, who also donated physical labor to actually build the schools.[114] The school was too far away from Ross' home for him to walk there and get back in time to work in the fields. Local white children had a school bus. But Ross and other African American children did not. Thus, Ross lost out on the opportunity for a better education.[115] For many African American students, the school that Ross was encouraged to attend was the first ever available to them in their community. In yet another way, African Americans paid twice. They devoted funds and their own labor to build a school for their children while also paying taxes that supported better schools for white students.

In spite of concerted state efforts to deny them equal educational opportunities, African American Southerners achieved a literacy rate of 43 percent by 1890, a rate of growth that far surpassed the rise of literacy in Spain and Italy during the same period and that continued to rise in nearly all southern states in the early 1900s.[116] Yet, researchers have found that the "legacies of slavery" compounded by the many obstacles that African American children faced in acquiring education show a correlation with high rates of illiteracy among African Americans nearly 80 years after slavery ended.[117]

Resistance to Integration

In 1951, African American students led the fight for desegregation[118] and, in 1954, the Supreme Court declared race-based segregation in public schools unconstitutional in its *Brown v. Board of Education* decision.[119] Although many Americans believed that the Supreme Court's *Brown* decision was the end of school segregation, it was not. After the *Brown* decision, all across the country, many white Americans and white state and local governments refused to implement the Court's order, while the federal government failed to adequately

COURTESY OF BUYENLARGE VIA GETTY IMAGES

African American boy watching a group of people, some carrying American flags, march past to protest the admission of the "Little Rock Nine" to Central High School. (c. 1958)

90% of the south's Congressional delegation

Signed the "Southern Manifesto" pledging to **fight integration** using any means at their disposal.

enforce the order and protect African American teachers, school administrators, and students.

In former enslaving states, white-controlled government school boards, and state and municipal governments almost universally refused to comply with *Brown* in what historians have called the "era of massive resistance."[120] On May 12, 1956, 90 percent of the south's Congressional delegation signed the "Southern Manifesto" pledging to fight integration using any means at their disposal. [121] These lawmakers and others in southern states made good on their promise.

Some white Americans in the South used violence, harassment, and threats to stop integration. They attacked African American students and terrorized some African American families who dared to enroll their children in white public schools. For example, in Arkansas, on September 4, 1957, when nine African American students went to enroll in Little Rock's all-white Central High School, Arkansas Governor Orval Faubus ordered the Arkansas National Guard to form a blockade around the school's front door to keep the students out. The National Association for the Advancement of Colored People (NAACP) had to get a federal court order to make the National Guard stand down. But even with the court's order, the students were still not safe to enter because of the threat of white mob violence. Only after Dr. Martin Luther King, Jr. sent a plea for protection to President Eisenhower, did the federal government act. The federal government brought in 1,000 Army paratroopers and ordered the National Guard to provide an escort for the students as they entered the school. Twenty-one days after the nine African American students – now known as the "Little Rock Nine" –first tried to attend the high school, they were finally able to enter. As they walked in, angry white crowds of students and adults yelled racial insults and threw objects at them. Rather than allow integration to go forward in other schools, Governor Faubus then closed all public high schools in Little Rock for the 1958 to 1959 school year.[122] Throughout their time in the school, the Little Rock Nine reported enduring severe harassment, including physical violence from some white students. Several years later on the eve of graduation, the home of Carlotta Walls, one of the Little Rock Nine was bombed by white supremacists.[123]

In Mississippi when then-NAACP civil rights attorney Derrick Bell filed a lawsuit to integrate one community's schools, he described how nightriders came through the community firing guns into African American homes.[124] African Americans who signed petitions to integrate the schools lost their jobs or had their credit cut off by merchants.[125] Because of the severe intimidation and harassment by the white community, only one African American family was ultimately willing to send their child to the white school.[126] When the child, Debra, arrived at school, a large crowd jeered and marshals had to escort her into the school.[127] Debra's father lost his job the same day, and white Americans attempted to burn their house down.[128]

Rather than allow integration to go forward in other schools, Governor Faubus then closed all public high schools in Little Rock for the 1958 to 1959 school year.

Southern states also passed laws to close both white and African American public schools, deny state money for any schools that integrated, and provided vouchers or "freedom-of-choice" to over 3,000 newly created private schools for white students.[129] For several years, African American students in certain areas in the South had no school to attend at all.[130] In Georgia, Governor Herman Talmadge, who fiercely opposed public school integration, told the public at a press conference that the only solution to a public school segregation ban was "abolition of the public school system."[131]

The Supreme Court also contributed to the slow progress of desegregation. When asked to decide how quickly school districts across the country must desegregate, the Supreme Court answered that schools could do so with "all deliberate speed."[132] One federal judge who heard cases filed by African Americans challenging the failure to desegregate schools for almost 10 years, concluded that the effect of the Supreme Court's decision was to "sacrifice[] individual and immediate vindication of the newly discovered right of [B]lacks to a desegregated education in favor of a remedy more palatable to whites"[133]

Because of all of these government acts, legal school segregation in many places in the South continued into the 1960s and little desegregation of schools took place.[134] In five Deep South states, 1.4 million African American school children continued to attend a segregated school until the fall of 1960, when integration efforts finally began.[135]

Mass Firings of African American Educators

Federal government and court failure to adequately enforce the *Brown v. Board of Education* decision had other negative consequences.[136] Southern states engaged in en masse firing of African American teachers and administrators without cause to prevent a white administrator and teacher with the same or overlapping position as a Black administrator or teacher at the newly integrated school from losing their job.[137] In 1955, a federal government staff attorney responded to the firing of Black teachers, stating that: "In a war, there must be some casualties, and perhaps the black teachers will be the casualties in the fight for equal education of black students."[138]

One African American educator affected by the firings told researchers that in his community, the teachers' college for African Americans was closed in the name of integration, and many of the professors who taught there were required to go teach in the high schools. The president of the Black college was "given a central office do-nothing position and then someone with a Master's degree, a [White] high school principal, was named president of [the newly desegregated teachers college]."[139]

Mass firing of Black educators deeply affected the economic, social, and cultural structure of the Black community because many middle-class Black people served in education.[140] It is estimated that Black communities lost millions of dollars as a result. For example, in 1970-71, the Black community in 17 southern states lost an estimated $240 million in salaries.[141]

The mass firings also have had long-standing repercussions, as the presence of Black principals and superintendents remain disproportionately low across America in relation to the number of Black public-school students.[142] Studies show that students who have teachers who look like them do better in school than those who do not. African American students with at least one African American teacher by third grade are 13 percent more likely to graduate high school and 19 percent more likely to enroll in college than African American students who had no African American teachers.[143] However, about 80 percent of teachers and principals and 90 percent of superintendents nationwide are white.[144] African American teachers represent just seven percent and African American male teachers represent just two percent of the teaching force,[145] yet 15 percent of public school students are Black students.[146] Many African American students will go through their educational careers without having an African American teacher.

Other Government-Implemented Tools to Segregate Schools

Whereas in the South, legal segregation laws prohibited African American students from attending schools with white students, in the rest of the country, government actors largely used different but nearly as effective tools to create segregated schools for African American students with less funding and resources. First, federal, state and local housing segregation policies, including redlining and restrictive covenants as described in Chapter 5, Housing Segregation, forced the vast majority of African Americans to live in separate communities from white Americans.[147] School and government officials then assigned African American and white students to attend different schools based on where they lived. In this way, segregated schools were created and maintained.

Black students with at least one Black teacher by third grade are 13 percent more likely to graduate high school and 19 percent more likely to enroll in college than Black students who had no Black teachers.

The schools that African American students attended then received less funding and resources than the schools that white students attended. This occurred because public schools generally obtained a large portion of money from local property taxes raised within the city where the schools were located. As a result, the amount of funding for the school district and school depended on how much could be raised by taxes in each local, segregated community.

The more expensive the properties in a school district, the more money a school district receives. When the federal government along with private actors devalued Black-owned properties, through redlining, they also locked Black students into schools that received far less funding for their schools than the white families in nearby neighborhoods with a higher property tax base.[148]

Some cities' schools outside of the South were also segregated by law for a number of years after the Civil War. For example, segregated schools were not banned until 1920 in New York City.[149] In general, the quality of education received by African American students in these segregated schools was not equal to the quality of education received by white students, because schools largely attended by African American students were underfunded and provided with fewer resources.[150]

Even after the *Brown v. Board of Education* decision, highly segregated schools fostered through official actions—government implemented housing segregation and school district boundary and assignment policies—also remained largely the rule.[151] White protests against integration, including some that involved violence against African Americans integrating schools, occurred in different places across the country. For example, in February of 1964, after 460,000 African American and Puerto Rican students and their parents called on the New York City Board of Education to integrate majority-student of color schools that were so overcrowded they operated on split shifts—with the school day lasting only four hours for students, and so underfunded that they had inferior facilities and less experienced teachers—15,000 white New York parents staged a counter-protest.[152] Milton Galamison, a civil rights activist and pastor of Siloam Presbyterian Church in Bedford-Stuyvesant, who helped lead the protest to integrate the schools stated: "Nobody can do these children more harm than these children are being done every day in this public school system."[153]

The United States Commission on Civil Rights 1967 study, *Racial Isolation in Public Schools,* confirmed the nation-wide problem, finding that "violence against [African American people] continues to be a deterrent to school desegregation."[154] The report also found that African American children suffer serious harm when they must attend racially segregated schools, "whatever the source of that segregation might be."[155]

After actively enforcing desegregation from 1965 to 1969, the federal government reduced enforcement of the Civil Rights Act under President Nixon. By the 1980s, roughly half of the nation's children of color resided in the 20 or 30 largest school districts.

In 1968, the Kerner Commission warned President Lyndon Johnson that the nation was "moving toward two societies, one black, one white—separate and unequal" as a result of "[w]hite racism" and white supremacist institutions.[156] After a short period of active coordinated federal effort to enforce desegregation rights from 1965 to 1969, the Nixon Administration curtailed enforcement of the 1964 Civil Rights Act.[157] By the 1980s, roughly half of the nation's children of color resided in the 20 or 30 largest school districts.[158] In urban areas, white Americans continued to fight vehemently against integration. For example, in Boston, schools that served African American children were poorly equipped and understaffed, and badly underfunded. They received about two-thirds the amount of funding received by schools in white neighborhoods.[159] In 1974, after African American families filed suit and a court ordered the city to desegregate its schools, white mobs threw bricks, bottles, and eggs at buses carrying African American students to majority-white schools, injuring nine children.[160]

As white Americans moved into the suburbs, redlining, restrictive covenants, and even violence prevented many African Americans from doing the same. Suburban school district officials drew their boundaries at the city and suburb line, which ensured that African American students living in the inner city would be required to attend inner-city schools, while white children living in the suburbs attended suburban schools. In larger school districts in cities, unless a court desegregation order was in place, districts continued to assign students to schools based on the schools in their neighborhoods. Because the neighborhoods remained segregated by race, the schools continued to be segregated, too.

Intentional segregation in housing by federal and local government actors and the drawing of school district boundaries to mirror school segregation and funding inequities was well-known and documented. But, in 1974, when African American parents asked the Supreme Court to order 53 suburban school districts to participate in the desegregation of the predominantly African American and very under-resourced Detroit city school system, the Court said no.[161] Because the Supreme Court refused to address the government-supported residential segregation that forced African Americans to attend a small subset of American schools, integration was stopped at the city-suburb line.[162] Today, the Detroit city school system remains segregated—approximately 80 percent African American—and severely underfunded and under-resourced.[163]

Then, in 1977, the Supreme Court made it difficult to challenge neighborhood zoning rules, which made it

difficult for African Americans to move into largely white residential areas.[164] Professor Derrick Bell noted that the federal government and local governments created racially isolated communities, which in turn "created single-race schools" and then the Supreme Court "insulated these schools from court challenges."[165] After these Supreme Court opinions, lower court judges began to declare school districts desegregated even when the percentage of African American students increased after white Americans moved to the suburbs aided by housing policies that continued to discriminate against African Americans.[166] In general, these federal courts would not find that it was against the law for African American students to attend schools that received far less funding and had far fewer resources than those schools attended mostly by white students.[167]

On July 17, 2001, Harvard University's Civil Rights Project published a study concluding that school districts across the nation had re-segregated or were re-segregating at an alarming rate, particularly in the South. The study linked this re-segregation to a series of Supreme Court cases decided in the early 1990s, which made it easier for school districts to remain segregated.

By the late 1980s, which was considered the peak of integration, schools remained or were returning to being predominantly white and predominantly non-white.[168] Ten years later things had gotten worse. On July 17, 2001, Harvard University's Civil Rights Project published a study concluding that school districts across the nation had re-segregated or were re-segregating at an alarming rate, particularly in the South.[169] The study linked this re-segregation to a series of Supreme Court cases decided in the early 1990s, which made it easier for school districts to remain segregated.[170]

In 2007, the Supreme Court eliminated school districts' ability to use certain types of voluntary local desegregation plans.[171] Five years later a study found that school segregation across the nation was substantially worse than at the high point of desegregation in 1988, and that the typical African American student was in a school where almost two out of every three classmates (64 percent) are low-income, nearly double the level of schools of the typical white or Asian student.[172]

Studies in the last five years continue to find that segregated and unequally resourced schools remain the reality for the vast majority of African American students and other students of color.[173] However, they also note the extraordinary gains that African American students have made, in spite of remaining in segregated and unequally funded and resourced schools. Before the *Brown* decision, less than a fourth of Black students had graduated from high school; now about nine-tenths of Black students are graduating.[174] Nonetheless, for African Americans to ever attain academic justice, emphasis should be placed not just on the number of African Americans receiving an education, but rather on the quality and content of the education received. As stated by Carter G. Woodson, if the education being provided to African Americans is "of the wrong kind, the increase in numbers [of "educated" African Americans] will be a disadvantage rather than an advantage."[175]

Tracking

After *Brown v. Board of Education*, in districts and schools that were marginally integrated, African American students faced segregation by other means. School officials were more likely to place African American students into special education programs and inferior vocational, non-diploma, and alternative school tracks than white students. And school officials were more likely to place white students into gifted or accelerated programs than African American students. This practice where educators group students by what they view as the student's abilities is commonly referred to as "tracking."[176]

Studies have shown that tracking, which continues today, is correlated with race,[177] and eliminates the benefits of integration for African American students, like access to college classes and high-quality curriculum.[178]

Researchers explain that teachers, the vast majority of whom are white, function as primary gatekeepers in gifted and talented identification, and are less likely to refer African American students for gifted programs than white students with similar levels of academic achievement.[179] Black students tracked out of the mainstream program are often re-segregated in another classroom within the school or in a setting in another school location.[180] Those placed in "lower tracks" do not receive the same quality of education—they often receive less resources and opportunities.[181]

At the October 12, 2021 Task Force hearing, Professor Rucker Johnson testified to the harms of segregation within schools, including harm to student's health,

mental health, school success, and income growth, telling the panel "[t]oo often even when we see what look like diverse schools there are segregated classrooms" and "racialized tracking."[182]

Unequal and Segregated Schools Persist

As of the early 2000s and through today, the vast majority of African American children remain locked into schools separate from their white peers, and possibly more unequal than the schools that their grandparents had attended under legal segregation.[183] The U.S. Government Accountability Office found that, 60 years after *Brown v. Board of Education*, African American students are increasingly attending segregated, high-poverty schools where they face multiple educational disparities.[184] The U.S. Department of Education's Office of Civil Rights data between 2014 through 2018 shows the same disparities—large and persistent opportunity gaps and fewer education resources for Black students.[185] African American students are less likely to attend schools that offer advanced coursework and math and science courses,[186] and less likely to be placed in gifted and talented programs. Another found that African American students who had been on an accelerated math track consistent with their white and Asian peers were disproportionately removed from that track, so that in high school they were no longer being placed with the highest achievers—thereby reinforcing racial inequality.[187] African American students are also more likely to attend schools with large class sizes and teachers with the least amount of experience and qualifications, and that employ law enforcement officers but no counselors.[188] This can partially be attributed to the fact that urban school districts often times have difficulty attracting and retaining teachers due to the low pay, substandard working conditions, and socioeconomic factors that affect such work environments.[189] Moreover, although many African American students deal with greater social and environmental pressures, schools mostly attended by African Americans fail to place greater emphasis on family counseling and community empowerment.[190]

Nationally, nonwhite school districts get

$23 Billion LESS

than predominantly white districts

In addition, because African American students more often have less qualified teachers than their white peers, they fall further behind in school, and some researchers believe this is one reason for their excess placement in classes that support students with disabilities. In other words, even though they have only fallen behind because they have not received high quality instruction, schools believe incorrectly that they may have a learning or other disability.[191] These school placement and resource allocation decisions matter for student achievement and post-K-12 school outcomes.[192]

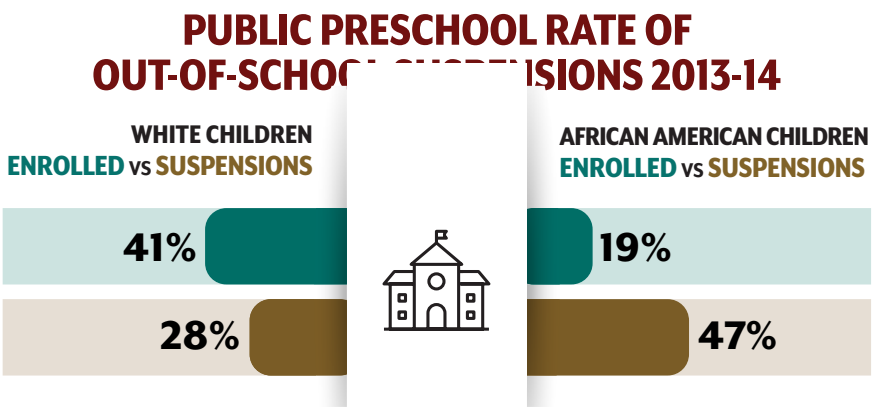
Severe funding disparities between schools serving white students and those serving African American students persist as well.[193] Many school districts across the country today continue to be funded primarily by property taxes raised from the school district's local community, even though neighborhoods continue to be segregated by race and income. Federal and state governments have not filled the gaps between high- and low-income districts. According to a study by EdBuild, "[n]ationally, predominantly white school districts get $23 billion more than their nonwhite peers, despite serving a similar number of children" and there is a "$1,500 per student gap between white districts . . . and equally disadvantaged nonwhite districts."[194] This funding differential matters: more school funding improves education quality.[195] In underfunded schools, students also face health and other risks because of the decrepit conditions of their school buildings.[196]

In addition, because Black students more often have less qualified teachers than their white peers, they fall further behind in school, and some researchers believe this is one reason for their excess placement in classes that support students with disabilities.

Discriminatory Use of Discipline and the School-to-Prison Track

African American students are disproportionately subjected to exclusionary discipline with devastating consequences, which include significantly higher risk of dropout and juvenile justice involvement.[197] Over the last three decades, research has shown that African American students are far more likely than white students to be suspended, even when controlling for income level.[198] This disproportionate discipline also extends to preschool, where Department of Education data from the 2013-14 school year showed that Black preschoolers made up 18 percent of preschoolers, but nearly half of all

out-of-school suspensions.[199] Overall, African American students made up approximately 16 percent of enrollment, yet they accounted for 40 percent of suspensions nationally during the 2013-14 school year.[200] And African American students were four times more likely to be suspended than their white peers during the 2017-18 school year.[201] Some researchers have shown that even when you control for the type of student misbehavior, African American students are suspended and expelled at far higher rates than their white peers. In short, even when white students and African American students misbehave in the same or similar ways, African American students are more likely to be removed from school for the behavior than their white peers who do the same or similar things.[202] Researchers have also found that the difference in suspension rates between white and African American students accounts for as much as one-fifth of the achievement gap between African American and white students, so if African American students were suspended less then achievement levels should go up.[203]



In addition, African American students are more likely to attend schools with law enforcement on campus and significant security measures, such as metal detectors, random security sweeps and searches, security guards, and security cameras.[204] Having a large police presence and heighted surveillance measures on campus can cause students to feel less bonded to school adults, less engaged in school, more fearful and less trusting of school officials and police, and left with a feeling of alienation because they perceive that adults on campus inherently distrust them.[205]

That schools serving mostly African American students have more law enforcement and fewer counselors is one reason that African American students have more contact with and are also disproportionately referred by schools to law enforcement. Arrests of African American students are higher in schools with a police officer on campus, even when controlling for school-wide academic achievement, racial/ethnic composition, geography, and student misconduct.[206] In the 2015-16 school year, African American students made-up 15 percent of students enrolled in America's public schools but 31 percent of referrals and arrests, and they were twice as likely to be referred or arrested than their white peers in 2018-19.[207] And Black girls are three times more likely than white girls to receive referrals to law enforcement.[208] There is also evidence that African American students are more likely to be subjected to excessive force by officers in schools.[209] One arrest during school can have severe consequences for a student's future, as it doubles a high school student's likelihood of dropout and increases their likelihood of incarceration as adults.[210]

Disproportionality in discipline—and the school-to-prison pipeline such disproportionality begets—has been attributed to biases, implicit or otherwise, that school officials may carry into the schoolhouse. Research shows that these biases about African American students, which can result in discriminatory disciplinary decisions, may also exacerbate the achievement gap by decreasing expectations and opportunities.[211] In addition, when students perceive an unfair distribution of punishment, an environment of anxiety is created, with achievement outcomes decreasing and students reporting less of a sense of belonging.[212] Consistent research has identified alternatives to exclusionary discipline, such as School-Wide Positive Behavior Interventions and Supports and social emotional learning lessons for students that improve educational outcomes, faculty cohesion, school safety, and teacher morale, but many school districts have not implemented these alternatives.[213] Furthermore, intergenerational exposure to trauma related to racism has been linked to higher incidences of depression, anxiety, and other mental health conditions in African American communities compared with other groups, including African immigrants, who

Even when white students and Black students misbehave in similar ways, Black students are more likely to be removed from schools.

have not experienced the same multigenerational slavery and institutionalized racism.[214] Schools have not consistently provided help, such as mental health services and a trauma-informed approach to education. Instead, schools with large numbers of African American students have increased security and police presence.

The impact of the school-to-prison pipeline is also reflected in data over decades showing that, nationally, Black youth and adults are incarcerated at a disproportionately high rate compared with white youth and adults.[215] See Chapter 11, An Unjust Legal System and Chapter 8, Pathologizing the African American Family for additional discussions of this topic. Once in the system, education provided to African American students in juvenile facilities is often substandard and youth in adult facilities may receive no education at all.[216] One of the many tragic consequences of the disproportionate incarceration of Black men is reflected in the academic struggles experienced by young Black boys.[217] The

incarceration of African American adult men contributes to the number of young African American students in fatherless homes. Moreover, research suggests that the lack of male models in the home has a significantly higher impact on African American male students than it does on African American female students.[218]

California

From the Civil War until the present, African Americans attending school in California have been forced to endure the same segregated and unequal education conditions endured by African Americans in the rest of the nation. In the early years, school segregation was required by state law. Later, the methods to maintain segregated and unequal schools—which included housing segregation, how to draw school districts and where to build schools—have largely mirrored the methods employed in other states outside of the South.

Segregated and Unequal Education Systems

In 1866, California law was amended to empower school districts to "allow 'colored' children to attend" school with white children in areas where there were not enough children of color to create a separate school, unless the "majority of white parents objected in writing."[219] However, this change was short-lived because a California Superintendent of Public Instruction who believed in segregation and a governor who refused to abide by the Fourteenth and Fifteenth Amendments won the subsequent election.[220]

In 1870, legislators amended California law to provide that every school shall be open for the admission of white children residing within the school district—and that the "education of children of African descent and Indian children shall be provided for in separate schools," and that schools with "fewer than ten students of color" can "educate them in separate schools or in any other manner."[221] The Oakland School Board interpreted state law as no longer requiring a school for African American children and, in 1871, abruptly closed its "colored school," which had been operating since 1866.[222]

On September 22, 1872, after the principal of San Francisco's white-only Broadway public school denied 11-year-old Mary Frances Ward entrance and told her to attend the separate, all-African American public school, she and her parents filed suit in California court.[223] The California Supreme Court upheld the system of segregated schools with a caveat.[224] Where no separate school existed, the Court concluded that African American children could attend white schools.[225] Soon after, state law was conformed to the *Ward* decision—"children of African descent, and Indian children" must be educated in separate schools but if districts "fail to provide such separate schools, then such children must be admitted into schools for white children."[226]

Records reveal that in 1874, there were 23 "colored schools" in California, but "conditions had worsened for many of the state's black youths," because such schools were "poorly equipped."[227] One year later in 1875, the San Francisco School Board ended school segregation, principally due to the cost of maintaining segregated schools.[228] Soon after, in 1880, the legislature removed school segregation for African American students from state education law. The amended law stated that schools "must be open" for "all children," except "children of filthy or vicious habits, or children suffering from contagious or infectious diseases."[229]

Nevertheless, 10 years later, in 1890, 12-year-old Arthur Wysinger was denied admission to Visalia's "Little White" public school on account of race. The school for nonwhite Americans was manifestly unequal to the school for white Americans as illustrated by the fact that the Visalia School District built a new two-story school for white students and forced African American students to attend school in a barn. [230]

Arthur Wysinger's father, Edmond, both African American and Native American, had been brought to California as an enslaved person during the gold rush and eventually bought his freedom. Edmond became a part-time preacher and laborer and always stressed the value of education to his six children. Edmond wanted to send his son to Visalia's newly constructed school, however, officials said his son could only attend the one held in the barn. Edmond sued in response and the California Supreme Court ultimately held in favor of Edmond, but he died before he could see his son enroll in the "Little White" school. The Supreme Court found that the 1880 education law allowed an African American student to attend any local public school.[231] However, the Court also recognized the state legislature's right to re-impose segregated schools whenever it wished.[232]

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Despite this decision, California continued to have racially segregated schools due to other discriminatory policies in housing and education. Just as education segregation existed in the North because of government-supported housing segregation, so too it existed in California. Government-supported housing discrimination in the form of restrictive covenants on properties, redlining, and white-only housing perpetuated school segregation. The federal government intentionally financed the creation of neighborhoods segregated by race—funding white-only public housing, redlining communities to deny homeownership loans to African Americans, and promoting racially-restrictive housing covenants. See Chapter 5, Housing Segregation, for a more detailed discussion of this topic.

Racially-restrictive covenants, enforced by California courts until 1948, were inserted into property titles as early as the 1890s and became rampant in the 1910s, "effectively turning neighborhoods across the state white-only."[233] Districts then assigned students to schools based on the segregated neighborhood where they lived or gerrymandered district boundaries to create segregated schools. School districts also zoned and constructed schools and drew school attendance boundaries in ways that created schools segregated by race.[234] In addition, in the 1940s and 1950s, when African American homeowners tried to break the color lines, they came under attack by the Ku Klux Klan.[235]

On March 2, 1945, five Mexican-American families on behalf of 5,000 other families sued the Westminster School District in Orange County because the school district forced their children to attend a different set of schools with fewer resources than the children of white families.[236] Two years later, the federal court of appeal in California ruled that California education law did not permit separate schools for Mexican children, so creation of segregated schools for Mexican children was arbitrary and not allowed under federal law.[237] This case is called the *Mendez* case after the family who led the filing of the lawsuit. At the time of this lawsuit, most African American students in the state were also attending schools with all African American or nearly all African American children.

Because California law also did not permit the creation of separate schools for African American students, this case meant that where a school district had purposefully created a segregated school by, for example, creating school attendance boundaries around an African American neighborhood, this too was illegal. The lawyers who filed *Brown v. Board of Education* relied on the cases filed by Wysinger and Mendez and the other four Mexican-American families to help convince the Supreme Court to hold that separate schooling was unconstitutional. Also, as a result of the *Mendez* decision, on June 14, 1947, the last of California's school segregation laws, which applied to Asian American and Native American children, was repealed.[238]

Even after the *Wysinger* and *Mendez* decision, and the *Brown* decision in 1954, local cities and school boards refused to take proactive steps to desegregate schools. For example, they did not change the school-site attendance boundaries that had been drawn to reflect racially segregated neighborhoods and that created racially segregated schools. Many also did not take proactive steps to allow students to attend other schools outside their racially segregated neighborhoods. Moreover, those that did failed to provide African American students adequate transportation to get them to schools in the white neighborhood.

In the years after, California leaders and the state's school board acknowledged that local school segregation continued and was illegal, but the problem was not fixed. In

1962, California's Board of Education acknowledged the ongoing problem of highly segregated schools and directed local districts to "exert all effort to avoid and eliminate segregation . . . ." [239] In 1964, prominent civil rights attorney, Loren Miller, confirmed that rampant segregation by race existed in California schools when he told an assembly of western governors, "[M]ore Negro children attend all-Negro schools in Los Angeles than in Jackson, Mississippi and Little Rock, Arkansas, combined."[240]

Statewide racial school census data taken in 1966 also confirmed the high levels of segregated schools: 85 percent of African Americans attended predominantly minority schools, whereas only 12 percent of African American students and 39 percent of white students attended racially balanced schools.[241] To address this segregation, California Attorney General Stanley Mosk advocated for explicit consideration of race in formulating a plan to eliminate it, because to ignore race one would have to "not merely conclude the Constitution is colorblind, but that it is totally blind."[242]

Many local school boards and districts did not take the necessary steps to integrate schools, and so African American and Latino families and their advocates filed lawsuits and asked California courts to order school districts to integrate.[243] In the 1960s and 70s, Los Angeles, San Francisco, Pasadena, San Diego, Inglewood, and Richmond school districts, among others, faced court desegregation orders. Berkeley and Riverside initiated busing programs.[244]

Despite these orders, the passage of Proposition 64 in November 1964 allowed majority-white California to undermine efforts to integrate schools through desegregation of communities. This proposition allowed property sellers, landlords, and agents to continue to segregate communities—and, thereby, schools—on racial grounds when selling or renting accommodations, as they had been permitted to do before 1963.[245] The highest courts ultimately struck the law down in 1967, but private racially restrictive covenants continued to be used by private owners to prevent African Americans from moving into white neighborhoods with better funded and resourced schools.[246] See Chapter 5, Housing Segregation for further discussion of related issues.

In addition, Californians successfully passed laws to limit the tools courts could use to order schools to desegregate. Because neighborhoods continued to be segregated by race, one of the main tools that courts used to desegregate schools was to have African American and white students attend schools outside of their neighborhoods via bus transportation to the new schools. But many white Californians strongly opposed integration plans, especially court-ordered ones that required African American people or other students of color to be bused to attend their white schools or vice versa. And, 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.[247]

The law, upheld by the United States Supreme Court, limited the ability of California courts to integrate schools that were segregated in fact, for example due to racially segregated neighborhoods, but not by a California law.[248] Then, from the mid- to late-1970s through the 1990s, courts removed or limited desegregation orders in many California districts, as the Supreme Court and Congress further restricted the use of remedies like busing and school reassignment to integrate schools.[249] In a few cases, such as in Berkeley, schools remained relatively integrated because school districts continued busing students and using school-selection processes designed to achieve integration, even without a desegregation order.[250]

COURTESY OF FRANCES BENJAMIN JOHNSTON/LIBRARY OF CONGRESS

African American children and teacher in classroom studying corn and cotton, Annie Davis School, near Tuskegee, Alabama. (c. 1902)

But, in the vast majority of California school districts, schools either re-segregated or were never integrated, and so segregated schooling persists today. As of 2003, California was one of the four most segregated states for African American students.[251] As of 2014, California was identified as the third most segregated state for African American students, and a state where African American and Latino students are strongly concentrated in schools that have far lower quality and resources than their white and Asian peers.[252] As of 2020, California remained in the top 10 most segregated states for Black students.[253] Approximately 51 percent of African American students in California attend hyper-segregated, 90- to 100-percent nonwhite schools.[254]

In a recent case, the state found that the segregation that persisted in a Bay Area school district was by design. For example, the California Attorney General's office found in 2019 that the Sausalito Marin City school board had segregated its schools, leaving the vast majority of African American students in an underfunded and under-resourced school while providing a better-funded and resourced charter school for the majority of white students.[255]

Separate and Unequal Education Conditions Persist

In California's highly segregated schools, schools mostly attended by white and Asian children receive more funding and resources than schools mostly attended by African American and Latino children. Throughout the 20th century, school districts in California, like those across the nation, financed their operations mainly with local property tax revenue and limited amounts of state and federal funding. This system allowed richer, white neighborhoods to better fund their schools districts than poorer, largely African American neighborhoods.[256] In 1971, the California Supreme Court decided that this education funding system was discriminatory because, according to the Supreme Court, it made "the quality of a child's education a function of the wealth of his parents and neighbors."[257]

As of 2020, California remained in the top 10 most segregated states in the country for Black students. Approximately 64 percent of Black students in California attend hyper-segregated, 90- to 100-percent nonwhite schools.

In 1978, voters passed Proposition 13, which decreased the amount of local property tax revenues and increased the amount of state funding for K-12 education. In 1988, voters then approved Proposition 98, which requires the state to dedicate at least 40 percent of its General Fund to K-14 education each year.[258] These measures still did not solve the issue, and African American parents and students and other parents and students of color have continued to challenge funding inequities in court.

In late April 1991, the Richmond Unified School District, which served a high proportion of African American students, announced that it would close its schools six weeks early on May 1, 1991 due to a budget shortfall. As discussed in Chapter 5, Housing Segregation, federal housing policies, and local officials segregated Richmond and made it extremely difficult for African American residents to move to the suburbs after World War II.[259] Richmond parents sued, and the state Supreme Court decided that the closure did not meet the minimum level of education required by the state constitution.[260] In the late 1990s, in the Compton Unified School District, which served mostly African American and Latino students, a teacher described the deplorable conditions in a temporary school building in Compton where she taught: "Because the wooden beams across the ceiling were being eaten by termites, a fine layer of wood dust covered the students desks every morning. Maggots crawled in a cracked and collapsing area of the floor near my desk . . . The blue metal window coverings on the outsides of the windows were shut permanently, blocking all sunlight."[261]

In 2000, students were part of a lawsuit, *Williams v. California*, again alleging that schools serving majority African American, Latino, and low-income students across the state failed to provide access to even the most rudimentary learning tools: school books, safe and decent facilities, and qualified teachers.[262] The lawsuit ultimately settled in 2004, with $138 million in state funds to provide instructional materials to schools, $800 million for facility repairs in low performing schools through establishment of the Emergency Repair Program (ERP), and $50 million to create a complaint and oversight system to check to see if schools were providing the basics of an education.[263] According to the American Civil Liberties Union, which brought the lawsuit, the state has failed its obligation under the settlement to fund the ERP and, as of 2013, the state's cumulative net contribution to ERP for the five last years had been $0.[264] Further, despite progress made as a result of the *Williams* settlement, persistent challenges remain, such as textbook distribution issues and insufficient monitoring of school districts that are new to the *Williams* process.[265] Without county oversight, school districts facing hard fiscal choices are often tempted to give textbooks less of a priority, despite the fact that, under *Williams*, students have a right to sufficient instructional materials.[266] California's unequal funding system continues to mean that African American and Latino students, and low-income students have far fewer school resources.

In 2013, the state tried to address the inequalities in school funding by giving more money to schools that have higher numbers of low-income, homeless, and foster youth. This change in the way funding was provided to school districts is referred to as the "equity index" and is part of the state's Local Control Funding Formula that provides approximately 58 percent of the funding that

California public schools receive each year.[267] The state's funding formula does not focus on African American students specifically or require schools to ensure that the funding is spent on the high-needs students within the district.[268] Because about 32 percent of the funding for California schools still comes from local property taxes, and wealthier communities with higher property values can more easily raise additional funds through local bonds and donations, rich and often more predominantly white neighborhoods continue to fund their schools at greater levels.[269]

At the October 2021 Task Force hearing, Kawika Smith, who graduated from Verbum Dei High School in Watts, a historic African American neighborhood of Los Angeles, testified about two high schools in Los Angeles. In the predominantly African American high school, African American students went without paper for three months simply because the school was underfunded. In contrast, the other school had access to extra funding, which allowed the school to purchase a fountain. Smith told the Task Force, "I strongly believe that we need to revisit the property tax laws and algorithms for how schools are funded . . . I can only imagine if that money was redirected into the Black school where they needed the money –what that could have meant for [those] Black students."[270]

As in the rest of the country, unequal funding translates to unequal opportunities. Schools with fewer resources mean fewer Advanced Placement and college preparation courses, which means that African American students attending those schools are less competitive for college and university admission and may not have taken the courses necessary—called A-G courses in California—to go to a four-year state University. Within districts and schools, Black students continue to be placed in vocational tracks and out of Science, Technology, Engineering, Mathematics, and Advanced Placement programs.[271] In addition, African American students in California are disproportionately likely to be identified as having a learning disability, at nearly twice the rate of African American students nationwide.[272] "Where we failed is discontinuing those efforts to integrate our schools, to invest in them equitably, and to begin in the pre-K years," Dr. Rucker Johnson, Professor of Public Policy at Berkeley told the Task Force.[273]

Because about 32 percent of the funding for California schools still comes from local property taxes, and wealthier communities with higher property values can more easily raise additional funds through local bonds and donations, rich and often more predominantly white neighborhoods continue to fund their schools at greater levels.

Recent studies have shown the importance of having at least one teacher who looks like you.[274] But the percentage of African American teachers in California declined from 5.1 percent in 1997-98 to four percent in 2017-18, even though African American students made up 5.6 percent of California's student population.[275] African American men comprise one percent of California's teaching force.[276]

Furthermore, in California, while suspensions have decreased significantly statewide since 2013,[277] Black students continue to be suspended at three times the rate of white students,[278] and lose nearly four times the number of days of instruction to suspensions and expulsions as white students.[279] Suspensions for subjective offenses, such as willful defiance or disruption—which can include anything from failing to take a hat off in class to talking in class—are a persistent but declining source of disproportionate discipline due to recent legislation limiting use for these reasons.

In recent stipulated judgments reached with four different California school districts, the California Attorney General's office identified racial disparities in discipline for African American students with harmful negative impacts.[280] For example, the Attorney General's investigation of the Barstow Unified School District found that African American middle and high school students were 79 and 78 percent, respectively, more likely, to be suspended out of school than similarly situated white students, and the rate of days African American students were punished was 168 percent greater in elementary, 37.9 percent greater in middle school, and 54.5 percent greater in high school than their white peers.[281]

In California, African American students are also disproportionately referred by schools to law enforcement.[282] A case investigated by the California Attorney General's Office found that, since 1991, school resource officers in the Stockton Unified School District had arrested 34,000 students, including 1,600 under 10 years old, with many minor misbehaviors turned into criminal offenses, disproportionality impacting African American and Latino students, and students with disabilities.[283]

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Demonstrators picket in front of a school board office protesting segregation of students. (1963)

A number of high-profile reported cases have also raised concerns that African American children in California face increased risk of invasive searches and excessive use of force in schools. In one reported case, during school hours, a police officer handcuffed a five-year-old African American boy with zip ties and charged him with battery because he "resisted" being arrested.[284] The American Civil Liberties Union has also reported a number of incidents. In one, an African American student in a Los Angeles school was partially strip-searched in the presence of a male officer—a vice principal forced an "eighth grade girl to pull her bra away from her body and shake it" and when she "tried to cover her breast for modesty, the vice-principal pulled her hands away."[285] In another filed case, school police were alleged to have handcuffed and placed a 13-year-old African American student on probation after he was playing a makeshift game of soccer with an orange.[286] In yet another, the American Civil Liberties Union reported that a school police officer who told an African American high school student that it was wrong to be gay and wear boy's clothes, subsequently pushed her against the wall and handcuffed her for telling the officer that "it was also wrong that white people like the officer enslaved her people."[287] Subsequent to the incident, the same officer "continued to harass [her], routinely patting her down and demanding that she turn out her bag."[288]

Jacob "Blacc" Jackson, the Los Angeles Youth Commissioner, explained to the Task Force during its October 2021 hearing how he was placed in an abusive adoptive home and lost his older brother in a police shooting but was focused on "finish[ing] high school [at Crenshaw High] and pass[ing] all of [his classes]."[289] When, at school, Jackson made a mistake in dealing with a substitute teacher, instead of the teacher, counselors, and school administrators trying to work with him, he was questioned, threatened, and handcuffed by school police for an incident he had already apologized for. The school police officer told Jackson that "they would always be watching me. They said you're just like everybody else at this school . . . I felt scared and anxious and unclear about what to do." Jackson felt he could not stay at his high school and told the Task Force that, "What I wish the school [had] provided for me when I was there was real counselors, after-school programs, real nurses, Black people history, peace building, and [transformative justice] practice."

In general, research shows that school officials are more likely to refer African American students like Jackson to law enforcement for minor behavior than white students.[290] Such contacts with law enforcement increase a student's feeling of isolation, and contributes to the school-to-prison pipeline and the disproportionate rates of African American people in our criminal justice system.[291]

Once in the juvenile justice system, African American students face an increased likelihood of dropout due to inconsistent education access and adequacy of instruction.[292] See Chapter 11 An Unjust Legal System for a more detailed discussion of this topic. For African American students charged with offenses that result in a transfer to the state prison system, few can access and complete higher education.[293]

IV. Unequal Higher Education

Until *Brown v. Board of Education,* white colleges and universities largely refused to admit African Americans.[294] In response, African Americans raised funding to develop Historically Black Colleges and Universities (HBCUs). In the early 1900s, the federal government began to provide funding and land to open HBCUs, but it had to pass

through white-controlled state legislatures. However, these historically African American institutions have been unequally funded in comparison to similar historically white institutions throughout American history.

After World War II, the GI Bill paid for veterans to attend college, graduate school, and go through training programs.[295] Although the GI Bill should have helped African American and white veterans equally, due to African American veterans' exclusion from white colleges, the lack of African American Veterans Administration counselors and the tendency of white counselors to steer African American veterans into vocational programs, it actually increased the racial higher education gap between African American and white Americans.[296] Even today, African American military veterans continue to face discriminatory barriers that can result in unequal access to education benefits available to veterans. In addition, although the Civil Rights Act of 1964 again promised some relief through a prohibition on discrimination in higher education programs receiving federal funds and some colleges and universities took affirmative action to remedy prior-discrimination in college admissions, gains were short-lived due to Supreme Court decisions and, in California, passage of Proposition 209, which prohibited race from being used as a factor in admissions.

Unequal Funding for Historically Black Colleges and Universities

Prior to the Civil War, a few colleges for free African Americans existed in the north, and none in the south.[297] In 1862, the federal government under the first Morrill Act granted federal land and funding to states to open colleges and universities, but African Americans were generally not allowed to attend.[298] After the Civil War ended in 1865, the Freedmen's Bureau began establishing Black colleges staffed by Civil War veterans with the support of white and Black religious missionaries.[299] White missionaries funded African American education in order to Christianize the "menace" of uneducated enslaved people.[300] These colleges were in name only and, like many white colleges at the time, generally provided only primary and secondary education.[301]

In 1890, Congress passed the second Morrill Act and required states to provide higher education to African American students as the states had for white students.[302] In the North, where African American students were allowed to attend colleges and universities in extremely limited numbers, they often were not allowed to fully participate in the way that white, male students participated.[303]

In order to continue receiving federal funding, former enslaving states, where the majority of African Americans lived, built segregated public African American colleges.[304] White-controlled legislatures underfunded African American colleges and universities, provided substandard facilities, and did not provide adequate resources to train faculty.[305] White-controlled southern legislatures limited curriculum to mechanical, agricultural, and industrial arts, helping maintain African Americans as a servant underclass to build white wealth.[306]

Few graduate programs admitted African American students, although after World War II, the NAACP successfully sued to expand graduate education opportunities for African American students.[307] Although a few African American people were allowed to attend predominantly white institutions, 90 percent of all African American degree-holders in the late 1940s had been educated at Historically Black Colleges and Universities. On the eve of the 1954 *Brown v. Board of Education* decision, African American people were less than one percent of entering first-year students at predominantly white institutions.[308]

Even after the *Brown* decision, white government officials in the south used state power to prohibit integration efforts, including in Mississippi.[309] In 1959, Clyde Kennard, a 31-year-old African American veteran of the Korean War, who ran a small poultry farm, applied to Mississippi Southern College, now the University of Southern Mississippi.[310] The university president reported Kennard's intention to apply to the Mississippi Sovereignty Commission, a state agency led by the governor of Mississippi, which was created in order to preserve segregation.[311] After refusing to back down from applying to the university, even after the Mississippi governor requested that he withdraw his application, Kennard's local cooperative foreclosed on his farm and local government officials arrested and falsely convicted him for stealing $25 of chicken feed.[312] Kennard was sentenced to seven years in a chain gang where he picked cotton and was fed white prisoners' leftover food.[313] Kennard died of misdiagnosed and untreated colon cancer in 1963.[314]

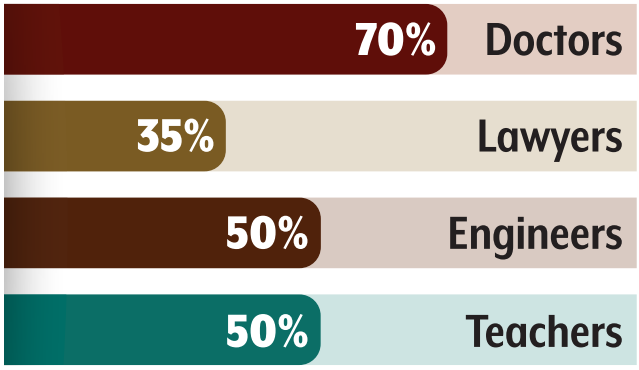
Segregated higher education continued into the 1970s. In 1969 and 1970, the federal Department of Education concluded that Louisiana, Mississippi, Oklahoma, North Carolina, Florida, Arkansas, Pennsylvania, Georgia, Maryland, and Virginia operated segregated colleges and universities and, in 1970, the NAACP sued the federal department of education for failing to force these institutions to desegregate.[315] By the late 1970s, many years after the Civil Rights Act of 1964, at least 17 southern states were still operating racially segregated higher education systems.[316] A number of public HBCUs closed

or merged with traditionally white institutions, but most African American college students continued to attend HBCUs.[317] HBCUs continued to struggle with poorer facilities and budgets compared to traditionally white institutions; some lacked adequate libraries and scientific and research equipment.[318]

Despite the underfunding, through the 1970s, private and public HBCUs educated a large proportion of the African American middle class.[319] In 2006, HBCUs made up three percent of higher education but enrolled 14 percent of Black undergraduates, and graduated 28 percent of all Black undergraduate students who earned a degree.[320] Seventy percent of America's African American doctors, 35 percent of African American lawyers, and 50 percent of African American engineers and teachers have a degree from an HBCU.[321] For African American students, HBCUs can provide an empowering, family-like environment of small classes and close relationships with faculty and students away from racial tensions experienced off campus.[322]

AFRICAN AMERICAN PROFESSIONALS TODAY

Percent that graduated from HBCUs



Today, increased access for African American students to all colleges and universities has led to a relative decrease in enrollment to HBCUs.[323] While Black enrollment at HBCUs increased by 17 percent between 1976 and 2018, the total number of Black students enrolled in all degree-granting postsecondary institutions more than doubled during this period.[324] In 2018, there were 101 HBCUs located in 19 states, including one in Los Angeles, the Charles R. Drew University of Medicine and Science.[325] However, funding for HBCUs continues to be uneven and is tied to a state's fiscal health.[326] Reports in 2008 and 2014 concluded that state governments continue to deprioritize funding public HBCUs, leading to predominantly white universities receiving more funding per student than HBCUs.[327] In 2008, for example, the University of North Carolina at Chapel Hill received about $15,700 in state funding per student.[328] But students at historically African American North Carolina Agricultural and Technical State University received about $7,800 in state funding per student.[329] In 2020, the federal government increased funding for HBCUs, but many HBCUs have closed in recent years due to financial issues, a trend that has worsened during the COVID-19 pandemic.[330]

Unequal Access to the GI Bill

Due to expanded education opportunities and funding under the GI Bill, between 1950 and 1975, Black student college enrollment increased from 83,000 to 666,000 students.[331] However, in comparison to white veterans who used GI Bill benefits to go to college, state officials and the structure of the program generally prevented African American veterans from accessing the full education benefits available to them.[332]

At the end of World War II, the vast majority of African American veterans returned to their residence in the southern states.[333] Universities in the South did not accept African American students, and white state legislatures did not increase funding to Historically Black Colleges and Universities to meet increased demand from returning veterans.[334] Many HBCUs had huge waiting lists, and applicants might have to wait a year or more to learn whether they had been admitted; during the postwar period, approximately 55 percent of African American veteran applicants to HBCUs were rejected.[335] In the North, where less than a quarter of African Americans lived at the time, although public universities admitted African American students, many private colleges and universities continued to reject African American students, or only admitted them in small numbers.[336] Local Veterans Administration officials in the South were overwhelmingly white, and steered African American people to vocational programs that funneled them to menial jobs or prohibited use of the GI Bill to pay for college.[337] Only 12 percent of African American veterans were able to use the GI bill to enroll in college, compared to 26 percent for veterans as a whole.[338] Although African Americans used the educational benefits of the GI Bill more often than white Americans did, they could not use those benefits for college, like white Americans could, because they were denied entrance to white colleges and universities and often steered away from college degree programs and into vocational tracks.[339] As a result, the educational and economic gap between white and African Americans widened.[340] See Chapter 13 The Wealth Gap for further discussion of related issues.

Today, discrimination in access to healthcare, employment, and housing continues to limit access to education benefits in the GI Bill for African American veterans compared to white veterans.[341] While African Americans

make up 16.9 percent of the U.S. active duty force, studies show that African American veterans are not utilizing their benefits as much as white or Asian American veterans due to the aforementioned barriers.[342]

Deficiencies of Affirmative Action

The idea of affirmative action began as a concept with President John F. Kennedy issuing an executive order in 1961 requiring that federal contractors "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin," and establishing the President's Committee on Equal Employment Opportunity.[343] Three years later, Congress passed the Civil Rights Act of 1964 to ban discrimination on the basis of race, color, and national origin not only in employment, but also in education.[344] With respect to employment, the federal department of labor ordered all federal contractors to prepare affirmative action plans including goals and timetables to improve the employment standing of specific groups of people, including African Americans.[345]

In his 1965 commencement address at Howard University, President Lyndon Johnson stated that affirmative action should be approached as a moral and policy response to the material and psychological losses suffered by African Americans during and after the time of slavery.[346] He declared, "you do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair."[347] Further, he emphasized the importance of African Americans' humanity and stated that what African Americans sought was "not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result."[348]

In the late 1960s and 1970s, some colleges and graduate schools began to develop similar affirmative action policies to increase the number of African American and other underrepresented students.[349] After the assassination of Dr. Martin Luther King, Jr. on April 4, 1968, civil rights leaders pushed for colleges to admit more African American students.[350] In 1969, the next school year, the number of African American students admitted to America's elite universities rose sharply, some by more than 100 percent.[351]

The lawsuits came quickly. In 1971, two years after schools adopted affirmative action policies, a white student sued the University of Washington Law School, citing reverse racism as the reason for his rejection.[352] Because of this case, Harvard alumni believed that "semiliterate blacks are being accepted at the expense of white geniuses[,]" said David L. Evans, associate dean of admissions at Harvard in 1975.

By 1978, when the former nearly all white colleges and universities were still admitting fewer African American students than African American high school graduates, the Supreme Court decided in the *Regents of the University of California v. Bakke*, to limit states' and universities' ability to take race-based affirmative actions to address education discrimination.[353] The Supreme Court declared that the policy of the University of California at Davis's medical school to set aside 16 of 100 total seats for "minority groups" like African Americans was unconstitutional because it prevented white students from competing for the 16 seats set aside.[354] The Supreme Court declared in *Bakke* and subsequent cases that if a college or university wanted to have a more diverse class of students or make up for "societal" discrimination against African Americans in the United States then it could only consider race as a factor, among many other factors, and with limitations.[355]

In doing so, the Supreme Court rejected affirmative action programs, like Davis's program, that were intended to compensate African American students (and other

COURTESY OF RONDAL PARTRIDGE/NATIONAL ARCHIVES

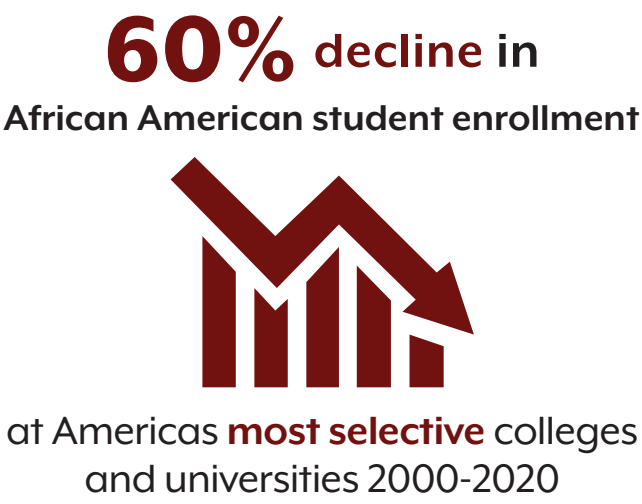
A photograph taken by the Federal Security Agency, National Youth Administration. The original caption written by the federal agency stated: "Bakersfield, California. These Negro youth are returning to their squalid homes in the Sunset district of Bakersfield." (1940)

racial minority groups) for the ways that federal, state, and local government had discriminated against them in education for more than 200 years, solely on account of their race. Instead, the Supreme Court described the American history of discrimination as "societal discrimination" that is "amorphous and ageless into the past[,]" which colleges and universities could not fix through programs like the one at Davis.[356] At the same time, federal courts have not struck down university and college admissions policies, which provide a preference for legacy admissions, students whose parents, grandparents, and great grandparents attended the university or college.[357] The argument is that such preferences are not race-based, but this does not grapple with the fact that white legacies may have received a preference in admission because they did not need to compete with African American students who were excluded from the admissions pool for centuries.[358] Critics of the current way that colleges and universities practice affirmative action as sanctioned by the Supreme Court argue that using student diversity as a reason to include race as a factor does not address the original intention of desegregation or break down structural barriers for African American students.[359]

The percentage of African American college students has risen in the past 50 years, but it has fallen recently. The percentage of American college students who are African American increased from 10 percent in 1976 to 14 percent in 2017, but has dropped since from its high of 15 percent in 2011.[360] College enrollment rates for African American 18- to 24-year-old Americans still lag behind those for Asian and white Americans of the same age.[361] A 2020 study found that, since 2000, the percentage of Black students enrolled has decreased at nearly 60 percent of the 101 most selective public colleges and universities.[362] Researchers identify that one cause of declining enrollment is a focus on standardized testing as an admissions requirement because the scores from such testing do not reflect the potential or ability of African American students but rather the inequities that African American students experience throughout their education career, from less access to high-quality early education to a greater likelihood of attending schools with less funding, fewer experienced teachers, and fewer rigorous course options.[363] Other causes for declining enrollment include closure of for-profit colleges and declines at two-year public colleges due to unemployment. Black students are overrepresented at both types of colleges.[364]

California

In 1996, California voters passed Proposition 209, which eliminated consideration of race in public education admissions, regardless of long-standing segregation and past discrimination.[365] This has had significant impacts on African American and other students of color in California.[366] In 2020, a University of California, Berkeley study found that this affirmative action ban has harmed Black and Latino students by significantly reducing enrollment across the University of California campuses and lowering their graduation rates.[367]



An earlier 2006 study found that Black admissions had plummeted since the ban on affirmative action, particularly at the University of California Los Angeles and Berkeley campuses.[368] In 2020, the President of the University of California Student Association, Varsha Sarveshwar, commented that, "[t]he exclusion of Black and Latino students from selective colleges and universities is nothing short of a crisis. . . . 7 out of 9 UC undergraduate campuses receive D and F grades in access for Black and Latino students."[369] Sarveshwar called on higher education leaders and policymakers to "move beyond public commitments to diversity – and act decisively to ensure that access is truly equitable."[370]

The continued nature of the uneven playing field between African American and white students was highlighted in a recent legal settlement between student and community groups and the University of California.[371] The lawsuit, leading up to the settlement, was brought by then 19-year-old Kawika Smith, a high school student from South Los Angeles, who asserted that the use of SAT and ACT scores in admissions and university scholarship decisions may be discriminatory because they are proxies for wealth and race, and only exacerbate the gaps that exist due to unequal exam preparation between schools and based on whether parents can pay for private test tutors.[372] In addition, research has shown that African American students may perform poorly on standardized tests, not because of genetic or cultural differences, but because negative stereotypes raise doubts and high-pressure anxieties in a test-taker's mind.[373]

Kawika Smith told the Task Force at its October 2021 hearing that when he thought back to the day he took the SAT, he was "immediately met with this memory of feeling that I wasn't worthy or capable of being in a collegiate environment, and this singular test determined that I would not be eligible for scholarship opportunities despite my academic achievements and having been in need of financial support to afford college[.]"[374] The legal settlement with the University California ensures that SAT and ACT scores will not be used in admission and scholarship decisions until spring 2025.[375]

V. Teaching Inaccurate History

Researchers and historians have raised significant concerns that the American K-12 education system is failing to teach a complete and accurate history of slavery and structural racism, along with the significant role that African Americans had in developing this nation's wealth without compensation. Dr. David Yacovone, a historian at Harvard University's Hutchins Center for African & African American Research who has been studying United States history textbooks published from 1839 to the 1980s found that many textbooks taught that white people were superior to African American people and downplayed, minimized, or justified slavery based on a racial caste system, with African Americans appearing "only as a problem."[376] Dr. Yacovone explained that in the older history textbooks "[w]hite supremacy is a toxin. . . . injected . . . into the mind of many generations of Americans."[377]

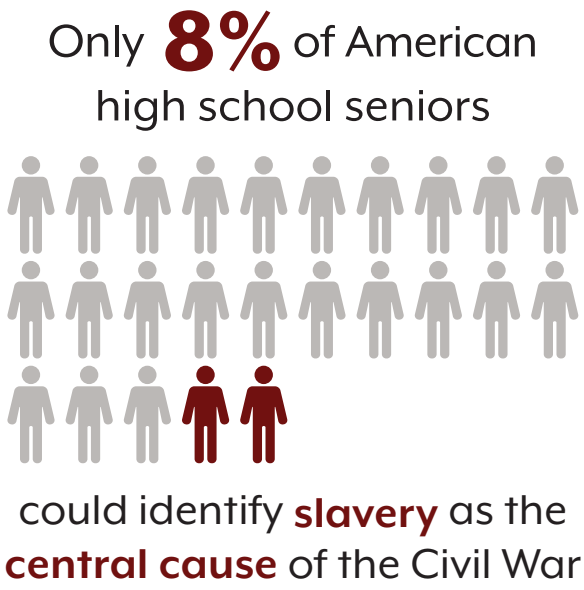
In addition, a 2018 study, *Teaching Hard History: American Slavery*, surveyed social studies teachers in K-12 schools across the country and found that 97 percent agreed that learning about slavery is essential, but that there is a lack of deep coverage on the topic; 58 percent reported dissatisfaction with their textbooks; and 39 percent reported their state offered little or no support for teaching about slavery.[378] The study gave an average score of 46 percent with respect to whether 10 popular U.S. history textbooks provide comprehensive coverage of slavery and enslaved people. The study also found that only eight percent of 1,000 American high school seniors surveyed could identify slavery as the central cause of the Civil War.[379] To ensure that schools accurately teach American history, Dr. Yacovone recommends "teach[ing] the truth about slavery as a central institution in America's origins, as the cause of the Civil War, and about its legacy that still lives on."[380]

Historians have found that United States history textbooks published from 1839 to the 1980s taught that white people were superior to Black people and downplayed, minimized, or justified slavery.

In Texas, the state that uses the largest amount of textbooks, thereby shaping the K-12 textbook industry, the Board of Education, rather than historians, began changing the history books to refer to formerly enslaved people as workers.[381] In schools, students of color, including African American students, are less likely to see books with characters that share their cultural background and textbooks that reflect their experiences.[382] Many educators recognize that textbooks do not accurately and fully reflect experiences of people of color; only one in five educators, the vast majority of whom were white, in a June 2020 nationwide survey thought so.[383] Educators of color were more likely to find textbooks lacking.[384] In 2020, Connecticut became the first state in the nation to require high schools to offer African-American, Black, Puerto Rican, and Latino studies.[385]

There is continued opposition to discussing the truth about slavery in public K-12 schools. Republicans in multiple states and in Congress have introduced bills to cut funding from schools that choose to use curriculum derived from the New York Times' Pulitzer Prize-winning *1619* series of essays challenging readers to think about slavery as foundational to the nation's origin story. They argue inclusion of this history delegitimizes the idea of the U.S. as a nation founded on principles of liberty and freedom and creates racial divisions.[386] In addition, the concept that schools may be teaching students critical race theory—which explains that race is a social construct embedded in legal systems and policies—is under attack across the nation by groups that say it divides Americans and places the blame on white Americans for current and historical harm to African Americans and other nonwhite Americans.[387] But Randi Weingarten, the President of the American Federation of Teachers, one of the nation's largest teaching unions, has said that teaching critical race theory is really about

teaching "the truth" and pledged to defend any teacher "who gets in trouble for teaching honest history . . . Teaching the truth is not radical or wrong. Distorting history and threatening educators for teaching the truth is what is truly radical and wrong."[388] Weingarten publicly stated that those attacking critical race theory have other motives: "labeling any discussion of race, racism or discrimination as critical race theory to try to make it toxic" and "to deprive students of a robust understanding of our common history."[389]



As important as how schools shape their curriculum concerning the history of African American people in America is how schools teach the humanity of African American people before, during, and after enslavement. A curriculum that undoes the harmful narratives of African Americans that have historically been used to justify false conceptions of African American inferiority, requires schools to teach that African Americans' stories did not begin with enslavement.[390] Such a curriculum also requires schools to teach about humanity's origins in Africa thousands of years before either Arabs or Europeans encountered people of West and Central African ancestry.[391] Academics have also focused on the importance of teaching about the study of African lives and the African experience for true liberation.[392] In order to empower African American communities through the study of African American history, academics discuss the importance of challenging European perspectives of the African experience to prevent others from defining the African experience and to give African people control over the narrative that is told about their experiences.[393] Redefinition of school curriculum discussing Black experiences, including the narrative about the African experience, is particularly important in California, a state which, as of 2015, was home to the fifth largest Black population in the country.[394]

The dehumanization inscribed in school textbooks causes miseducation and effectively contributes to African Americans' "cultural and social alienation from identity and existential belonging."[395] In the 1960s, W.E.B Du Bois spoke out about the dangers posed by the deficiencies in school curriculums with regard to African American history and culture.[396] He warned that the intentional omission of these concepts from public school curriculums would ultimately cause African American history and culture to be lost, unless African American families and organizations actively and systematically impressed these fundamental principles upon subsequent generations of African Americans.[397]

In line with this same notion of education for liberation and cultural preservation, many activists specifically focused their efforts on the establishment and expansion of "Black Studies" on university and college campuses to further the ongoing movement for the liberation of African Americans. The majority of Black Studies programs began at predominantly white institutions and a handful of HBCUs.[398] Although the Black Studies Movement was initially faced with stiff opposition, by 1971 an estimated 500 courses and programs had been organized in the United States.[399]

California

California student groups have long raised concerns that the complete history of racism and segregation in the state and across the nation has been left out of textbooks, and that leaders from diverse backgrounds who helped create this nation and California are not reflected.[400] "It isn't just white heroes like Christopher Columbus or folks like George Washington or Thomas Jefferson. There was a lot more history behind it and we don't learn a lot about the other important figures that contributed to making America[] into what it is," Alvin Lee, President of Generation Up, a 4,000-member California student organization, shared with legislators considering how to change California's history textbooks to better reflect the contributions of its diverse people. One state legislator who has advocated to ensure that California's elementary and secondary schools teach a curriculum that reflects the history of African Americans and other people of color, explained that: "Knowledge of our history plays a critical role in showing who we become" and "students [are more engaged] when they [see] themselves reflected in the coursework."[401]

Among other things, California's approach to teaching about slavery has been critiqued. In 2018, a classroom

teacher made headlines for staging a classroom simulation of conditions on a slave ship to provide a "unique learning experience."[402] A study by Southern Poverty Law Center found that California did a better job than other states in teaching slavery, but highlighted concerns with the approach of teaching about Harriet Tubman in second grade two years before slavery is taught and failing to discuss how false ideas of white economic and political supremacy fueled and perpetuated slavery as an institution.[403]

In addition, research has shown that because school curricula often do not include content that reflects the experience, culture, and history of African American students, they and others students whose experience, culture, and history is not reflected, suffer.[404] When African American students do not see their experiences and history reflected in the school curricula, this leads to a feeling that they are not important and even invisible and voiceless in the classroom.[405] And while culturally responsive teacher training is one way to help African American students and other students of color feel welcomed, included, and valued in schools, teacher preparation is inadequate in training teachers to be culturally-responsive and to carry those practices into the classroom in both the way they teach and the materials they use when they teach.[406]

One other way to increase diversity in curriculum is by adding ethnic studies courses. "Ethnic studies" is a term used to encompass African American, Chicano, Latino, Native, and Asian American studies, and was developed in response to lack of representation of people from these groups in curricula taught in U.S. schools, colleges, and universities. Generally, ethnic studies is not taught in California elementary and secondary schools, despite known academic performance and attendance benefits.[407] In 2016-17, only a small number—17,354 K-12 students statewide—were enrolled in ethnic studies courses.[408] One reason for this: Only 51 percent of the 777 ethnic studies courses in social science in 2016-17 were approved as meeting A-G state university admissions requirements.[409]

This may be changing. In 2016, California state law mandated creation of a voluntary K-12 ethnic studies curriculum. Recently, on March 18, 2021, the State Board of Education approved the model ethnic studies curriculum.[410] And while in 2019, a California bill to mandate ethnic studies in all K-12 schools was vetoed by Governor Newsom,[411] in October 2021, he signed a different bill, Assembly Bill 101, which will require California high school students to take ethnic studies as a graduation requirement commencing in 2030.[412] In the interim, several districts have recently made completion of a course in ethnic studies a graduation requirement, including Montebello, Sacramento City, and Coachella.[413] In 2020, San Francisco approved development of a K-12 Black studies curriculum.[414]

In California's public colleges and universities, the movement for Ethnic Studies began in 1968. At that time, the Black Student Union, the Third World Liberation Front, select faculty and staff, and other activists from the larger San Francisco Bay Area, organized and led a series of protests at San Francisco State University.[415] Protestors denounced the deficiencies within the university's curriculum, which neglected and misrepresented the experiences of people of color, including African Americans and Indigenous people.[416] On a mission to define and shape their own educational experiences, students drafted a list of demands for the university and protested for months until a deal was negotiated. Ultimately, the university agreed to establish a College of Ethnic Studies, the first in the nation, with classes geared toward communities of color.[417] Since that time, 22 of 23 CSU campuses have maintained some level of ethnic studies, but a recent legislative analysis suggested that 53 percent of CSU students had not taken a course between 2015 to 2018.[418]

In August 2020, Governor Newsom signed Assembly Bill 1460, which, beginning in 2024 to 2025, requires a three credit ethnic studies course for graduation from a CSU—the first change to the CSU's general education curriculum in over 40 years.[419] Legislative findings in support of the bill's passage included that white students and students of color benefit from taking ethnic studies courses, which "play an important role in building an inclusive multicultural democracy."[420] In discussing the importance of the bill's passage, Senator Steven Bradford, the bill's co-author commented, "Ethnic studies is critical in learning our contributions to America and telling the true story of our rich history."[421]

VI. Conclusion

During the slavery era, enslaving states denied enslaved African Americans an education so that they could maintain control over the enslaved people they depended upon to build this nation's wealth. However, an understanding of how powerful knowledge can be emboldened enslaved African Americans to find ways to educate themselves, despite the great danger they risked in doing so. Following the Civil War, states adopted many

laws and policies continue denying education to free African Americans and to effectively maintain an illiterate servant class. In states where African American children were permitted to attend segregated schools, white-controlled legislatures severely underfunded these schools and subjected African American students to deplorable conditions. Aside from the inferior quality of these schools, African American communities also suffered from the ongoing racist attacks by white terrorist groups who committed themselves to destroying African American schools. Even after the Supreme Court outlawed school segregation in its 1954 *Brown v. Board of Education* decision, white policymakers and school boards adopted other policies to ensure the continued exclusion of African American students from their schools. Such policies and the incidents and effects of enslavement continue to have lasting effects on the educational opportunities and the quality of academic opportunities available to African Americans today.[422]

Because government acts have denied the vast majority of African Americans continued access to education and high quality and well-funded schools from enslavement until the present, they have suffered a number of harms, including lower levels of high school graduation, achievement, and college access and completion. These injuries widened the gap between African American and white wealth in America. The COVID-19 pandemic has made the education injuries even worse, because far more African American students than white students live in poverty, and students living in poverty have had less access to the technology needed to participate in remote schooling.[423] California and the nation have not adequately accounted for the harmful intergenerational effects of education discrimination and denial.

In recent years, the academic gap between all student groups has steadily narrowed, except for the gap between African American and white students, which has widened, confirming the ongoing existence of deeply-rooted racial disparities in the nation's education system.[424] In California, over the past decade, average math and reading test scores rose for all student groups, except African American students. In districts where there was the least significant gap between the academic achievements of different student groups, data showed that this could be attributed to less socioeconomic inequality among students, more spending per pupil by the district, and fewer disparities in access to experienced teachers.[425] The gap also continues to exist in high school graduation rates, but it has reduced considerably nationwide and in California since the 1960s.[426] Nonetheless, the gap in college as well as graduate school admission and graduation rates has remained stagnant, with African Americans half as likely as white Americans to have a college degree.[427]

Due to intergenerational denials of equal educational opportunity, African Americans have also been denied a number of other benefits, including a positive link between one's own education and the education received by one's children.[428] More schooling is associated with higher earnings in one's own life and in subsequent generations.[429] However, white and African Americans with the same educational level do not have the same level of wealth.[430] White college graduates have seven times more wealth than their African American college graduate counterparts, even when it is assumed that the white and African American college graduates are in jobs making the same amount of money.[431] African American college graduates also have two-thirds of the net worth of white Americans who never finished high school.[432] And Black college graduates continue to suffer higher unemployment rates than white college graduates.[433] Centuries after slavery, white Americans continue to benefit from its effects, and African Americans continue to suffer its compounded harms.

Endnotes

[1] *Piper v. Big Pine Sch. Dist. of Inyo Cty.* (1924) 193 Cal. 664, 668, 673-74.

[2] Orfield and Jarvie, *Black Segregation Matters: School Resegregation and Black Educational Opportunity*, UCLA Civil Rights Project/Proyecto Derechos Civiles (Dec. 2020) pp. 4-6 (as of July 1, 2021) (hereafter *Black Segregation Matters*); Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools* (2006) 35 Ed. Researcher 3, 5 (hereafter *Achievement Gap to the Education Debt*).

[3] Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*; Tamborini et al., *Education and Lifetime Earnings in the United States* (2015) 54 Demography 1383, 1385-1386.

[4] Sambol-Tosco, *The Slave Experience: Education, Arts & Culture*, Thirteen (2004) p. 2 (as of Mar. 5, 2021) (hereafter *The Slave Experience*).

[5] Sambol-Tosco, *The Slave Experience*, *supra*; Bell, *Silent Covenants*: *Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (2004) p. 52 (hereafter *Silent Covenants*).

[6] Woodson, *The Education of the Negro Prior to 1861* (1919) p. 15.

[7] Burnette II, *Do America's Public Schools Owe Black People Reparations?* (Sept. 23, 2020) 40 Education Week 4-7 (as of June 21, 2021) (hereafter *Do America's Public Schools?*); *Jim Crow Laws*, History (Feb. 21, 2021) (as of June 21, 2021); see also *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 310-13, 311, fn. 10 (noting that Southern states "rapidly instituted racial segregation in their public schools" following the Civil War and discussing the interplay between efforts to restrict literacy and efforts to restrict the vote); Du Bois, *The Souls of Black Folk: Essays and Sketches* (2d ed. 1903); Tyack and Lowe, *The Constitutional Moment: Reconstruction and Black Education in the South* (1986), 94 Am. J. Ed. 236, 238-239, 250-252; Anderson, *The Education of Blacks in the South, 1860-1935* (1988) pp. 95-96 ("From the vantage point of the southern white majority, any system of universal education for blacks, even industrial education, would potentially lead to universal suffrage.").

[8] Coates, *The Case for Reparations*, The Atlantic (Jun. 2014) (as of June 21, 2021); Du Bois and Dill, *The Common School and the Negro American, Report Of A Social Study Made By Atlanta University Under The Patronage Of The Trustees Of The John F. Slater Fund, With The Proceedings Of The 16th Annual Conference For The Study Of The Negro Problems, Held At Atlanta University, On Tuesday, May 30th, 1911* (1911) (hereafter *The Common School*) p. 117 (in 1909 in one county in Georgia, "five school houses for colored children, with their contents, have been burned" and over the last few years "burning of Negro school houses . . . by white neighbors had been frequent in the gulf states.").

[9] *Brown v. Board of Education* (1954) 347 U.S. 483, 495.

[10] Horsford and McKenzie, *'Sometimes I feel like the Problems Started with Desegregation': Exploring Black Superintendent Perspectives on Desegregation Policy* (2008) 21 Int. J. of Qualitative Studies in Ed. 443, 444 (hereafter *Exploring Black Superintendent Perspectives*).

[11] *Don Wilson Builders v. Superior Ct. for Los Angeles County* (1963) 220 Cal. App. 2d 77, 89 (dis. opn. of Fourt, J.) ("California history indicates that at the time the state was organized in 1849 and for some several years thereafter many southerners were influential in the state government and otherwise and their influence is reflected in many statutes. The statutes of 1850, ch. 140, p. 424, set forth the law against miscegenation and such remained the law in one form or another until 1948 [].."); Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (2011) 80 Pacific Historical Rev. 28, 49-50.

[12] Hudson, *West of Jim Crow: The Fight Against California's Color Line* (2020) p. 32 (hereafter *West of Jim Crow*); Hendrick, *The Education of Non-Whites in California, 1849-1970* (1977) p. 7; Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975* (1976) p. 12, fn. 10 (hereafter *All Deliberate Speed*); see Stats. 1855, ch. 185, § 12, p. 232.

[13] One of these tactics was housing segregation, which government enforced in a variety of ways. See, e.g., Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017) (hereafter *The Color of Law*); Orfield and Jarvie, *Black Segregation Matters, supra*, pp. 12-13.

[14] Farrow et al., *Complicity: How the North Promoted, Prolonged, and Profited from Slavery* (2005) pp. 180-181 (hereafter *Complicity*).

[15] *Ibid.*

[16] *Id.* at pp. 181-182.

[17] *Id.* at p. 191.

[18] Ladson-Billings, *From the Achievement Gap to the Education Debt*, *supra*, p. 6 (hereafter *Achievement Gap to the Education Debt*); Warner, *Psychiatry Confronts its Racist Past, and Tries to Make Amends*, N.Y. Times (Apr. 30, 2021) (as of Apr. 27, 2022).

[19] Farrow et al., *Complicity*, *supra*, p. 191.

[20] Burnette II, *Do America's Public Schools?*, *supra*, fn. 7.

[21] *Ibid.*

[22] Sambol-Tosco, *The Slave Experience*, *supra*, p. 2.

[23] Woodson, *The Education of the Negro Prior to 1861*, *supra*, pp. 7-10, 13; Albanese, *The Plantation School* (1976) pp. 131-138, 255-256 ("Moreover the presence of a large mass of semi-civilized slaves made possible the concentration of large tracts of lands in a few hands, and helped perpetuate a society with aristocratic institutions and tendencies.").

[24] Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (1845) Electronic Edition, p. 33.

[25] Span, *Learning in Spite of Opposition: African Americans and their History of Educational Exclusion in Antebellum America* (2005) 131 Counterpoints 26, 27-28; Woodson, *The Education of the*

Negro Prior to 1861, *supra*, pp. 151-178; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5.

[26] Span, *supra*, pp. 27-28; Cornelius, *"We Slipped and Learned to Read:" Slave Accounts of the Literacy Process, 1830-1865* (1983) 44 Phylon 171, 174.

[27] Woodson, *The Education of the Negro Prior to 1861*, *supra*, pp. 70-92.

[28] Douglass, *Narrative of the Life of Frederick Douglass, an American Slave* (1845) Electronic Edition, pp. 49.

[29] Langhorne, *The African American Community: Circumventing the Compulsory Education System* (2000) 33 Beverly Hills Bar Assn. J. 12, 13.

[30] Bracey, *The Significance of Historically Black Colleges and Universities (HBCUs) in the 21st Century: Will Such Institutions of Higher Learning Survive?* (2017) 76 Am. J. Econ. & Socio. 670, 671 (hereafter *Significance of HBCUs*).

[31] Sambol-Tosco, *The Slave Experience*, *supra*, p. 2; Bell, *Silent Covenants*, *supra*, at p. 52.

[32] Woodson, *The Education of the Negro Prior to 1861*, *supra*, pp. 10-11; Sambol-Tosco, *The Slave Experience*, *supra*, p. 2. In 1857, the Supreme Court held in *Dred Scott* that Black people were not citizens and, as such, gave the states express permission to deny Black people equal rights, including to education. *Scott v. Sandford* (1857) 60 U.S. 393.

[33] May, *Some Recollections of Our Antislavery Conflict* (1869) pp. 52-53 (as of June 24, 2021).

[34] *Ibid.*

[35] *Id.* at p. 50.

[36] *Id.* at p. 52.

[37] *Id.* at pp. 70-71.

[38] *Id.* at p. 71.

[39] *Id.* at pp. 71-72.

[40] See Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 6 (noting that by 1860, New England was home to 472 cotton mills and between 1830 and 1840, Northern mills consumed more than 100 million pounds of Southern cotton).

[41] Encyclopedia.com, *Impact of Slavery on the Northern Economy* (as of Jan. 26, 2022).

[42] Farrow et al., *Complicity*, *supra*, p. 141.

[43] Woodson, *The Education of the Negro Prior to 1861*, *supra*, p. 15.

[44] Bracey, *Significance of HBCUs*, *supra*, p. 675; Office for Civil Rights, *Historically Black Colleges and Universities and Higher Education Desegregation*, U.S. Dept. of Ed. (Mar. 1991) (as of June 21, 2021) (hereafter *HBCUs and Desegregation*).

[45] Bracey, *Significance of HBCUs*, *supra*, p. 676; Office for Civil Rights, *HBCUs and Desegregation*, *supra*.

[46] Harper et al., *Access and Equity for African American Students in Higher Education: A Critical Race Historical Analysis of Policy Efforts* (2009) 80 J. of Higher Ed. 389, 393 (hereafter *Access and Equity*); Roebuck and Murty, *Historically Black Colleges and Universities: Their Place in American Higher Education* (1993) p. 22 ("[O]nly twenty-eight blacks received baccalaureate degrees . . . prior to the Civil War.")

[47] Hudson, *West of Jim Crow*, *supra*, pp. 22-23;.see, e.g., *In re Perkins* (1852) 2 Cal. 424, 437-441, 454-457 (upholding 1852 Fugitive Slave Act, affirming that enslavers who brought enslaved persons from other states were not affected by the anti-slavery clause in the constitution); *Gold Chains: The Hidden History of Slavery in California*, ACLU (as of June 24, 2021).

[48] E.g., *Don Wilson Builders v. Superior Ct. for Los Angeles County* (1963) 220 Cal.App.2d 77, 89 (dis. opn. of Fourt, J.) ("California history indicates that at the time the state was organized in 1849 and for some several years thereafter many southerners were influential in the state government and otherwise and their influence is reflected in many statutes. The statutes of 1850, ch. 140, p. 424, set forth the law against miscegenation and such remained the law in one form or another until 1948 [].")); Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (2011) 80 Pacific Historical Rev. 28, 49-50.

[49] Hudson, *West of Jim Crow*, *supra*, pp. 19, 31.

[50] *Id.* at p. 32 (citing Moulder, *Annual Report of the State Superintendent of Public Instruction (1858)* S.F. Public Library Archives, p. 14).

[51] Hendrick, *The Education of Non-Whites in California*, *supra*, p. 7; see also Hudson, *West of Jim Crow*, *supra*, p. 32; Wollenberg, *All Deliberate Speed*, *supra*, p. 12; see Stats. 1855, ch. 185, § 12, p. 232.

[52] *Ibid.*; see also Hendrick, *The Education of Non-Whites in California*, *supra*, pp. 7-8; Wollenberg, *All Deliberate Speed*, *supra*, p. 12, fn. 10; see Stats. 1855, ch. 185, § 12, p. 232.

[53] Wollenberg, *All Deliberate Speed*, *supra*, p. 10.

[54] *Id.* at p. 11.

[55] *Id.* at p. 14.

[56] *Id.* at pp. 14, 17.

[57] Hudson, *West of Jim Crow*, *supra*, pp. 31-32.

[58] Wollenberg, *All Deliberate Speed*, *supra*, p. 16.

[59] Anderson, *supra*, at p. 5.

[60] Du Bois and Dill, *The Common School*, *supra*, pp. 19-22; John Hope Franklin, *Reconstruction after the Civil War* (2d ed., 1994) pp. 107-113; Burnette II, *Do America's Public Schools?*, *supra*.

[61] See Franklin, *Reconstruction after the Civil War*, *supra*, pp. 107-113; Tyack and Lowe, *The Constitutional Moment: Reconstruction and Black Education in the South* (1986) 94 Am. J. Ed. 236, 238; Gershon, *Bringing Universal Education to the South* (Jan. 24, 2018) JSTOR Daily (as of May 3, 2022).

[62] Burnette II, *Do America's Public Schools?*, *supra*; *Jim Crow Laws* (Feb. 21, 2021) History (as of June 21, 2021); see also *South Carolina*, *supra*, 383 U.S. at p. 301, 310-13, 311 (noting that Southern states "rapidly instituted racial segregation in their public schools" following the Civil War and discussing the interplay between efforts to restrict literacy and efforts to restrict the vote).

[63] Blackmon, *Slavery by Another Name: The Re-Enslavement of African Americans from the Civil War to World War II*

(2008) pp. 105 & fn. 40 (hereafter *Slavery by Another Name*).

[64] See National Geographic, *The Black Codes and Jim Crow Laws* (as of June 24, 2021).

[65] Du Bois, *The Souls of Black Folk: Essays and Sketches* (2d ed. 1903); Tyack & Lowe, *supra*, pp. 238-239, 250-252; Anderson, *supra*, at pp. 95-96 ("From the vantage point of the southern white majority, any system of universal education for blacks, even industrial education, would potentially lead to universal suffrage.").

[66] Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America* (2017) p. 273; Blackmon, *Slavery by Another Name*, *supra*, at fn. 63, pp. 121-122; Greenblatt, *The Racial History of the 'Grandfather Clause'*, NPR (Oct. 22, 2013) (as of July 15, 2020).

[67] Du Bois, et al., The Common School and the Negro American: Report of a Social Study, Atlanta University (May 30, 1911) p. 22.

[68] Du Bois and Dill, *The Common School*, *supra*, p. 21; Franklin, *Reconstruction after the Civil War*, *supra*, at fn. 60, pp. 107-113; Burnette II, *Do America's Public Schools?*, *supra*.

[69] Du Bois and Dill, *The Common School*, *supra*, pp. 19-21; Tyack & Lowe, *supra*, at pp. 238-239, 243-249.

[70] Burnette II, *Do America's Public Schools?*, *supra*.

[71] United States Senate, *Freedmen's Bureau Acts (1865 And 1868)* (as of June 18, 2021); Du Bois and Dill, *The Common School*, *supra*, p. 19.

[72] Nat. Archives, *The Freedmen's Bureau* (as of Apr. 26, 2022).

[73] Antietam National Battlefield, *African Americans and Education During Reconstruction: The Tolson's Chapel Schools* (as of Mar. 11, 2022).

[74] *Ibid.*

[75] *Ibid.*

[76] *Ibid.*

[77] *Ibid.*

[78] The North Carolina Collection – Durham County Library, *The Women Who Ran the Schools: The Jeanes Teachers and Durham County's Rural Black Schools* (As of March 10, 2022).

[79] McHugh, *Denied a Teaching Job for Being "too Black," She Started Her Own School – and a Movement*, The Wash. Post (February 2021).

[80] *Ibid.*

[81] *Ibid.*

[82] Coates, *The Case for Reparations*, The Atlantic (Jun. 2014) (as of June 21, 2021); Du Bois and Dill, *The Common School*, *supra*, p. 117 (in 1909 in one county in Georgia, "five school houses for colored children, with their contents, have been burned" and over the last few years "burning of Negro school houses . . . by white neighbors had been frequent in the gulf states").

[83] Bell, *Silent Covenants*, *supra*, p. 91; Darity Jr. and Mullen, *From Here to Equality: Reparations for African Americans in the Twenty-First Century* (2020) p. 210 (hereafter *From Here to Equality*).

[84] *Cummings v. Board of Ed. of Richmond County* (1899) 175 U.S. 528, 530, 542 (court will not intervene in case where county closed a Black high school and used the "funds in hand", including tax dollars from Black residents, to support a white high school to which Black students were denied entry).

[85] See Blackmon, *Slavery by Another Name*, *supra*, p. 93.

[86] *Id.* at pp. 93, 97.

[87] *Id.* at pp. 100-102.

[88] Orfield and Jarvie, *Black Segregation Matters*, *supra*, pp. 4-6.

[89] E.g., *United States v. Stanley* (*Civil Rights Cases*) (1883) 109 U.S. 3, 13, 25.

[90] *Plessy v. Ferguson* (1896) 163 U.S. 537, 546-548, 550-552.

[91] Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5.

[92] Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (2014 ed.) p. 422.

[93] See *Ibid.*

[94] See *Ibid.*; cf. generally Du Bois and Dill, *The Common School*, *supra*.

[95] See Foner, *supra*, p. 422; Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration*, pp. 85-86 (2010) (hereafter *The Warmth of Other Suns*).

[96] Wilkerson, *The Warmth of Other Suns*, *supra*.

[97] *Id.* at p. 86.

[98] Anderson, *supra*, at pp. 183-184; Du Bois and Dill, *The Common School*, *supra*, pp. 7-8 (African American people "themselves have purchased school sites, school houses and school furniture, thus being a peculiar way double taxed" and are "paying into the school fund" in taxes much more than they are receiving in "actual appropriations for school facilities.").

[99] Wilkerson, *The Warmth of Other Suns*, *supra*, pp. 84-86.

[100] Blackmon, *Slavery by Another Name*, *supra*, p. 157.

[101] See, e.g., Du Bois and Dill, *The Common School*, *supra*, p. 136.

[102] See, e.g., *id.* at pp. 40, 52-53, 57, 59, 63, 65, 78-79.

[103] *Id.* at pp. 100-107.

[104] *Id.* at p. 3.

[105] Bell, *Silent Covenants*, *supra*, p. 15 (citing Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 1987), pp. 5-6); Darity Jr. and Mullen, *From Here to Equality*, *supra*, p. 230 (citing Bond, *The Education of the Negro in the American Social Order*, 46); Du Bois and Dill, *The Common School*, *supra*, pp. 29-31; 118 (report that in Mississippi counties draw their share of funding according to the number of white and African American children but spend the money almost exclusively on the white children).

[106] Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration*, p. 88 (2010).

[107] *Ibid.*

[108] *Ibid.*

[109] See, e.g., Du Bois and Dill, *The Common School*, *supra*, pp. 52; see also *Ibid.* at pp. 57, 59-60, 101 (describing differences in months of operation for African American and white schools in Georgia and South Carolina); Brooker, *The Education of Black Children in the Jim Crow South*, America's Black Holocaust Museum: Bringing Our History to Light (as of June 18, 2021); Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5.

[110] Brooker, *supra*; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, p. 5; see, e.g., Du Bois and Dill, *The Common School*, *supra*, pp. 52-54, 58, 101.

[111] Du Bois, *Does the Negro Need Separate Schools?* (1935) 4 The J. of Negro Education, p. 328.

[112] *Ibid.*

[113] *Id.* at pp. 328-329.

[114] Coates, *The Case for Reparations*, The Atlantic (June 2014) (as of Nov. 19, 2021).

[115] *Ibid.*

[116] Compare Du Bois and Dill, *The Common School*, *supra*, p. 16 with Tapia et al., *The Uneven Transition Toward Universal Literacy in Spain, 1860-1930* (2021) 50 Hist. of Educ. 605, 609; Nat. Bureau of Economic Research (Working Paper No. 173) p. 26 (Spain's literacy rate was 38.1% in 1887 and 44.8% in 1990); Tapia et al., *Two Stories, One Fate: Age-Heaping and Literacy in Spain, 1877-1930* (2018) National Bureau of Economic Research (Working Paper No. 139) p. 5 (literacy rate in Italy was similarly poor as Spain and was below 50% in the nineteenth century); see also National Center for Education Statistics, *National Assessment of Adult Literacy, 120 Years of American Education: A Statistical Portrait* (as of Jan. 26, 2022) (African American literacy rose from 20 percent in 1870 to 70 percent by 1910, close to 80 percent by 1920).

[117] Bertocchi and Dimico, *The Racial Gap in Education and the Legacy of Slavery* (2012) 40 J. Comp. Econ. 581, 581-582. (hereafter *The Racial Gap in Education*)

[118] Burnette II, *Do America's Public Schools?*, *supra*.

[119] *Brown*, *supra*, 347 U.S. at p. 495. The idea that segregated schools were "equal" was unfounded—segregated public schools for African American students provided unequal education in nearly every category when compared to public schools for white students. See Margo, *Race and Schooling in the South 1880-1950: An Economic History* (1990) pp. 18-20.

[120] Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, p. 444; see, e.g., *Griffin v. County School Bd.* (1964) 377 U.S. 218, 221 (school districts closed public schools rather than integrate, cut off funding for public schools and instead provided private vouchers for private schools, then delayed adoption of integration plan); *Green v. County School Bd.* (1968) 391 U.S. 430, 433 (*Green*) (school board automatically reassigned children to schools they had attended the prior year, preventing integration); *Goss v. Bd. of Ed. of City of Knoxville* (1963) 373 U.S. 683, 686-687 (school board allowed students to request to be transferred if they had been assigned to a school previously attended only by members of a different race).

[121] Driver, *Supremacies and the Southern Manifesto* (2014) 92 Tex. L. Rev. 1053, 1054, 1066-1067, 1079 (nineteen out of the twenty-two Southern senators signed the Manifesto and declared their aim to reverse *Brown* using all lawful means); see Ogletree, *Tulsa Reparations: The Survivor's Story* (2004) 24 B.C. Third World L.J. 13, 22 (noting that "[s]ince the end of slavery, whites have resisted the challenge of integration and found more or less sophisticated ways by which to resist the efforts of African Americans to participate on equal terms in American society").

[122] Equal Justice Initiative, *Supreme Court Bans School Segregation, Sparking Massive White Resistance* (as of May 5, 2021); Bennett, *Little Rock Nine: Decades-long Battle for School Equity Began with Nine Black Students Facing Angry White Mob* (Sept. 25, 2020) Southern Poverty Law Center (as of Nov. 19, 2021); Zinn Education Project, *Sept 12, 1958: Little Rock Public Schools Closed*, (as of Apr. 27, 2022).

[123] Ross and Key, *In the Wake of Central High Crisis, Crime and Injustice*, Arkansas Times (Oct. 27, 2020) (as of Nov. 19, 2021).

[124] Bell, *Silent Covenants*, *supra*, p. 100.

[125] *Ibid.*

[126] *Id.* at pp. 100-102.

[127] *Ibid.*

[128] *Ibid.*

[129] Schofield, *School Desegregation and Intergroup Relations: A Review of the Literature* (1991) 17 Rev. of Research in Education 335, 335; Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, pp. 448-49; Bell, *Silent Covenants*, *supra*, p. 100.

[130] E.g., Equal Justice Initiative, *Georgia Governor Proposes Abolition of Public School System to Avoid Integration* (as of Nov. 19, 2021).

[131] E.g., *Ibid.*

[132] *Brown v. Board of Educ. of Topeka, Kan.* (1955) 349 U.S. 294, 300.

[133] Bell, *Silent Covenants*, *supra*, p. 95; see also Carter, *The Warren Court and Desegregation* (1968) 67 Mich. L. Rev. 237, 243.

[134] See *Alexander v. Holmes County Bd. of Ed.* (1969) 396 U.S. 19, 20-21.

[135] Equal Justice Initiative, *Supreme Court Bans School Segregation, Sparking Massive White Resistance* (as of May 5, 2021).

[136] See Tate et al., *The* Brown *Decision Revisited: Mathematizing a Social Problem* (1993) 7 Educational Policy 255, 259-268; Ladson-Billings, *Landing on the Wrong Note: The Price We Paid for* Brown (2004) 33 Education Researcher 3, 6 (noting that one of consequences of *Brown* included the "job loss and demotions for Black teachers and administrators").

[137] Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, p. 447; Toppo, *Thousands of Black Teachers Lost Jobs*, USA Today (Apr. 28, 2004) (as of June 21, 2021).

[138] *Ibid.*

[139] Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, p. 449.

[140] *Ibid.*; Tillman, *(Un)Intended Consequences?: The Impact of the Brown v. Board of Education Decision on the Employment Status of Black Educators* (2004) 36 Educ. & Urban Soc. 280, 287-288; Will, *65 Years After 'Brown v. Board,' Where Are All the Black Educators?*, Education Week (May 14, 2019) (as of June 23, 2021); Ethridge, *Impact of the 1954 Brown vs. Topeka Board of Education Decision on Black Educators* (1979) 30 Negro Ed. Rev. 217, 223.

[141] Fultz, *The Displacement of Black Educators Post-Brown: An Overview and Analysis* (2004) 44 Hist. Ed. Q. 11, 37; see Tillman, *supra*, p. 288 (noting that firing of African American educators affected their communities economically); Ethridge, *supra*, , p. 224.

[142] Fultz, *supra*, pp. 28-29; Tillman, *supra*, p. 294; Toppo, *Thousands of Black Teachers Lost Jobs*, *supra*; see Jones-Wilson, *Race, Realities, and American Educators: Two Sides of the Coin* (1990) 59 J. of Negro Ed. 119, 121; Walker, *The Architects of Black Schooling in the Segregated South: The Case of One Principal Leader* (2003) 19 J. of Curriculum & Supervision 54, 56.

[143] Gershenson et al., *The Long-Run Impacts of Same-Race Teachers* (Nov. 2018) National Bureau of Economic Research (Working Paper No. 25254) pp. 1-2, 33 (finding that African American students with at least one African American teacher in K-3 are 13% more likely to graduate high school and 19% more likely to enroll in college than their African American peers who had no African American teachers).

[144] Will, *Still Mostly White and Female: New Federal Data on the Teaching Profession*, Education Week (Apr. 14, 2020) (as of June 21, 2021); Gewertz, *Survey of Mostly-White Educators Finds 1 in 5 Think Textbooks Accurately Reflect People of Color*, Education Week (June 29, 2020) (as of June 22, 2021) (hereafter *Survey of Mostly-White Educators*); U.S. Dept. of Ed., *The State of Racial Diversity in the Educator Workforce* (2016) pp. 2, 6, 7, 9 (as of June 21, 2021); Modan, *Survey: Superintendents still overwhelmingly white, male*, K-12 Dive (Feb. 11, 2020) (as of May 6, 2022).

[145] Will, *Still Mostly White and Female: New Federal Data on the Teaching Profession*, Education Week (Apr. 14, 2020) (as of June 21, 2021); U.S. Dept. of Ed., *The State of Racial Diversity in the Educator Workforce* (2016) pp. 2, 6 (as of June 21, 2021).

[146] Nat. School Boards Assn., *Black Students in the Condition of Education 2020* (June 23, 2020) (as of Jan. 26, 2022).

[147] Rothstein, *The Color of Law*, *supra*, at fn. 13, preface.

[148] See Burnette II, *As Districts Seek Revenue Due to Pandemic, Black Homeowners May Feel the Biggest Hit*, Education Week (July 23, 2020) (as of June 22, 2021); Oliver and Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (1995) pp. 8-9, 19-20; Guastaferro, *Why Racial Inequities in America's Schools are Rooted in Housing Policies of the Past*, USA Today (Nov. 2, 2020) (as of June 23, 2021) (hereafter *Why Racial Inequities are Rooted in Housing Policies*).

[149] *Demand for School Integration Leads to Massive 1964 Boycott – in New York City*, N.Y. Public Radio (Feb. 3, 2016) (as of Nov. 19, 2021).

[150] *Ibid.*; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 5; see generally Du Bois & and Dill, *The Common School*, *supra*, at fn. 8.

[151] Bell, *Silent Covenants*, *supra*, at fn. 5, pp. 109-112; Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 142, 146.

[152] *Demand for School Integration Leads to Massive 1964 Boycott – in New York City*, N.Y. Public Radio (Feb. 3, 2016) (as of Nov. 19, 2021).

[153] *Ibid.*

[154] Equal Justice Initiative, *Resistance to School Desegregation* (March 1, 2014) (as of June 21, 2021).

[155] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 147-148.

[156] Kerner, *Report of the National Advisory Commission on Civil Disorders: Summary of Report* (1968) pp. 1, 5-6 (as of June 21, 2021).

[157] Graham, *Richard Nixon and Civil Rights: Explaining an Enigma* (1996) 26 Presidential Studies Quarterly 93, 94, 101.

[158] Orfield and Jarvie, *Black Segregation Matters*, *supra*, at fn. 2, p. 22; see also Orfield, *Schools More Separate: Consequences of A Decade of Resegregation*, The Civil Rights Project, Harvard University (July, 2001) p. 25 (as of July 1, 2021) (hereafter *Schools More Separate*) (26 central cities house districts which enroll 1/10 of the nation's students, but only a minute fraction of the nation's white student; five school districts were more than 90% nonwhite, while a large majority of the others had less than one-fifth white students).

[159] Boston Research Center, Encyclopedia of Boston, *Desegregation Busing* (as of Jan. 26, 2022.)

[160] History, This Day in History, *Violence erupts in Boston over Desegregation Busing* (as of Jan. 26, 2022); Bubar, *The Jim Crow North*, Upfront: The N.Y. Times (March 9 2020) (as of Jan. 26, 2022).

[161] *Milliken v. Bradley* (1974) 418 U.S. 717, 752.

[162] See e.g., Bell, *Silent Covenants*, *supra*, at fn. 5, p. 112.

[163] Goldstein, *Detroit Students Have a Constitutional Right to Literacy, Court Rules*, The N.Y. Times (April 27, 2020) (as of June 22, 2021); see Bell, supra, at fn. 5, pp. 111-112;

[164] *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977) 429 U.S. 252.

[165] Bell, *Silent Covenants*, *supra*, at fn. 5, p. 110.

[166] *Id.* at p. 114; Orfield and Jarvie, *Black Segregation Matters, supra*, at fn. 2, pp. 12-13.

[167] Bell, *Silent Covenants*, *supra*, at fn. 5, p. 114.

[168] See *id.* at pp. 110-113; Orfield, *Schools More Separate*, *supra*, pp. 1-2; see also Orfield and Jarvie, *Black Segregation Matters, supra*, at fn. 2, p. 6 ("Intense segregation, in 90-100% non-White schools, fell very sharply from 78% of Black students in 1968 to 24% in the

South states by 1988, but [by 2020] has now risen back to 37%[.]").

[169] Orfield, *Schools More Separate, supra*, pp. 15-44.

[170] *Ibid.* (citing *Board of Education of Oklahoma City vs. Dowell* (1991), *Freeman v. Pitts* (1992), and *Missouri v. Jenkins* (1995)).

[171] *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007) 551 U.S. 701.

[172] Orfield and Siegel-Hawley, *E Pluribus . . . Separation, Deepening Double Segregation for More Students*, UCLA Civil Rights Project/Proyecto Derechos Civiles (Sept. 2012) p. 7 (as of Apr. 29, 2022).

[173] Meatto, *Still Separate, Still Unequal: Teaching about School Segregation and Educational Inequality*, N.Y. Times (May 2, 2019) (as of June 21, 2021) ("More than half of the nation's schoolchildren are in racially concentrated districts, where over 75 percent of students are either white or nonwhite."); Bracey, *Significance of HBCUs*, *supra*, p. 687; Toppo, *GAO Study: Segregation Worsening in U.S. Schools*, USA Today (May 17, 2016) (as of June 22, 2021); Guastaferro, *Why Racial Inequities are Rooted in Housing Policies, supra* (discussing study showing that predominantly nonwhite school districts received $23 billion less in state and local funding than majority white school districts in 2016); Orfield and Jarvie, *Black Segregation Matters, supra,* pp. 6, 28.

[174] Orfield and Jarvie, *Black Segregation Matters, supra.* at fn. 2, p. 28.

[175] Woodson, *The Mis-Education of the Negro* (1933).

[176] Ed. Week, *Tracking* (Sept. 21, 2004) (as of June 24, 2021); Oakes et al., *Multiplying Inequalities: The Effects of Race, Social Class, and Tracking on Opportunities to Learn Mathematics and Science* (1990) pp. 18-19 & fn. 6 ("[W]e are dealing with *teachers' perceptions* of ability—we cannot assume that ability means the same thing from teacher to teacher, or from school to school.") (hereafter *Multiplying Inequalities*); Anderson and Oakes, *The Truth About Tracking* in *The Big Lies of School Reform: Finding Better Solutions for the Futile Public Education* (2014) pp. 113-114 (describing the arbitrary nature of tracking) (hereafter *The Truth About Tracking*).

[177] Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, at fn. 10, p. 452; Oakes, *Two Cities' Tracking and Within-School Segregation* (1995) 96 Teachers College Record 681 (as of June 24, 2021); Oakes, *Keeping Track: How Schools Structure Inequality* (2005) pp. 11-12, 40, 64-65; Oakes et al., *Detracking: The Social Construction of Ability, Cultural Politics, and Resistance to Reform* (1997) 98 Teachers College Record 482, 490-491, 496-500; Artiles et al., *Culturally Diverse Students in Special Education: Legacies and Prospects*, in Handbook of Research on Multicultural Education (2d ed. 2004) p. 716 (finding that many students because of factors including race are disproportionately referred and placed in special education programs); Conger, *Within-School Segregation in an Urban School District* (2005) 27 Ed. Eval. & Policy Analysis 225, 237-238; Saddler, *The Impact of Brown on African American Students: A Critical Race Theoretical Perspective* (2005) 37 Ed. Studies 41, 44 (observing that African American students are three times more likely to be placed in special education classes and more likely to be placed in vocational tracks); Oakes et al., *Multiplying Inequalities*, *supra*, pp. 18-25.

[178] Bell, *Silent Covenants*, *supra*, at fn. 5, p. 112; see Kohli and Quartz, *Modern-Day Segregation in Public Schools*, The Atlantic, (Nov. 18, 2014); Mathis, *Moving Beyond Tracking*, National Education Policy Center (May 2013) ("[Tracking] generally plays out in a discriminatory way, segregating students by race and socio-economic status.") (as of June 25, 2021).

[179] Darity Jr. and Mullen, *From Here to Equality*, *supra*, p. 220; Oakes et al.,, *Multiplying Inequalities*, *supra*, pp. 18, 23; Anderson & and Oakes, *The Truth About Tracking*, *supra*, pp. 118 (discussing their research finding that "African American and Latino students were much less likely than White or Asian students *with the same test scores* to be placed in high-ability classes") (hereafter *The Truth About Tracking*).

[180] Horsford and McKenzie, *Exploring Black Superintendent Perspectives*, *supra*, at fn. 10, pp. 451-452.

[181] Anderson and Oakes, *The Truth About Tracking*, *supra*, pp. 114-118 ("in every aspect of what makes for a quality education, kids in lower tracks typically get less than those in higher tracks and gifted programs"); Mathis, *supra*, ("Low-track classes tend to have watered-down curriculum, less experienced teachers, lowered expectations, more discipline problems, and less engaging lessons.") (as of June 25, 2021); Oakes et al., *Multiplying Inequalities*, *supra*, pp. 104-105 ("Students judged to have low ability may get less because they are thought to need less (they are considered unable to benefit) or deserve less (they are considered unwilling to benefit).").

[182] California Task Force to Study and Develop Reparation Proposals for African Americans (October 12, 2021) *Testimony of Dr. Rucker Johnson* (as of Jan. 28, 2022).

[183] Bell, *Silent Covenants*, *supra*, at fn. 5, pp. 127-129; Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 9 ("If we are unwilling to desegregate our schools *and* unwilling to fund them equitably, we find ourselves not only backing away from the promise of the *Brown* decision but literally refusing even to take *Plessy* seriously. At least a serious consideration of *Plessy* would make us look at funding inequities."); Kozol, *Savage Inequalities: Children in American Schools* (1991) pp. 3-6; Kozol, *The Shame of the Nation: The Restoration of Apartheid Schooling in America* (2005) pp. 18-21.

[184] U.S. Government Accountability Office, GAO-20-494, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement* (June 2020) (as of July 1, 2021).

[185] Shores et al., *Categorical Inequalities Between Black and White Students are Common in US Schools—But They Don't Have to Be*, Brookings Institute (Feb. 21, 2020) (as of June 21, 2021).

[186] Bracey, *Significance of HBCUs*, *supra*, pp. 687-688; Kerr, *Report Finds Segregation*

in Education on the Rise, AP News (May 17, 2016) (as of June 23, 2021); Office for Civil Rights, *2015-16 Civil Rights Data Collection: Stem Course Taking*, U.S. Dept. of Ed. (2018) at p. 5 fig.4 (as of July 1, 2021); compare College Board, *AP Cohort Data Report: Graduating Class of 2020* (2020) p. 20 with Handwerk et al., *Access to Success: Patterns of Advanced Placement Participation in U.S. High Schools* (July 2008) p. 7 (as of July 1, 2021) (African American students were 14.2% of all public high school seniors in 2020, but only 8.3% of students nationwide who took an AP exam—an increase of only 1.3% since 2006).

[187] Irizarry, *On Track or Derailed? Race, Advanced Math, and the Transition to High School* (2021) 7 Socius 1, 12-13 (as of Jan. 28, 2022).

[188] Hammond, *Inequality in Teaching and Schooling: How Opportunity is Rationed to Students of Color in America*, in *The Right Thing to Do, The Smart Thing to Do: Enhancing Diversity in Health Professions*, Summary of the Symposium on Diversity in Health Professions in Honor of Herbert W.Nickens, M.D., National Academies Press (2001) pp. 208-209; Grissom and Redding, *Discretion and Disproportionality: Explaining the Underrepresentation of High-Achieving Students of Color in Gifted Programs* (2016) 2 Aera Open 1, 1-2; The Education Trust, *Inequities in Advanced Coursework: What's Driving Them and What Leaders Can Do* (2019), at p. 8 ("Our analysis [of the 2015-16 CRDC data] shows that although Black students make up 16% of elementary schoolers, they make up only 9% of students in gifted and talented programs."); Llahamon, Office for Civil Rights, *Dear Colleague Letter: Resource Comparability*, U.S. Dept. of Ed. (Oct. 1, 2014), p. 4 (as of July 1, 2021); Office for Civil Rights, *2011-12 Civil Rights Data Collection, Data Snapshot: Teacher Equity*, U.S. Dept. of Ed. (2014) (as of July 1, 2021); Adamson and Darling-Hammond, *Funding Disparities and the Inequitable Distribution of Teachers: Evaluating Sources and Solutions* (2012) 20 Ed. Policy Analysis Archives 1, 30-32; Whitaker et al., *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students*, ACLU (2019) p. 7 (finding that students of color are more likely to attend schools with law enforcement officers, be referred to law enforcement, and be arrested, and "students who attend schools with high percentages of Black students . . . are more likely to attend schools with tough security measures like metal detectors, random 'contraband' sweeps, security guards, and security cameras") (as of June 23, 2021) (hereafter *Cops and No Counselors*).

[189] Toldson, *Breaking Barriers: Plotting the Path to Academic Success for School-Age African American Males*, Congressional Black Caucus Foundation, Inc. p. 46 (2008).

[190] *Id.* at p. 23.

[191] Powers et al., *Twenty-five Years after Larry P.: The California Response to Overrepresentation of African Americans in Special Education* (2004) 9 The California School Psychologist 145, 155 (hereafter *Twenty-five Years after Larry P.*).

[192] E.g., Office for Civil Rights, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students*, U.S. Dept. of Ed. (2021) p. 10 (citing Shores et al., *Categorical Inequality in Black and White: Linking Disproportionality across Multiple Educational Outcomes*, 57 Am. Ed. Research J. 2089, 2097 (2020)).

[193] Bellan, *$23 Billion: Education Funding Report Reveals Less Money for City Kids*, Bloomberg.com (March 27, 2019) (as of June 21, 2021); Mervosh, *How Much Wealthier Are White School Districts than Nonwhite Ones? $23 Billion, Report Says*, The N.Y. Times (Feb. 27, 2019) (as of June 21, 2021); Carey, *Rich Schools, Poor Schools and a Biden Plan*, The N.Y. Times (June 9, 2021) (reporting that "districts where more than 75 percent of students are white receive $23 billion more per year than districts where more than 75 percent of students are not white — even though there are more students in predominantly nonwhite districts") (as of June 25, 2021).

[194] EdBuild, *$23 Billion* (Feb. 2019) pp. 4-5 (as of June 25, 2021).

[195] Carey, *supra*; Carey and Harris, *It Turns Out Spending More Probably Does Improve Education*, The N.Y. Times (Dec. 12, 2016) (as of June 25, 2021); Lafortune et al., *School Finance Reform and the Distribution of Student Achievement* (2018) 10 Am. Econ. J.: Applied Econs. 1, 24 (finding that "money can and does matter in education").

[196] Reparations 4 Slavery, *The Movement for Black Lives* (as of June 21, 2021); Vazquez-Martinez et al., *Unsafe School Facilities Reinforce Educational Inequities Among Marginalized Students*, Brookings Institute (Sept. 1, 2020) (as of July 1, 2021); U.S. Government Accountability Office, GAO-20-494, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement* (June 2020) (as of July 1, 2021); Kelley, *Study Unlocks Why Decrepit Schools Mean Poor Test Scores*, Cornell Chronicle (July 20, 2016) (as of Apr. 29, 2022).

[197] Rosenbaum, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, Youth & Soc'y (Jan. 17, 2018) (finding that suspended youth were less likely to have graduated from college or high school, and were more likely to have been arrested and on probation); Gordon, *Disproportionality in Student Discipline: Connecting Policy to Research*, Brookings Institute (Jan. 18, 2018) (as of June 21, 2021) (hereafter *Disproportionality in Student Discipline*); Losen and Martin, *The Unequal Impact of Suspension on the Opportunity to Learn in California: What the 2016-2017 Rates Tell Us about Progress*, The Center for Civil Rights Remedies (2018) pp. 7-9, 12; Losen and Whitaker, *Lost Instruction: The Disparate Impact of the School Discipline Gap in California*, The Center for Civil Rights Remedies (2017) pp. 8-9; The Council on State Gov. & Pub. Policy Research Inst. at Tex. A&M Univ., *Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (July 2011) (as of July 1, 2021).

[198] Gordon, *Disproportionality in Student Discipline*, supra, p. 6; Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment* (2002) 34 Urban Rev. 317,

318-319, 333 (finding that "[c]ontrary to the socioeconomic hypothesis, the current investigation demonstrates that significant racial disparities in school discipline remain even after controlling for socioeconomic status"); see CADRE et al., *Redefining Dignity in Our Schools: A Shadow Report on School-Wide Positive Behavior Support Implementation in South Los Angeles, 2007-2010* (June, 2010) pp. 6-7, 12; *Into New Rules for Schools: Remote Learning Means Remote School Discipline. But Not All Kids Are Treated Equally*, MSNBC (Sept. 14, 2020) (as of June 25, 2021).

[199] National Public Radio, Code Switch, *Black Preschoolers Far More Likely to Be Suspended* (March 21, 2014) (as of Jan. 26, 2022).

[200] Gordon, *Disproportionality in Student Discipline*, *supra*; U.S. Government Accountability Office, GAO 18-258, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities* (Mar. 2018).

[201] Office for Civil Rights, *Civil Rights Data Collection (for 2017-18 School Year),* U.S. Dept. of Ed. (Oct. 14, 2020) (as of July 1, 2021); see also Green et al., *'A Battle for the Souls of Black Girls'*, The N.Y. Times (Oct. 1, 2020) ("The disproportionate discipline rates among girls indicate what researchers have long said about all Black children: It is not that they misbehave more than their peers, but their behaviors may be judged more harshly.") (as of June 25, 2021).

[202] Rocque and Paternoster, *Understanding the Antecedents of the 'School-to-Jail' Link: The Relationship Between Race and School Discipline* (2011) 101 The J. of Crim. L. & Criminology 633, 653-54.

[203] Morris and Perry, *The Punishment Gap: School Suspension and Racial Disparities in Achievement* (2016) 63 J. Social Problems 68, 68-69.

[204] Whitaker et al., *Cops and No Counselors*, *supra*, p. 7.

[205] E.g., ACLU, *The Right to Remain A Student: How California School Policies Fail to Protect and Serve*, p. 14 (Oct. 2016) (as of Jan. 28, 2022).

[206] Servoss and Finn, *Security in American Schools: Are Schools Safer*? Presentation to Alberti Center for Bullying Abuse Prevention Colloquium Series (Nov. 8, 2015).

[207] Office for Civil Rights, *2015-16 Civil Rights Data Collection: School Climate and Safety*, U.S. Dept. of Ed. (2018) (as of June 22, 2021); Robles-Ramamurthy and Watson, *Examining Racial Disparities in Juvenile Justice* (2019) 47 J. Am. Academy of Psych. & L. 48 (hereafter *Examining Racial Disparities*); U.S. Dept. of Ed., *Civil Rights Data Collection (for 2017-18 School Year)* (Oct. 14, 2020) (as of July 1, 2021).

[208] Green et al., *'A Battle for the Souls of Black Girls'*, *supra*.

[209] E.g., Cal. Dept. of Justice, *Stockton Unified School District Enter into Agreement to Address Discriminatory Treatment of Minority Students and Students with Disabilities, Press Release* (Jan. 22, 2019) (as of June 22, 2021).

[210] E.g., ACLU, *The Right to Remain A Student: How California School Policies Fail to Protect and Serve*, p. 14 (Oct. 2016) (as of Jan. 28, 2022).

[211] See, e.g., Gilliam et al., *Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?*, Yale Child Study Center, p. 14 (Sept. 28, 2016) (as of June 22, 2021); Dee, *A Teacher Like Me: Does Race, Ethnicity, or Gender Matter?* (2005) 95 Am. Econ. Rev. 158, 160-163; Banks et al., *Discrimination and Implicit Bias in a Racially Unequal Society* (2006) 94 Cal. L.Rev. 1169; Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital–Sentencing Outcomes* (2006) 17 Psychological Sci. 383; Greenwald and Kriegar, *Implicit Bias: Scientific Foundations* (2006) 94 Cal. L.Rev. 945; see also Dasgupta, *Implicit In Group Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations* (2004) 17 Soc. Justice Research 146, 155 (discussing "[a]lmost a hundred studies" verifying the existence and importance of implicit bias in understanding racial stereotyping that results in different treatment on the basis of race or other protected categories); Gordon, *Disproportionality in Student Discipline*, *supra*.

[212] Bottiani et al., *A Multilevel Examination of Racial Disparities in High School Discipline: Black and White Adolescents' Perceived Equity, School Belonging, and Adjustment Problems* (2017) 109 J. Ed. Psych. 532, 532-533; Bottiani et al., *Inequality in Black and White High School Students' Perceptions of School Support: An Examination of Race in Context* (2016) 45 J. Youth Adolescence 1176, 1176-1177; Perry and Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools* (2014) 79 Am. Sociological Rev. 1067, 1070, 1084.

[213] Gordon, *Disproportionality in Student Discipline*, *supra: Results From a Randomized Controlled Effectiveness Trial in Elementary Schools* (2010) 12 J. Positive Behavior Interventions 133, 133-135; Luiselli et al., *Longitudinal Evaluation of Behavior Support Intervention in a Public Middle School* (2002) 4 J. Positive Behavior Interventions 184; OSI Baltimore, *Restorative Practices in Baltimore City Schools: Research Updates and Implementation Guide* (Sept. 2020) pp. 6-8 (finding that studies are continuing to confirm that restorative approaches result in positive outcomes and are associated with "decreases in harmful exclusionary discipline and improvements in school climate") (as of Apr. 29, 2022).

[214] Jackson et al., *Intergenerational Resilience in Response to the Stress and Trauma of Enslavement and Chronic Exposure to Institutionalized Racism* (2018) 4 J. of Clinical Epigenetics 1, 4.

[215] Lu, *Michelle Alexander: More Black Men in Prison Than Were Enslaved in 1850: Clearly, Colorblindness Hasn't Gotten Us Very Far*, Colorlines (Mar. 30, 2011) (as of June 22, 2021); Robles-Ramamurthy, *Examining Racial Disparities*, *supra*, see generally Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) (hereafter, *The New Jim Crow*).

[216] The Sentencing Project, *Youth Reentry* (June 14, 2012) (as of June 22, 2021); cf. Alexander, *The New Jim Crow*, *supra*, pp. 8, 94-96.

[217] Toldson, *Breaking Barriers: Plotting the Path to Academic Success for School-Age African American Males*, Congressional Black Caucus Foundation, Inc. p. 29 (2008).

[218] *Ibid.*

[219] Hudson, *West of Jim Crow*, *supra*, at fn. 12, p. 34; An Act to Provide for a System of Common Schools, Stats. 1866, ch. 342, §§ 57-58, p. 18.

[220] Hudson, *West of Jim Crow*, *supra*, at fn. 12, pp. 34-36.

[221] *Ibid.*; Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 14, 18, 20; see also *Don Wilson Builders v. Superior Court of Los Angeles County* (1963) 220 Cal. App.2d 77, 90 (dis. opn. of Fourt, J.) (describing statutes and regulation stating that children of African or Indian descent shall not be admitted into schools for white children).

[222] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 17.

[223] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 8.

[224] *Ward v. Flood* (1874) 48 Cal. 36, 54-57.

[225] Hudson, *West of Jim Crow*, *supra*, p. 38; Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 23-24.

[226] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 24.

[227] Hudson, *West of Jim Crow*, *supra*, p. 34.

[228] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 25-26.

[229] *Ibid.*

[230] Bailey, *Hidden History: Edmond Wysinger*, YourCentralValley.com (Feb. 14, 2017) (as of June 22, 2021).

[231] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 25 (citing *Wysinger v. Crookshank* (1890) 82 Cal. 588, 592–93).

[232] *Id.* at p. 26. The state legislature did so later in its history to re-create for separates schools for Asians and Native Americans; also some legislators attempted to do so again for African American children, but the legislation failed. *Id.*

[233] Hudson, *West of Jim Crow*, *supra*, p. 61; *see also id.* at p. 168.

[234] Rothstein, *The Color of Law*, *supra*, pp. 122, 132-137; Orfield and Jarvie, *Black Segregation Matters, supra,* at fn. 2, pp. 12-13.

[235] Hudson, *West of Jim Crow*, *supra*, at fn. 12, pp. 167, 199.

[236] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 125-126.

[237] *Id.* at pp. 129-130; *Westminster Sch. Dist. of Orange County v. Mendez* (9th Cir. 1947) 161 F.2d 774, 777-781.

[238] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 108-109.

[239] *Id.* at p. 143.

[240] Hudson, *West of Jim Crow*, *supra*, at p. 255 (citing Miller, *Address to Western Governors* (1964) Civil Rights and State's Rights).

[241] Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, p. 143.

[242] *Ibid.*

[243] E.g., *Crawford v. Bd. of Educ.* (1976) 17 Cal.3d 280, 284-285 (Los Angeles); *Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 881-882 (Pasadena).

[244] See e.g., Wollenberg, *All Deliberate Speed*, *supra*, at fn. 12, pp. 148-164.

[245] Cal. Const. art. I, § 26 (November 3, 1964).

[246] Reft, *How Prop 14 Shaped California's Racial Covenants*, KCET (as of June 30, 2021).

[247] *See* Cal. Const., art. I, § 7; School Assignment and Transportation of Pupils, California Proposition 1 (1979).

[248] *Crawford v. Board. of Educ. of City of Los Angeles* (1982) 458 U.S. 527, 535-536.

[249] 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 (hereafter *Segregating California's Future*); *Butt v. State of California* (1992) 4 Cal. 4th 668, 684-685.

[250] Bowles, *Kamala Harris and Classmates Were Bused Across Berkeley. The Experience Changed Them*, N.Y. Times (June 30, 2019) (as of Apr. 29, 2022).

[251] Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 9.

[252] Orfield and Ee, *Segregating California's Future*, *supra*, pp. 3, 27.

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[424] Jones, *New Data Shines Light on Student Achievement Progress – And Gaps – In California and US*, EdSource (Feb. 8, 2021) (as of June 22, 2021) (hereafter *New Data Shines Light on Student Achievement*).

[425] *Ibid.*

[426] Jones et al., *50 Years After the Kerner Commission: African Americans Are Better Off in Many Ways But Are Still Disadvantaged By Racial Inequality*, Economic Policy Institute (Feb. 26, 2018) (as of June 22, 2021); Cal. Dept. of Ed., *California Department of Education Releases 2019-20 High School Graduation and Dropout Rates* (Dec. 11, 2020) (as of June 22, 2021).

[427] Agrawal, *Black Students Are Succeeding in College at Higher Rates, But Far Behind White Peers, Report Says*, L.A. Times (Feb. 24, 2021) (as of June 22, 2021); Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 4; Orfield et al., *Losing our Future: How Minority Youth are Being Left Behind by the Graduation Rate Crisis*, The Civil Rights Project at Harvard University et al. (2004) (as of June 22, 2021); Bridgeland et al., *The Silent Epidemic: Perspectives of High School Dropouts* (2006) p. i.

[428] Ladson-Billings, *Achievement Gap to the Education Debt*, *supra*, at fn. 2, p. 5.

[429] *Id.* at p. 6; Tamborini et al., *Education and Lifetime Earnings in the United States* (2015) 54 Demography 1383, 1385-1386.

[430] Altonji and Doraszelski, *The Role of Permanent Income and Demographics in Black/White Differences in Wealth* (2005) 40 J. Human Resources 1, 9.

[431] Broyles, *A Conversations About the Racial Wealth Gap—And How to Address It*, Brookings Institute (June 18, 2019) (as of June 22, 2021).

[432] Hicks et al., *Still Running Up the Down Escalator: How Narratives Shape our Understanding of Racial Wealthy Inequality* (2021) Insight Center for Community Economic Development, Duke University, p. 13 (as of Jan. 28, 2022).

[433] E.g., Gould and Cooke, *Unemployment for Young Black Grads is Still Worse Than it was For Young White Grades in the Aftermath of the Recession*, Econ. Policy Institute (May 11, 2016) (as of June 22, 2021).

CHAPTER 7 Racism in Environment and Infrastructure

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Housing of Black migrant workers. Florida. (1941)

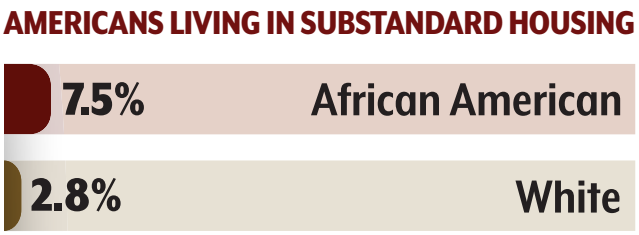
I. Introduction

The legacy of slavery, legal segregation, and government policies known as redlining have created environmental impacts that have harmed and continue to harm African Americans. First, government policies forced African Americans to live in poor-quality housing, exposing them to disproportionate amounts of lead poisoning[1] and increasing their risks of disease,[2] including COVID-19.[3] Outside of their homes, African Americans are also exposed to far more pollutants than white Americans, partially because redlining explicitly grouped African Americans and other "inharmonious racial groups" with polluting sources.[4] Second, government actors developed infrastructure projects, like highways and parks, in ways that destroyed and segregated African American communities, and also failed to provide or repair public services like sewage lines and water pipes.[5] Finally, African Americans and their homes are more vulnerable than white Americans to the dangerous effects of extreme weather patterns like heat waves, disparities which are made worse by climate change.[6]

Section III of this chapter addresses the substandard housing and overcrowding problems faced by African Americans throughout American history caused by government practices including redlining. Section IV of this chapter addresses discusses the environmental pollutants to which African Americans are exposed as result of similar and related government practices, which disproportionately continues to subject African Americans to hazardous waste management, oil and gas production, automobile and diesel fumes. Section V addresses the discriminatory choices made by government actors in implementing infrastructure development and related public services, which consistently have disadvantaged African Americans. Section VI addresses the discriminatory impacts of climate change, which are experienced disproportionately by African Americans as a result of government actions and policies that have imposed those harms on them.

II. Substandard Housing and Overcrowding

Throughout American history and to this day, African Americans have lived in housing of worse quality than white Americans, and paid more to live in it.[7]



Nationally

Starting in the early 20th century, as African Americans primarily rented housing in urban areas, they were consistently charged higher rents than white people.[8] Before the federal Fair Housing Act made housing discrimination based on race illegal, landlords would freely admit that they needed to charge African American renters higher rent because white renters did not want to share an apartment building with African Americans.[9] To pay for the higher rents, African American families often took in lodgers or shared apartments, which created additional overcrowding.[10]

As of 2010, about 2.6 million (7.5 percent) non-Hispanic African American people and 5.9 million white people (2.8 percent) live in substandard housing in America, which is defined largely in relation to the housing's susceptibility to waterborne and airborne communicable diseases.[11] African American households are almost twice as likely as white households to lack indoor plumbing nationwide.[12] African American households are more poorly ventilated than white households in general, leading to excess moisture that supports the growth of mold and vermin, which can lead to or exacerbate asthma and other breathing issues.[13]

African American families also still experience overcrowded housing—generally defined as either having more than 1.5 or more than two persons per room living in a household—at three times the rates of white Americans.[14] Overcrowded housing is linked with physical and mental health problems, including higher rates of exposure to household lead poisoning.[15] This association may be correlative rather than causative, since overcrowded housing is more likely to be older housing, and also more likely to house low-income workers in heavy industries that may cause them to bring lead dust and other contaminants into the household.[16] Overcrowding has similarly shown to increase the risk of spread of infectious diseases, such as tuberculosis, diarrhea, and infectious respiratory illnesses.[17] At least one recent study demonstrated that overcrowding and other poor housing conditions correlated with greater rates of COVID-19 infections across the country, as well as increased mortality from COVID-19.[18]

Overcrowded housing also is linked with various mental health issues, including psychological distress, alcohol abuse, depression, and sleep disorders.[19] Living in overcrowded housing is also associated with social withdrawal and feelings of helplessness,[20] as well as an increase in hostility among household residents due to the lack of privacy and time to oneself.[21]

Overcrowded housing also harms school performance for children, which has lasting impact on their educational attainment.[22] Living in a house with too many people makes it difficult to find a quiet place to study,[23] and even a quiet place to sleep.[24] Children in crowded houses are more likely to catch infectious diseases from others in their household, making it more likely for the child to stay home from school.[25] Children from overcrowded homes are more likely to be held back a grade,[26] they show reduced math and reading test scores,[27] and they demonstrate higher rates of disruptive behaviors according to teachers.[28] Moreover, some international research has found that children and adolescents in overcrowded housing are more likely to engage in violent behavior in the home,[29] as well as to be victims of sexual abuse.[30]

California

California displays the same racial disparities regarding overcrowded housing as the rest of America. The most recent data provided by the California Department of Public Health reveals that African American Californians are approximately 2.5 times more likely to live in housing considered "overcrowded," and 2.8 times more likely to live in housing considered "severely overcrowded," compared to white Californians.[31]

African American Californians have also been forced to live in substandard housing, sometimes as a direct result of government action. One historical example is the federal government's building of public housing in Richmond to accommodate ship workers during World War II, which was officially and explicitly segregated.[32] As part of those efforts, the federal government put programs in place that enabled white workers to access permanent, residential housing, but offered African American workers no permanent housing.[33] While some African American workers were able to find low-quality, long-term housing in areas of the East Bay, others lived in barns, minimal shelter like tents or cardboard shacks, or even without any shelter in open fields.[34]

In California specifically, the problem of overcrowded housing has been linked to the rapid spread of COVID-19 in neighborhoods with a higher number of African American residents, such as South Los Angeles.[35] Neighborhoods with overcrowded housing in California had rates of COVID-19 that were 3.7 times higher than neighborhoods without overcrowded housing.[36]

III. Environmental Pollutants

U.S. government policies, as discussed in Chapter 5,, Housing Segregation, penned African Americans into poorer neighborhoods with polluting industries, garbage dumps, and other sources of toxic health harms.[37] Local governments zoned African American neighborhoods as industrial instead of residential specifically to segregate African American residents from white residents.[38] White neighborhoods frequently were zoned by local entities to explicitly ensure that few industrial or polluting business could locate within them, again pushing environmental pollution into African American neighborhoods.[39] Redlined and segregated African American neighborhoods were cheaper for polluting industries to build on.[40] This became a downward spiral: the more garbage dumps and sewer treatment plants a neighborhood had, the cheaper the land was, and the more likely that other polluting industries would move in.[41] Without access to the mortgages and loans available to white Americans, African American homeowners also had less money to maintain and improve their homes, which made housing conditions worse and prevented African Americans from moving away from polluting sources.[42]

Redlined and segregated Black neighborhoods were cheaper for polluting industries to build on. This became a downward spiral: the more garbage dumps and sewer treatment plants a neighborhood had, the cheaper the land was, and the more likely that other polluting industries would move in.

African American communities across the country still experience higher rates of pollution and the negative health outcomes caused by exposure to pollutants.[43]

African Americans are exposed to greater pollution from virtually every polluting source when compared to white Americans, including hazardous waste, heavy industry, vehicle traffic, and construction—all of which can be partially attributed to redlining and other historical discrimination.[44]

Hazardous Waste

One source of pollution that has been continuously prevalent in African American communities is hazardous waste sites. This pollution has been shown to correlate with increased rates of asthma, cancer, lung disease, and heart disease.[45] For example, in 2020, the *New York Times Magazine* profiled the story of Kilynn Johnson, an African American resident of Philadelphia, who developed asthma as a child and eventually developed gallbladder cancer after growing up in a largely African American neighborhood proximate to hazardous waste facilities and oil refineries.[46] After recovering from surgery and chemotherapy, Johnson and a neighbor documented over two dozen close relatives who were diagnosed with some form of cancer, many rare, and many at unusually young ages.[47]

African Americans have long been disproportionately exposed to these harms. As of 1983, approximately three out of every four communities in which hazardous waste landfills were found were predominantly African American.[48] In 1991, the federal Environmental Protection Agency (EPA) acknowledged that a disproportionate number of toxic waste facilities were found in African American neighborhoods throughout the country.[49] More recently, a study in 2007 analyzed 38 states and

found that African Americans disproportionately live in neighborhoods that host hazardous waste facilities and are twice as likely to live near a hazardous waste facility.[50] As of 2020, African Americans are still 75 percent more likely to live near facilities that handle hazardous waste.[51]

Moreover, studies have shown that that the EPA's handling of toxic waste clean-up sites—i.e., so-called "Superfund" sites, or former industrial sites polluted with dangerous levels of hazardous waste—has consistently favored white communities over minority communities, and an external audit of the handling of discrimination complaints by the EPA determined that the agency failed to adequately respond to those complaints.[52] From 1985 to 1991, fines assessed by the EPA against polluters in minority zip codes were approximately 46 percent lower than in white zip codes.[53] The EPA also took longer to address hazardous sites in minority communities than in white ones, and polluters were required to undertake more stringent cleanup measures in white communities.[54]

Oil and Gas Pollution

The oil and gas industry, as permitted by governmental entities, has also imposed disproportionate environmental harms on African Americans. Oil and gas extraction is associated with various carcinogenic pollutants, including benzene.[55] Studies have shown that living near these sources elevates one's risk of cancer.[56] Over one million African Americans live within half a mile of oil and gas extraction and refining facilities.[57] African Americans are also more likely to live near fracking facilities, which create similar pollution to more traditional oil and gas facilities.[58] The natural gas produced via fracking contains various toxins and carcinogens, including hexane, benzene, and hydrogen sulfide.[59] These dangerous, cancer-causing chemicals are emitted at the initial facilities that gather natural gas, at points along the systems that move the from those facilities, and at the destination plants at which they are processed, all of which occur disproportionately in African American neighborhoods.[60] Moreover, as African Americans have grown increasingly involved in the fight against oil and gas pollution in their communities, fossil fuel companies have pushed back by arguing that the fight for environmental justice would particularly *harm* African American communities by robbing them of oil and gas-related jobs, including through a false report that the National Association for the Advancement of Colored People was opposed to a clean energy plan.[61]

Automobile Traffic

Although not specific to one particular industry, African Americans are also subject to disproportionate environmental harms as a result of automobile traffic. Some African Americans live in areas with more than double the traffic density of white neighborhoods, and experience the highest traffic density of any racial or ethnic group.[62] As a result, many African Americans are exposed to more on-road sources of carcinogenic pollution than other racial or ethnic groups.[63]

Compared to other Americans, African Americans are

75% MORE LIKELY **to live near hazardous waste or refining facilities**

Auto pollution includes, among other things, exposure to nitrogen dioxide (NO2), which contributes to asthma and other respiratory ailments.[64] While exposure to NO2 is decreasing across all races in the United States, the percentage of increased exposure experienced by African Americans as compared to white Americans has changed little.[65] Moreover, among all pollution sources nationwide, African Americans are more disproportionately exposed to air pollution attributable to construction than as to any other air pollution source.[66]

Lead Poisoning

Also not specific to any industry, lead pollution is disproportionately high in African American communities that were officially segregated through federal redlining.[67] Although this has been known for decades, commentators have noted that "surprisingly little research" has examined the extent of the problem.[68] This toxic lead exposure comes from myriad sources that are found in greater amounts in African American neighborhoods, including toxic industrial sites near to residences.[69] Exposure to lead from outside the home can be through lead water pipes, gasoline exhaust, and nearby smelting plants.[70] Even though most smelting plants that created lead pollution have been closed since the 1960s, soil pollution surrounding these facilities remains an active problem.[71] Nationally, African American children are three times as likely to have elevated blood rates of lead, and these patterns have persisted even as lead exposure rates have decreased for children of other races and ethnicities.[72] These disparities are even more dramatic in some areas with older housing stock. For example, a 2004 report found that in Chicago, African American children were five to 12 times more likely to exhibit lead poisoning than white children.[73] This is partially because African American Chicagoans are disproportionately located in older housing stock with deteriorating lead-based paint.[74]

All of these forms of environmental pollution have serious health consequences, resulting in chronic illnesses like diabetes, asthma, and heart disease, and affecting maternal health and educational outcomes.[75] African Americans suffer disproportionately from these health problems.[76] Moreover, these health consequences persist long after exposure, with at least one study showing substantial central nervous system deficits 11 years after childhood exposure.[77] For further discussion of disparities in health outcomes not specific to environmental pollution, see Chapter 12, Mental and Physical Harm and Neglect.

California

Historically, federal public housing was explicitly created to segregate African American Californians into areas with greater pollution burdens due to immediately adjacent polluting sources. For example, when the federal government built public housing in Richmond to accommodate ship workers, as discussed above, it placed the temporary housing for African American workers by the railroad tracks and shipbuilding areas, subjecting them to particulate matter (e.g., small cancer-causing particles associated with diesel exhaust) and industrial pollution, but built higher quality housing for white workers further inland.[78]

Many areas within California still demonstrate racial disparities traceable to state and federal government action. Studies throughout the 1990s have found that largely African American and Latino people in Los Angeles are the most heavily impacted by pollution and toxic waste sites.[79] Neighborhoods that were explicitly redlined by federal agencies in the 1930s—ranging from South Stockton to West Oakland to Wilmington in Los Angeles—continue to have some of the highest average pollution levels in the state.[80]

African American children are

3x MORE LIKELY to have elevated lead levels in their blood

The historically African American area of Bayview-Hunters Point in San Francisco has a long history of environmental racism, with African American residents subjected to myriad environmental harms, including radioactive contamination from a nearby shipyard, not experienced by whiter, wealthier areas within San Francisco.[81] Moreover, recent environmental remediation efforts have come hand-in-hand with a substantial decline in the percentage of African American residents.[82] Starting in the 20th century, African American residents of the neighborhood were displaced by Latino and Asian-American residents.[83] Although this has largely been attributed to the "dot com" boom and rising housing prices across San Francisco, scholars have offered a variety of discriminatory factors that drove African American residents out.[84] These include the San Francisco Housing Authority's demolition of public housing, the San Francisco Police Department's enforcement of gang injunctions, and the issuance of subprime mortgage loans.[85] As one long-time African American resident described it, the formerly-polluted community in which she had long lived is now dramatically cleaner, but is no longer meant for "her or for her grandchildren."[86]

Similarly, the divisions between the wealthier, white "hills" of Oakland, California and the poorer, African American "flats" that were first established by federal redlining have remained today, with African American residents of the low-lying areas still subject to far greater environmental pollutants.[87] In Oakland's earlier days, redlining placed Black Californians in these "flats" adjacent to various heavy industries and manufacturing centers, acknowledging that the housing available was of low quality and subject to noticeable industrial "odors."[88] From the 1950s through the 1980s, substantial freeway construction projects placed substantial pollution burdens on all of the low-lying areas in Oakland, including in the few parks and other green space available to them.[89] Residents of these areas continue to experience quantifiably greater health consequences, such as emergency room visits due to asthma.[90]

These patterns exist across California with respect to facilities that handle hazardous waste. Los Angeles has 1.2 million people living near facilities that handle hazardous waste, and *91 percent* of them are people of color.[91] African Americans live near hazardous waste facilities at rates higher than other people of color as a whole.[92] This is true elsewhere in California, leading to increased lifetime cancer risks for African American Californians that correlate with exposure to outdoor air toxins.[93]

As is the case nationwide, the oil and gas industry disproportionately affects African American Californians. More than two million Californians live within 2,500 feet of an unplugged oil or gas well, with greater percentages of African Americans living near these sources of pollution than the California population as a whole.[94] Aside from the exposure to carcinogenic chemicals involved with oil and gas production, toxic residues brought up by subterranean drilling can contaminate local aquifers that supply drinking water.[95] In the greater Los Angeles Area, notable oil production exists in Inglewood and Baldwin Hills areas

which have a greater African American population than Los Angeles generally.[96] Similar patterns exist in the San Francisco Bay Area, with major oil production facilities in Richmond and Martinez, areas that are disproportionately African American when compared to the broader Bay Area.[97] Moreover, advocates have argued that public officials are more responsive to oil and gas-related health concerns from residents of whiter, wealthier neighborhoods, noting that the methane leak in the wealthy Porter Ranch neighborhood of Los Angeles elicited a massive, statewide response while hundreds of significant health complaints related to the AllenCo drilling site in the largely African American neighborhood Jefferson Park were ignored for years.[98]

Even for industries that do not inherently involve toxic or carcinogenic materials, increased rates of truck traffic and general industrial activity also lead to higher rates of heavy metal contamination of local soils.[99] Those soils are disproportionately found in the backyards, playgrounds, and urban gardens of African American Californians.[100] This heavy metal contamination poses

Residents of Los Angeles who live near a hazardous waste facility are

91% people of **color**

Compared to white Californians, African American Californians are exposed to

40% MORE **particulate matter from cars, trucks and buses**

a wide array of serious health consequences, including increased susceptibility to asthma, inflammation, pregnancy complications, high blood pressure, osteoporosis, kidney damage, and even Parkinson's disease.[101] It also can prevent safe urban gardening in neighborhoods that would desperately benefit from it.[102] On average, African American Californians breathe in about 40 percent more particulate matter from cars, trucks, and buses than white Californians.[103] African American Californians are exposed to a higher amount of PM 2.5—fine particles emitted by diesel engines—at a rate of 43 percent higher than white Californians, the highest rate of any racial or ethnic group.[104] African American Californians also are exposed to disproportionately high levels of air pollution from other infrastructure-related non-mobile sources, such as shipyards, factories, warehouses, and aviation.[105] These sources of air pollution are a primary reason that African Americans have the highest rates of asthma among all groups in California,[106] leading to asthma-related deaths at a rate of two to three times higher than any other racial or ethnic group.[107] Exposure to small particulate matter from cars, trucks, and buses is also tied to increased risk of heart and lung disease.[108]

IV. Climate Change

Research on the concrete and worsening effects of climate change has made clear that harmful health and environment-related effects of climate change will be experienced by all Americans.[109] These effects include increased range and incidence of infectious disease vectors like ticks, mosquitos, and avian-borne pathogens and decreased food quality and security.[110] Rising sea levels will damage coastal communities and reduce water quality and availability.[111] Extreme weather events, like floods, storms, fires, and extreme heat waves are projected to occur more frequently and more severely.[112] All Americans will be at risk of these harms, but not all will face that risk equally. Communities that are already socially and economically struggling, including the urban poor, communities of color, the elderly and children, agricultural workers, and rural communities will shoulder a disproportionate burden of these hazards.[113]

Nationally

Nationally, formerly redlined areas consistently show hotter temperatures than other areas.[114] Therefore, climate change is certain to exacerbate existing, historically-codified disparities that track existing housing-related harms experienced by African Americans.[115] In particular, so-called "heat islands," which will worsen due to climate change, exist where built-up urban areas have few trees, vegetation, or parks that serve to dissipate or reflect heat, and instead have pavement and building materials that absorb and retain it.[116] Federal Environmental Protection Agency studies have found that the heat island effect can cause urban areas to be up to seven degrees hotter than outlying areas during the day and up to five degrees hotter at night.[117] African Americans disproportionately live in such heat islands, experiencing higher temperatures on extreme heat days

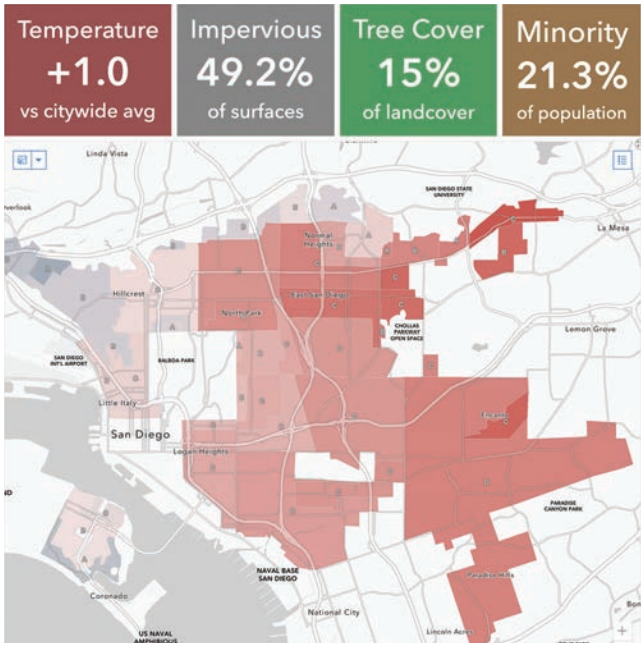
due to a lack of adequate tree cover.[118] In a study of 108 urban areas nationwide, including several in California, the formerly-redlined neighborhoods of nearly every city studied were hotter than the non-redlined neighborhoods, some by nearly 13 degrees.[119] Aside from tree cover, other features of the urban landscape in African American neighborhoods—most notably, roadways and large building complexes—also absorb and slowly release heat, which also exacerbate heat islands and their effects as discussed above.[120]

The greater presence of trees in a community has been shown to correlate with lower asthma rates, fewer hospital visits during heat waves, and improved mental health for the community's residents.[121] There are a variety of reasons for this, but the most significant is the prevalence of shade that trees create, lowering temperatures and providing a less oppressive environment during particularly hot days.[122] Conversely, the heightened temperatures in "heat islands" has led to higher rates of heat-related adverse pregnancy consequences for Black women, including premature births and still births.[123] Elected officials have recognized that the issue of shade and heat islands is connected to social justice, with those facing the greatest risk as a result of these disparities often being the most vulnerable members of a community.[124]

The association between parks and green space with wealthier, whiter neighborhoods is so strong that even modern efforts to add green space to largely African American neighborhoods sometimes involve racist narratives, with local efforts portraying green revitalization plans as benefiting primarily white residents even in African American neighborhoods.[125] Such revitalization plans can also lead to the backlash and suffering of African American residents in these gentrifying neighborhoods. For example, they can be treated as suspicious by local government and new residents when they take advantage of newly-constructed parks and other green space.[126] African American residents of areas without tree cover have also faced gentrification and unaffordability as a consequence, intentional or inadvertent, of local government efforts to add green space.[127]

In a study of 108 urban areas nationwide, including several in California, the formerly-redlined neighborhoods of nearly every city studied were hotter than the non-redlined neighborhoods, some by nearly 13 degrees.

COURTESY OF HOFFMAN, JEREMY S., VIVEK SHANDAS, AND NICHOLAS PENDLETON. 2020. "THE EFFECTS OF HISTORICAL HOUSING POLICIES ON RESIDENT EXPOSURE TO INTRA-URBAN HEAT: A STUDY OF 108 US URBAN AREAS" CLIMATE 8, NO. 1: 12.



Map of San Diego depicting average temperature rises, tree coverage, percentage of impervious surfaces and percentage of minority population affected through color coded map. (2020)

California

African American Californians experience these disproportionate harms in many ways, many attributable to the decisions of state and local governments. As is the case nationally, redlining had the effect of clustering African American Californians in urban centers that often constitute heat islands and the worsening heat waves caused by climate change will impose disproportionate health burdens on African American Californians.[128] A 2009 report published by the University of Southern California, "The Climate Gap," found that African American residents of Los Angeles are already almost twice as likely to die during a heat wave as other residents because of the "heat islands" attributable to a history of redlining and segregation.[129]

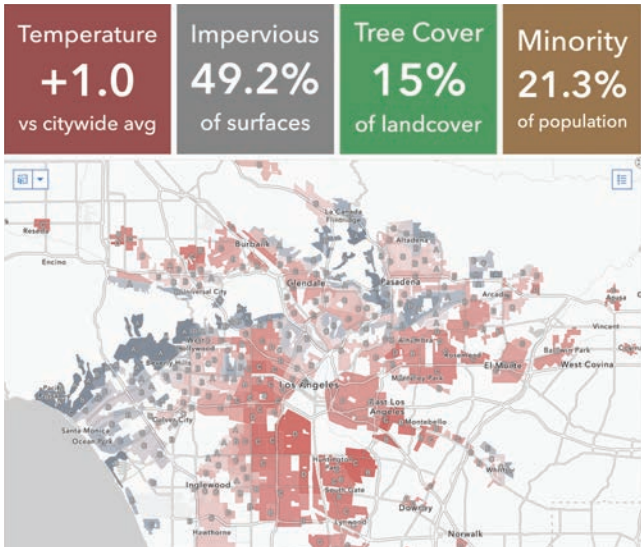
According to the California Department of Public Health, African American Californians are 52 percent more likely than white Californians to live in areas where more than half the ground is covered by impervious surfaces like asphalt and concrete, and where more than half the population lacks tree canopy—by

Black residents of Los Angeles were already almost twice as likely to die during a heat wave as other residents because of the "heat islands" attributable to a history of redlining and segregation.

definition, the characteristics of a heat island.[130] This disparity is particularly pronounced in the Greater Los Angeles Area, where wealthier white areas have triple the amount of tree cover compared to poorer African American neighborhoods.[131] This may be directly attributable to government action, since the City of Los Angeles intentionally kept tree growth to a minimum in African American communities where police officers expressed a concern—realistic or not—that trees could serve as places to hide drugs or weapons.[132]

The California Department of Public Health has warned that, as heat waves begin earlier in the season and last longer, heat-related deaths are growing disproportionately more common for certain racial or ethnic groups, particularly African American Californians.[133] Exacerbating these harms, African American Californians are less likely to have air conditioning, a car to access cooler areas, government-sponsored cooling stations, and are more likely to have one or more chronic health conditions.[134] For example, in South Los Angeles, a disproportionately African American neighborhood, nearly three-fifths of households did not have air conditioning in 2020, a number which has not substantially changed over the past decade even as heat waves worsened.[135] These patterns have been seen across the state during heat waves, in which African American Californians consistently experience heightened rates of emergency medical visits and hospitalizations compared to white Californians.[136]

COURTESY OF HOFFMAN, JEREMY S., VIVEK SHANDAS, AND NICHOLAS PENDLETON. 2020. "THE EFFECTS OF HISTORICAL HOUSING POLICIES ON RESIDENT EXPOSURE TO INTRA-URBAN HEAT: A STUDY OF 108 US URBAN AREAS" CLIMATE 8, NO. 1: 12.



Map of Los Angeles depicting average temperature rises, tree coverage, percentage of impervious surfaces and percentage of minority population affected through color coded map. (2020)

V. Infrastructure and Public Services

Nationally and within California, African Americans have suffered disproportionate harms—both environmental and otherwise—as a result of governmental investment and neglect relating to infrastructure and public services.

Neglected Water Systems

While African American communities across the U.S. face these infrastructure disparities daily, the crisis of water quality and lead poisoning in Flint, Michigan, is an example of governmental neglect that led to the poisoning of an African American community.[137]

Flint, Michigan, in Genesee County, which is now a majority African American city, was originally populated largely by white workers for the General Motors (GM) corporation, which recruited workers in the 1920s and 30s through housing it built itself and then sold subject to restrictive covenants preventing sale to non-white persons.[138] Private discrimination was cemented and continued through federal redlining in the 1940s, as GM also discriminated in the jobs it offered to the few African American residents of Flint, who generally worked as janitorial staff.[139] However, starting in the 1960s, as a larger African American population arrived, pockets of Flint experienced "white flight," which accelerated dramatically across Flint through the 1970s as the automotive industry suffered.[140]

In 2014, the entire city of Flint decided to switch its drinking water source from Detroit's system to the Flint River to save money.[141] Residents thereafter complained for months that their water both smelled and appeared worse, but city and state officials continued to maintain the water was safe for human consumption, even as they explicitly chose not to test the water's safety.[142] After a leaked internal memo from the U.S. Environmental

Protection Agency reported high levels of lead due to the corrosivity of the Flint River water, state officials continued to falsely maintain the levels were safe and called the federal report an "outlier."[143] By the time Flint switched back to Detroit's water system, children were exposed to massive amounts of lead with potentially irreversible health consequences for both young children and those exposed in utero through their mothers.[144] Those consequences include learning disabilities, intellectual disabilities, and behavioral problems.[145] Again, because Flint had become a majority African American city at the time of the crisis, these impacts were experienced by African American Michiganders far more so than other groups: even in 2017, after years of attention and remediation, Flint's water still had higher rates of lead than 98 percent of the rest of the state.[146]

Studies showed that the amount of children in Flint with lead pollution in their blood almost doubled as a result of the crisis, while both state officials and Michigan Governor Rick Snyder continued to downplay the issue.[147] The Michigan State Attorney General has attributed responsibility for the crisis to all levels of state and local government, filing criminal charges against various state and local officials including former Governor Snyder.[148] The charges range from perjury, related to actions designed to cover up malfeasance, to manslaughter.[149]

In the 19th century, as cities built sewer and garbage systems, they ignored or built them slower for Black neighborhoods. In the 20th century, Black neighborhoods lost access to water and sewage services as cities prioritized white neighborhoods.

Inadequate Sewage Systems

Historically, African Americans were subjected to environmental and health consequences as a result of failure to equitably construct sewer and other waste management systems. Originally, U.S. cities relied on private waterworks.[150] By the mid-19th century, cities across America began substantial investment in constructing modern, sanitary sewer and garbage removal systems.[151]

However, African American neighborhoods were not provided with such systems as early—or at all—as compared to white neighborhoods.[152] In fact, the impetus for provision of such services to African American neighborhoods was sometimes to prevent diseases that resulted from the *lack* of such services from crossing from African American neighborhoods into white ones.[153]

Rates of illness and death resulting from poor sewage disposal dramatically diverged for African American and white Americans as the latter gained access to effective sewage systems while the former did not.[154] For example, in early 20th century New York, African American residents were forced to live in lowland areas near drainage pools for sewage while white residents lived on higher ground with better drainage.[155] As a result, African American people died from malaria at much higher rates than white people and experienced higher rates of diseases like dysentery and typhoid.[156] Similar patterns existed across the South as well.[157]

Across the nation, as residential segregation increased throughout the 20th century, African American neighborhoods actually *lost* access to water and sewer municipal services, since it enabled municipalities to more easily prioritize white over African American neighborhoods for better services.[158] These disparities continue today. As recently as 2019, New York City acknowledged its responsibility for a massive leak caused by a collapsed pipe in a largely African American neighborhood of Queens, which flooded 127 homes with raw sewage.[159] Many of these houses were destroyed or severely damaged, losses that were not covered by basic homeowners or rental insurance.[160]

Energy Burdens

African Americans nationally are subject to disproportionately-higher costs and disproportionately-poorer service with respect to the electrical grid. African American households in America spend more on residential energy bills than white households, even when controlling for income, household size, and other possibly-relevant factors.[161] Across the country, African Americans shoulder energy burdens that are disproportionately larger than any other racial group, meaning they spend a larger portion of their income on energy.[162] This is true in major California cities as well, such as Los Angeles and San Francisco.[163] These disproportionate costs are partially attributable to African Americans living in older, energy-inefficient homes as a result of the legacy of redlining and other discriminatory housing policies.[164] Low-income African Americans are also twice as likely to have their utility service shut off as similarly-low-income white Americans,[165] which advocates have argued are the result of inflexible shut-off regulations and disproportionate energy burdens.[166]

Because of lower rates of home ownership in the African American community, African Americans also often cannot take advantage of programs aimed at lessening energy burdens that require home ownership to utilize, such as home solar panels[167] or installation of free charging stations for electric vehicles.[168] As discussed in more detail above, African Americans also suffer disproportionate burdens related to the production of energy, as power plants—including those fired by coal—continue to be disproportionately located in their neighborhoods, producing particulate matter emissions that cause damage to the heart, lungs, and brain.[169]

Racist Transportation Systems

Federal, state, and local governments have consistently failed to offer equitable transit options for African American communities throughout American history. The earliest form of transportation discrimination was the trafficking of Black Africans in slave ships, discussed more fully in Chapter 2 Enslavement. The federal government allowed and regulated this form of human trafficking until 1808, when the importation of enslaved people was outlawed.[170] By the late 1700s, the Underground Railroad, an organized effort of safe houses and activists, helped transport enslaved people to freedom.[171] Between 1810 and 1850, the Underground Railroad freed an estimated 100,000 enslaved persons.[172]

Around the same time, both the South and the North segregated travelers by race. Frederick Douglass "was often dragged out of [his] seat, beaten, and severely bruised, by conductors and brakemen" when he refused to ride in the Jim Crow car as he rode trains in New England.[173] The federal government supported these segregation efforts, even as some states attempted to desegregate. For example, in 1877, the U.S. Supreme Court *struck down* a Louisiana civil rights law requiring the desegregation of transport as unconstitutional.[174] Decuir, an African American woman, bought a first class ticket on a steamboat, but was sent to the second class cabin because first class was for whites only.[175] The Court overturned a decision from the Louisiana Supreme Court to award legal damages to Decuir based on a state law requiring desegregated transport, holding that Louisiana had no authority to regulate such transport.[176] In 1896, in contrast, the United States Supreme Court explicitly permitted segregation in public transit when it upheld Louisiana's law *requiring* transportation segregation.[177] This history of government segregation set the stage for unequal transportation for African Americans that continues to the present.

At the turn of the century, subsidized by government funds, private companies constructed mass transit systems in America's cities.[178] Until around the 1950s, nearly all transit was built and operated by private companies.[179] Many transit companies struggled to remain profitable in the 1920s, especially after the Depression.[180] The widespread adoption of the automobile combined with white Americans' move to the suburbs, as described in Chapter 5, Housing Segregation, resulted in the companies' financial failure.[181] Public transit systems cut back services as masses of white riders left the system, and never expanded to the suburbs.[182] As government and private actors erected barriers to prevent African Americans from moving to the suburbs, poorer African American workers without cars were left with few public transportation options.[183] When manufacturing and industrial jobs moved from urban centers to suburban or rural areas, urban African American workers were often unable to follow due to lack of transportation options.[184]

In 1968, Dr. Martin Luther King, Jr., described how city planning decisions result in transportation systems that failed African American communities: "Urban transit systems in most American cities . . . have become a genuine civil rights issue—and a valid one—because the layout of rapid-transit systems determines the accessibility of jobs to the black community. If transportation systems in American cities could be laid out so as to provide an opportunity for poor people to get meaningful employment, then they could begin to move into the mainstream of American life."[185]

The federal government has been aware of this failure to support transportation for the African American urban workforce, but has not provided a remedy. In 1968, the report of the National Advisory Commission on Civil Disorders, also known as the Kerner Commission report, studied the causes and effects of riots in U.S. cities.[186] In order to enhance employment opportunities for central-city residents, the report recommended the creation of improved transportation links between African American urban neighborhoods and new job locations in the suburbs.[187]

In the 1960s and 70s, the federal government began providing funding for public transit, and many municipalities took control of transit operations.[188] However, scholars argue that these revitalized agencies built a segregated system.[189] The municipal transit agencies that were created throughout the 70s and into the 80s were designed to be responsive to the demands of the local communities, demands which had often grown "re-segregationist" as a backlash to the Civil Rights Movement.[190] This created transit systems that were

unequal by design. Municipal agencies did not cater to urban riders who relied exclusively on public transit, instead channeling greater resources to entice mostly white suburban commuters who could also choose to drive.[191] This translated to less comfortable seats, unshaded waiting areas, and bumpier, more unpleasant rides for African American users of public transit.[192]

This system continues to operate today. African Americans still rely on public transit to get to work at much higher rates than white workers. African American workers commute by public transit at nearly four times the rate of white workers.[193] Moreover, African American workers on average experience higher commute times than white workers, both nationally and in California.[194] Finally, since most fares are usually flat, low income people pay a higher share of their monthly salary on transit, which is more likely to impact African Americans and other people of color.[195] Due to these government actions, workers relying on public transit, who are more often African American than white, often pay comparatively more money and commute for a longer amount of time if they are able to use transit to get to jobs at all.[196]

In addition to discrimination in the public transit system, as discussed in Chapter 5, our country's highway system destroyed African American neighborhoods and intensified residential segregation by separating African American neighborhoods from white neighborhoods.

Disparities in Telecom

African Americans also face disproportionate burdens with respect to the national telecommunications network. From 1960 through 2010, African Americans have had significantly lower rates of telephone access than white Americans, though this gap has reduced over time as telephone use became more ubiquitous.[197] More recently, fewer African Americans have access to broadband internet access than white Americans.

The town of Lanare, founded by Black families fleeing the Dust Bowl, had no running water until the 1970s. After wells were drilled, the water contained dangerous levels of arsenic. The town's residents had no access to clean drinking water until 2019.

A 2021 study in Indiana revealed that 56.2 percent of African American residents lacked reliable access to internet service and/or a computer, compared to 34.8 percent of white residents.[198] This lack of telecommunications impacts economic and educational opportunities. African American teens are almost twice as likely to report that they cannot complete all their homework due to lack of access to a computer or reliable internet access.[199]

In addition to difficulty accessing the internet, African Americans are disadvantaged by racist structures within it. Dr. Yeshimabeit Milner testified before the California Task Force to Study and Develop Reparation Proposals for African Americans that search algorithms, machine learning, automated resource allocation systems, and even credit reporting agencies are all built by software engineers that are overwhelmingly white.[200] As a result, the implicit biases of these human software engineers have been built into seemingly neutral algorithms and artificial intelligence, with discriminatory effects.[201] For example, in 2016, when Amazon Prime same day-delivery services were introduced in Atlanta, Georgia, virtually 100 percent of white residents were given access to the service but less than half of African American residents did.[202] Similar patterns existed for African American residents of Boston and Chicago.[203]

California

California authorized segregated public transportation at least until 1864.[204] The governments of California and its municipalities have chosen infrastructure projects that have harmed African American communities. While California and federal law require state and municipal agencies to consider racially disparate impacts of infrastructure projects today, the historical damage caused by highways in particular has contributed to higher exposure to air pollution among communities of color as discussed above.

As with the federal government, California's government historically neglected water infrastructure as it applied to African American Californians. One example is California's treatment of African American families fleeing the dust bowl. These families left the prairie states and came to farmland across California starting in the 1930s, experiencing widespread infrastructure discrimination from state and local governments.[205] For example, African American Californians in the San Joaquin Valley were excluded from most urban areas with access to clean water as a result of explicit redlining policies, racially-restrictive housing covenants, and even racially-motivated violence.[206] In Tulare county, the largely African American community of Teviston had

no access to sewer and water infrastructure, while the adjacent white community of Pixley did.[207] Again, this discrimination continued until recently: the town of Lanare, also formed by African American families fleeing the Dust Bowl, had no running water at all until the 1970s, and was subjected to dangerous levels of arsenic in the water even after wells and pipes were drilled.[208] The town's residents did not get access to clean drinking until 2019.[209]

At times, government entities were explicit in weaponizing infrastructure against African American Californians. For example, in the 1950s, a developer in Milpitas, a town north of San Jose, sought to build a large housing development open to both white and African American homebuyers.[210] He managed to overcome several zoning related obstacles only to discover that the Milpitas City Council had increased the sewer connection fee more than tenfold explicitly to thwart the development.[211]

African American neighborhoods in California still suffer extremely high rates of water pollution in the water provided through government infrastructure. In 2019, the *New York Times* reported that as many as 1,000 community water systems in California may be at high risk of failing to deliver potable water, with a disproportionate number of these systems located in low-income areas that tend to be disproportionately African American.[212] California's Environmental Protection Agency has also acknowledged that contamination of water sources disproportionately impacts communities of color.[213]

A UCLA report in 2021 identified 29 failing water systems in Los Angeles County, and these systems largely service communities of color.[214] For example, in 2019, authorities dissolved the Sativa Los Angeles county Water District for servicing brown water for decades to its customers in Willowbrook and the historically African American neighborhood of Compton.[215] In Oakland, the majority African American McClymonds High School has had a history of serious water contamination issues in recent years, from lead pollution to dangerously high levels of chemical solvent groundwater pollution that led to the school's temporary closure in 2020.[216]

Transportation discrimination impacts African American Californians as well. In 1965, the California Governor created the McCone Commission to examine causes of civil unrest in Los Angeles in 1965, identifying "inadequate and costly" transportation as contributing to high rates of unemployment among the African American urban population. California has not designed its transportation system to address this need, often favoring rail options catering to suburbs rather than bus lines used by urban areas with greater African American populations.[217] These choices have led to several high-profile lawsuits, including in Los Angeles and San Francisco in the 1990s and 2000s.[218]

Nevertheless, design of public transit by major municipalities in the state often catered to the largely white suburban residents because they were seen as needing better options in order to "choose" public transit.

For example, Oakland's San Antonio neighborhood, the most racially diverse in the city and one of the densest parts of the Bay Area, sees the Bay Area Rapid Transit (BART) train travel for nearly three miles

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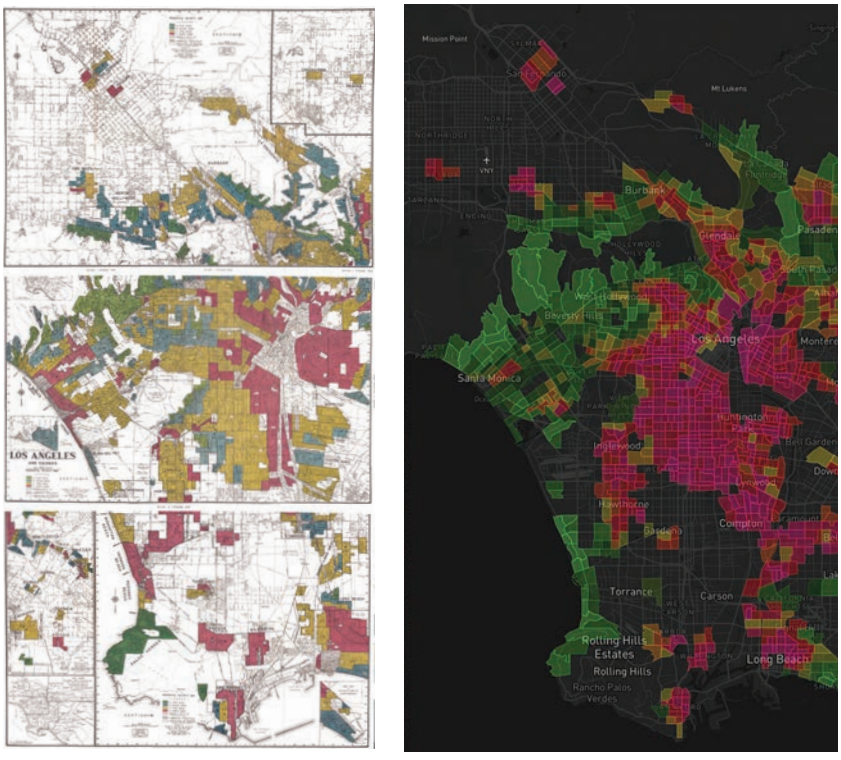

The image on the left shows a redlining map of Los Angeles, CA made by the Home Owners Loan Corporation during the 1930s. The red portions are non-white neighborhoods deemed by the federal agency to be a credit risk. The map on the right shows the Center for Disease Control's Social Vulnerability Index scores for census tracts today. The Social Vulnerability Index is widely used to assess a community's capacity to prepare for, respond to, and recover from human and natural disasters. The red portion indicates the highest level of vulnerability to disasters.

without stopping.[219] By contrast, in suburban Walnut Creek and Pleasant Hill, which are less than half as dense, BART stations are only 1¾ miles apart.[220] In the late 1960s, BART was "literally designed" to hurry white suburban commuters past African American inner-city neighborhoods and residents.[221] This purposeful decision by the government left African American residents without the same transit options to reach jobs, and limited economic mobility and opportunity.[222]

In Oakland, a $484 million elevated "people mover," which connects BART to the airport, lost federal funding because it was found to have a discriminatory impact; its construction led to the elimination of a bus route in the minority neighborhoods it bypasses.[223] But, though the project lost federal funding, it still went ahead, and the Oakland neighborhood still lost its bus line.[224]

Finally, although the disparities between African American and white residents in terms of raw internet

COURTESY OF BETTMANN VIA GETTY IMAGES

Afton, NC– Black and white protesters march against a toxic waste dump in Warren County. The site was chosen because most of its residents were Black and poor. (1982)

access in California is much smaller than nationally,[225] research has shown that African American neighborhoods in both Los Angeles and Oakland had the least investment in broadband internet in those cities.[226]

VI. Conclusion

The various forms of environment and infrastructure-related discrimination suffered by African Americans in this country are rooted in the badges and incidents of slavery that have never been eliminated in this country. African American enslaved persons were released from bondage and forced into unhealthy, dangerous, and overcrowded housing, located in the most toxic areas in our cities, which also lacked proper water and sewage services. Residential segregation and government decisions regarding modern infrastructure development reinforced these patterns throughout the 20th century. African Americans have been denied equal access to telecommunication services, and are increasingly subjected to "algorithms" and other forms of computerized decision making with racist underpinnings and outcomes. These racist systems have harmed and will continue to harm African Americans.

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[126] *Id.* at 8 (noting that "Black and Brown bodies [] can and have also been rendered as trespassers, criminalized, and met by state violence historically and currently when in parks.").

[127] Kang, *supra* at pp. 31-34. One displaced resident put it follows: "When you sit [in] a room full of poor folks on one side and homeowners on the other side, who are trying to bring all of this . . . 'greening' into our areas . . . And I'm saying, Good Lord! We're black, we're not stupid.'" *Id.* at 34.

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[135] Smith, *How Communities of Color are Hurt Most by Climate Change* (June 7, 2021) Forbes (as of Apr. 22, 2022); Chen et al., *Utilizing Smart-Meter Data to Project Impacts of Urban Warming on Residential Electricity Use for Vulnerable Populations in Southern California* (2020) 15 Environmental Research Letters 6, p. 6.

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[137] Tamar Meshel, *Environmental Justice in the United States: The Human Right to Water* (2018) 8 Wash. J. Environmental L. & Policy 264, pp. 270-72.

[138] Mich. Civil Rights Commission, *The Flint Water Crisis: Systemic Racism Through the Lens of Flint* (Feb. 17, 2017) Michigan Civil Rights Commission, pp. 26-27.

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[140] *Id.* at pp. 56-57, 68-69.

[141] Denchak, *Flint Water Crisis: Everything You Need to Know* (Nov. 8, 2018) Natural Resources Defense Council (as of Apr. 27, 2022).

[142] Merrit Kennedy, *Lead-Laced Water In Flint: A Step-By-Step Look at the Makings of A Crisis* (Apr. 20, 2016) NPR (as of Apr. 22, 2022).

[143] *Ibid.*; see also Del Toral, *High Lead Levels in Flint, Michigan – Interim Report* (June 24, 2015) U.S. Environmental Protection Agency (as of Apr. 27, 2022).

[144] Kennedy, *supra*.

[145] *Ibid.*

[146] Kennedy, *supra*; Fonger, *Flint Water Has More Lead than 98 Percent of State, Despite Snyder's Claim* (Mar. 31, 2017) MLive-The Flint Journal (as of Apr. 27, 2022).

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[148] Booker, *Ex-Michigan Gov. Rick Snyder And 8 Others Criminally Charged in Flint Water Crisis* (Jan. 14, 2021) NPR (as of Apr. 27, 2022).

[149] *Ibid.*

[150] Montag, *Water/Color: A Study of Race & The Water Affordability Crisis in America's Cities* (2019) , NAACP Legal Defense and Educational Fund, Inc., p. 7.

[151] Taylor, The Environment and the People in American Cities, *supra* at p. 270.

[152] *Id.* at p. 94.; Montag, *supra* at p. 12.

[153] Taylor, *supra* at p. 94; Montag, *supra* at p. 10.

[154] Taylor, *supra* at p. 94.

[155] *Ibid.*

[156] *Ibid.*

[157] *Id.*at p. 96.

[158] Montag, *supra* at p. 3.

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CHAPTER 8 Pathologizing the African American Family

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A migrant worker from the South and her baby on an Arizona cotton farm. (c. 1940)

I. Introduction

Starting over 400 years ago, the federal and state governments of our country have decimated African American families, both through their own official action and inaction, as well as through creating and supporting systems in which private actors enacted racist policies and practices. After the end of the legal enslavement of African Americans, the apprenticeship system and segregation laws denied African Americans the stability and safety of the family unit.[1] In the past century, both financial assistance and child welfare systems have based decisions on racist beliefs about African Americans.[2]

As a result, these government-run systems have excluded African Americans from receiving benefits and targeted Black families for investigations of child mistreatment and neglect.[3] Further, these structures have placed African American children in foster care systems at much higher rates than white children.[4] Meanwhile, the criminal and juvenile justice systems have intensified these harms to African American families by imprisoning large numbers of African American children, thereby separating African American families.[5] All of these actions have systematically worked to deny African Americans the opportunities to form stable, supportive family structures, and have often further stereotyped and blamed African Americans themselves for resulting harms.

Section III of this chapter addresses the treatment—and decimation—of family structure among African American enslaved persons during the slavery era of American history. Section IV discusses the African American family from emancipation until the Civil Rights Era, during which government structures and policies empowered the continued enslavement of African American children, excluded both African American women and African American men from healthy parenting relationships, and continued to deny the legitimacy—both literal and figurative—of African American marriages and children, so as to ensure white wealth was not dispersed to them. Section V addresses the Moynihan Report, which largely blamed the culture of African American families for the injustices faced by African Americans and proposed deeply problematic solutions to remedy them. Section VI addresses direct cash assistance welfare programs, from their overtly racist origins through modern programs that continue

to systematically disadvantage impoverished African American families. Section VII lays out the history of the foster care and other child welfare systems in America, discussing the myriad ways in which that system further attacked the African American family and denied them resources afforded to other Americans. Section VIII addresses the criminalization of African American youth, who are targeted consistently both within and outside of schools, further breaking families apart. Section IX addresses issues relating to African American victims of domestic violence, who are doubted and excluded from assistance in ways that many white victims are not.

II. Enslavement

Throughout the slavery era of American history, federal and state governments empowered and protected white enslavers in their destruction of African American family structures by treating enslaved people as chattel, unworthy of family love, care, and support.

Enslavers and state governments maintained no records of the origins of enslaved Africans, and replaced their names with those of their new enslavers. This erased their identity, severed them from their family, and made it extremely difficult for them to find each other after emancipation.

The Transatlantic Slave Trade and Reproductive Slavery

As Frederick Douglass observed over 250 years ago, "[g]enealogical trees do not flourish among slaves."[6]

The vast majority of the nearly 400,000 enslaved persons brought over from Africa were children or young adults, and more than a quarter were children.[7] Upon the arrival of enslaved people in the United States, private parties and state governments maintained no records of their origins, replacing their names with those of their new enslavers, names by which they were called throughout their lives.[8] This erased an individual's identity, severed them from their family, and made it extremely difficult for them to find each other after emancipation.[9] See Chapter 2, Enslavement, for more detailed information about this process.

Federal and state governments passed laws that protected enslavers' ability to destroy African American families and use African American women and their children as a way to increase the wealth of enslavers. Before 1662, English law governing the American colonies held that children of enslaved fathers were enslaved, but the child of enslaved women and white male enslavers were free persons upon their birth, thereby entitling them to the full protection of the law.[10] This changed in 1662, when the colonial government of Virginia passed a law stating that all children born to enslaved mothers were enslaved themselves, regardless of whether or not the father was white, African American, enslaved, or free.[11] This law created a new source of wealth as enslavers used these children to settle debts, pass on a larger inheritance, or otherwise enrich themselves.[12] The doctrine underlying this law became known as "partus sequitur ventrem," Latin for "that which is brought forth follows the womb."[13] It was adopted in laws by virtually all other states in which enslavement was legal.[14]

The United States outlawed trafficking enslaved people into the country in 1807.[15] The only legal way to increase the number of enslaved people and free labor for the American economy was therefore through domestic birth of new enslaved persons. This created a financial incentive for impregnating African American women and girls and carrying the pregnancies to term.[16] Historians have found evidence that enslavers raped African American women and forced them to birth children to create more enslaved people and further enrich their enslavers.[17]

Professor Daina Ramey Berry has argued that this sexual slavery served to provide great benefits to both government and private actors within both the southern and northern states.[18] The labor of African American enslaved people created wealth for their enslavers, sustained cotton production and other private industries, and paid state and local taxes across the country.[19] In the North, maritime industry, merchants, textile manufacturers, and even consumers of cheap cloth were all dependent on the southern cotton plantation economy, which was based on the sexual slavery of Black women and men[20] and the destruction of Black families.[21] Professor Berry argues that enslavers focused on the fertility of young African American women during slave auctions, and that early childbirth was considered to be a valuable skill, like housekeeping and clothes-mending.[22] Enslavers considered the birth of enslaved infants

not with humanity, but "appraised" them with a monetary value, one that typically increased as they aged.[23]

Marriage Between Enslaved People

American governments prohibited or did not recognize marriage between enslaved people. Across the southern enslaving states, enslaved persons were generally prohibited by law from entering any legally-binding marriage.[24] Abolitionist William Goodell described the way that American law treated the families of enslaved people in 1853 as: "The slave has no rights. Of course he, or she, cannot have the rights of a husband, a wife. The slave is a chattel, and chattels do not marry. 'The slave is not ranked among sentient beings, but among things,' and things are not married."[25] Tennessee was the only enslaving state that allowed for marriage between enslaved persons, but the law required consent of the enslavers for the marriage to be valid.[26] Because enslaved persons were not considered to be human beings under the law, they could not enter into legal contracts.[27] Therefore, enslaved people could neither own nor transfer property, which is what American law recognized their husbands, wives, and children to be.[28]

The North Carolina Supreme Court in 1858 said: "The relation between slaves is essentially different from that of man and wife joined in lawful wedlock," because "with slaves it may be dissolved at the pleasure of either party, or by the sale of one or both, dependent upon the caprice or necessity of the owners."

Their condition was compatible only with a form of concubinage, "voluntary on the part of the slaves, and permissive on that of the master."[30]

These attitudes and legal mandates were not limited to the South. One notable example is the case of Basil Campbell, who at the time of his death in 1906 was one of the wealthiest African American men in California.[31] He arrived to California from Missouri in 1854 as an enslaved person, forcibly removed from his wife and two children, who never saw him again.[32] After his death, his two adult sons from his marriage in Missouri sued to seek their inheritance, leading three different courts, including the California Supreme Court, to reject their claims.[33] Indeed, one appellate court held—nearly 50 years after the legal emancipation of enslaved African Americans—that describing Campbell's marriage to his enslaved wife as a marriage would make a "mockery" of the institution.[34]

Interracial Marriage

Laws prohibiting interracial marriage, known as anti-miscegenation laws, devalued African American families. The earliest known anti-miscegenation law, passed in 1661 in the Colony of Maryland, stated that a white woman who married an African American man became an enslaved person herself.[35] Other colonies followed suit to prohibit interracial marriage during slavery.[36] However, from slavery through the era of legal segregation, American society accepted white men having sex with African American women—whether consensual or rape—especially when those women were treated as the property of white men.[37] The children of these interracial interactions were typically enslaved and could not inherit their white father's wealth.[38]

Fears of interracial marriage often led to violence. In 1834, a false rumor that abolitionist ministers had married an interracial couple led to 11 days of racial terror in New York City.[39] Mobs attacked a mixed-race gathering of the American Anti-Slavery Society and destroyed African American churches, homes, schools, and businesses, as well as the homes and churches of leading abolitionists.[40] A similar incident occurred in Philadelphia in 1838.[41]

Punishments for interracial marriage varied by state, but in many states prior to the Civil War, white Americans were punished more often than African Americans, at least within the legal system.[42] Scholars have argued that this reflects anti-Black racist attitudes that, depending on the circumstance, African American people were sometimes considered "too irresponsible and too inferior to punish" and "it was whites' responsibility to protect the purity of their own bloodlines."[43] Punishments for African Americans, however, were still severe, including whippings, fines, exile, or even enslavement if they were free at the time of their violation of the law.[44] Although it is unclear how often anti-miscegenation laws were enforced, evidence suggests that they were used to make examples of high-visibility interracial couples, who were considered a threat to public order.[45]

Parent-Child Relationships

Enslavement treated enslaved African Americans as replaceable property, so enslavers separated children from their parents if it was profitable to do so, and sometimes in order to discourage potential rebellion. This was justified by the enslavers in various ways. For example, Thomas R.R. Cobb, a legal scholar who drafted parts of the Georgia legal code of 1861,[46] claimed that the African American mother "suffers little" when her children are stolen from her, since she lacked maternal feelings.[47] Cobb helped write principles of white supremacy into Georgia law, including a provision that presumed African Americans were enslaved unless proven otherwise.[48]

State law legally entitled enslavers to separate enslaved parents and children at any time, and to relocate them at different plantations at the time of the child's birth. In some southern states, approximately one-third of enslaved children were separated from one or both parents.

From their birth, enslaved children were considered property of the enslaver, and therefore enslavers controlled a child's life and upbringing.[49] From the time of birth, enslavers stripped away parental rights, often not allowing the birth parents to choose the newborn's name.[50] Very soon after giving birth, enslaved mothers were expected to return to work and leave their children with extended family members or an older enslaved woman who was assigned the role to watch over children on the plantation.[51] Even if an enslaved parent had some control over their child's life, the enslaver held the highest authority and could make final decisions as to who would take care of the child, what activities they participated in, or whether they would be separated from their family by selling the parent or child to a different enslaver.[52] As a result of many children and parents being separated through chattel sales, orphaned children were often adopted and cared for by friends, extended family, or the enslaved community as a whole.[53] This approach of allowing white strangers, aided by laws and government actors, to take an African American child from their family is echoed after enslavement via the apprenticeship system and by the modern foster care system, as discussed further below.

Enslaved children typically received no formal education and were expected to work as soon as they were physically able, forced to work in the fields as young as eight.[54] They often worked in a similar capacity as the adults, working fields, tending animals, cleaning and serving in their enslavers' houses, and taking care of younger children.[55] State law legally entitled enslavers to separate enslaved parents and children at any time, and to relocate them at different plantations at the time of the child's birth.[56] In some southern states, approximately one-third of enslaved children were separated from one or both parents.[57]

Harriet Mason, an enslaved women forced to separate from her family at age seven, related that she "used to say I wish I'd died when I was little."[58] Members of a family could be separately sold as enslavers fell into debt or wanted to raise profits.[59] In some parts of the South, an African American enslaved person had a 30 percent chance of being sold in his or her lifetime.[60] A quarter of trades of enslaved persons across state lines destroyed a first marriage, while approximately half destroyed a nuclear family by separating immediate family members.[61]

Opponents of slavery, including those in the federal government, recognized how it destroyed the families of

COURTESY OF CULTURE CLUB VIA GETTY IMAGES

The Separation of Mother and Child. (1852)

African Americans. Advocating for the elimination of slavery, U.S. Senator James Harlan of Iowa stated that slavery effected "the abolition practically of the parental relation, robbing the offspring of the care and attention of his parents[.]"[62] Scholars argue that the anguish caused by the threat of family separation coerced enslaved people into working without complaint.[63] The horrors of family separation during slavery were highlighted by abolitionists as a central strategy to enlist people to their cause.[64] Near the end of the slavery era, in the 1850s, some southern states responded to public horror at child separation by passing laws prohibiting the taking of infants from their enslaved mothers.[65] Modern scholars analyzing this development have argued that these laws were not passed out of concern for African Americans, but to assuage public outrage in order to maintain slavery.[66]

Extended Family Kinship Structures

In order to cope with the destruction of their nuclear family, enslaved people created deep, extended supportive relationships with other enslaved people.[67] Some historians have argued that the extended kinship structures of African American enslaved people mirrored similar structures in their native West African homelands.[68] The role of African American grandparents, other extended relatives, and older Black caregivers who were not biologically related took on particular importance,[69] with Black grandmothers often serving as a central figure within a plantation ensuring the care of all children of enslaved parents who were sold to other enslavers, killed, or otherwise removed from their nuclear families.[70] The reliance of Black mothers and African Americans on extended kinship networks was a necessity for mere survival, beginning in the slavery era and continued through legal segregation and other forms of discrimination.[71]

Early African American historians argued that the legacy of slavery created "disorganization and instability" in African American families for generations.[72] In 1899 and again in 1909, prominent sociologist and social critic W.E.B. Du Bois published detailed, fact-driven analyses of African American families, demonstrating the many ways in which a lack of economic means and opportunities after the end of slavery harmed African American families in both the North and South.[73] In 1932, sociologist E. Franklin Frazier argued that African American families had particular difficulty adapting to the drastic changes of the early 20th century due to the way that enslavement destroyed African American families and traditions.[74] As discussed further below, these resulting harms have been used throughout American history to claim that the African American family itself was to blame because it was dysfunctional by its nature.

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Red Cross Relief, drought of 1930-31. African American family of 9. (c. 1930)

III. African American Families from Emancipation to the Civil Rights Era, 1865 to 1960

After slavery, states and private actors continued to discriminate against African American families, particularly with respect to the dominant gender norms of the time. Before the women's liberation movement of the late 1960s redefined the role of women in society,[75] women were expected to take care of children and the home.[76] Only men were expected to participate in the public sphere.[77] For African American women, these expectations imposed impossible burdens. African American women were expected to be mothers and wives, but white society expected African American women to be their servants and workers.[78] African American women attempted to do both, which took a great emotional and physical toll on African American women and, in turn, their families.[79]

For African American men, traditional gender roles dictated that they must dominate and lead, acting as the head of the family.[80] Under these norms of masculinity, society expected men to be stoic figures, enduring all injury without emotion or complaint.[81] These expectations, too, demanded the impossible from Black men, as society expected them to accept the indignities of discrimination without complaint.[82] When Black men responded to discrimination in anger—one of the few emotions society expected of and allowed for men to exhibit—Black men were criminalized and treated as threats, feeding the stereotypes imposed upon them.[83] This, too, has taken a toll on African American men and their families.[84]

Black women were generally precluded from taking public-facing retail jobs or professional secretarial work with traditional nine-to-five work schedules. Instead, typically they were only given opportunities to serve as domestic caregivers and maids, often living in the homes of their white employers and on call at all hours. These domestic service jobs took the individual work of caring and mothering from Black families and gave it to the children of white families, often preventing Black mothers from even living with their children.

African American Parenthood

During this time, prevailing gender norms defined fathers as breadwinners and mothers as caretakers at home.[85] But racial discrimination combined with these gender expectations to place heavier burdens on African American families and African American parenthood. As described in greater detail in Chapter 10, Stolen Labor and Hindered Opportunity, government and private actors discriminated against African American men seeking employment, restricting them to ill-paid menial jobs and limiting their ability to earn income to support their families.[86] At times, this required African American men to direct their children to work to ensure that the family could survive.[87] African American children, therefore, often could not pursue schooling or their own goals and dreams.[88]

COURTESY OF JOHN H. TARBELL/LIBRARY OF CONGRESS/CORBIS/VCG VIA GETTY IMAGES

(1899)

Because discrimination limited African American men's employment opportunities, African American women also had to seek work to supplement the family's income even where white women did not.[89] This required African American women to play the social roles of both men and women, taking care of children and the household while working jobs at the same time.[90] The Freedmen's Bureau, a government agency established to aid the transition of enslaved people to freedom, singled out African American women as subset of poor women who were supposed to work rather than remaining at home.[91] For example, South Carolina Freedmen's Bureau agent John de Forest criticized the "myriads of [African American] women who once earned their own living [who] now have aspirations to be like white ladies and, instead of using the hoe, pass the days in dawdling over their trivial housework[.]"[92]

As a result, a higher percentage of African American married women worked than their white counterparts.[93] This systematically denied African American children the care of their mothers when compared to white children whose mothers could more often choose to stay home and provide care.[94] Later in the 20th century, African American women were generally precluded from taking public-facing retail jobs or professional secretarial work with traditional nine-to-five work schedules.[95] Instead, typically they were only given opportunities to serve as domestic caregivers and maids, often living in the homes of their white employers and on call at all hours.[96] These domestic service jobs took the individual work of caring

and mothering from African American families and gave it to the children of white families, often preventing African American mothers from even living with their children.[97]

Interracial Marriage

Anti-miscegenation laws continued after the end of enslavement. When the Fourteenth Amendment was ratified, it was not considered to prohibit laws banning interracial marriage so long as the laws applied equally to both races.[98] In 1883, the Supreme Court upheld the constitutionality of laws outlawing interracial marriage, and state courts followed suit through the mid-20th century.[99] Members of Congress also tried—unsuccessfully—to ban interracial marriage nationwide through legislative proposals made in 1871, 1912, and 1928.[100] Eventually, a total of 38 states established such laws.[101]

Many scholars argue that the white-dominated state governments passed anti-miscegenation laws to prevent African Americans—enslaved or otherwise—from accumulating wealth, in addition to controlling women's sexuality.[102] In America's earliest days, white colonists were also concerned with possible mixing of African Americans and Native Americans, given that an alliance of both groups might provide sufficient strength to rise against slavery and other forms of economic oppression.[103]

Immediately after emancipation, former enslavers continued to exploit children, both sexually and as a cheap source of labor, through the apprenticeship system. Enslavers refused to free children when their parents were freed, either through apprenticeship laws or through outright kidnapping.

The most direct concern was a passing on of white wealth to interracial offspring through inheritance or probate laws, undermining race-based social stratification.[104] Children of legally-unrecognized interracial marriages were almost always excluded from economic benefits they would have received if their parents were both white.[105] The children were legally considered "bastards," and had no claim to the estates of their biological fathers, nor could the man or woman in such a "void" marriage claim alimony, child support, death benefits, or any inheritance.[106]

White relatives also had a strong motivation to ensure these statutes were strictly and aggressively enforced, since a sibling who might inherit nothing on the death of a married brother or sister could inherit that sibling's wealth by proving that the sibling's spouse was African American, and that the marriage was therefore void.[107] Anti-miscegenation laws continued to deny economic benefits—especially in probate, i.e., a judicial process whereby a will is "proven" in court—to African Americans who would have otherwise received them, since, by operation of law, assets of those who died without wills would be inherited by spouses.[108]

Government officials and white militants enforced bans on sexual intimacy between African American men and white women with particular intensity due to the overlapping aims of maintaining racial hierarchy and policing white women's bodies.[109] The Ku Klux Klan, an all-male group, claimed one of its purposes was to treat white women as the "special objects of [its] regard and protection."[110] Nevertheless, they abused, raped, and mutilated white women who fraternized with Black men.[111]

This also meant that African American men were special targets for violence after any interactions with white women. In Alabama in 1929, for example, Elijah Fields, a 50-year-old African American man, and Ollie Roden, a 25-year-old white woman, were both arrested and tried for violation of the state's anti-miscegenation law, which also prohibited cohabitation.[112] An Alabama jury convicted Fields even though Roden's father testified that he had only asked Fields to drive his daughter, who was incontinent and suffering from open sores, from a hospital to a boardinghouse.[113] The state sentenced Fields to two to three years in prison, although it was later reversed on appeal.[114]

In 1967, in *Loving v. Virginia*, the U.S. Supreme Court finally struck down all anti-miscegenation laws as unconstitutional.[115]

Continued Enslavement of African American Children Through Apprenticeship

The so-called "apprenticeship system" was a system that existed both before and after the Civil War under which state and local governments, through court decisions and agency actions, removed African American children from their families and placed them in the control of white adults who sometimes forced them to work without pay.[116] This system had existed in some form since the late 1700s, including when enslavement of African American children was legal.[117] However, even during the slavery era, it was used to exploit the labor of *free* African American children, including in enslaving

states.[118] For example, records reveal that in 1857 a three-year-old free African American boy named Charles Bell was bound to an apprenticeship in Frederick County, Maryland, until the age of 21, through an agreement between local county officials and Nathanial C. Lupton, which makes no mention of his parents.[119]

Immediately after emancipation, former enslavers continued to exploit children, both sexually and as a cheap source of labor, through the apprenticeship system.[120] Enslavers refused to free children when their parents were freed, either through apprenticeship laws or through outright kidnapping.[121] Former enslavers petitioned state courts to remove African American children from their families based on apprenticeship laws.[122] These laws often allowed former enslavers to gain legal custody of African American children simply by claiming their parents were incapable of financially supporting them.[123] In addition to the trauma of losing a child, African American families often suffered substantial economic harm since farming families relied upon children to assist in agricultural work.[124]

This apprenticeship system controlled African American girls until they were 18 and African American boys until they were 21.[125] Although it is not known precisely how many children were effectively re-enslaved through apprenticeship, scholars estimate that many thousands of children in the South were taken from their recently-freed parents.[126]

Court cases throughout the second half of the 19th century document occasionally-successful attempts of parents to free their children from this form of enslavement, but also reveal the continued success of the system at ensuring that white former enslavers could profit from their continued exploitation of African American children.[127]

In one well-known example, a young Black girl named Elizabeth Turner was apprenticed as a "house servant" at the age of eight, two days after her emancipation.

Southern white people defended the apprenticeship system as benevolent in nature. One Maryland newspaper, for example, described the system in 1864 as being "prompted by feelings of humanity towards these unfortunate young ones."[128] One Texas judge described the Texas apprenticeship system as granting "justice to these children" by placing them in "good comfortable homes" where they would receive "some education."[129]

State and local courts were involved in empowering this injustice. So-called "orphan" courts across the southern states, typically run by pro-slavery judges, bound an estimated 10,000 children of freed African American men and women to these apprenticeships, which for all intents and purposes were an extension of their forced labor under slavery, operating to the benefit of the children's former enslavers.[130] Chief Justice of the United States Supreme

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Photograph shows ten African American children of various ages in a field picking berries. (c.1920)

Court Salmon Chase noted, in an 1867 case, that under the Maryland apprenticeship system "younger persons were bound as apprentices, usually, if not always, to their late masters."[131] This legal dispute arose because, under Maryland law, anyone seeking to apprentice a white child was required to provide an education, and could not involuntarily "transfer" the apprenticed child to another.[132]

However, African American children subjected to apprenticeship were not provided similar rights, and were described as a "property and interest."[133] In one well-known example, a young African American girl named Elizabeth Turner was apprenticed as a "house servant" at the age of eight, two days after her emancipation.[134] She challenged her apprenticeship because of the differences between apprenticeship laws for African American and white children.[135] The Supreme Court held that no African American child could be bound to an apprenticeship without the protections afforded to white children, concluding that "the alleged apprenticeship in the present case is involuntary servitude, within the meaning of...the [thirteenth] amendment."[136]

Although this decision meant freedom for Elizabeth Turner, many southern trial courts ignored Justice Chase's observations, and the re-enslavement of African American youth continued in the South.[137]

Since apprenticeship laws allowed local courts to judge whether African American parents were financially able to raise their children, white former enslavers often easily convinced white judges that the children would be better off placed with them.[138]

Scholars have noted that these attitudes have continued through modern family court and child welfare systems, which continue to apply three presumptions that are racist in practice: 1) that the state knows how to raise African American children better than their parents; 2) that poverty in and of itself prevents parents from raising their children well; and 3) that menial or vocational work, instead of an academic education, is more appropriate for African American youth.[139]

During the New Deal, the federal government had a chance to remedy these abuses but did not. The Fair Labor Standards Act of 1938, a federal law that generally outlawed child labor explicitly carved out agricultural and domestic work, which was then largely done by African American workers.[140] The United States Congress excluded these industries from labor protections, thereby denying African American children the labor protections given to white children.[141] See Chapter 10, Stolen Labor and Hindered Opportunity, for further discussion of related issues.

Impacts of the Great Migration on the African American Family

In the first half of the 20th century, millions of African Americans left the segregated South in search of greater opportunity in urban centers in the North and the West in a phenomenon called the Great Migration, which is discussed in detail in Chapter 1. This was, in part, because these cities already had some existing Black social networks and possibly relatives with whom southern African Americans could connect.[142] Older studies theorized that Black migrants during the Great Migration had disorganized family structures in the South, which they brought with them when they migrated to the North, contributing to higher rates of single parenthood and childbirth outside of marriage.[143] Many African American families sent one parent, northwards or westwards first, with the rest of the family to follow months or years later.[144]

Modern scholarship disputed these conclusions, noting that African American migrants from the South were more likely than African Americans already living in the North to have children living with two parents, married women living with their spouses, and fewer mothers that had never married.[145] They were also less likely than northern African Americans to receive welfare payments,[146] contradicting claims in the Moynihan Report, which is discussed further below, that the higher welfare payments in the North drew migrants from the South.

California

California had an anti-miscegenation statute even as other nearby states did not.[147] In fact, California enacted an anti-miscegenation law in its very first legislative session in 1850.[148] It initially singled out "negroes and mulattos" as the sole group which was prohibited from marrying "whites," following the national trend of disenfranchising African American people from entering into legally-recognized marriages with white Americans.[149] Although the law was based in slavery-era motivations for prohibiting such marriages, other racial groups facing waves of societal discrimination in California were targeted by later amendments to the original law.[150] California legislators exported its ban on interracial marriage to other states: In 1939, California legislators convinced the Utah legislature to add "Malay" to their state's anti-miscegenation law in order to avoid having to recognize marriages between Filipino Americans and white people performed in Utah.[151]

It was not until 1948 that the California anti-miscegenation law was struck down by the California Supreme

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Photograph shows Lavinia Russell Baker and her five surviving children after the lynching of her husband, Postmaster Frazer Baker, and their daughter, Julia, on February 22, 1898. The Post Office and Baker family home was burned and family members were attacked by gunfire as they sought to escape.

Court.[152] At oral argument, in defense of the law, the attorney for Los Angeles County asserted that "it has been shown that the white race is superior physically and mentally to the black race, and the intermarriage of these races results in a lessening of physical vitality and mentality in their offspring" and that "people who enter into miscegenous marriages are usually from the lower walks of both races . . . generally people who are lost to shame."[153]Even after the law was struck down as unconstitutional, the California legislature repeatedly refused to repeal the law.[154] It was not until *11 years* later that the California legislature finally repealed the statute, following consistent pressure from the National Association for the Advancement of Colored People.[155]

IV. The Moynihan Report

Few developments in the past half-century have been as impactful, or arguably as harmful, to America's perception of African American families as the "Moynihan Report" of 1965.

Drafting and Content of the Moynihan Report

In the midst of the civil rights movement, in 1965, Daniel Moynihan, an Assistant Secretary of Labor researching policies as part of the Johnson Administration's "War on Poverty," drafted what was originally an internal Department of Labor Report entitled, "The Negro Family: The Case For National Action."[156] As described in the introduction of the report, one of its goals was to analyze the African American family structure, which Moynihan saw as the fundamental problem underlying the gap in income, standards of living, and education between African Americans and other groups.[157]

The report described numerous ways that the historical legacy of slavery and institutional racism created lasting, harmful effects on African Americans and the African American family.[158] However, while acknowledging the impacts of these historical realities, the report essentially claimed that the high rate of single motherhood in African American families in America was a major reason for the continued failure of African Americans to achieve full and equal access to success in America.[159] It further asserted that such equality could only be achieved by changing the culture of African Americans, and particularly of African American men, who Moynihan claimed had been feminized and rendered inadequate workers through being raised without male role models.[160]

Even when advocating for governmental intervention to assist African Americans, the Moynihan Report still portrayed them as helpless but for the intervention of white Americans, describing what Moynihan called the "pathology" of Black America as "capable of perpetuating itself without assistance from the white world."[161] Although the Moynihan Report relied heavily on scholarship previously published by African American scholars, and linked the poverty experienced by African Americans to the historical traumas of slavery, it also argued that the Civil Rights Act and equality of opportunity would not resolve them.[162]

Instead, the Moynihan Report asserted that "[t]he gap between the Negro and other groups in American society is widening. The fundamental problem, in which this is most clearly the case, is that of family structure."[163] Moynihan argued, for example, that the prevalence of single motherhood in African American families created "a matriarchal structure which . . . seriously retards the progress of the group as a whole."[164]

The overt sexism and gender-stereotyping of the report also dovetailed with existing hostility towards African American women serving as leaders in the Civil Rights movement.[165] Contemporary African American women leaders were outraged that Moynihan explicitly advocated for improved governmental job opportunities for African American men over African American women to ensure male "breadwinners."[166]

Trailblazing advocate Pauli Murray stated that Moynihan's criticism of African American women in the workforce was "bitterly ironic," as criticism "for their efforts to overcome a handicap not of their own making."[167] Murray and others sharply disputed that traditional gender roles could solve African American poverty and racism.[168] Social scientist Donna Franklin argued that the family instability Moynihan focused on was mostly a result of the fact that African American women were hired as maids and child caregivers, while racial discrimination prevented African American men from finding jobs.[169] W.E.B. Du Bois made a similar observation nearly a half a century before the Moynihan Report.[170]

Franklin also noted that the many single mothers in the African American community noted by Moynihan was at least partially due to the fact that adoption services did not accept African American children.[171] As a result, single African American women were forced into motherhood when white women had the option of giving their children up for adoption.[172] During the 1950s, 70

COURTESY OF GOODMAN AND SPRINGER /LIBRARY OF CONGRESS

Unidentified African American Civil War veteran in Grand Army of the Republic uniform with two children. (c. 1900)

percent of white single mothers gave up their children for adoption, but only five percent or fewer of African American single mothers did so.[173]

As Ta-Nehisi Coates wrote, the report helped create "the myth…that fatherhood is the great antidote to all that ails black people."[174]

Ultimately, no national effort resulted from the Moynihan Report. President Johnson called for a White House conference in its wake, which occurred in November of 1965.[175] At that point, the report had engendered so much controversy that Moynihan himself was largely sidelined at the conference, having recently left the administration.[176]

The Contemporary Response of African American Leaders to the Moynihan Report

Largely in response to the Moynihan Report, President Johnson acknowledged the legacy of state-sanctioned slavery and discrimination when he publicly stated, "Negro poverty is not white poverty."[177] Nevertheless, his administration followed that announcement with few meaningful efforts to address disparities of African Americans.[178]

Johnson did, however, convene a group of well-respected civil rights leaders to address African American poverty, which produced a report proposing that the federal government spend billions of dollars to ensure jobs, universal health insurance, and a basic minimum income paid to all Americans, regardless of race.[179] Their approach did not acknowledge that the American government has harmed African Americans in a unique way, since they believed proposals aimed at helping all poor Americans, African American and white, were likely to succeed.[180] Nevertheless, very few of their recommendations ultimately manifested in any federal legislation from the Johnson Administration, or otherwise.[181]

Impacts on Public Discourse and Social Policy

Scholars have consistently criticized the Moynihan Report for blaming the victim.[182] For some politicians and government actors, the Moynihan Report justified a stance that African Americans were unworthy of public assistance because African American culture was to blame for harms resulting from the enslavement and racial discrimination.[183]

Moynihan also suggested that every young African American man should join the armed forces, which would provide African American men with a much-needed "world away from women, a world run by strong men of unquestioned authority, where discipline, if harsh, is nonetheless orderly and predictable."[184] This recommendation was made as American involvement in the Vietnam War was beginning to escalate, at a time in which African American men were underrepresented in the armed forces.[185] Moynihan's analysis and recommendation lead to Secretary of Defense Robert McNamara's "Project 100,000," a program ostensibly designed to allow greater access to the U.S. Military for those who initially failed the qualifications test.[186] Project 100,000 ultimately served as a successful

recruitment tool for Black soldiers in the Vietnam War—40 percent of those recruited were Black, a proportion nearly four times the percentage of African Americans in the general population.[187] Regardless, African American men were more likely to be drafted than white men, further devastating African American families when thousands of African American men died in the war.[188]

Although the Moynihan Report and its central conclusions were immediately controversial and contested, President Johnson adopted its language and central focus in decrying the "breakdown of the Negro family structure" as fundamental to the challenges faced by African Americans.[189] Several high-profile scholars also used the conclusions of the Moynihan Report to argue against the very social welfare programs for which Moynihan had advocated to help African Americans out of poverty. These included Arthur Jensen and Charles Murray—best known for their deeply controversial book "The Bell Curve"—who argued that the wealth gap between African American and white Americans existed because white Americans were more intelligent, a position Moynihan explicitly rejected.[190]

Later scholars argued the Moynihan Report provided grounds for politicians to blame African American single-parent families for their poverty and to deny assistance to African Americans in need.[191] Scholars have noted that Ronald Reagan, as California governor, "exploited" the perception of the single African American mother popularized by the Moynihan report when he coined the term "welfare queen" as part of his larger campaign for limited government.[192] Historians have argued that the Moynihan Report, despite arguing for greater interventions to combat African American poverty, nevertheless influenced the political movement within the federal government in the 1990s to cut welfare programs and impose punitive "welfare to work" training or employment requirements on recipients of cash assistance.[193]

V. The Welfare System: Assistance to Families

Despite the consistent arguments of politicians in the 1980s and 1990s stereotyping African Americans as unfairly taking advantage of government welfare policies, the American welfare system throughout history has actually discriminated against African American women and families, both explicitly and implicitly.

1900 to 1935: State "Mothers' Pensions"

States across America developed centralized welfare systems in the early 1900s to provide economic aid to low-income single mothers taking care of their children.[194] States made support payments every month to ensure a basic standard of living to care for both mother and child.[195] By 1930, all but two of the 48 existing states had created these "mothers' pensions."[196]

Throughout the era of mothers' pensions, Southern states consistently avoided giving aid to single African American mothers.[197] These policies discriminated against African American mothers, despite their greater economic need on average.[198] This approach was in line with southern state officials' administration of federal public works programs; such officials generally argued that African Americans should not need or be given relief so long as menial jobs were available to them.[199] Research has shown that between 1910 and 1920, the states in the South that enacted no "mothers' pensions" were those with greatest percentage of African American single mothers.[200] Similarly, states that had higher African American single motherhood rates were slower to enact such pensions and/or less generous with them when they were enacted.[201]

Both Northern and Southern states also implemented standards that disproportionally disqualified African American women, such as barring unmarried mothers

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African-American family living in crowded quarters, Chicago, Illinois. (1941)

from receiving benefits.[202] Many states across the nation only gave mothers' pensions to widows, thereby excluding unmarried mothers who were more often African American women.[203] Even nominally race-neutral programs were often racist in their administration, since discretion in administering these programs was often left to "line officials (judges as well as county agencies)" who made decisions "to separate the worthy mothers from the unworthy" and about whether to provide benefits at all.[204]

A welfare field supervisor in the 1930s explained that the withholding of welfare payments from African American mothers was to prevent them from staying at home caring for their children and to instead force them into the work place.[205] This reflected the attitude of the white community that African American women should be forced to continue engaging in seasonal labor jobs or domestic service rather than receive any aid.[206]

MOTHERS' PENSIONS RECIPIENTS 1931 BY RACE
A FORM OF GOVERNMENT AID TO NEEDY FAMILIES
Percent receiving funds

A survey of all mothers' pensions across states in 1931 found that 96 percent of recipients were white; only three percent went to African American mothers.[207] All the states of the Deep South—Arkansas, Florida, Louisiana, Mississippi, North Carolina, Tennessee, and Texas—created "mothers' pension" programs, but provided almost no assistance to African American single mothers. Across these seven states in 1931, only 39 African American families received mothers' pensions, compared to 2,957 white families.[208]

1935 to The Present: Federal Aid to Dependent Children and Modern Welfare

In 1935, the federal government passed the Social Security Act, which created a federal program similar to the state mothers' pensions known as "Aid to Dependent Children," later renamed "Aid to Families with Dependent Children."[209] In the 1950s, the federal government established payment programs to help poor Americans, but these programs were administered by state government agents who often denied welfare benefits to African American families by claiming that their homes were immoral, typically because children were born out of wedlock.[210] For example, in 1960 the Louisiana government removed 23,000 children from its state welfare rolls solely because their parents were not married, which was more likely to be the case among African American families.[211]

In response, the federal government prohibited states from denying welfare benefits solely because a child was born to unmarried parents, and required them to decide on a case-by-case basis whether a family was "unsuitable" for welfare and to provide service interventions to such families.[212] Although the intent of this rule, which became known as "Flemming Rule," was to prohibit states from excluding families from welfare assistance by applying broad (and often arbitrary) rules to all recipients, the effect was to push more African American children into foster care.[213] State welfare officials investigated African American families to consider whether to remove their children, often simply because the family was poor.[214] Again, scholars have noted that these policies were in many ways a modern day continuation of the apprenticeship process of removing African American children from their low-income families.[215]

For example, in 1960 in Florida, the largely white state welfare worker staff investigated and challenged the "suitability" of approximately 13,000 families already receiving welfare assistance.[216] Of these 13,000 families, only nine percent were white, even though welfare recipients as a whole were 39 percent white.[217] The State of Florida forced these 13,000 families to choose between their children or their welfare benefits.[218] Based on the racist beliefs that African American women had little maternal connection to their children, state workers expressed surprise that only 168 families agreed to place their children in state care.[219]

In modern times, the welfare system of cash assistance has remained biased against African Americans. In 1996, as part of a public movement against so-called "welfare moms," Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, which created the Temporary Assistance to Needy Families program, a system of federal funds sent to the states.[220] This system awards fixed dollar amounts to each state, but allows them to spend that money how they see fit to achieve federal goals.[221] Those goals include, but are not limited to, providing cash assistance to needy families and ending the dependence of needy parents on government benefits.[222]

This system has allowed states to craft policies that determine who is eligible for assistance, and these state policies tend to disqualify African American families from receiving cash assistance at a higher rate than other racial and ethnic groups.[223] For example, seven states have policies that completely ban individuals with any drug-related convictions from eligibility for cash assistance.[224] As discussed in Chapter 11, An Unjust Legal System, African American

individuals are much more likely than white individuals to be convicted of drug offenses due to discrimination in the criminal justice system.[225] Therefore, these restrictions are more likely to burden poor African Americans.[226] Similarly, 11 states still maintain "family cap" policies that originated in "welfare mom" stereotypes, which deny benefit increases when welfare recipients have another child, and which have disproportionate impacts on African American families that tend to be larger than white families.[227]

One other notable change has emerged in very recent times. Because the law gives states the power to spend federal money on programs other than direct cash assistance, states are motivated to minimize cash assistance so they can spend more on other programs that might otherwise drain state coffers.[228] Over the past 20 years there has been a dramatic reduction in the percentage of federal money spent on cash assistance. In 1997, 71 percent of federal money was spent on welfare benefits nationwide, whereas in 2019 states spent only 21 percent of their federal money on such benefits.[229] Again, African Americans are more likely to suffer from this change, as states with larger percentages of African American residents have tended to spend the least percentage of their federal funds on welfare benefits.[230]

Both during and for many decades after the slavery era, Black children were systematically excluded from orphanages and other resources designed to care for poor children. Instead, some free Black children were placed in charitable housing for homeless or very low-income adults, where they faced abuse and were sometimes "indentured" into forced labor, effectively re-enslaving them.

California

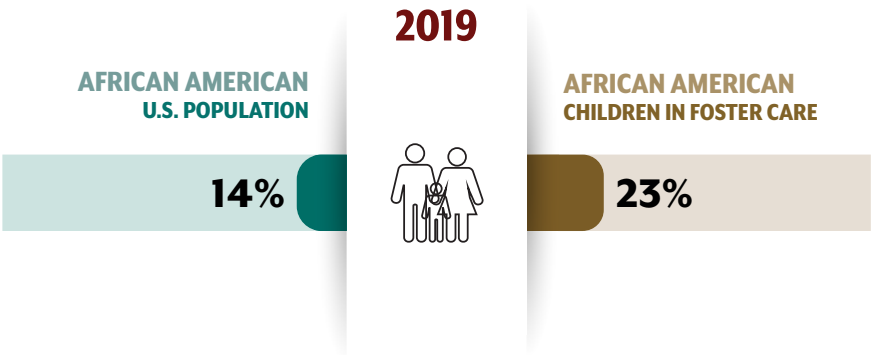
Historically, California provided "mother's pensions" solely to widows, and was thus more likely to give these benefits to white single mothers because of the greater percentage of unwed African American mothers.[231] Moreover, the racist stereotype of "Welfare Queen" was arguably popularized by then-California Governor Ronald Reagan in 1976, who ran for President in part on a promise to cut welfare benefits, as he had done as Governor of California.[232]

Currently, California spends a greater percentage of its federal Temporary Assistance to Needy Families funds on basic assistance than most other states in the nation.[233] However, that percentage has reduced from 51 percent in 2009 to 39 percent in 2020.[234] Advocates and academics note that these reductions disproportionately harm African American families.[235]

VI. Foster Care Systems and Other Forms of Child Welfare

Historically and through today, African American families have faced racism in the child welfare system. After the Civil War, government agencies excluded African American orphans from government care and have consistently been more likely to investigate African American families. As of 2019, African American children "accounted for roughly 14 percent of the child population [but] 23 percent of the foster care population."[236]

The fact that child welfare agencies are more likely to investigate African American families is not because African American parents are more likely to mistreat their children, but rather due to many other factors.237 An official study of the U.S. Department of Health and Human Services found in 1996 that the disproportionality of African American children being taken from their parents and placed in foster care "does not derive from inherent differences in the rates at which they are abused or neglected," but rather reflects the "differential attention" received by African American children "along the child welfare service pathway."[238] Since then, some studies have found slightly higher rates of mistreatment within African American families, but scholars have



observed that these higher rates are due to the fact that African American families are more likely to be poor, and the stresses of poverty correlate with child mistreatment.[239]

Foster Care and Adoption Throughout American History

Both during and for many decades after the slavery era, Black children were systematically excluded from orphanages and other resources designed to care for poor children.[240] Instead, some free African American children were placed in charitable housing for unhoused or very low-income adults, where they faced abuse and were sometimes "indentured" into forced labor, effectively re-enslaving them.[241] Non-governmental African American child welfare organizations were sometimes established to help some African American children rejected from private and public entities that only assisted white children.[242] For example, Pittsburgh's Home for Colored Children was founded after a young Black girl, Nellie Grant, wandered the streets after being rejected from the city's childcare institutions because she was Black.[243]

Scholars have argued that more African American children end up in foster care because adoption services believed that African American children were "unadoptable" due to the preferences of the white families which they served to adopt white children.[244] After governmental child adoption services were officially open to African American children, most were not still given the same opportunities as white families because adoption agencies catered to the preferences of white families.[245] Non-governmental agencies similarly excluded African American children by catering to the private adoption market, which was largely affluent and white.[246] When these adoption institutions failed to place Black children with families, they blamed the children and stigmatized them as "unadoptable."[247]

From 1945 to 1982, the percentage of nonwhite children in foster care rose from 17 percent to 47 percent, with 80 percent of nonwhite children being Black. Scholars have found that racial discrimination exists at every stage of the child welfare process.

State government systems that take children from caregivers believed to be unfit and place them in other environments designed to ensure their safety developed after World War II.[248] From the start, state agencies removed African American children from their families and placed them into foster care far more often than white children. Between the years of 1945 and 1961, the number of nonwhite children in child welfare caseloads almost doubled, increasing from 14 percent to 27 percent.[249]

In 2008, compared to white children, similarly-situated African American children were

77% MORE LIKELY to be removed from their homes

As the modern foster care system developed, various governmental policies have placed African American youth at greater risk of being taken from their families. As discussed above, until the 1950s, poor African American families continued to be denied benefits available to other poor Americans based on federal policies, and then were faced with potential removal of their children into foster care because of "unsuitable" home conditions.[250]

The criminalization of African Americans through the "War on Drugs" also contributed to increasing numbers of Black children being removed from families and placed into the foster care system, as Black men in particular were disproportionately arrested for minor crimes, breaking apart families and often leaving children in the care of extended relatives or strangers.[251] Child welfare agencies tasked with ensuring child safety also often pay particular attention to families experiencing homelessness and housing instability, which African Americans are more likely to experience.[252] Housing instability can also delay the return of a child who has been removed to their family.[253] From 1945 to 1982, the percentage of nonwhite children in foster care rose from 17 percent to 47 percent, with 80 percent of nonwhite children being African American.[254]

Scholars have found that racial discrimination exists at every stage of the child welfare process. State agencies are more likely to be involved with African American families than with white families.[255] African American parents are more likely to be investigated than other families, because neighbors, teachers, and bystanders are more likely to report African American families than white families, likely due to their own racial biases.[256]

When equally poor African American and white families are compared, even where the families are considered to be at equal risk for future abuse, state agencies are more likely to remove African American than white children from their families.[257]A 2008 study found that

African American children were *77 percent more likely* than similarly-situated white children to be removed from their homes as opposed to receiving in-home services.[258] African American children placed in foster care spend more time there, and are less likely to reunify with their families.[259] All other factors being equal, African American parents are more likely than white parents to have their parental rights terminated.[260]

In 2017, the *New York Times* published evidence of racist foster care interventions in New York City in which African American mothers not only had their children taken away, but also faced unfair criminal consequences.[261] One African American woman, who remained anonymous in the article, called emergency services when she went into premature labor, but then realized her boyfriend could not be reached unless she walked to his location.[262] She left her six-year-old-daughter alone at her apartment and walked to get her boyfriend, returning 40 minutes later to find emergency services and police.[263] Immediately after giving birth, she was handcuffed and placed under arrest for child endangerment, and both of her children—including her newborn baby—were placed in foster care.[264] Scholars argue that the refusal of some academics to consider the narrative experiences of African American parents facing foster care interventions such as these echo the arguments of the Moynihan Report.[265]

Consequences of Foster Care Disparities

As a group, children in the foster care system are often subjected to harms as a result of the experience. These children are more likely to be African American.[266] For example, Brittany Clark spent 12 years in state care.[267] At age seven, she was placed as the only girl in a long-term home, during which she experienced physical and sexual abuse.[268] After five years, Clark was relocated and spent the remainder of her time in foster care moving from home to home, encountering individuals who cared more about receiving foster care payments than caring for her.[269] This instability, lack of control over circumstances, and repeated loss of connection harms foster children in compounding and lasting ways.[270]

Foster children as a group—in which African American children are greatly overrepresented—demonstrate various long term negative outcomes when compared to children not involved in the foster care system. Compared to youth nationally, children who age out of foster care are less likely to be employed or employed regularly, and earn far less, than young adults who were not in the foster care system.[271] By age 26, only three to four percent of young adults who aged out of foster care earn a college degree.[272] One in five of these youth will experience homelessness after turning 18.[273] Only *half* will obtain *any* employment by 24.[274] Over 70 percent of female foster youth will become pregnant by 21, and one in four former foster youth will experience Post-Traumatic Stress Disorder.[275]

Children in foster care are also far more likely to be involved with the criminal justice system. Some children taken from their families are placed in correctional facilities, and within this group, African American children were placed in various penal facilities at rates much higher than white children.[276] Approximately 25 percent of children in foster care will become involved with the criminal justice system within two years of leaving foster care, and over half of youth currently in foster care experience an arrest, conviction, or stay at a correctional facility by the age of 17.[277] For children who have been moved through multiple foster care placements, the risk is even higher, with one study indicating that over *90 percent* of foster youth who move five or more times will end up in the juvenile justice system.[278] Foster youth, particularly girls, are targeted by sex traffickers, and the criminalization of sex work can funnel these victims of modern-day slavery into the criminal justice system.[279]

As a result of these severe disadvantages faced by foster youth, some modern scholars have advocated for the abolition of the modern "Child Protective Services" agency, arguing that it is inherently racist and should be replaced with a child protection model that implements policies and procedures designed from the ground-up to exclude racist presumptions.[280]

California

California's Child Welfare system historically exhibited, and continues to exhibit, the same disparities between African American and white families that are discussed above at the national level, generally in even more extreme forms. For example, African American children in California make up approximately 22 percent of the foster population, while only *six percent* of the general child population.[281] Nationally, these percentages are 24 percent and 15 percent, meaning that, in California, African American children are more than twice as overrepresented in foster care when compared to the national average.[282]

Compared to white children in California, African American children are

2x MORE LIKELY to experience a Child Protective Services Event

A 2015 study ranked California among the five worst states in foster care racial disparities.[283] Some counties in California—both urban and rural—have much higher disparities compared to the statewide average. In San Francisco County, which is largely urban and has nearly 900,000 residents, the percentage of African American children in foster care in 2018 was over *25 times* the rate of white children.[284] In Yolo County, which is largely rural and has approximately 200,000 residents, the percentage of African American children in foster care in 2018 was over *8 times* the rate of white children.[285] In 2014, Los Angeles County's Commission on Child Protection issued a detailed report noting widespread failures and shortcomings across the county's child welfare system—failures that fall disproportionately on the overrepresented African American population within that system.[286]

Similar to national statistics, a 2003 study showed that, even when normalizing for other relevant factors like poverty, Black children in California are more likely to be removed from their caretakers and placed in foster care than white children.[287] African American children in California are approximately twice as likely as white children to experience a Child Protective Services investigation, and approximately three times as likely to spend some time in foster care or experience a termination in parental rights.[288]

California youth who enter foster care also consistently exhibit various achievement gaps compared to children not involved with foster care, further worsening disparities for African Americans. By age 24, California foster youth who age out of foster care earn less than half what an average 24-year-old earns nationally.[289] Only 53 percent of foster youth in California graduate high school on time, compared with 83 percent of all youth in California.[290]

California has made some recent attempts to address these dramatic disparities between foster youth and those not in the foster system, though little has been done to specifically target the racial disparities discussed above. In September 2021, California Assembly Bill 12 was passed into law, enabling foster youth to remain in care through age 21 as a tool to help increase foster youth college attendance rates and address some of the negative consequences of youth aging out of care at 18 with no sources of support.[291] In July 2021, California lawmakers approved the first ever state-funded plan to guarantee monthly cash payments to youth leaving the foster system.[292] All University of California, California State University, and California Community College campuses now have foster youth programs designed to provide help and support to former foster youth on their campuses.[293] Explicitly addressing the racial disparity in Los Angeles County's foster care system, the Los Angeles County Board of Supervisors created an "office of equity" within the agency administering the foster care system.[294] It was created, however, with "no proposed budget or more specific mandates on the office in terms of actual services it will provide."[295]

VII. Criminalization of African American Youth

Black youth are more likely to be exposed to the criminal legal system as a result of racism and over-policing.[296] In recent years, these disparities have often gotten worse.[297] In 2018, while African American youth made up 16 percent of the youth population, the rate of arrest of African American youth was 2.6 times that of white youth, and African American youth accounted for 50 percent of all youth arrests for violent crimes.[298]

Once charged with a crime, African American youth are at risk of harsher prosecution, detention, and punishment.[299] African American youth are transferred to adult

COURTESY OF CHARLOTTE BROOKS/LIBRARY OF CONGRESS

Photograph shows children of William and Daisy Myers, the first black residents of Levittown, Pennsylvania riding bicycles on the sidewalk. (1957)

court at a much higher rate than white youth. In 2018, while African American youth only accounted for 35 percent of all cases, they made up more than 51 percent of transfers from the juvenile court system to adult court.[300] African American girls are 3.5 times more likely to be incarcerated than their white peers.[301] African American girls also comprise 34 percent of girls in residential placements, but accounted for 15 percent of the female youth population.[302] A 2016 study found that for youth serving life without parole sentences in the United States, twice as many individuals were African American as white.[303]

Law enforcement and other government agencies across America often treat African American youth as adults, or as less than human, in myriad ways. Research confirms that law enforcement often overestimates the age of African American youth when they are suspected of a felony based on contact with police.[304] One study found that Black boys are perceived as older than they are and less innocent than their white peers.[305]

COURTESY OF NATIONAL YOUTH ADMINISTRATION/NATIONAL ARCHIVES

A photograph taken by the Federal Security Agency. National Youth Administration. The original caption stated: "Oakland, California. High School Youth. Two Negro youngsters look over the shoulders of a couple of fortunate enough to own a model plane. The white boys can hope to become aviators" (1940)

School Policing

In all 50 states, public schools, including elementary schools, employ student resource officers, which often do not go by the title of police.[306] Proponents of school policing have long tied this practice to fears after deadly mass shootings in places like Columbine High School, while some scholars have argued its prevalence is linked to white fear of African American youth under the guise of protecting school children.[307] In either case, over the past several decades the number of law enforcement officers on school campuses throughout the United States has skyrocketed.

In the 2015-16 school year, Black students were arrested at three times the rate of white students, while only comprising 15 percent of the population in schools. This is at least partially explained by findings that Black girls are seen by authorities and teachers as "disobedient" or "disruptive" for similar but accepted behaviors from white children.

In 1975, the number of U.S. schools with police presence on campus was only one percent.[308] By 2016, there were 27,000 school resource officers patrolling U.S. schools, up from about 9,400 in 1997.[309] This equated to sworn officers in approximately 36 percent of elementary schools, 67.6 percent of middle schools, and 72 percent of high schools in the 2017-18 school year.[310] This is at least partially due to a dramatic increase in federal funding for school police.[311] Congress passed the Violent Crime Control and Law Enforcement Act in 1994 to increase federal involvement in school policing and safety.[312] The law provided massive federal aid for policing at the state and local level and in schools.[313]

In the 2015-16 school year, African American students were arrested at three times the rate of white students, while only comprising 15 percent of the population in schools.[314] This disparity widens for African American girls, who make up 17 percent of the school population, but are arrested at 3.3 times the rate of white girls.[315] This is at least partially explained by findings that Black girls are seen by authorities and teachers as "disobedient" or "disruptive" for similar but accepted behaviors from white children.[316]

Moreover, schools have historically disciplined clothing trends popular among African American youth, including "sagging," oversized, and baggy clothes.[317] Police played a role in creating a narrative in schools that sagging was a symbol of gang activity, and school officials proceeded to ban sagging as a way to prevent gang violence, graffiti, and create "safe" environments for kids, thereby further targeting African American youth.[318] See Chapter 6, Separate and Unequal Education, for more information on the so-called "school to prison pipeline."

One in five students in the U.S. will develop mental health challenges that rise to the level of a diagnosis.[319] Yet, around the country, schools are more likely to employ law enforcement than mental health counselors, and

African American students are three times more likely than their white peers to have police in their school but no psychologist.[320] African American male youth with disabilities in the 2015-16 school year had an arrest rate of five times the rate of the whole population.[321]

The Juvenile Justice System

Outside of schools, African American youth face disproportionate harms through various aspects of the juvenile justice system. A 2021 study by researchers from the University of California, Berkeley, found that Black youth in the 10 to 14 age group are injured in police-related incidents at 5.3 times the rate for boys, and 6.7 times the rate for girls, compared to their white peers.[322] The study suggested that especially among African American girls, this disparity could be due to how African American girls are "adultified" compared to white girls and perceived of as older.[323] Scholars have noted similar "adultification" of African American boys, who at 10 years old are perceived as less childlike, less innocent, and four and a half years older than their white counterparts.[324] Because of this perception of African American children as older and less innocent, they are seen as more responsible for their actions than white children who engage in the same behaviors.[325] Both Black boys and girls are also perceived as more dangerous than their white peers, though the magnitude of the bias has been shown to be stronger for boys than girls.[326]

More broadly, as discussed in Chapter 11, An Unjust Legal System of this report, African American youth are more than four times as likely to be detained or committed in juvenile facilities as their white peers.[327] Youth who are stopped more frequently by police are more likely to report feelings such as anger, fear, and stigma, and shame.[328] More invasive stops led to increased feelings of emotional distress and trauma, including posttraumatic stress after the stop.[329] Stress among youth involved in police stops is not contingent on whether they were engaging in any misconduct.[330]

The "War on Drugs" in the 1980s and 90s had an outsized impact on African American youth. White youth use drugs at the same or higher rate as African American youth, but African American youth are disproportionately prosecuted though drug cases in juvenile courts.[331] Again, this was largely enabled by the federal government. In 1990, Congress passed legislation authorizing Department of Defense resources to be used to combat drug activity by state and local agencies, including public schools.[332] In 2014, schools in states such as California, Florida, and Texas reported receiving military-grade equipment through the department's program.[333]

African American youth facing mental health problems or crises are also funneled into the juvenile justice system in ways white children facing similar issues are not.[334] Even when African American youth receive mental health treatment instead of or in addition to incarceration, they are more likely to be inappropriately diagnosed and medicated than their white peers.[335]

Once in the juvenile justice system, outreach to families is inadequate.[336] Police and facility outreach to parents is usually limited to notice that their child has an upcoming court appearance, without more information such as why an arrest was made or the circumstances of their child's confinement.[337] The bail system for youth in the criminal legal system is also deeply flawed. Courts rarely consider what a family can actually afford when setting bail, and bail is regularly set between $100 to $500 for children.[338]

White youth use drugs at the same or higher rate as Black youth, but Black youth are more likely to be prosecuted.

California

The issues discussed above apply to California's history and present treatment of African American youth, although there has been some modern pushback to these approaches.

Recent California Attorney General investigations and settlements with California school districts, e.g., the Barstow Unified School District, the Oroville City Elementary School District, and the Oroville Union High School District are all representative of continued targeting of African American youth.[339] Investigations at these districts showed that African American students were more likely to be punished and/or suspended, and were subjected to greater punishments, than similarly-situated peers of other races.[340]

Other districts have taken proactive steps to change outdated approaches. For example, the Oakland school board voted to remove security officers from schools in June 2020.[341] Before this vote, school officer practices were governed by a policy and procedure manual that described them as having a "calming presence" in the school.[342] The manual also included authorization for officers to restrain students, search students and their property, and even detain individuals if they had reason to believe a crime had been committed.[343] All of these powers,

and the school police enforcing them, have disproportionate harmful impacts on African American students. California-specific research has determined that schools with larger police presences lead to decreased instruction for African American students, likely because police discipline and monitoring contributes to a climate that is incompatible with learning.[344]

Nevertheless, California still allows law enforcement discretion to add youth over the age of 12 to a gang database as long as two of the following factors—under certain limitations and requirements—are found: admission of gang activity, identification of a gang tattoo, frequent identification in a "gang area," any known association with gang members, clothing associated with a gang, arrest for typical gang activity, or display of gang signals.[345] In California, public defenders and youth advocates estimate that police have tracked children as young as 10 for suspected gang activity.[346]

In one high-profile incident related to the policing of African American children, in May 2019, police in Sacramento chased down an African American 12-year-old child who they claimed was asking people to buy goods he was selling, and forcefully detained him while he was calling for his mom.[347] One police officer covered his face with a mesh sack and forced him on the ground with a knee on his back while an officer put a knee on his thigh.[348]

Although African Americans experience intimate partner violence at greater rates, very little academic or practical attention has been paid towards specific interventions or assistance models that are explicitly catered to Black victims.

VIII. Domestic Violence in African American Families

Domestic violence, also termed intimate partner violence, is a significant problem within African American families and communities across the country, and that problem is linked to many of the issues already discussed in this chapter.

Elevated Rates of Domestic Violence

African American women experience intimate partner violence at greater rates, and in more traumatic ways, than other women on average.[349] The U.S. Department of Justice estimated that, in 2000, African American females experienced intimate partner violence at a rate 35 percent higher than that of white women.[350] In 2007, data indicated that African American women victims of intimate partner violence were twice as likely to be murdered by a spouse and *four* times as likely to be murdered by an unmarried partner when compared to white women.[351] Even among victims of intimate partner violence, African American women experience more traumatic forms of violence on average as compared to white women.[352] Moreover, African American men also experience elevated rates of intimate partner violence when compared to white men.[353] Similar patterns exist for African American LGBTQ+ victims of both genders, who experience intimate partner violence at greater rates than white LGBTQ+ victims.[354] Despite these disparities, very little academic or practical attention has been paid towards specific interventions or assistance models that are explicitly catered to African American victims.[355]

Causal Factors

The higher rates of domestic violence in African American families cannot be explained by a single cause. Some scholars have noted that, aside from greater rates of poverty, overcrowding, and other domestic violence risk factors experienced by African American families, African American men have experienced systemic racism throughout American history that, when compounded with traditional gender roles, may contribute to displaced anger, hatred, and frustration toward family members.[356] Throughout American history, African American men have been subjected to racial discrimination in employment (as further detailed in Chapter 10, Stolen Labor and Hindered Opportunity) while society simultaneously tells them that their role is to provide for their families.[357] Scholars have argued that these pressures, which are impossible to reconcile, may lead to expressions of physical violence.[358]

Regardless of the causes of domestic violence, African American women are less likely to seek assistance from social services agencies because of distrust based on the racially discriminatory history described earlier in this chapter.[359]

Evidence shows that this distrust is not misplaced. Government actors in social services agencies and the judicial system have unfairly disregarded African American victims as angry "welfare queens" who are

immune to violence, or violent themselves.[360] These perceptions are further cemented by media portrayals of African American women as aggressive or emasculating.[361] Similarly, African American women already involved with the justice system are less likely to seek help from police because they expect to be disbelieved, based on the extensive histories of racist government actions in supporting violence against African American women as detailed in Chapters 3, Racial Terror, 11, An Unjust Legal System and 12, Mental and Physical Harm and Neglect.[362] Black female victims of abuse are sometimes reluctant to report abuse by Black men to the "white legal system" even when police intervention is appropriate, given their long exposure to inequities within that system for African Americans.[363] As explained by Cecily Johnson, director of strategic initiatives at the Domestic Violence Network, I have been told personally [by a survivor] they can't get help because they don't want their partner to become a statistic . . . . There's a genuine and legitimate fear that if they call the police, their partner could be killed or they, as the survivor, could be killed.[364]

Black transgender women are similarly hesitant to report abuse to the police because they fear being falsely or illegitimately arrested, are particularly likely to be physically or sexually assaulted in prison,[365] and because they are more than three times as likely to experience police violence compared to non-transgender people.[366]

A lack of understanding of the real and well-founded concerns of Black victims of domestic violence, and the distrust of Black victims of police and social services, has consistently been a major challenge among those tasked with helping victims of intimate partner violence, both within California and nationally.

High-profile instances of violence against transgender women, especially when transgender women defend themselves, legitimize these fears.[367]

A lack of understanding of the real and well-founded concerns of Black victims of domestic violence, and the distrust of Black victims of police and social services, has consistently been a major challenge among those tasked with helping victims of intimate partner violence, both within California and nationally.[368]

California

The patterns discussed above exist in California as well as nationally. California has the largest number of domestic violence survivors in the country, and African American women in California are approximately 25 percent more likely than women generally to experience such violence during their lifetimes.[369] Moreover, a report from Blue Shield of California concluded that "Black women in particular . . . experience a significant resource gap after instances of intimate partner violence."[370] These disparities have likely been exacerbated by the COVID-19 epidemic, with significant majorities of Black Californians surveyed saying that they believe the epidemic and its stay-at-home orders both made domestic violence more likely to occur and made it harder for victims of such violence to reach out for help.[371]

Qualitative studies within California have also confirmed that African American Californians perceive poverty, prior trauma, and systemic racism as root causes of domestic violence in African American families.[372] African American female victims in California are also less likely to seek police assistance because they fear police will falsely believe them to be aggressors and arrest them as well.[373]

IX. Conclusion

The destruction, commodification, and exploitation of the African American family has occurred throughout American history, and enriched both private and government actors for generations of white Americans.

The racist and sexist stereotypes created during enslavement to sustain the cotton economy and enrich the entire nation are woven throughout American laws, policies, and government agencies. These racist beliefs tore apart African American families on the auction block during enslavement, justified re-enslaving children through the apprenticeship system, and underlie the continued removal of African American children from their parents in the foster care system. This reality has rarely been recognized, let alone remedied. To the contrary, in the past half-century government actors have blamed African Americans for the harms that have resulted from racist government actions.

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[356] See generally, e.g., Hampton et al., *Domestic Violence in the African-American Community* (2009) 9 Violence Against Women 533, 539; Blassingame, The Slave Community (Oxford University Press 1972); Levine, Black Culture and Black Consciousness (Oxford University Press 1977).

[357] Hampton et al., *supra*, at p. 539; see generally Madhubuti, Black Men—Single, Dangerous, and Obsolete (Third World Press 1990); Staples, Black Masculinity: The Black Man's Role in American Society (Black Scholar Press 1982).

[358] Hampton et al., *supra*, at p. 539; see generally Madhubuti, Black Men—Single, Dangerous, and Obsolete (Third World Press 1990); Staples, Black Masculinity: The Black Man's Role in American Society (Black Scholar Press 1982).

[359] Sumter, *Domestic Violence and Diversity: A Call for Multicultural Services* (2006) 29 J. of Health and Human Services Administration 173, 175-176, 178-179.

[360] Sokoloff & Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender Challenges: Contributions to Understanding Violence against Marginalized Women in Diverse Communities* (2005) 11 Violence against Women 38, 38-64.

[361] Young et al., *Does African American Women's Racial Identity Mediate Gendered Racism on Anticipated Relationship Threat?* (2021) 36 J. of Interpersonal Violence 9749, 9752.

[362] See, e.g., Carbone-Lopez et al., "*Police Wouldn't Give You No Help" Female Offenders on Reporting Sexual Assault to Police* (2015) 22 Violence against Women 1, 1-31.

[363] Manetta, *Interpersonal Violence and Suicidal Behavior in Midlife African American Women* (1999) 29 J. of Black Studies 510, 518; see generally Richie, Arrested Justice: Black Women, Violence, and America's Prison Nation (New York University Press 2012).

[364] Coburn Place, *A Layered Look at Domestic Violence in the Black Community* (as of Mar. 10, 2022).

[365] Harrison-Quintana et al., *Injustice at Every Turn: A Look at Black Respondents in the National Transgender Discrimination Survey* (as of Mar. 10, 2022).

[366] Nat. Coalition of Anti-Violence Programs, *National Report on Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities Released Today* (May 29, 2014) (as of Mar. 10, 2022).

[367] See, e.g., Finoh & Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence* (Jan. 28, 2019) Am. Civil Liberties Union (as of Mar. 10, 2022).

[368] Asbury, *African-American Women in Violent Relationships: An Exploration of Cultural Differences*, in Hampton, Violence in the Black Family: Correlates and Consequences (1987) pp. 86-106; Hampton & Yung, *Violence in Communities of Color: Where We Were, Where We Are, and Where We Need to Be*, in Jenkins & Gullotta, Preventing Violence in America (1996) pp. 53-86.

[369] Blue Shield of California Foundation *Perceptions of Domestic Violence in California's African American Communities: Roots, Prevalence and Resources* (Feb. 2019), p. 11 (as of Apr. 15, 2022) (hereinafter "Blue Shield of California Foundation 2019").

[370] *Id.* at p. 12.

[371] Blue Shield of California Foundation, *Key Insights into the Experiences of Black Californians from a Statewide Survey about COVID-19, Equity, and Domestic Violence* (Apr. 2021) (as of Mar. 25, 2022).

[372] Blue Shield of California Foundation 2019, *supra*, at p. 17.

[373] *Id.* at p. 20.

CHAPTER 9 Control Over Creative, Cultural, & Intellectual Life

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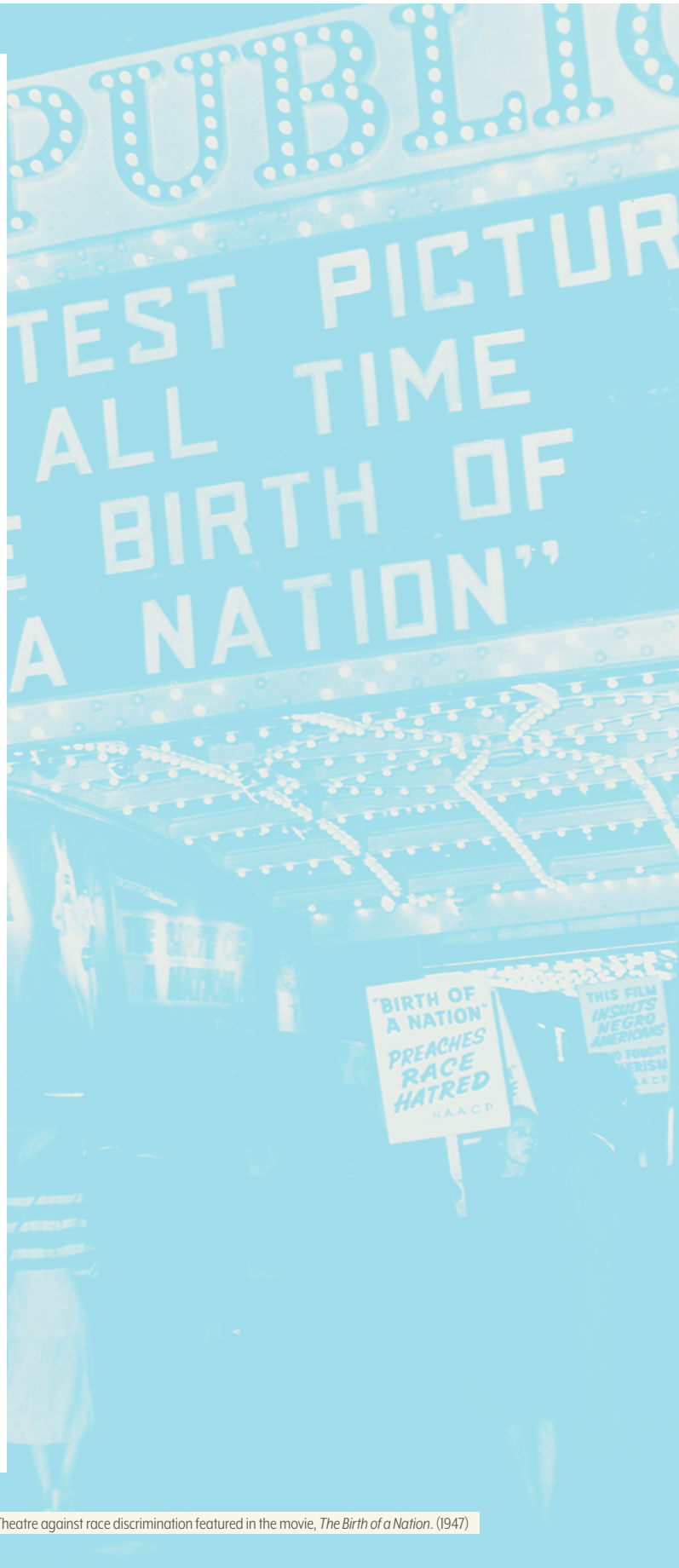


People picketing under the marquee of the Republic Movie Theatre against race discrimination featured in the movie, *The Birth of a Nation*. (1947)

I. Introduction

At its inception, the United States created a series of laws and policies that denied African Americans the ability to create and own art and engage in sports and leisure activities.[1] During the period of enslavement, state governments controlled and dictated the forms and content of African American artistic and cultural production.[2] Following the end of the enslavement period, governments and politicians embraced minstrelsy, which was the popular racist and stereotypical depiction of African Americans through song, dance, and film.[3] Government support of minstrelsy, which was enormously profitable, encouraged white Americans to laugh at, disregard, and reimagine the enslavement of African Americans as harmless and entertaining.[4]

Federal and state governments failed to protect African American artists, culture-makers, and media-makers from discrimination and simultaneously promoted discriminatory narratives. State governments forced African American artists to perform in segregated venues.[5] The federal government actively discriminated against African Americans during wars, and projected a false image of respect for African American soldiers in propaganda.[6] Federal and state governments allowed white Americans to steal African American art and culture with impunity—depriving African American creators of valuable copyright and patent protections.[7] State governments encouraged segregation and discrimination against African American athletes.[8] State governments denied African American entrepreneurs and culture-makers access to leisure sites, business licenses, and funding for leisure activities.[9] State governments memorialized the Confederacy as just and heroic through monument building, while suppressing the nation's actual history.[10] States censored cinematic depictions of discrimination against and integration of African American people into white society.[11] Today, African American artists, culture-makers, presenters, and entrepreneurs must contend with the legacy of enslavement and racial discrimination as they attempt to pursue creative endeavors that empower and uplift African American communities.

Section III describes discrimination against African American artists. Section IV discusses the anti-Black

narratives in American culture. Sections V and VI discuss government censorship and deprivation of intellectual property. Sections VII and VIII discuss discrimination against African American athletes and restraints on recreation by African Americans.

II. Discrimination Against African American Artists and Culture

African American artists have faced intense discrimination and restriction in the United States since the era of slavery. During the period of enslavement, enslaved people faced legal restrictions from many state governments while creating arts, crafts, and engaging in education.[12] Many enslaved people were highly talented craftspeople and artists, including seamstresses and tailors, blacksmiths, woodcutters, and musicians of all types.[13] They fabricated architectural materials, furnishings, musical instruments, such as banjos, and handicrafts, like baskets and rugs.[14] Free African American artists did engage in self-expression during the period of enslavement, however they had to rely on outside resources or wealthy white patrons to support their careers.[15]

Many enslaved people were highly talented craftspeople and artists, including seamstresses and tailors, blacksmiths, woodcutters, and musicians of all types.

Many white enslavers were suspicious of the subversive potential of African American art.[16] After 1730, South Carolina outlawed dancing, drumming, and playing loud instruments by enslaved people for fear that it would incite rebellions—other states enacted similar laws.[17] Concerned that literate enslaved people would incite insurrections, some southern enslavers banned enslaved people from learning to read or write.[18] Enslaved people who were not allowed to read or write, instead, developed traditions of song and dance to pass along subversive messages and resist slavery—and to share routes for escape.[19] Enslaved people created music during the period of enslavement, but they could not capitalize on their creative efforts the way that white people could.[20] Yet, through work songs, call and response, cries, and hollering, enslaved people coordinated labor, communicated with one another, and commented on the oppression they suffered.[21]

African American artists were subject to segregation by custom and by law, enforced by state and local governments.[22] African American musicians were forced to join segregated local chapters of professional musician associations, which were segregated due to racism in the music industry.[23] They were prohibited from employment in city symphonies, radio stations, and clubs outside of segregated African American neighborhoods—due to racist employers, unions, and police enforcement of segregation.[24] Concert venues were often segregated due to racist customs.[25]

African American musicians were subject to arbitrary, racist rules.[26] They could not make eye contact with white Americans who were usually standing right in front of the stage, while African Americans were confined to balconies.[27] African American musicians also could not stay at many hotels, were banned from restaurants, and were often served rotten food at others.[28] Such customs were enforced by state and local police.[29] African American artists who challenged segregation were met with violence—for example, a musician in Georgia was brutally beaten for refusing to say "sir" in response to a white man's question at a concert in 1951.[30] African American artists were driven from white towns in the south, barred from performing, and chased by white people brandishing guns.[31] An interracial all-woman jazz group performed at some integrated concerts, but were occasionally turned away and even jailed.[32] Consequently, governments failed to investigate or prosecute racist violence against African American artists.

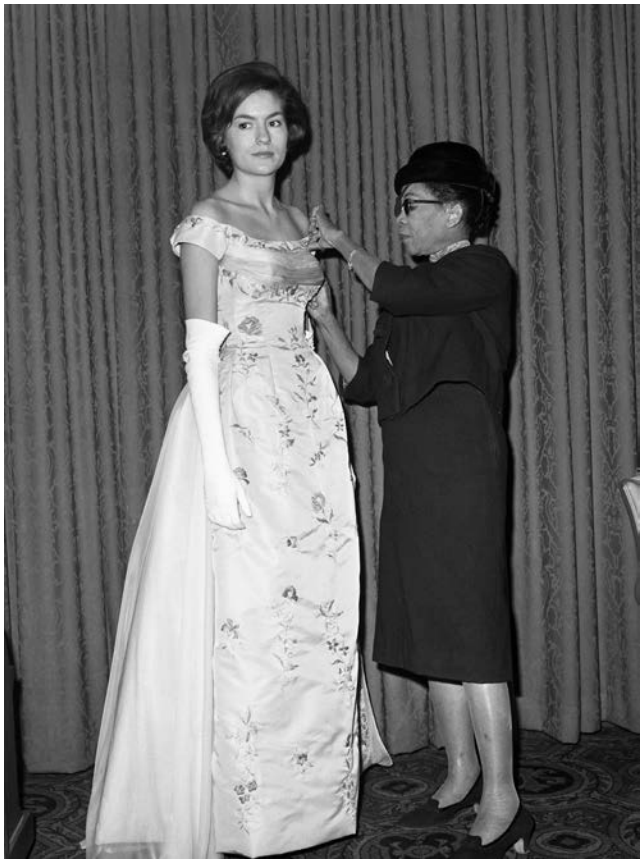
African American sacred spirituals, hymns, gospel music, and freedom songs deeply influenced 20th-century American popular music.[33] Many acclaimed and influential American musical artists began their careers in African American church choirs.[34] African American churches birthed gospel music—sound rooted in spirituals sung during slavery, integrated with chanting, clapping, and group participation.[35] Gospel choirs began broadcasting on public radio stations and church memberships grew to thousands.[36] Much of the music of the civil rights movement was inspired by gospel and congregational hymns.[37]

Despite creating and innovating styles of music, such as blues, gospel, rhythm and blues, soul, jazz, rock and roll, and disco, African American musicians and artists suffered

from limited opportunities for financial success.[38] White artists appropriated and profited from African American music.[39] For example, under the 1909 copyright act, a record could be covered only after obtaining a license from the original artist.[40] However, many African American musicians' contracts robbed them of these copyright protections.[41] This led to a licensing regime that prevented African American musicians from gaining financial success.[42] African American musicians recorded music on "race records," which were played on segregated radio stations and marketed only to African Americans.[43] During the 1920s and 1930s, African American musicians were subjected to contracts where the copyright for their work would be assigned to their employer, while being paid less than white musicians who had similar contracts.[44] For example, Elvis Presley imitated African American blues and R&B singers, and due to these exploitative contracts, the original song creators whose work he appropriated were not even paid for the use of their music.[45] One of Elvis' hit songs, "*That's All Right Mama,*" was originally written and recorded by Arthur Crudup, an African American man who was paid so little for his recordings that he had to work as a laborer selling sweet potatoes.[46] This type of appropriation was so pervasive that many Americans did not understand that these art forms were invented by African American artists.[47] The federal government neglected to take action to protect African American artists from financial exploitation.

Many white enslavers were suspicious of the subversive potential of Black art. After 1730, South Carolina outlawed dancing, drumming, and playing loud instruments by enslaved people for fear that it would incite rebellions—other states enacted similar laws.

COURTESY OF BETTMANN ARCHIVE VIA GETTY IMAGES



Black fashion designer, Ann Lowe, adjusting the bodice of a gown she designed, worn by Alice Baker. (1962)

African Americans have historically been discriminated against by governments and employers for their fashion, hair, and appearance through criminalization and fines.[48] The United States Army did not allow African Americans to wear their hair in locs (locks, dreads, or dreadlocks) until 2017.[49] African American women in the army had been forced to straighten their hair with chemicals or hot irons, wear expensive and uncomfortable wigs, or cut their hair off to abide by the army's hair regulations.[50] Many states passed laws that prohibited sagging clothes in public places, and instituted a significant fine or jail sentence if an individual was caught sagging pants.[51] Sagging originated from hip-hop culture, and sagging laws target African American boys and criminalize African American adolescent fashion, inviting police to intrude in African American life.[52] In 2007, Shreveport, Louisiana passed a law banning sagging, resulting in African American men accounting for 96 percent of those arrested for sagging.[53] Schools have removed African American students for hairstyles that have violated their dress codes.[54] An African American student at a Texas school was told that he could not attend his prom because his locs were too long.[55] The CROWN Act, which stands for Creating a Respectful and Open World for Natural Hair, would prohibit discrimination based on hair texture or hairstyle.[56] While this act has been introduced in Congress, as of March 2022, it has not been passed.[57] As of 2021, only 13 states have passed versions of the CROWN Act.[58]

Many African American fashion designers who were influential in American fashion history, whose clients included first ladies and government officials, suffered from racism that was supported by federal and state governments.[59] Elizabeth Keckley was an African American woman and fashion designer who dressed the first lady, Mary Todd Lincoln.[60] Keckley was born an enslaved person and suffered violence and sexual assault from white enslavers.[61] Keckley worked as a seamstress for several years, attempting to raise money to pay back the loans

she used to purchase her freedom.[62] She faced legal restrictions in establishing her business—including the requirement that a white man vouch for her freedom.[63] Ann Lowe was an African American woman and fashion designer, who designed the wedding dress Jacqueline Bouvier wore when she married Senator John. F. Kennedy along with many other gowns for an exclusive clientele.[64] Lowe worked as a seamstress with her mother on a plantation in Alabama and later made dresses for wealthy white women in the South.[65] She could not get credit or rent a workspace in the business district in the South, and was forced to operate out of a segregated neighborhood.[66] Ann Lowe did not receive recognition in the fashion industry, despite her well-loved designs.[67]

Rap music, one of the most culturally potent and commercially successful forms of African American expression in the latter half of the 20th century, has been criminalized by federal, state, and local governments.[68] By the late 1980s, rappers were unable to book performances and were being subjected to intrusive searches and surveillance.[69] Rap lyrics and videos have been used in criminal trials to associate Black artists with crimes and to prove the substance of threats or incitements to violence during trial and sentencing.[70] One scholar found hundreds of cases in which rap lyrics have been used as evidence in criminal prosecutions.[71] Writing rap lyrics and making rap music videos has led to African American students being disciplined.[72] In *Bell v. Itawamba County Sch. Bd.* (2015), the U.S. Court of Appeals for the Fifth Circuit stated that a school could discipline a student for a rap music video he made off-campus, after learning that two white teachers allegedly sexually harassed several African American students.[73]

COURTESY OF BETTMANN ARCHIVE VIA GETTY IMAGES

Hattie McDaniel with her Academy Award. At the awards ceremony she was forced to sit at a separate table because the hotel in which it was held did not allow Black people into the building. (1940)

Law enforcement agencies and local governments have attempted to chill or criminalize the sale of rap albums based on their content, sometimes cancelling rap performances outright.[74] For example, law enforcement agencies attempted to suppress the music of Compton rap group N.W.A.'s 1988 debut album, "*Straight Outta Compton*," and particularly their song "*Fuck Tha Police*."[75] In 1989, the Assistant Director of the Federal Bureau of Investigation Office of Public Affairs sent a letter to the distributor of the album, criticizing the group's lyrics regarding law enforcement and making the record label "aware of the FBI's position relative to this song and its message."[76] Law enforcement officials have attempted to prohibit record stores from selling rap albums to minors.[77] During a 1989 N.W.A. concert in Detroit, law enforcement in the crowd, which reportedly contained 200 police officers, rushed the stage and ended the concert early.[78]

California

In California, city governments decimated thriving African American neighborhoods with vibrant artistic communities.[79] California theaters denied entry to African American patrons.[80] In 1876, Charles Green, a African American man, was explicitly denied entry into the Maguire's New Theater in San Francisco.[81] The theater owner was sued by the U.S. Attorney but a jury acquitted him after the judge excluded evidence.[82] Decades later, from the 1930s to 1960s, Black projectionists and other movie house workers fought for employment and equal wages at movie houses—striking, negotiating, and picketing in the face of violent confrontations with local police.[83] In San Francisco, African American artists had limited opportunities due to segregation.[84] The bassist, Vernon Alley, described "the time in San Francisco when black bands couldn't play east of Van Ness Avenue, and that's true. I was a part of it."[85] Alley stated that white musicians' unions fought against African American musicians who attempted to play in downtown San Francisco.[86] Many African American musicians struggled to make a living by playing behind curtains for tourists or out of sight at strip clubs.[87] Consequently, the state openly

allowed segregation and discrimination against African American musicians, workers, and artists.

African American Californians continue to face discrimination in the television and film industries in California. In 1940, when Hattie McDaniel became the first African American actor to receive an Academy Award, she was forced to sit at a separate table because the hotel in which the awards ceremony was held did not allow African American people into the building.[88] Today, research has shown that Hollywood studio executives associate casting African American actors with financial risk.[89] In a vicious cycle, Black-led projects are characterized as economically inviable; therefore, they are underfunded, despite earning higher returns.[90] African American actors face a lack of opportunity and African American people are underrepresented in top management in the film and television industries, as well as in off-screen talent in Hollywood.[91] The state has failed, overall, to adequately engage in civil rights enforcement in the motion picture industry.

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For a brief period in the 1940s and 1950s, the Fillmore neighborhood in San Francisco was home to a vibrant African American community and referred to by locals as "the Harlem of the West."[92] The Fillmore was home to a vibrant African American jazz scene, social clubs, and was an important cultural hub.[93] In the 1950s and 1960s, the City of San Francisco tore down Black-owned jazz clubs and businesses and built an expressway through the district in the name of "redevelopment."[94] (See Chapter 5 on housing.)

In the 1930s and 1940s, the zoot suit, a particular style of suit with a long coat and loose pants, became an icon of resistance against assimilation for communities of color.[95] The increase in migration of Mexican Americans and African Americans to Los Angeles resulted in the growth of interracial communities of color, which were targeted by the Los Angeles Police Department.[96] To confront the dehumanizing social and economic conditions imposed by the wartime political economy, local officials, and the mainstream press, the zoot suit became a symbol of resistance for those who wore it.[97] However, in the eyes of state officials and law enforcement, the zoot suit and those who wore it were labelled as criminal and hypersexual.[98]

African Americans in Los Angeles were victims of the mob violence and criminalization by local police that preceded and followed the Zoot Suit Riots of Los Angeles.[99] In June 1943, the Zoot Suit Riots of Los Angeles stemmed from tensions between white servicemen at the new Naval Reserve Armory and local Mexican American youth.[100] Violence broke out as gangs of white sailors attacked brown and African American youth in zoot suits.[101] On the worst day of the violence, white soldiers and civilians poured into Los Angeles and attacked the African American neighborhoods of Watts, as well as other neighborhoods around Los Angeles.[102] All 94 nonwhite civilians who were seriously injured were arrested by the Los Angeles Police Department, compared to only two of the 18 white servicemen who participated.[103] The police arrested and jailed Mexican American and African American victims of the mobs rather than the white sailors.[104] The Los Angeles Police Department engaged in preventative enforcement based on racial profiling, targeting African Americans among other communities in Los Angeles.[105] Law enforcement efforts to publicize crackdowns on youth resulted in hundreds of arrests in the summer of 1942.[106] This show of force was designed to reassure white middle classes that wartime police forces could maintain law and order by rounding up innocent youth of color, many of whom were African American.[107]

Local governments in California have discriminated against, punished, and penalized African American students for their fashion, hairstyle, and appearance.

COURTESY OF BETTMANN ARCHIVE VIA GETTY IMAGES

Watts, California- Armed with clubs, pipes and bottles, this self-appointed posse of uniformed men was all set to settle the Zoot Suit War when the Navy Shore Patrol stepped in and broke it up. All 94 nonwhite civilians who were seriously injured were arrested by the Los Angeles Police Department, compared to only two of the 18 white servicemen who participated. (1943)

In March 2018, at Tenaya Middle School in Fresno, school officials pulled an African American student out of class for a haircut with shaved-in designs.[108] They cited a dress code policy and separated him from other students.[109] They also prevented him from going to lunch and gave him extra work to complete.[110] In 2015, an African American biracial student was not allowed to attend school in Clovis because his hair was too long, in violation of the school dress code.[111] The student was given a warning, a subsequent lunch detention, two hours of after school detention, a four-hour after school detention, and three additional unofficial violations.[112]

Historically, state-funded California museums have excluded African American art from their institutions. In 2019, the Los Angeles Museum of Contemporary Art began an informal audit of its collection to increase the representation of African American Artists.[113] In 2020, the museum announced a list of new acquisitions that included African American artists such as Lauren Halsey, LaToya Ruby Frazier, and Senga Nengudi.[114] The University of California, Los Angeles's Hammer Museum engaged in a similar audit. In July 2020, the longest tenured curator at the San Francisco Museum of Modern Art resigned after stating that he did not believe in discrimination.[115] The resignation was related to a larger problem at the museum with respect to racial equality.[116] The museum's staff is only four percent African American and employees report that key leadership positions are dominated by white Americans.[117]

California has also criminalized African American rap artists. Los Angeles law enforcement leaders had been targeting rapper Nipsey Hussle's businesses, before and after his death in 2019—alleging gang activity and stopping hundreds of people in a predominantly African American neighborhood, while making very few arrests.[118] For over 20 years, California courts allowed rap lyrics to be used as evidence related to street gang activity.[119]

III. Anti-Black Narratives in Arts and Culture

The federal government has produced and promoted anti-Black narratives through a series of racist and white supremacist cultural projects across time, beginning with minstrelsy. Minstrelsy was a performance of "Blackness" by white Americans in exaggerated costumes and black make-up, known as blackface.[120] White Americans distorted the hair and facial features of African Americans and demeaned their language, accents, mannerisms, and character.[121] The first minstrel shows were performed in the 1830s in New York by white people with blackened faces and torn clothing.[122] These performances depicted African Americans as lazy, ignorant, superstitious, hypersexual, and criminal.[123]

The minstrel performance became a cross-generational racial parody and stereotype made for white amusement. The performance of minstrelsy relied on racist stereotypes that dehumanized African Americans. This dehumanizing allowed white Americans to secure their own positive identity.

In 1830, Thomas Dartmouth Rice created the popular blackface character, "Jim Crow."[124] By 1845, the minstrel show led to the creation of a whole entertainment industry that thrived on prejudicial stereotypes against African Americans.[125] Blackface minstrelsy grew after the end of the Civil War alongside racial hatred, and the legal segregation laws that proliferated across the country after the end of the war took their name from this primary character in minstrel shows.[126] Minstrel performances eventually expanded beyond the stage and entered radio and television airwaves, as well as movie theaters.[127] The minstrel performance became a cross-generational racial parody and stereotype made for white amusement.[128] The performance of minstrelsy relied on racist stereotypes that dehumanized African Americans.[129] This dehumanizing allowed white Americans to secure their own positive identity.[130] Minstrelsy repeated and entrenched this dehumanization into national and local American culture.[131] Watching and engaging in demeaning depictions of African Americans, like blackface performances, was even a common pastime for U.S. presidents.[132]

The federal government endorsed dehumanizing narratives of African Americans as violent and propagated white supremacist narratives of the Ku Klux Klan as saviors of the nation through the medium of cinema. *The Birth of a Nation,* which bore its origin title *The Clansman,* for its first month of screenings, is an unapologetically racist 1915 silent film directed by D.W. Griffith.[133] The film, which premiered in Los Angeles at Clune's Auditorium, takes place between the Civil War and Reconstruction.[134]

Essentially a powerful propaganda tool, it glorifies the rise of the KKK, the white supremacist terrorist group, and depicts them as white saviors attempting to "restore order" to the nation.[135] Woodrow Wilson had the film shown at the White House—a federal government endorsement of white supremacy and anti-Blackness.[136]

From the silent film era through the 1950s, the U.S. Department of Agriculture (USDA) was an important filmmaking agency in the federal government.[137] The films produced by the USDA reinforced problematic racial stereotypes against African American communities.[138] USDA motion pictures supported separate-but-equal laws and customs.[139]

Government war propaganda during World War II employed the strategic use of motion pictures as war propaganda.[140] This propaganda achieved two intertwined objectives, a false image of American democracy and the reinforcement of racist stereotypes about African American people.[141] The Office of War Information, a government censorship agency, blocked racial depictions of discrimination against nonwhite people to show a falsely ideal racial democracy.[142] The Office of War Information also approved blackface and jokes perpetuating and relying upon Black stereotypes.[143]

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Federal and state governments have constructed racist monuments on state property and altered school curriculum—glorifying slavery and white supremacy, perpetuating the "Lost Cause" myth, and erasing African American history.[144] State and local governments have collaborated with the United Daughters of the Confederacy, which seeks to memorialize and preserve Confederate culture for future generations,[145] to memorialize the "Lost Cause" myth—that the rebels were patriots and not traitors to the nation.[146] Organized and systematic efforts to manipulate and distort the nation's history—began immediately after the end of the Civil War.[147] These included erecting Confederate monuments, many of them placed on courthouse grounds; naming schools, streets, and military bases after Confederate officers; and lobbying Congress for holidays.[148] The construction of these monuments coincided with a historical period in which increased racial terror through lynching and violence against African American people was at an all-time high.[149] (See Chapter 3 on racial terror for more information.) Monument construction has coincided with moments in which African American communities seem to gain some political power or voice.[150] The Supreme Court ruling of *Brown v. Board of Education*, which declared segregation unconstitutional, and the civil rights movement triggered another wave of Confederate monuments across the country.[151]

COURTESY OF BETTMANN ARCHIVES VIA GETTY IMAGES

Little Richard protesting record companies over royalties. Little Richard sold the rights to the song "Tutti Fruity" for a reported $50, and received half a cent for each record sold. "I was a dumb black kid and my mama had 12 kids and my daddy was dead," Little Richard reportedly said, "I wanted to help them, so I took whatever was offered." (1984)

Federal and state governments have enacted laws to protect Confederate monuments and other monuments to white supremacy.[152] Alabama, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia recently enacted these laws between 2012 to 2017.[153] In 2009, the U.S. Supreme Court also protected government monuments from free speech challenges in *Pleasant Grove City v. Summum*—a protection that includes Confederate monuments.[154]

African Americans were denied access to the mainstream media for much of American history, due to segregation and racism.[155] Since the 2000s, many newspapers have apologized for blatantly racist news coverage

that they have engaged in for over a century-long period that encompasses the slavery era to today.[156] Consequently, African Americans formed their own media—the African American press.

Freedom's Journal was one of the first of many subsequent African American newspapers and publications that would be formed throughout the United States.[157] These publications advocated for community cohesiveness, demonstrated racial pride, and challenged legislation.[158] The staff members of small, struggling African American publications often risked their lives to refute white supremacy in the news.[159] Ida B. Wells was a journalist for the Memphis weekly known as *The Free Speech*.[160] She conducted investigations, finding that mobs regularly lynched innocent victims as part of a racial terror regime.[161] This was work that should have been done by federal and state law enforcement agencies. She found that the African American men who were charged with raping white women were often involved in consensual relationships with them.[162] After she published her findings in an editorial, a white mob destroyed *The Free Speech*, suffering no legal consequences.[163] African American newspapers like *The Baltimore Afro-American*, *The Chicago Defender*, and *The Pittsburgh Courier* served as a corrective to the lies of the white press, and advanced the early civil rights movement.[164]

African Americans were often invisible in white press and mainstream media, unless they were alleged to have committed crimes.[165] They were often denied courtesy titles such as Mrs. and Mr., which were given to white Americans.[166] When African Americans were cast in television shows, they acted out narratives crafted by white Americans that pigeonholed them in roles as domestics, criminals, brutes, or lazy and deceitful.[167] In 1945, John H. Johnson established *Ebony* magazine—one of the first magazines to be founded by and operated for African Americans.[168] *Ebony* highlighted historical figures who had been left out of textbooks.[169] The magazine also worked with corporations who sought to advertise to African American communities.[170] In 1979, Robert Johnson (no relation to John H. Johnson), a cable industry lobbyist, started a television channel called Black Entertainment Television (BET).[171] By the 1990s, he sold BET to Viacom for $2.3 billion, making him the first African American billionaire in U.S. history.[172]

American television has a sordid history of creating television shows and series that reinforce racism against African Americans and are written, conceived, and produced by white Americans.[173] White Hollywood has been complicit in the racist practices that thwarted African American freedom struggles.[174] The first African American sitcom originated from a radio program called Amos 'n' Andy, in the 1940s, in which two white men portrayed African American characters.[175] According to testimony by Dr. Darnell Hunt before the California Task Force to Study and Develop Reparation Proposals for African Americans, "[C]rime procedurals were found to routinely glamourize policing and to legitimize the criminal justice system, while downplaying the degree to which African Americans are racially profiled and victimized by both." This finding is particularly alarming given what we know about the normalizing effects of media, about the potential for media, in this case, to condition police officers, prosecutors, juries, judges, and/or vigilantes to perceive African American bodies as a threat, and police violence against them as justified."[176] This is important because, as Erika Alexander stated in her testimony, "[s]tory is the conduit to our mind, but once the seed is planted, it is the quickest way to our heart."[177]

The television industry was almost entirely white for many of its initial decades.[178] African American writers and actors in the 1970s faced exclusion at nearly every turn.[179] Television executives held the racist presumption that white writers could write for any audience, but African American writers only could contribute to African American shows.[180] The African American screenwriters who are employed by mainstream television networks are often tasked with crafting stereotypical narratives of African American people and story lines that are acceptable to white producers, studio executives, and viewers.[181] In 2005, the gap in median annual salary between white and African American writers in the television industry was nearly $15,000.[182] According to a 2017 survey of the television industry, 91 percent of shows are led by

Ida B. Wells was a journalist for the Memphis weekly known as The Free Speech. She conducted investigations, finding that mobs regularly lynched innocent victims as part of a racial terror regime. This was work that should have been done by federal and state law enforcement agencies. She found that the Black men who were charged with raping white women were often involved in consensual relationships with them. After she published her findings in an editorial, a white mob destroyed The Free Speech, suffering no legal consequences.

white creators and producers.[183] Only 1.3 percent of U.S. full-power commercial TV stations were Black-owned in 2019.[184] African Americans are largely underrepresented in the entertainment industry.[185] While they comprise 12.4% of the general population in 2020, African Americans only constituted 3.9% of major studio heads, 6.8% of network CEOs.[186] They comprised 4.5% of broadcast show creators, and 7.4 % of digital show creators for the 2019-2020 season.[187] Federal and state governments have neglected to address the anti-Black discrimination in the entertainment industry.

The buying practices of radio advertisers in the U.S. have been characterized by the Federal Communications Commission (FCC) as racially discriminatory—minority broadcasting stations earn 63 percent less than other stations with comparable market shares.[188] Despite this, the FCC has failed to enact regulations to protect African American radio stations and media businesses.[189] Of the 11,000 commercial radio stations across the country, fewer than 180 are owned by African Americans—about 1.6 percent of the total.[190] Carole Cutting is an African American radio station owner who started a jazz station in 1999 in Springfield, Massachusetts—where there were no Black-owned radio stations.[191] She went through a 15-year legal battle to be able to finally get her broadcast license and is the only African American to own a commercial radio station, AM or FM, in New England.[192]

In 2020, the National Association of Black-Owned Broadcasters called on Congress to pass a bill that would reinstate a tax incentive to encourage people to sell radio stations to members of minority communities and women.[193] The legislation would bring back a tax break enacted in 1978 to account for the history of racism in broadcast licensing.[194] In the years it was in effect, minority ownership increased, however, in 1995, the tax incentive was overturned by Congress.[195] African Americans have proposed that the FCC approve a new technology called radio geo-targeting—that would allow radio stations to provide geographic-specific traffic, weather, public interest information, and advertising to their local communities.[196] Geo-targeting would allow African American radio stations to better engage listeners, allow for more African American ownership, and more effectively reach African American communities.[197] As of September 2021, the proposal was pending FCC approval.[198] Consequently, the federal government has engaged in discriminatory regulation of the media, which has harmed African American media professionals and business owners.

African American women face excessive racism and discrimination on social media today. In 2018, Amnesty International and Element AI found that African American women on Twitter were 84 percent more likely than white women to receive hateful tweets.[199] Despite this harassment, African American women online are innovators who contribute greatly to digital cultural spaces.[200] African American activists say that their remarks on racism are disproportionately stifled on Facebook.[201]

California

In the 1850s, blackface minstrelsy dominated entertainment in San Francisco.[202] Minstrel songs were played during a banquet for the new University of California president in 1899.[203]

COURTESY OF PAUL BERSEBACH/MEDIANEWS GROUP/ORANGE COUNTY REGISTER VIA GETTY IMAGES

Cemetery workers cover a confederate monument at Santa Ana Cemetery after it was defaced with orange paint. The monument honored confederate soldiers who fought for the Confederate States of America during the Civil War. (2019)

California has been home to racist monument and memorial construction for centuries. The Native Sons of the Golden West is a California organization that has erected racist monuments throughout the state.[204] It was formed on July 11, 1865 with the goal of honoring the Forty Niners, the first white people to settle in California and take advantage of the gold rush and has erected monuments through the state.[205] In the 1920s, the Native Sons of the Golden West Grand President wrote that "California was given by God to a white people, and with God's strength we want to keep it as He gave it to us."[206] The United Daughters of the Confederacy had 14 chapters across California[207] and erected plaques, monuments, and other memorials dedicated to Confederate generals and soldiers across California, such as in Monterey and San Diego, throughout the 1940s and 1950.[208]

California has erected a great number of Confederate monuments, including a dozen or more state markers and cemetery memorials.[209] Some of these monuments were erected by southern veterans of the Confederacy who moved to southern California after the Civil War and sought to memorialize their service through the creation of monuments.[210] The Mendocino coastal town of

Fort Bragg is named after a Confederate army general and enslaver, as of March 2021, the town has not yet changed its names despite numerous requests.[211]

In the radio, film, and television industries, California has neglected to adequately address widespread discrimination. Out of the hundreds of radio stations in California, only two are African American owned.[212] The State of California has, overall, neglected to enforce the civil rights of African American people or address the widespread practice of anti-Black discrimination in Hollywood.[213] African Americans have been depicted in crude stereotypical film roles in Hollywood: as servants, rapists, and enslaved people—or they were barred from roles in films altogether.[214]

The *Los Angeles Times* apologized for being "an institution deeply rooted in white supremacy" for most of its history and admitted to a record that included indifference and "outright hostility" toward the city's nonwhite population—acknowledging the underrepresentation of Black journalists in the newsroom.

The *Los Angeles Times* apologized for being "an institution deeply rooted in white supremacy" for most of its history and admitted to a record that included indifference and "outright hostility" toward the city's nonwhite population—acknowledging the underrepresentation of African American journalists in the newsroom.[215] For instance, the *Times* won a Pulitzer Prize for its coverage of the August 1965 civil unrest in Watts. While much of the Watts story's content was reported by a 24-year-old African American advertising messenger, Robert Richardson, the reporters and editors of record were nearly all white.[216] Richardson covered the disturbances, driving to the scene and phoning in his reports.[217] He was designated a "reporter trainee" after the uprisings but was only provided minimal mentorship or opportunities to enhance his skills. He left the paper the following year.[218]

In contrast, California's African American newspapers hired African American reporters and writers and invested in them. From 1850 to 1870, the earliest African American newspapers published in California included *The Mirror of the Times*, *The Pacific Appeal*, and *The Elevator*.[219] These newspapers emphasized civil rights, community, and racial politics.[220] Writers and editors were free to be activists and journalists.[221] *The California Eagle* was founded in 1879 and helped ease African Americans' transition to the west—providing them with housing and job information, and other information essential to surviving in a new environment.[222] With Charlotta Spears Bass at the helm, over the years, the *Eagle* protested racism in the motion picture industry, in the military, and successfully waged battles against discriminatory hiring in Los Angeles—work that should have been done by the state government.[223] The state government has failed to prevent discrimination in mainstream media in California.

California's Social Media Transparency and Accountability Act of 2021, Assembly Bill 587, would require social media platforms to publicly disclose their corporate policies regarding online hate, disinformation, extremism, harassment, and foreign interference, as well as key metrics and data regarding the enforcement of those policies.[224] However, the bill only applies to social media companies that have at least $100 million in revenue—which would exclude many websites where racist commentary and discourse is highly prevalent, such as Parler.[225] As a result, California's attempts to address white supremacy and racism targeted at African Americans online may still leave many vulnerable to abuse. In conclusion, the State of California has promoted blackface minstrelsy, funded confederate monuments, and neglected to enforce the civil rights of African American artists, culture makers, and media makers.

IV. Racist Censorship

State censorship of depictions of African Americans in movies, art, and books was constitutional until 1952.[226] The institutions that regulated cinema, including the Production Code Administration, state censorship boards, and film studios themselves, produced a warped and racist view of African American life in cinema.[227] State government censorship was strongest from 1915 to 1952.[228] States with active censorship boards focused on censoring miscegenation, the depiction of African American women's sexuality, depictions of racial discrimination and lynching, and depictions of integration.[229] States engaged in censorship to generate cultural narratives that upheld white supremacy, and rendered it invisible to the public—erasing depictions of Black power, humanity, and anti-Black state violence.[230] After the U.S. Supreme Court banned state

censorship in 1952, Hollywood began to casually depict violence against African Americans on screen.[231] Scholars argue that the proliferation of these scenes has helped normalize anti-Black violence in society.[232]

States and local governments have engaged in racist censorship of books written by African American authors, primarily in public schools and in prisons. Many public high schools across the nation have banned acclaimed novels written by African American authors.[233] Toni Morrison's acclaimed novels have been banned for "depicting the inappropriate topic of…racism," and for being "filthy," in 1998 in Florida, and 2007 in Kentucky.[234] Texas law prohibits teachers from portraying slavery and racism as "anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States,"—explicitly prohibiting the *New York Times's* 1619 Project, which places African Americans and the consequences of slavery at the center of American history.[235] In 2021, in York, Pennsylvania, an all-white school board banned books related to racial justice, which mentioned key African American civil rights leaders, such as Rosa Parks and Dr. Martin Luther King, Jr.— stating that they "may lean more toward indoctrination rather than age-appropriate academic content."[236] After sustained protests from community members, students, and teachers, the school board reversed the ban.[237]

State officials across the country have banned books on the enslavement of African American people, civil rights, and novels by African American authors in prisons and carceral settings.[238] For example, as of 2021, Wisconsin bans Ralph Ginzburg's *100 Years of Lynching*, but allows incarcerated people to read Adolf Hitler's *Mein Kampf*—presumably the first was banned for obscenity and yet the latter was deemed to be acceptable.[239] Florida banned the Equal Justice Initiative's Lynching in America report—one of the most comprehensive reports available on the lynching of African Americans—because it was supposedly a threat to prison security.[240] To maintain the lie of white cultural supremacy, state governments have therefore participated in censoring African American artistic work that was critical of American institutions, deemed subversive, or threatened white supremacy.

California

In the 1930s, African American activists protested pro-lynching films at movie theaters, fought against Hollywood's depictions of African American people, and tried to use film to promote the fight for civil rights.[241] Early films that depicted lynching scenes included *Frisco Kid* (1935), *Barbary Coast* (1935), *Fury* (1936), and *They Won't Forget* (1937).[242] These films made African Americans "nauseous" because they glorified and applauded lynching—even when the person being lynched was not Black.[243] These films encouraged and justified lynching at a time when the lynching of African Americans was still highly prevalent.[244]

Many public schools and prisons in California have censored the literature of African American authors. The Oakland Board of Education banned Alice Walker's book *The Color Purple* in 1984, due to "troubling ideas about race relations, man's relationship to God, African history, and human sexuality"—approving it only after nine months of community advocacy.[245] At Irvington High School in Fremont, Richard Wright's novel *Native Son*, was banned for being "unnecessarily violent" in 1998.[246] At the state level, the California Department of Corrections and Rehabilitation still maintains a list of banned books for its prisons.[247]

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V. Deprivation of African American Intellectual Property

The federal government's copyright laws routinely deprived African American artists of legal protection because this regime allowed art created by African American artists to be appropriated and stolen by white artists.[248] As a result of complex and convoluted requirements of the 1909 Copyright Act, artists unfamiliar with legal requirements could easily find their works injected into the public domain.[249] This resulted in the loss of economic rights and copyright protection—which resulted in generations of lost wealth for African Americans.[250] Additionally, the federal and state governments have not legally allowed descendants of enslaved people to own art made by their enslaved ancestors or photographs taken of their enslaved ancestors—depriving them of rightful earnings.[251]

Only 3% of U.S. patents

went to African American inventors from 1970 to 2006

Even though Black people were leaders in invention, they could not access patent protections due to institutional racism and state-sanctioned anti-Black discrimination and violence.[252] There are estimates that racial violence accounts for 1,100 missing patents won by African Americans.[253] Cyrus McCormick received a patent for the mechanical reaper, even though it was actually invented by Jo Anderson, a man who was enslaved by the McCormick family.[254] Obtaining a patent was difficult and expensive, and some African American inventors could not afford a lawyer.[255] Some patent applications may have been rejected due to racial discrimination.[256] To avoid discrimination, some African Americans relied on white partners to apply for patents under the white person's name.[257] One inventor, Henry Boyd, invented a new type of bed frame and partnered with a white man who applied for the patent in his name.[258]

Obtaining a patent was more difficult for African American artists and innovators because it often involved working with white lawyers who engaged in racist and unfair dealings—and the federal government took no action to ensure that African American innovators' patents were properly documented and preserved.[259] African American innovators faced additional professional and financial barriers, in addition to racism, that white innovators did not face.[260] In 1913, the U.S. Patent Office surveyed approximately 8,000 registered patent attorneys and found 1,200 inventions attributed to people of African American ancestry.[261] However, the Office was only able to confirm 800 of them—a large undercount because attorneys reported failing to recall the names or inventions of some of their African American clients.[262] This failure to recall the names of African American inventors and their inventions resulted in African American inventors being cheated out of profits for their creative work.[263]

Government-enforced racial segregation and disinvestment in African American communities resulted in a dearth of resources that crippled African American invention.[264] These racist practices suppressed the ability of African Americans to receive patents for their inventions.[265] Today, African American patentees are underrepresented in America.[266] There are wide disparities between the number of U.S. patents issued to African American inventors and the total number of patents issued in general.[267] For example, one 2010 study found that from 1970 to 2006, African American inventors received six patents per million people, compared to 235 patents per million for all U.S. inventors.[268] According to Professor Kevin J. Greene's testimony before the California Task Force to Study and Develop Reparation Proposals for African Americans, American copyright law disadvantages African American creators because it enables appropriation and under-compensation.[269] There are significant disparities in how African American and white music performers have been compensated for copyright use.[270] Professor Greene stated, "It's not just some problem that happened 200 years ago, it's a problem that's ongoing and happening today."[271] Throughout American history, the federal government historically deprived African American artists and innovators of intellectual property rights, copyright protections, and patent protections resulting in intellectual and cultural theft and exploitation.

There are estimates that racial violence accounts for 1,100 missing patents that should have been given to African Americans. Cyrus McCormick received a patent for the mechanical reaper, even though it was actually invented by Jo Anderson, a man who was enslaved by the McCormick family.

VI. Discrimination Against African American Athletes

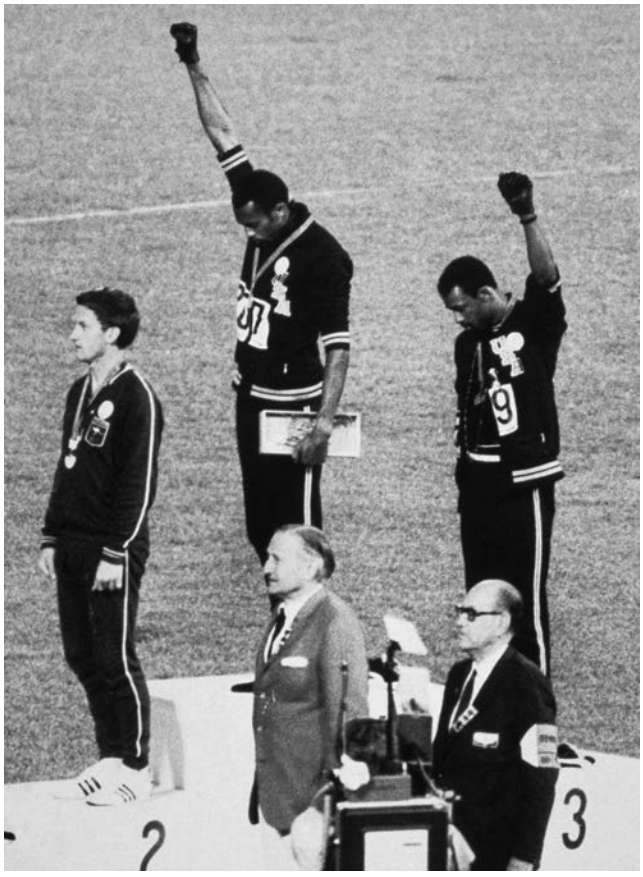
Following the end of slavery, most African American athletes were forced to compete in segregated teams, sports, and organizations.[272] Prior to World War II, some African Americans played sports at white universities—where they were picked for their talent, yet ridiculed and mistreated by white students.[273] Despite the inherent inequality of segregation, African American colleges and their football programs thrived in the mid-20th century.[274] Many Americans believed Historically Black Colleges and Universities were of lower quality than white higher education institutions, so athletic achievement was a way to dispute this narrative.[275] HBCUs had fewer material resources but produced high numbers of professional athletes—particularly in football.[276]

The reintegration of sports was a long and slow process because white Americans who held positions of power were hesitant to break the tradition of segregation.[277] Most major college athletics programs did not allow African American players until 1947.[278] The "gentlemen's agreement" was a standard, unwritten rule that allowed coaches to bench African American athletes during intercollegiate contests with all-white colleges and universities.[279] In 1955, Georgia's Governor asked the State Board of Regents to prohibit Georgia's all-white football teams from playing against teams with African American players.[280]

During the 1960s, the government and the sports industry punished African American athletes who engaged in racial justice and political protests, or resisted racial oppression.[281] Muhammad Ali, a African American Muslim boxing champion, was stripped of his world heavyweight title for refusing to be drafted into the U.S. armed forces.[282] When explaining why he would not join the army, he pointed out the irony of being drafted to fight on behalf a nation in which he was subjected to racial oppression.[283] "My conscience won't let me go shoot my brother, or some darker people...for big powerful America," he said.[284] "They never called me nigger, they never lynched me, they didn't put no dogs on me, they didn't rob me of my nationality, rape and kill my mother and father... Shoot them for what?"[285] Ali was charged with a felony, fined, and banned from boxing.[286] Later the Supreme Court would overturn his conviction. Justice John Harlan stated that the government had misinterpreted the doctrine of Black Muslims by not recognizing Ali as a conscientious objector.[287] Ali experienced racial and religious discrimination by the government—which refused to recognize his religious beliefs and punished him for his resistance to racism.

African American Olympic athletes have faced racial discrimination in athletics.[288] The Amateur Sports Act of 1978, gave the United States Olympic and Paralympic Committee, a private organization, exclusive jurisdiction over all matters related to the Olympics.[289] The federal government has provided funding for the Olympics when they are held in the United States.[290] In 1968, African American Californian track athletes, Tommie Smith and John Carlos, protested the lack of African Americans on the United States Olympic Committee, as well as the stripping of Muhammad Ali's heavyweight belt at the Olympics.[291] They raised their black gloved fists in a Black power salute during the National Anthem, while standing on the victory podiums of the Olympic Games.[292] Subsequently, the International Olympic Committee kicked them out of the Olympic Village and banned protest during the Olympics.[293] When Smith and Carlos returned to America, their families received death threats.[294] Today, many African American

COURTESY OF BETTMANN ARCHIVE VIA GETTY IMAGES



Tommie Smith and John Carlos protested the lack of African Americans on the United States Olympic Committee, as well as the stripping of Muhammad Ali's heavyweight belt at the Olympics. They raised their black gloved fists in a Black power salute during the National Anthem, while standing on the victory podiums of the Olympic Games. (1968)

Olympic athletes are discriminated against—from being suspended for legal marijuana use to being forbidden from wearing swimming caps designed for natural African American hair.[295] Most Olympic athletes, many of whom are African Americans, live in poverty and receive little compensation for their hard work—while high-ranking Olympic committee executives and organizers are compensated generously, due to the billions of dollars in profit from sponsorships, donations, and broadcasting rights.[296]

Similarly, studies have shown that the National Collegiate Athletic Association (NCAA) has profited from the labor of poor African American students, many of whom live below the federal poverty line—and the United States Supreme Court has supported this through caselaw.[297] The NCAA prohibits college athletes from being compensated for their labor.[298] Many public universities, which are government funded, generate millions of dollars in revenue due to football and basketball teams that are part of the NCAA.[299] Black students constitute nearly 60 percent of the rosters of football and basketball teams, and just 11 percent of the rosters of all other sports.[300] African American athletes who risk their health and safety to play these sports while in school do not receive any compensation.[301] Much of the money generated by football and basketball athletes is spent on salaries for coaches and administrators and on the construction of lavish facilities.[302]

COURTESY OF BETTMANN ARCHIVE VIA GETTY IMAGES

U.S. women's team for the 1936 Berlin Olympics. The two African American women pictured, Louise Stokes and Tidye Pickett, qualified three years earlier for the 1932 Olympics in track and field but were not allowed to participate due to their race.

African Americans began to play baseball in the late 1800s and historically joined professional teams with white players.[303] However, due to racism and legal segregation laws, they were forced to leave these teams by 1900.[304] In 1920, an organized league structure, called the National Negro League, was formed by Black businesspeople and athletes in Kansas City, Missouri.[305] The leagues were professional and became central to economic development in many Black communities.[306] In 1945, the segregation policies of baseball changed when Branch Rickey signed Jackie Robinson of the Negro League's Kansas City Monarchs to a contract that would bring Robinson into the major leagues in 1947.[307]

Football has a history of racial discrimination in the United States, sanctioned by state and federal governments.[308] Recently, the NFL has engaged in racist practices against Black athletes—many of whom suffered brain injuries while playing professional football.[309] The NFL used "race-norming"—a racist medical practice where Black players were assumed to have lower cognitive function than white players as part of a dementia test to determine payouts in a brain injury settlement.[310] As of January 2022, there was only one Black head coach in the NFL.[311]

Tennis, like football, was originally a sport for elite white men.[312] Due to segregation laws, most tennis clubs explicitly or implicitly prohibited African Americans from participation.[313] Public courts were not fairly distributed in Black neighborhoods or accessible to Black players.[314] Today, prominent African American women tennis players, like Serena Williams, are more likely to be disciplined, fined, and criticized while playing.[315]

In the early 1950s, the National Basketball Association (NBA) had an unspoken rule that there could not be more than two Black players on a team, later that number was expanded to three.[316] More recently, in 2020, African American women in the Women's National Basketball Association went on strike to protest anti-Black police violence—building upon a long history of protests for racial justice.[317] Following the lead of Black women, Black male professional basketball players in the NBA protested

anti-Black police violence in a historic strike—refusing to play games and talk to journalists.[318] Due to their efforts, sports arenas in areas with large African American communities were turned into voting locations for the 2020 general election to allow for safe, in-person voting—work that should have been done by federal and state governments.[319] (See Chapter 4 on political disenfranchisement.) There is consequently a history of racism in basketball, like in many other sports, which has harmed African American athletes.[320]

There have long been inequalities between men's and women's sports—however, for African American women, this is compounded by race.[321] One of the first women's track teams in the United States began at the all-Black Tuskegee Institute in 1929.[322] Three years later, two African American women, Louise Stokes and Tidye Pickett, qualified for the 1932 Olympics in track and field but were not allowed to participate due to their race.[323] Title IX of the Education Amendments of 1972 (Title IX) changed the landscape for women's sports. It requires any program or activity that receives federal financial assistance, including sports, to provide equal opportunities to all genders.[324] Title IX resulted in a significant increase in women athletes, however, the percentage of women in coaching positions greatly declined.[325] Today, Black women represent 88 percent of professional women's basketball, but there are no Black women in head coaching positions.[326] Despite title IX's legal guarantee of equal opportunity, African American parents have reported more sports programs for boys than girls in their communities.[327] Fifty-three percent of white girls are most likely to be involved with sports at age six or younger, while only 29 percent of Black girls are.[328] Due to the lack of title IX enforcement that centers African American women, they have suffered the consequences of both racism and sexism in the sports industry—including underrepresentation in sports leadership and limited access to sports in general. The history of sports in the United States is one of racial discrimination, segregation, and the exploitation of African American male and female athletes—a history in which governments have played a significant role.

California

Many Black football players experienced discrimination in California's colleges and universities. The University of Southern California did not permit black athletes to play until the 1920s.[329] While the University of California, Los Angeles did allow Black players to play in starting positions on its football team, the Los Angeles community was not as accepting of Black athletes.[330] At San Jose State College, Black athletes reportedly faced discrimination in athletics, such as overbearing coaches, a lack of academic assistance, exploitative demands made on Black participants, prejudice outside of the sport, and hostility in the campus Greek system and the local community.[331] Professor Harry Edwards, a sociologist who helped organize Black athletes against discrimination was called "unfit to teach" by California governor and later president, Ronald Reagan.[332]

Black athletes have often protested discrimination in sports in California. Take for instance Colin Kaepernick, a Black Californian who was the quarterback for the San Francisco 49ers.[333] In 2016, he knelt during the National Anthem in protest of anti-Black police violence.[334] Subsequently, the President of the United States, said that he should, "find a country that works better for him."[335] The National Football League then stated that it would fine teams whose players did not stand for the National Anthem.[336] Kaepernick was ultimately told he would be released from his contract by the general manager and coach of the 49ers.[337] Since then, all NFL teams have refused to sign Kaepernick on as a player, despite his clear record of success and athleticism.[338]

The University of California system has also reproduced racial inequities in its revenue-generating athletic programs.[339] It has some of the lowest graduation rates for African American male student athletes, who comprise a large majority of the male student athlete population, in comparison to overall graduation rates.[340] As of 2018, the Black male student-athlete graduation rate for the University of California, Berkeley was 39 percent, much lower than the 91 percent graduation rate for students overall.[341] The graduation rate for Black male student-athletes at the University of California, Los Angeles was 57 percent, while the overall graduation rate was 91 percent.[342] More generally, Black male student-athletes rarely accrue the benefits of higher education, beyond athletics.[343] Black athletes reported that coaches prioritize athletic accomplishment over academic engagement and discouraged participation in activities beyond their sport.[344] Though many Black athletes aspire to become professional players, the NFL and National Basketball Association draft fewer than two percent of student athletes each year.[345] The University of California system pressures Black student-athletes to labor for its highly profitable athletic programs while they receive no compensation, risk damage to their health, and divert their focus from their education—all for the unlikely chance at being drafted into professional sports.

VII. Restraints on African American Leisure and Recreation

Across the United States, state and local governments have prohibited African Americans from participating in leisure.[346] Public parks, recreation centers, and pools[347] and the passageways to access them[348] are located away from African American communities, restricted, or closed. Further, various government statutes, including anti-cruising, anti-gathering, and curfew laws, have often targeted African Americans' ability to enjoy leisure time.[349]

California

The State of California engaged in racist restrictions on African American business owners through zoning ordinances, licensing laws, fire and safety codes, and anti-nuisance provisions, which discriminated against African American business owners and their African American customers. Racist state actions against predominantly African American leisure sites, included denying liquor or food licenses and heightened police surveillance at Black-owned bars and restaurants.[350] In *Shaw v. California Dept of Alcoholic Beverage Control*, African American tavern owners brought a civil rights action against the California Department of Alcoholic Beverage Control and the City of San Jose in 1986.[351] The African American tavern owners sued for violation of their civil rights based upon improper revocation of their liquor license and discriminatory enforcement of the law.[352] The court agreed that the loss of the bar's liquor license was due to racially discriminatory harassment by the San Jose police force.[353]

Cities in California also used eminent domain to seize the land of African American business owners who sought to establish leisure enterprises. The Manhattan Beach authorities in Southern California, prohibited the growth and development of Black-owned leisure businesses, such as Bruce's Beach.[354] In 1912, Ms. Willa "Willie" Bruce purchased two lots near Manhattan Beach from white real estate brokers for $1,225. She developed the land with a cottage, food establishment, and store—called Bruce's Lodge.[355] The lodge was popular with African American Los Angeles residents.[356] By 1926, six other African American families had bought property near the lodge for vacation homes.[357] This caused many white neighbors and beachgoers to complain, harass, and attack the African American beachgoers, their families, and their establishments.[358] The Manhattan Beach Board of Trustees and a white Manhattan Beach resident threatened to report Bruce's Beach for allegedly selling liquor during the prohibition, so that all the people on Bruce's property could be arrested.[359]

In 1924, Manhattan Beach authorities enacted new laws with fines and penalties for violations of parking and zoning laws to discourage African American visitors.[360] For example, "10 minute only" parking signage was put up to prevent visitors from staying because parking would be extremely limited.[361] Ordinance 273 prevented "bathhouses" in the same area as Bruce's, so there could be no further bathhouse developments or expansions at the beach.[362] Manhattan Beach authorities then used eminent domain to condemn the beach as a public park under the Park and Playground Act of 1909.[363] This action was petitioned for by white citizens in the area, and backed by Ku Klux Klan members, including those who befriended Board of Trustee members.[364] Today, the two parcels

COURTESY OF MERRIAM MATTHEWS PHOTOGRAPH COLLECTION/UCLA

Louise and Byron Kenner in bathing suits at Bruce's Beach, with a beach house visible behind them. Bruce's Beach, in the city of Manhattan Beach, was purchased by Willa and Charles Bruce in 1912. They built a beach resort. The city closed down the resort in the 1920s by proposing to build a park and imposing eminent domain. (c. 1920)

of land that were part of Bruce's Beach are now worth millions.[365] In 2021, California Governor Gavin Newsom signed Senate Bill No. 796, authorizing the county to transfer the land back to the Bruce family after nearly 100 years.[366] The Los Angeles County Board of Supervisors voted unanimously to begin the process of transferring the land.[367] That process included a plan for the county to lease the land as well as an option to purchase the land back from the family for up to $20 million, and the family did then sell the property to the county.[368]

Local governments in the State of California restricted access to public pools for African American Californians. The Brookside Plunge was a public pool in Pasadena, which opened on July 4, 1914.[369] It was initially only open to nonwhite individuals on Wednesday afternoons and evenings.[370] Eventually, it only opened for a shorter time—on Tuesdays between 2pm and 5pm—in retaliation to a legal challenge from African American taxpayers in the area.[371] The Los Angeles branch of the National Association for the Advancement of Colored People sued the city following the denial of six Black men to the pool.[372] Though they won, Pasadena closed the pool until the NAACP secured an injunction forcing the pool to reopen in 1947 with no racial restrictions.[373] The pool site suffered from a lack of financial support and closed in 1983, leading a local swim coach and several donors to form the AAF Rose Bowl Aquatic Center.[374] This center was supposed to be open to all, but discouraged access for African American people due to the "country club" atmosphere.[375] The Pasadena city council ignored this issue and allowed the formation of the center with public funds.[376]

City and county police departments in California engaged in targeted harassment of Black owned businesses that provided leisure opportunities to Black Californians. In 1927, the Parkridge Country Club was sold to a group of Black entrepreneurs. After the Ku Klux Klan burned a cross on the front lawn and white club members sued the previous owner for the sale, the Black entrepreneurs were forced to withdraw their bid.

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VIII. Conclusion

African Americans have suffered from discrimination in almost every type of cultural and artistic pursuit, including arts, sports, leisure, fashion, literature, media, and music. The United States has historically denied African Americans to own their intellectual and artistic property, engage in leisure activities without restriction, and receive fair compensation for their athletic talent. State and federal governments have endorsed blackface minstrelsy, promoted racist cinematic depictions of African Americans, allowed segregation in arts and culture, denied patents to African American inventors, and punished African Americans for protesting racial injustice. Federal and state governments failed to protect African American artists, culture-makers, and media-makers from discrimination while simultaneously promoting discriminatory narratives.

Today, African American artists, culture-makers, presenters, and entrepreneurs must contend with the legacy of enslavement, as they continue to be deprived of rightful profits from their intellectual, artistic, athletic, and creative labors. African Americans continue to face racial discrimination, difficulties in obtaining patents and copyrights, and at times, are not even compensated at all for their creative and physical labors. African Americans are weighed down by the legacy of enslavement, echoing the impacts felt by their ancestors, even as they attempt to pursue creative endeavors that empower and uplift African American communities.

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CHAPTER 10 Stolen Labor and Hindered Opportunity

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I. Introduction

During enslavement, American government at all levels enabled and benefitted from the direct theft of African Americans' labor. Since then, federal, state, and local government actions have directly segregated and discriminated against African Americans and also paved the way for private discrimination in labor and employment. Federal, state, and local laws and policies, including those of California, have expressly and in practice limited what work African Americans can do and suppressed African Americans' wages and opportunities for professional advancement. Federal laws have also protected white workers while denying the same protections to African American workers, setting up and allowing private discrimination. Government and private discrimination have contributed to the inability of African Americans to build wealth over generations. Although progress has been made, African American workers continue to face serious discrimination today. The badges and incidents of slavery have carried forward. The devaluation of African Americans, their abilities, and their labor did not end. It simply took on different forms.

Around the time of the Civil War, state and local governments passed laws known as the Black Codes and "Jim Crow" laws. While these laws touched all aspects of life, one of their main goals was to control how African Americans earned a living in order to maintain African Americans as a servant class for white Americans. These laws limited African Americans' job opportunities and salaries and their ability to provide for their families.

The federal government itself directly discriminated against African American workers. African American workers were routinely excluded from federal employment until 1861 and, in 1913, President Woodrow Wilson allowed for the federal workforce be segregated. The segregated federal government demoted and relegated African American workers to lower paid jobs, and, for instance, forced African American workers to use separate toilets in the Treasury and Interior Departments. Although the military offered an opportunity for upward mobility for African Americans, its ranks remained segregated until 1960, with lower pay and rank for African American service members. Even as the overall proportion of African American service members has grown, military leadership has remained overwhelmingly white, with only two African American officials out of 41 total holding four-star rank in 2020.

At the Kaiser shipyards, Eastine Cowner, a former waitress, is working as a scaler to build SS George Washington Carver. Richmond, CA. (1943)

COURTESY OF GEORGE RINHART/CORBIS VIA GETTY IMAGES

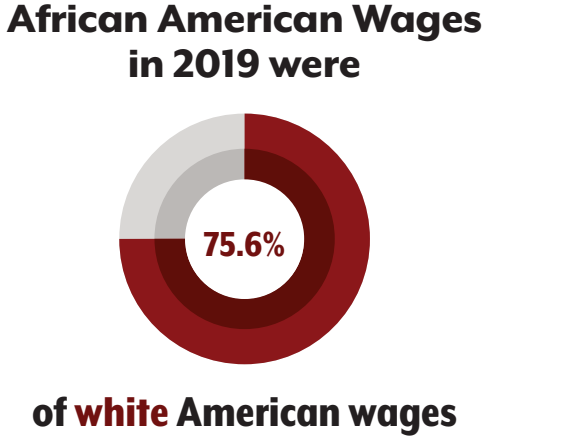
Railway workers with pneumatic drill. Undated photograph.

Although the federal government throughout history has passed laws, implemented policies, and made progress in protecting workers, its efforts were often limited in time and impact, and often left out African American workers due to compromises with racist southern legislators. After the Civil War, the Freedmen's Bureau provided for the welfare of previously enslaved African Americans, but it did so in a manner that reinforced racist notions, and lasted only seven years before being dismantled by Congress under pressure from white southerners. The federal government failed to prevent white Americans from using violence and terror to limit African Americans' ability to earn a living, and certified unions that excluded African American workers. Federal labor protections under the New Deal, which aimed to help American workers' economic prospects, excluded or harmed African Americans.

The Civil Rights Act of 1964 included Title VII, which largely banned discrimination on the basis of race in employment. However, it did not remedy the discriminatory workplace structures that have accumulated for hundreds of years. In 1977, the Supreme Court limited these federal protections to only instances where an employee can prove that their employer intended to discriminate against them, an extremely high standard. Federal government affirmative action plans created in the 1970s did lead to an increase in the rate of minority employment in businesses that contracted with the federal government in those years, but an organized backlash has narrowed the scope and impact of these programs since in the early 1980s. Despite some progress in preventing labor discrimination against African American workers, the federal government has made little to no effort to address the harms of past government action.

Research has produced evidence that, as a result of the legacy of enslavement and subsequent and ongoing discrimination, white workers are paid more than African American workers, and African American and white workers are concentrated in different types of jobs.[1] As of 2019, median African American wages were equivalent to only 75.6 percent of white wages, falling from a height of 79.2 percent in 2000. Researchers estimate that between one-quarter to one-third of the wage gap between African American and white workers is due to racial discrimination.[2] Without a safety net of savings, African Americans can be more vulnerable to upheavals in the labor market and less able to advocate for higher wages or other benefits. As of 2020, 19.5 percent of African Americans were living in poverty compared to 8.2 percent of non-Hispanic white Americans.[3] Out of the 2021 S&P 500 and Fortune 500 companies, only six of the chief executive officers of those companies were African Americans.[4] In 2020, African Americans held only 8.7 percent of the board seats in Fortune 500 companies.[5]

Similar patterns of government neglect and discrimination exist in California. African American workers did not hold many government jobs in the state until World War II. When Bay Area Rapid Transit was built in 1967, no skilled African American workers were hired because the National Labor Relations Board (NLRB)-certified unions did not admit African American members. BART, though a government agency, refused to use its power to insist on non-discrimination policies by the unions. In 1996, California changed its constitution to ban the use of affirmative action in government employment and education with Proposition 209. Persistent discrimination and limited affirmative action have prevented African Americans from receiving the same wages and career opportunities as white Americans received with government support.



This chapter recounts this long history and the continuing impact of discrimination in labor and employment. Section III provides a brief summary of enslavement, a subject explored in greater detail in Chapter 2. Section IV discusses discrimination in the laws enacted and government programs carried out from the Civil War forward as well as government support of private discrimination in labor and employment. Section IV also includes discussion of the advances and limitations of civil rights laws. Section V outlines the history of discrimination in government employment. The effects still seen today from centuries of discrimination are summarized in Section VI.

II. Enslavement

The story of African Americans in the United States begins with stolen labor. The purpose of enslavement was to exploit the fruits of African American labor for the benefit of mostly white Americans. For a full discussion of enslavement, please see Chapter 2. The labor of enslaved African Americans built the infrastructure of the nation, filled the nation's coffers, and produced its main agricultural products for domestic consumption and export.[6]

Federal and state law treated African Americans themselves as commodities to be sold by enslavers.[7] This system exploited the labor and love of African American mothers to recreate and grow the enslaved labor force.[8]

Federal and state law exploited the labor and love of Black mothers to create and grow the enslaved labor force. Between 1619 and 1808, 300,000 enslaved people were trafficked to the United States. By 1860, approximately 3.9 million enslaved African Americans lived in the United States. Over the 200-plus years of slavery, enslavers extracted an estimated $14 trillion of free labor from enslaved people.

Over the 200-plus years of slavery's existence in this country, enslavers extracted an estimated $14 trillion of labor from the human beings they enslaved.[9] One recent study estimated that "enslaved workers were responsible for somewhere between 18.7 and 24.3 percent of the increase in commodity output per capita nationally between 1839 and 1859."[10] Through various forms of taxes and tariffs—often structured to protect the interests of enslavers—federal, state, and local governments all reaped financial benefit from this condoned economic activity.[11]

Enslavement effectively led to separate labor markets for Black and white Americans.[12] White workers had access to a larger and more desirable selection of jobs, while free Black workers were relegated to menial labor.[13] Frederick Douglass observed, "Finding my trade of no immediate benefit, I threw off my calking habiliments, and prepared myself to do any kind of work I could get to do."[14]

Although there were fewer legal limitations on African Americans in the North, white workers were more motivated to reduce competition from African Americans.[15] Less threatened by free Black workers in the South, white employers were more likely to employ Black workers in skilled jobs than free Black wage earners in the North.[16] In 1860, for example, approximately 10 percent of Black men in New York City worked in a skilled trade, while in Richmond the figure was 32 percent, and in Charleston, where one third of the population was Black, 76 of Black men worked in a skilled trade.[17] A few years earlier, in 1856, nearly 40 percent of Black artisans in Philadelphia reported that unrelenting racial prejudice had compelled them to abandon their trades.[18]

California

As discussed in Chapter 2, enslavement existed in California into the mid-1860s.[19] Enslavers brought enslaved African Americans with them when they moved west.[20] Additionally, California passed its own fugitive slave law in 1852 and, for the three years that it was in force, it prevented courts from recognizing the freedom of those fleeing to California.[21] California at the time strongly discouraged free African Americans from entering its territories.[22] The relatively few free African Americans who resided in California in the late 1700s and the decades that followed tended to work as fur traders, scouts, cowboys, and miners.[23]

California's lack of government oversight allowed slavery to take hold in certain regions, including where enslavers brought African Americans to mine for gold.[24]

By 1852, 300 enslaved persons were involved in gold mining, with other enslaved persons forced to work in other capacities.[25] The California Fugitive Slave Act, coupled with California's law prohibiting the taking of testimony from an African American person against a white person, posed a threat to the lives of both free and enslaved African American residents.[26]

One enslaver from Mississippi, Charles Perkins, brought three enslaved men, Robert Perkins, Carter Perkins, and Sandy Jones to California in 1849.[27] Perkins later left the men behind with a friend who released them in 1951.[28] The three freed men then set up a freight hauling business that earned them over $3,000 in personal property, worth around $98,000 in 2020 dollars, but in 1852, the California Supreme Court ordered the three back to slavery in Mississippi.[29]

III. Government Support of Private Discrimination

Following the Civil War, Congress created programs to benefit African Americans and passed statutes to protect their rights. But fierce opposition from white government officials undermined these programs and led to their premature end—while the Supreme Court undermined statutory protections, allowing state and local legislatures to impose segregation.

Throughout American history and as discussed in the preceding chapters, local and state governments with the tacit approval of the federal government passed many laws restricting African American conduct. The majority of southern African American families did not own land and were exploited by white landowners in the sharecropping system.[31] African American women were mostly relegated to domestic service jobs until well into the 20th century.[32]

When the federal government aimed to improve labor conditions in the 1930s with the New Deal, federal policies and programs often failed to benefit, or even harmed African Americans, often by design. New Deal programs purposefully linked benefits like healthcare, paid vacations, pensions, tuition benefits, social security, and unemployment benefits to employment with large corporations, which at the time, generally did not hire Black workers.[33] Southern members of the House and Senate from states that passed laws to prevent African American workers from voting were instrumental in structuring the New Deal to exclude industries in which most African American workers were employed, like agriculture, domestic services, and casual labor.[34]

When the federal government tried to remedy the racism faced by African American workers, the actions often lacked power to enact real change and often lasted only a short time.

COURTESY OF CORBIS VIA GETTY IMAGES

The United States government established Freedmen's Villages to house, clothe, and educate freed enslaved people. (c. 1863-1865)

Black Codes and Jim Crow laws aimed to consolidate and maintain economic and political power generally in the hands of white Americans by controlling the type of work available to African Americans, and how that work has been performed.[30] This governmental discrimination against African Americans supported private employment discrimination. Until the Great Migration, as discussed in Chapter 1 and 5, the majority of African Americans lived in the South, and the

Freedmen's Bureau: Short-Lived Paternalism

In the wake of the Civil War, the federal government created programs to aid African Americans and statutes to protect their rights. However, both failed to live up to their promise to give African Americans equal access to economic and labor opportunities or remedy the harms of slavery.

Immediately before the end of the Civil War, Congress created the Bureau of Refugees, Freedmen, and Abandoned Lands to provide for the welfare of formerly enslaved African Americans, including through "issues of provisions, clothing, and fuel, as [necessary] for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children," according to the statute.[35] Commonly known as the Freedmen's Bureau, the agency had the authority to supervise labor relations in the South, with the mandate to provide education, medical care, and legal protections for formerly enslaved African Americans, along with the authority to rent out and eventually sell allotments of abandoned or confiscated land to free African Americans.[36]

The Federal Freedmen's Bureau withheld services and food in order to force African Americans into labor contracts, prosecuted Black workers, and enforced vagrancy laws to prevent African Americans from moving.

The original goal of the Freedmen's Bureau Act was the more radical notion of allowing African Americans the means to become self-sufficient.[37] In the closing days of the Civil War, Union General William Tecumseh Sherman issued Special Field Order No. 15, setting aside 400,000 acres of confiscated land for those who had been freed, and two months later, the Freedman Bureau's Act formalized the field order, "providing that each negro might have forty acres at a low price on long credit."[38] Many free African Americans and northern Republicans believed that land reform in the South—granting formerly enslaved African Americans access to their own land—was the true way that formerly enslaved people would be free from their enslavers.[39] The resulting independent African American farmers would provide a power base for a new social and political order in the postwar South.[40]

This new vision of social relations in the South was opposed by southerners as well as northerners who opposed enslavement but whose commitment was more to notions of free labor and capitalism than racial equality.[41] A large number of African American landowners would threaten plantations and disrupt the southern economy and social system.[42] White capitalists in the North and South believed that African American freedom should mean African American workers continuing to work on a plantation, although they would now be paid.[43] They did not believe that African Americans should be able to support themselves independently through subsistence farming, which would have led to less cotton being grown and posed a threat to the interests of cotton merchants and other capitalists in the South, elsewhere in the United States, and in Europe.[44] After the assassination of Abraham Lincoln, who had wished to give freed persons "'an interest in the soil,'"[45]Andrew Johnson became president and repudiated Lincoln's promises.[46] Proclaimed Johnson, "This is a country for white men, and by God, as long as I am president, it shall be a government for white men."[47] In less than a full harvest season, the land that Sherman had given to freed persons was returned to the prior owners.[48]

Although the Freedmen's Bureau tried to assert and protect the rights of the formerly enslaved, the Bureau under President Johnson perpetuated racist stereotypes, paternalistic attitudes, and continued to limit African Americans' economic and social power. Bureau agents often viewed formerly enslaved African Americans as children, unprepared for freedom, and needing to be taught the importance of work and wages.[49] The Freedmen's Bureau abandoned the possibility of land reform in the South, and focused on labor relations between African American and white southerners instead.[50]

Bureau agents did protect African American workers' rights by invalidating enslavement-like labor contracts, and they enforced contracts and settled wage disputes at the end of the harvest season.[51] However, the Bureau also harmed African Americans by acting on the racist belief that African Americans avoided work, and it was the Bureau's responsibility to reform such laziness.[52] One commander noted that emancipation only meant "liberty to work, *work or starve*."[53] General O.O. Howard, director of the Freedmen's Bureau, stated that African Americans must enter into labor contracts regardless of the contract terms because any Black man "who can work has no right to support by the government."[54] To this end, Bureau agents withheld social services and food in order to force African Americans into labor contracts,[55] prosecuted African American workers who broke labor contracts, enforced vagrancy laws, and imposed other restrictions on African Americans' mobility.[56] The Bureau allowed plantation owners to deduct unfairly large sums for supplies and rations, until many workers would receive little wages at all.[57] The wage guidelines for African American workers provided less pay for African American women regardless of their productive capacity.[58]

Nonetheless, the Freedmen's Bureau met severe resistance from southern politicians. In 1866, President Andrew Johnson vetoed the bill extending its existence

past one year, and it was only enacted once Congress overrode the veto.[59] Six years later, in 1872, Congress bowed to pressure from white southerners and dismantled the Bureau.[60]

An 1865 Mississippi law required African Americans to enter into a labor contract with white employers by January 1 of every year or risk being in violation. The punishment for violation was a criminal conviction allowing the state or locality to force the African American to work without pay.

Black Codes and Other Laws Controlled African American Workers

Immediately after the Civil War, "Black Codes," passed by state and local governments in both the North and the South, governed the conduct of free African Americans. Free African Americans posed a threat to the racial hierarchy of slavery, and Black Codes were a range of laws to maintain the lower status of African Americans through restrictions on movement and activity, often in order to compel them to work in menial jobs for low pay.[61]

The Thirteenth Amendment to the Constitution outlawed the institution of slavery, but it allowed involuntary servitude as a punishment for a crime. Mostly southern state and local governments used this loophole to develop a system of laws, often built around vagrancy laws, that turned African Americans into criminals, and then allowed the government to turn those labeled "criminals" into de facto enslaved persons, forced to labor without pay or freedom of movement.[62] For an in depth discussion of convict leasing, please see Chapter 11.

Vagrancy laws, passed by numerous states, criminalized unemployment.[63] An 1865 Mississippi law required African Americans to enter into a labor contract with white farmers by January 1 of every year or risk being in violation.[64] Violating such laws risked a criminal conviction that allowed the state or locality to force the African American to work without pay.[65] Means of compelling the labor of African Americans persisted even after some forced labor provisions were repealed. Other states "used open-ended fraud and false-pretenses laws to punish [workers] who had received advances and then breached contracts without repayment."[66]

Some jurisdictions used Black Codes to limit opportunities available to African Americans. Some laws prohibited employers from hiring workers who were already under contract; contract labor law gave employers nearly unlimited power over workers and often their family members as well; and individuals who quit jobs could be arrested and returned to their employers.[67] South Carolina enacted a statute in 1869 that criminalized simple breaches of labor contracts.[68] Probate courts could order that African American children be "apprenticed" to their former enslavers.[69] For an in-depth discussion of apprenticeship, please see Chapter 8. In South Carolina, African Americans were required to apply for a permit to do work that was not agriculture.[70] These codes often reinforced enslavement, even after it had been outlawed.

Later, as the Great Migration began, states also enacted laws that discouraged African Americans from migrating to places elsewhere in the country that offered better work opportunities with improved conditions and higher pay. After the Civil War, interstate labor recruiters known as emigrant agents helped African American workers leave the South towards better jobs in the North.[71] The Southern states lost large numbers of workers and even when workers did not move, the possibility of leaving improved African American workers' bargaining power.[72] The Southern states responded by passing laws that required emigrant agents to pay high license taxes.[73] The Supreme Court in 1900 ruled that one such law was constitutional, and allowed Southern states to hinder the ability of poor and rural African American laborers to move towards better jobs elsewhere.[74]

The Supreme Court Announces "Separate but Equal"

In 1866, Congress overrode President Johnson's veto to pass the Civil Rights Act of 1866, the first federal legislation banning discrimination on the basis of race.[75] As discussed in other chapters, the Civil Rights Act of 1866 was aimed at ensuring that African Americans had the same legal rights as white Americans. However, while criminalizing violations committed under color of law, the Act did not provide any civil remedy.[76]

The Civil Rights Act of 1875 allowed individuals to pursue a monetary penalty against businesses and other public accommodations that discriminated against African Americans.[77] This protection lasted only eight years, however, before the Supreme Court in 1883 decided in

the *Civil Rights Cases* that the Fourteenth Amendment did not apply to private parties.[78]

The decision allowed private employers and other businesses to discriminate openly against African Americans with no repercussions.[79] Together with *Plessy v. Ferguson* in 1896, which condoned the doctrine of "separate but equal," the Supreme Court's decisions created the ability for both private and public employers to entrench an inferior labor market for African American workers, with lower wages, fewer protections, and limited opportunities for advancement for the next 100 years.

Lack of Government Protection from Violence

In both the North and the South, federal, state, and local governments neglected their duty to protect African American workers from violence as a tactic to limit their job opportunities. White land owners, employers, vigilante groups, and others used violence and terror, more closely examined in Chapter 3, to deter African Americans from earning fair wages for their labor and achieving economic success.[80] For decades following Emancipation, lynchings targeted African Americans who attempted to wield some political and economic influence or even take steps as limited as demanding pay for their work.[81] While private actors often were the perpetrators of these brutal killings, federal, state, and local governments, in failing to prosecute racial violence, accepted its use to limit economic and political opportunities of African Americans.[82]

COURTESY OF SMITH COLLECTION/GADO VIA GETTY IMAGES

African-American engineers, working in an apparently segregated office, located in Newport News, Virginia. (1936)

Legal Segregation

During the brief period of Reconstruction following the end of the Civil War until the 1870s, radical Republicans in the federal government passed laws increasing African Americans' economic and labor freedom. This included rights to change employers, keep a portion of crops grown through cooperative labor, and change locations.[83] But this progress was temporary.

After the Union army withdrew from the South, as discussed in Chapters 2, 3, and 4 on enslavement, political disenfranchisement, and racial terror, respectively, southern states passed laws and white Americans used racial terror and violence to prevent African Americans from voting. The southern Democrats took back control of state and local governments across much of the South and built a power base in the federal government.[84] In the South, state and local governments passed laws that created a formal, legally enforced system of segregation.[85] The federal government supported this system with a series of Supreme Court decisions culminating with *Plessy v. Ferguson*'s official acceptance of "separate but equal" Jim Crow segregation regimes in 1896.[86]

To comply with Jim Crow laws, businesses would need to pay to erect segregated workspaces for Blacks, and thus many employers simply refused to hire any Black workers. As a result, most of the jobs available to African Americans were menial service jobs.

Segregation affected all aspects of African Americans' lives, including voting, marriage, education, transportation, access to public accommodations, and labor and working conditions.[87] For example, South Carolina passed a statute that essentially required employers to create two separate work spaces, as it forbid white textile workers from working in the same room or using the same entrances, exits, pay windows, doorways, stairways, or windows at the same time as African American workers.[88] African American textile workers in South Carolina could not use the same "water bucket, pails, cups, dippers or glasses" as white workers.[89] Not only did such laws directly regulate the labor of African Americans, they also made it more expensive to hire African American workers when such additional facilities were required.[90] In order to be compliant with state law, an employer would need to pay twice for compliant facilities if they hired any African American workers.[91] Many employers simply refused to hire any African American workers.[92] As a result, most of the jobs available to African Americans were menial and service jobs.[93]

COURTESY OF LIBRARY OF CONGRESS

Photograph shows Sam Williams (center, holding dog), his wife Diccie Williams (center in white), their youngest son Sidney Williams (in front of Sam), and other men, women, and children in a cotton field. (c. 1908)

State and local governments' refusal to enforce the economic and civil rights of African Americans in contract and employment disputes allowed white Americans to exploit and discriminate against African Americans. African Americans in the South mostly remained in agriculture, in a sharecropping or tenant farming system.[94] Sharecropping and tenant farming emerged in the late 1860s and lasted into the 1940s, tying African American workers to agricultural work and rendering them unable to pursue other opportunity.95 A sharecropping or tenancy arrangement typically involved African American workers and tenants paying rent to a white farmer while living and working on the rented land. The tenant farmers purchased supplies—including seed, fertilizer, and tools—on credit from plantation stores that then attached significant markups to the supplies and charged high interest rates, often locking the tenant farmers into a permanent state of debt.[96] Tenants were required to pay off all debts before leaving the farm, and landlords enforced these requirements with threats of violence.[97] For decades, federal authorities did little to limit peonage, even after the Supreme Court declared the practice unconstitutional.[98]

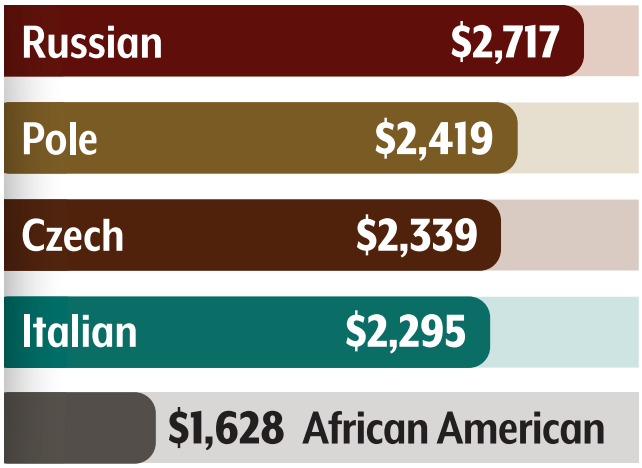
Although the sharecropping system also exploited poor white farmers, an added layer of racial terror plagued African American sharecroppers, with no hope of government or legal protection. In the South, an African American challenged a white American at the risk of severe violence, or death.[99] For example, in 1948, two white Americans beat an African American tenant farmer in Louise, Mississippi, because the African American farmer had asked for a receipt after paying for his water bill.[100] If an African American farmer tried to sell extra agricultural product without the landlord's permission, he could be whipped or killed.[101] "They could never leave as long as they owed the master, That made the planter as much master as any master during slavery, because the sharecropper was bound to him, belonged to him, almost like a slave," the grandson of a sharecropper told Isabel Wilkerson, the Pulitzer Prize-winning journalist and author of both The Warmth of Other Suns: The Epic Story of America's Great Migration and Caste: The Origins of Our Discontents.[102]

"One reason for preferring Negro to white labor on plantations is the inability of the Negro to make or enforce demands for a just statement or any statement at all. He may hope for protection, justice, honesty from his landlord, but he cannot demand them. There is no force to back up a demand, neither the law, the vote nor public opinion... Even the most fair and most just of the Whites are prone to accept the dishonest landlord as part of the system," wrote anthropologist Hortense Powdermaker.[103]

Elsewhere in the country, the Great Migration, as discussed in detail in Chapter 1 and 5, brought African Americans from the South to the North, Midwest, and West. "Blacks, though native born, were arriving as the poorest people from the poorest section of the country with the least access to the worst education[,]" wrote Wilkerson.[104] Largely excluded even from the better paying jobs in even the menial occupations, African American workers in the North and West earned the least money when compared with white recent immigrants at the time.[105] In 1950, African Americans in these regions had an annual income of $1,628.[106] Italian immigrants made $2,295, Czechs made $2,339, Poles made $2,419, and Russians made $2,717.[107]

ANNUAL INCOME DURING GREAT MIGRATION

White immigrant workers verses Black workers



Until well into the 20th century, African American women could mostly only find work as domestic servants for

white employers.[108] Following the Civil War, new career opportunities opened up for women in the fields of teaching and nursing.[109] Black women who entered these professions could only work in segregated facilities.[110] A few decades later, private employers hired mostly white women as receptionists, department store clerks, and telephone and machine operators.[111] African American women took over household work as white women, including white immigrant women, moved into these better paying jobs with set work hours.[112]

In both the North and the South, African American female labor participation rates were double those of American-born white women and triple those of immigrant women. During the first half of the 20th century, the number of white female domestic workers fell from 1.3 million to 542,000, while Black women went from accounting for 30 percent of household workers around 1900 to about 60 percent of household workers at the end of World War II.[113] Some African American women working as servants lived in their employer's homes and were on call 24 hours a day.[114] Other African American women resorted to what was colloquially referred to as "slave markets," where they gathered on street corners early in the morning to wait for white housewives to bid on them for as little as fifteen cents an hour.[115] One woman at a Chicago "slave market" reported that she made 50 cents a day—the same money as she would earned for picking cotton in the field.[116]

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In each of these eras, and through to the present, civil courts did not protect African Americans to the same degree as white Americans. However, there were exceptions. One scholar has found evidence that African Americans used civil courts in one district in Mississippi before the Civil War to vindicate their rights in claims over contracts and wages, and found that in many instances these litigants won their cases.[117]

But discrimination remained built into the law. Several states, including California, prohibited African American persons from testifying against those who were white.[118] African Americans additionally faced *de jure* and then *de facto* exclusion from juries.[119] Some states explicitly banned African Americans from jury service, while others tied jury service to voting, which was then limited to white men.[120] Exclusion continued by other means after the Supreme Court in 1879 ruled that a West Virginia statute limiting jury service to white men violated the Fourteenth Amendment.[121] Other forms of discrimination, including segregation, also limited access to justice.[122]

Over time, in addition to the racial terror discussed in Chapter 3 and the political disenfranchisement discussed in Chapter 4, the civil court system also contributed to a failure to protect African Americans against the theft or government taking of property, which often has been a source of income and sustenance. For example, in 1856, an enslaver, Thomas Howlett, directed that his plantation be sold and the proceeds given to his enslaved African American workers, who were to be freed upon his death.[123] Two courts upheld Howlett's will over the challenges of Howlett's white relatives, but the formerly enslaved workers never received the proceeds from the plantation sale.[124]

In another example, in 1964, Alabama sued two cousins, Lemon Williams and Lawrence Hudson, claiming that the 40-acre farm that the family had owned and operated since 1874 belonged to the state.[125] A state court judge ordered Lemon Williams and Lawrence Hudson off the land, though, in the same courthouse, investigating journalists found tax and property records showing that the family owned the farm.[126]

Barriers to justice, including those outlined above and in Chapter 11, continue for African Americans today. While the relationship between race and the civil justice system is under-researched, studies thus far indicate that African Americans under-utilize the civil justice system, including in the area of labor and employment. In a 2016 study conducted by legal scholar and professor Sara Sternberg Greene of low-income minority group attitudes toward the civil justice system, African American respondents were less likely than white American respondents to have considered seeking help for their civil legal issues, largely because of distrust in the legal system.[127] This lack of trust often stems from prior negative experiences.[128] African American people are more likely than white people to experience biased treatment in the judicial system, and individuals who experience discrimination are more likely to anticipate and perceive discrimination across institutional contexts.[129] There is

also evidence that African Americans are reluctant to complain when they perceive discrimination or experience other grievances.[130] Additionally, social science research shows that litigants may find their attorneys through their professional networks, and African Americans have more limited professional networks.[131]

Underutilization of the civil justice system and lack of access to justice have particular impact in the area of labor and employment. African Americans hold a significant share of low-wage jobs, in sectors in which wage theft is prevalent, and yet the available evidence indicates that African Americans rarely bring wage theft claims.[132] African Americans are more likely than white Americans to file a discrimination lawsuit without a lawyer.[133] A 2010 study found that African Americans are half as likely as white Americans to have a lawyer.[134] In general, less than five percent of worker discrimination claims go to trial and result in a ruling for the plaintiff,[135] and self-represented litigants are significantly less likely to achieve a favorable outcome in a discrimination suit.[136]

Exclusion from Unions

Legal segregation laws not only confined African American workers in the South, but also impacted the economy of the entire country.[137] Segregation pitted workers of different races against one another, resulting in continued suppression of opportunity for Black workers and less collective power for workers of all races.138 Unions have a lengthy history in the United States as craftsmen have long joined together to solve problems related to their craft.[139] In the 18th century, strikes, labor organizing, and collective bargaining developed at the same time, and the first authenticated strike was called in 1786 by Philadelphia printers.[140] Unions reached their peak around World War II, as unions grew at the rate of approximately one million workers per year.[141]

Prior to World War II, many unions refused to accept Black people as members. Since before the Civil War, white workers have claimed that Black workers were not suited to skilled labor in order to avoid competition for jobs. In the North, companies and unions did not hire Black workers because white workers refused to work beside them, and for the sake of morale, the companies and unions would not force the issue. White workers sometimes walked off the job to force their employers to rid their workplace of Black employees.

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Throughout the nineteenth century trade unions organized by white workers typically excluded African American workers; in 1902, African American workers scarcely made up three percent of members in unions.[146] In response to exclusion, African American workers sometimes formed their own unions.[147] For example, in 1869, African American delegates attended the Colored National Labor Union convention in Washington, D.C., which was a counterpart to the white National Labor Union.[148]

Government action sometimes supported labor unions' discrimination against African American workers.[149] For example, when the city of St. Louis built a segregated hospital for African American patients, white union members protested the hiring of a single African American tile setter.[150] The city fired the contractor and committed not to hire any contractor that employed African American workers.[151]

Legal segregation both reflected and intensified racial tension between workers. Segregation made contact between African American and white workers almost impossible, ensuring that African American and white workers would inhabit different worlds and making labor organizing across racial lines more dangerous and less likely to occur.[152] Legal segregation not only held down the wages of African American working-class Americans, it also prevented working class white workers from demanding higher pay, as long as African American workers could always be forced to work for less.[153]

The American Federation of Labor, founded in 1886 and survived today by the AFL-CIO, initially strived for racial equality[154] as leaders recognized the value of a united working class[155] However, legal segregation in the South proved to be too influential and federation leadership allowed local affiliates to exclude African American workers.[156]

African American workers protested exclusion throughout the 1920s[157] and 1930s.[158] The Federation's leaders' formal response was that the Federation did not discriminate, "human nature cannot be altered," and African American individuals ought to be grateful for what the Federation had done for them.[159]

Scholars have argued that legal segregation discouraged white and African American workers from working together for better working conditions and fostered a racial division that served the interests of southern planters and industrialists.[160] For example, beginning in the 1880s, African American and white tenant farmers and sharecroppers began to join biracial political parties to challenge the political and business elite of the South.[161] Scholars such as Jacqueline Jones, who testified before the Task Force, have argued that legal segregation and private racial discrimination were used to disrupt this burgeoning biracial political force.[162]

For example, before the Civil War, African American women, men, and children worked in the South. After the war, southern textile-mill owners reserved those jobs for white families, and advertised hazardous mill work as a welcome escape from sharecropping.[163] This drove a wedge between the African American and white rural poor.[164]

Exclusion from Occupational Licenses

Unions also played a part in how states excluded African American workers from skilled, higher paying jobs through what eventually became state licensure laws. A license from a state entity is required to practice some professions and trades, like electricians and doctors.[165] State, and sometimes local, governments, have designed these licensing requirements so that Black workers are less likely to qualify, which has intensified the impact of discrimination by private employers and unions.[166]

State licensure systems worked in parallel to exclusion by unions and professional societies[167] in a way that has been described by scholars as "particularly effective" in excluding Black workers from skilled, higher paid jobs.[168] White craft unions implemented unfair tests, conducted exclusively by white examiners to exclude qualified Black workers.[169]

For example, across the country from the late 1890s through the late 1930s, state laws allowed local mayors or city councils to appoint the members of the licensing board for plumbers.[170] This meant that the local plumbers' unions could exert significant influence over who sat on the licensing board.[171] From there, the boards erected barriers to avoid licensing African American plumbers, such as requiring a union apprenticeship—from which African American individuals were banned—before an applicant could even qualify to take a licensing exam.[172] Other barriers included a high school diploma, which was more difficult for Black workers due to education discrimination (as discussed in Chapter 6, Separate and Unequal Education), passing a personal interview conducted by a white person, or sometimes, even false test scores.[173]

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"Housekeeper Pushing Young Girl on Toy Cart on Sidewalk, Port Gibson, Mississippi." (1940)

These methods, which were used by other professions as well,[174] did not ban African American workers outright. Because these statutes were outwardly neutral, courts have repeatedly found that they were constitutional without questioning the discriminatory motives and impact.[175] A few courts recognized the dangers of allowing licensing boards to control entry into the profession, but not enough to stem the tide.[176]

Government support made the discrimination worse. In Virginia, a white plumber explained his state's law requiring members of the plumber's union be part of the licensing board: [T]he Negro is a factor in this section, and I believe the enclosed Virginia state plumbing law will entirely eliminate him and the impostor from following our craft."[177] By 1924, 24 states and Puerto Rico had similar laws in place.[178]

And these laws were effective.[179] In 1973, Montgomery County, Alabama had only one licensed African American plumber, who, despite having spent four years studying the trade, was told he failed the local exam each time he took it. He was not allowed to see his exam papers or told what his score was. He was finally able to obtain a local license after passing the state master plumber's exam.[180]

Charlotte, North Carolina, similarly had only one African American plumber in 1968, and in Maryland in 1953, only two of the 3,200 licensed plumbers were African American.[181] The impact of these exclusionary

efforts is still felt today: In 2021, the Bureau of Labor Statistics estimated that 87.2 percent of plumbers are white and only 7.1 percent are African American.[182]

The use of licensure to regulate jobs increased dramatically after the 1950s, when only five percent of professions required licensure in the United States.[183] In 2018, roughly 21.8 percent of professions required licensure.[184] Some of the reasons for this increase include trying to professionalize and legitimize certain jobs and an overall growth of fields that have historically required licensure.[185]

Regardless of the reason, one result of the growth is that discriminatory licensing standards have become more widespread. Even if these standards did not intend to exclude African American workers, the result was exclusion. One such method today is the bans on licensure for people with criminal records.

As discussed in Chapter 12, Mental and Physical Harm and Neglect, state and federal governments have criminalized African Americans throughout our nation's history, resulting in African Americans being more likely to have criminal records without necessarily committing crimes at higher rates than other races or ethnicities.[186] Race discrimination and disproportionality in the criminal justice system thus combine with laws like those excluding persons with criminal justice system involvement from licensure to close off avenues for work.

It is difficult for people with criminal records, who are disproportionately African American, to find jobs, even if their records are old or have little to do with the job, or if they have demonstrated rehabilitation.[187] When a license is required those challenges can become insurmountable. One 2016 study showed that there were 27,254 state occupational licensing restrictions against people with criminal records nationwide, 12,669 of which involve restrictions on licensure for people with any type of felony conviction and 6,372 of which involve restrictions for people with misdemeanor convictions.[188] 19,786 licensure restrictions were lifetime bans and 11,338 were mandatory and allowed no discretion by the board.[189] In some instances, upon release, formerly incarcerated persons cannot work in the very professions for which prison job rehabilitation programs trained them.[190] For example, while many prisons provide training programs on barbering, laws in every state prevent a formerly incarcerated person from working as a barber.[191]

Recently, efforts have begun to reform these criminal record exclusions.[192] Several states have now passed laws to revise licensing restrictions related to people's criminal records.[193] But thousands of restrictions still remain. A database funded by the United States Department of Justice shows that there are currently 12,989 consequences of having a criminal record for various licenses nationwide.[194]

Discrimination in Promotion and Pay

During World War I, African American workers began to make headway in previously white workplaces and industries. African American men took blue collar jobs previously held by immigrants who had shifted employment to the war effort; African American women took jobs previously held by white women and boys.[195] African American workers might earn 300 percent more doing industrial labor in the North than they earned doing agricultural labor in the South.[196] As discussed in Chapters 1 and 5, these job opportunities in the North and West led approximately three million African Americans to migrate from the South between World War I and World War II, and another five million to move between 1940 and 1980.[197]

Wherever they landed in the North, the Midwest, or the West, African Americans found more discrimination, which translated into racial job ceilings, pay differentials, and segregation by job type.[198] For example, Ford Motor Company refused to employ African American workers at a level above general labor outside of the Detroit area, and in the Chicago stockyards African American workers were excluded from jobs as foremen, as they were not permitted to supervise white workers.[199]

For example, Ford Motor Company refused to employ Black workers at a level above general labor outside of the Detroit area, and in the Chicago stockyards Black workers were excluded from jobs as foremen, as they were not permitted to supervise white workers.

In the urban industrial South, African American workers were categorized in lower-level jobs "helping" white workers, who would simply supervise work while taking home the higher wage.[200] One African American employee at the Firestone Company's Memphis plant described how: "You'd be classified as a 'helper,' but you'd be doing all the work. The white man would get the high wage … [but] he'd just be sittin' there watchin'."[201] As a result,

COURTESY OF KEYSTONE-FRANCE/GAMMA-KEYSTONE VIA GETTY IMAGES

Building site with whites on one side and African Americans on the other. (c. 1950)

African American workers were penalized both with lower wages and fewer advancement opportunities.

Black workers were often only hired in jobs that were far more physically dangerous.[202] For example, Ford Motor Company's foundry, where many African American workers were employed, had a lack of safety equipment, poor ventilation, and management-induced speed-ups that lead to worker injury and death.[203] One foundry worker described others finished a shift "so matted and covered with oil and dirt that no skin showed...we could [only] tell a friend by his voice."[204]

This pattern continued across manufacturing sectors for decades. African American workers were limited to lower-paying categories, barred from supervisory roles, and denied opportunities for advancement. For example, by 1970, one-fifth of autoworkers in Detroit were Black, but Black workers remained all but completely excluded from higher-level positions.[205]

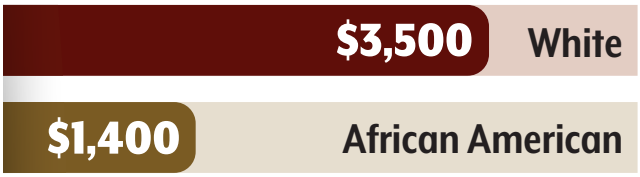
In 1968, African American autoworkers formed the Dodge Revolutionary Union Movement to protest racism at the plant. A writer in the organization's newsletter laid out the stark segregation and discrimination then present at the plant:

1. "95% of all foremen in the plants are white;
2. 99% of all the general foremen are white;
3. 100% of all plant superintendents are white;
4. 90% of all skilled tradesmen are white;
5. 90% of all apprentices are white; (6)...systematically all of the easier jobs are held by whites;
6. Whenever whites are on harder jobs they have helpers;
7. When Black workers miss a day they are required to bring 2 doctors' excuses as to why they missed work;
8. ...seniority is also a racist concept, since Black workers were systematically denied employment for years at the plant."[206]

This trend was not limited to manufacturing. In 1950, salaries of college-educated workers, in both the North and South, were significantly lower for African Americans across industries. For example, African American managers averaged an annual salary of around $1,400, while white managers averaged closer to $3,500.[207] In today's dollars, this translates to a monthly salary of approximately $1,396 for African American managers and $3,489 for white managers.[208] Discrepancies like this existed in professional, teaching, farming, clerical, sales, and skilled technician occupations as well.[209]

SALARY OF COLLEGE EDUCATED WORKERS

By Race in 1950

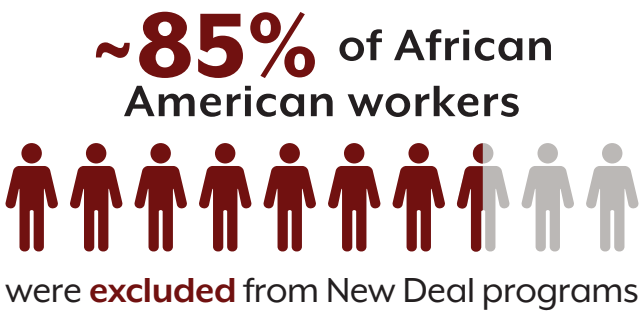


Exclusion from New Deal Protections

In the 1930s, the federal government under President Franklin D. Roosevelt sought to remake the relationship between employer and employees.[210] The New Deal transformed American society and set in motion the creation of the middle class[211]—but for white Americans.[212] The New Deal reshaped the role of the federal government in providing for American citizens.[213] Programs funded under the New Deal infused a huge amount of capital into the economy. Two researchers have estimated that the federal government spent almost $27 billion on various New Deal public works programs between 1933 and 1943.[214]

Southern Democrats, who rose to power by preventing African Americans from voting through a combination of violence and voter suppression laws, forced President Roosevelt essentially to exclude African Americans from New Deal programs and legislation.[215] While northern liberals at the time would not support explicitly racist language in the programs and statutes, the Southern Democrats' racist aim was accomplished in the structure of the programs themselves.[216] In order to pass numerous

New Deal laws, President Roosevelt compromised with the Southern Democrats to ensure their votes by largely excluding jobs mostly held by African Americans from the New Deal's protections like unemployment insurance, minimum wages, equalized bargaining power, or anti-child labor laws.[217] Agricultural and domestic-service workers, and anyone with seasonal or part-time jobs, were excluded from these benefits.[218] Approximately 85 percent of all African American workers in the United States at the time were excluded,[219] although some historians disagree that federal lawmakers intended to discriminate against African Americans.[220]



Congress also compromised to allow New Deal programs to be administered at the local level.[221] By the design of the Southern Democrats in Congress, southern local white government officials were in control of local relief efforts—individuals who held the view that African Americans should not receive relief of any kind if white southerners had laundry to be done or cotton to be picked.[222] While African American northerners received some governmental jobs and assistance, African American southerners did not.[223]

The following is a non-exhaustive list of labor-related New Deal laws and programs and the ways in which they have discriminated against African Americans. Many of the New Deal laws created the foundational structures that continue to provide Americans with a social safety net today.

National Industrial Recovery Act of 1933

The National Industrial Recovery Act created the National Recovery Agency, which established industry-specific minimum wages and employment protections. The National Recovery Agency eventually enacted over 540 codes providing for minimum wages and maximum hours in different industries.[224]

Many employers advocated for explicitly racist codes before the agency—one argued that African American workers made "a much better workman and a much better citizen, insofar as the South is concerned, when he is not paid the highest wage."[225] While explicit race-based codes were not adopted, the structure of geographic and occupational classifications in the codes often accomplished the same goal. An industry code would classify a state as either "Northern" or "Southern" for the purpose of setting a minimum wage, with "Southern" states often having a lower minimum.[226] And different occupations, governed by different codes, had different minimum wages. One example demonstrates how the government used both geographic and occupational classifications and exclusions to pay African American workers less and provide them fewer protections. Delaware was classified as being "Northern"—and thus subject to a higher minimum wage—for 449 industry codes, but was classified as being "Southern"—and thus subject to a lower minimum wage—for the fertilizer industry, where African American workers made up 90 percent of the industry.[227] John P. Davis, in a speech to the 25th Annual Conference of the National Association for the Advancement of Colored People in 1934 stated: "[T]he one common denominator in all these variations is the presence or absence of Negro labor. Where most workers in a given industry are Negro, that section is called South and inflicted with low wage rates. Where Negroes are negligible, the procedure is reversed."[228]

The purpose of the occupational and geographic differentials in the wage codes was clear to those involved in implementing the National Industrial Recovery Act at the time. The Executive Director of the National Recovery Agency's Labor Advisory Board wrote in 1934: "[T]o the degree the Southern rate is a rate for Negroes, it is a relic of slavery and should be eliminated."[229] That same year, Ira De A. Reid, of the National Urban League, wrote in the newspaper the Chicago Defender: "the Negro's initial attitude towards the national recovery act is best reflected in the interpretation of initials given by one observer who called it 'Negro Riddance Act.'"[230]

National Labor Relations Act of 1935 (Wagner Act)

The National Labor Relations Act of 1935 (NLRA or Wagner Act), proposed by Senator Robert Wagner, dramatically increased the power of organized labor by allowing officially certified unions in certain sectors the right to negotiate on behalf of *all* employees, if supported by a majority of workers.[231] The National Labor Relations Board (NLRB), the agency designated to administer the law, was abl -e to hold hearings and resolve disputes involving union representation.

The NLRA harmed African Americans by purposefully allowing unions to discriminate based on race and by failing to cover sectors of the economy that mostly employed African Americans.[232] This undermined the

bargaining power of African American workers and their ability to participate in the newly-recovering economy for decades.[233]

Labor unions have played a critical role in the development of American society and the day-to-day experience of the American worker. During and after the New Deal, workers' and employers' power was uniquely balanced, which enabled an unprecedented improvement in the condition of the working class in America, the benefits of which continue to be seen today.[234] For example, workers with strong unions have been able to set industry standards for wages and benefits that help all workers, both union and nonunion.[235] "Union workers are more likely to be covered by employer-provided health insurance. More than nine in 10 workers covered by a union contract (94%) have access to employer-sponsored health benefits, compared with just 68 percent of nonunion workers."[236] As another example, union workers also have greater access to paid sick days. Nine in 10 workers covered by a union contract (91 percent) have access to paid sick days, compared with 73 percent of nonunion workers.[237]

While African American leaders proposed amendments to the NLRA to prohibit government certification of a union that did not allow African American workers to join and have all rights, the American Federation of Labor, the principal white-dominated federation of craft unions, opposed this protection due to its desire to eliminate competition from African American workers.[238] The American Federation of Labor and Southern Democrats won, and the final law protected the bargaining rights of unions with racist membership policies. This gave white labor organizers the power to exclude African American workers from contract negotiations and implement their racist views in the union contracts, protected by the federal government.[239]

The final law also excluded agricultural and domestic workers, another compromise to the Southern Democrats.[240]

Federal law essentially allowed unions to ignore and discriminate against African American workers by protecting segregated unions. Unions refused to admit African American workers or afford them the privileges of membership, segregated African American workers into less-skilled jobs, and used collective bargaining rights to force employers to replace African American workers with white workers, while the NLRB, the federal agency charged with administering the NLRA, stood out of the way.[241] For example, the NLRB-certified Building Service Employees Union in New York forced Manhattan hotels, restaurants, and offices to replace African American elevator operators and restaurant workers with white employees, and the federal agency took no action in response.[242]

In 1944, the U.S. Supreme Court held that unions were obligated to represent their members without discriminating on the basis of race, but did not require them to eliminate racial segregation in their membership or provide African American union members with a mechanism for enforcing their civil rights.[243]

Only in 1964 did the federal agency finally decide that it could revoke a union's government certificate due to its racial segregation.[244] Even then, individual African American workers still had limited recourse against racist union leadership. Employees subject to a racist union could not deal directly with their employer instead.[245] Additionally, even after the NLRB stopped certifying whites-only unions, seniority rules meant that African American workers would need years to secure wages comparable to those of white workers.[246]

Federal law essentially allowed unions to ignore Black workers by maintaining segregated unions, segregating Black workers into less-skilled jobs, locking them out of contract negotiations, and using collective bargaining rights to force employers to replace Black workers with white workers.

Social Security Act of 1935

The Social Security Act of 1935 created old-age and unemployment benefits to help seniors and those out of work. This landmark law followed the same pattern as the rest of the New Deal legislation in limiting how its benefits applied to African Americans through occupational carve outs for agricultural and domestic labor, and allowing local rather than federal administration,[247] although some historians dispute the allegation that Congress acted with racist intent in making these carve outs.[248] The Social Security Act created several programs that remain central to the government's efforts to ensure some minimal level of financial stability, including retirement insurance, unemployment insurance, and Aid to Families with Dependent Children programs.[249]

During the debate over the Social Security Act, Congress acknowledged the preponderance of African American workers in the agricultural and domestic labor sectors, but excluded these occupations despite accusations of racism.[250] Charles H. Houston testified on behalf of the NAACP: "In these States, where your Negro population is heaviest, you will find the majority of Negroes engaged either in farming or else in domestic service, so that, unless we have some provisions which will expressly extend the provisions of the bill to include domestic servants and agricultural workers, I submit that the bill is inadequate . . . "[251]

African Americans advocated for a nondiscrimination provision in the statute as protection from the racist local administration of previous New Deal relief statutes. For example, one activist pointed out that in the local administration of past emergency measures "there ha[d] been repeated, wide-spread, and continued discrimination on account of race or color as a result of which Negro men, women, and children did not share equitably and fairly in the distribution of the benefits accruing from the expenditure of such Federal Funds."[252] Congress did not include any such provision in order to secure the support of Southern Democrats.

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Nine-year-old boy receiving twenty cents for hamper of beans he picked for a contract farmer, Homestead, Florida (1939)

Charles H. Houston expressed the view of many African Americans: "If we follow the history of the workmen's compensation acts, we know that two great classes of workers who will be excluded from the benefit of unemployment insurance; they are agricultural workers and domestic workers. Again, 3 out of every 5 Negro workers drop through the holes of the sieve."[253]

Fair Labor Standards Act of 1938

The Fair Labor Standards Act of 1938 (FLSA), which is still in force today, provides the federal minimum wage, the maximum number of working hours before overtime pay is required, and the limits on child labor. Like other New Deal laws, in order to appease Southern Democrats, the law purposefully excluded certain occupational categories, like agriculture and domestic services, preventing the majority of African Americans from benefiting from the law's protections.[254] Because of these exclusions, the FLSA essentially outlawed child labor in industrial settings, where most white children worked at the time, and allowed child labor in agricultural and domestic work, where most African American children worked.[255]

Like other New Deal laws, the Fair Labor Standards Act excluded agriculture and domestic services from its labor protections. Because of these exclusions, the FLSA essentially outlawed white child labor and continued to allow Black child labor, because most white children worked in industrial settings and most Black children worked in agriculture.

Members of Congress were clear about the racist intent. For example, Florida Representative J. Mark Wilcox explicitly stated: "You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in grave social and racial conflicts but it would also result in throwing the Negro out of employment and in making him a public charge. There just is not any sense in intensifying this racial problem in the South, and this bill cannot help but produce such a result."[256]

Congressman Cox of Georgia specifically objected to the possibility of equal wages because of the impact it would have on relieving the economic subjugation of African Americans central to the social organization of the South, stating the FLSA "will, in destroying State sovereignty and local self-determination, render easier the elimination and disappearance of racial and social distinctions."[257] As with other New Deal legislation, Congress included the agricultural and domestic service exemptions in order to secure the support from Southern Democrats needed to pass the legislation at all.[258]

Thus, when the FLSA passed without applying to agricultural or domestic workers, or to employers engaged in intrastate commerce such as service workers, it achieved the explicit aims of the drafting Congress. Like the other New Deal legislation, it accomplished the withholding of protections from many African Americans through these "race-neutral" occupational exclusions. These carve outs remained until the 1970s, and agricultural workers are still excluded from overtime protections.[259]

As originally enacted, the FLSA did not address pay for tipped workers.[260] While tipping prior to the Civil War had been frowned upon by many as an aristocratic, European practice incompatible with American democracy, after the war many restaurants and rail operators embraced tipping as a means of hiring newly freed African Americans without actually paying them—these workers were forced to labor for tips alone.[261] Tipping thus kept African American workers in an economically and socially subordinate position.[262]

Later the Supreme Court held that employers could count workers' tips toward their wages when calculating whether a worker was receiving minimum wage.[263] Employers did not need to pay their employees at all as long as workers' income from tips met or exceeded the established federal minimum wage.[264] Congress did not require a base wage for tipped employees until 1966.[265] Set then as fifty percent of the federal minimum wage, the tipped federal hourly minimum cash wage stands today at $2.13, where it has been for more than a quarter century.[266] The employer must make up the difference between this amount and the federal minimum hourly wage of $7.25 only if the employee's tips combined with the direct wages of at least $2.13 per hour do not equal the federal minimum hourly wage.[267]

The Federal Emergency Relief Administration (FERA) provided funding for state and local government programs in public works and the arts, and provided more than 20 million jobs. From 1935 to 1941 fewer than 20 percent of all WPA workers were women and only about three percent were Black women. Projects to train women in domestic skills were often explicitly limited to only white women.

Today's tipped wage system carries the legacy of slavery. While African American workers no longer are over-represented in the tipped workforce, studies of the restaurant industry have revealed that diners consistently tip African American servers less than white servers, regardless of service quality.[268] And 17 percent of tipped working people of color live in poverty, compared to less than 13 percent of all tip workers.[269]

Federal Emergency Relief Administration (1933 to 1935) and Works Progress Administration (1935 to 1941)

The Federal Emergency Relief Administration (FERA) provided funding for state and local government programs in public works and the arts, and provided more than 20 million jobs.[270] But the program disproportionately spent its funds on unemployed white workers, frequently refusing to hire African American workers for anything except unskilled work, and paying less than the officially stipulated wage.[271] One local administrator stated that "he had to tailor relief ...to accommodate the demands of southern plantation owners for cheap farm labor by curtailing [the level of] relief payments to agricultural laborers and sharecroppers."[272]

The Works Progress Administration (WPA) replaced FERA in 1935, but continued its racist and often sexist practices. For example, driven by the presumption that men were the primary earners and most in need of jobs amoung needy families, most projects created heavy construction-type work for men, ignoring women's wage needs and limiting their opportunities.[273] From 1935 to 1941 fewer than 20 percent of all WPA workers were women and only about three percent were African American women.[274] Projects to train women in domestic skills were often explicitly limited to only white women.[275] Government officials specifically pushed African American workers out of WPA jobs when local conditions required cheap agricultural labor. In Oklahoma, a WPA official closed an African American women's work project when there was a large cotton crop, writing to Washington, D.C.: "these women are perfectly able to do this kind of work and there is plenty of work to do."[276]

Civilian Conservation Corps (1933 to 1942)

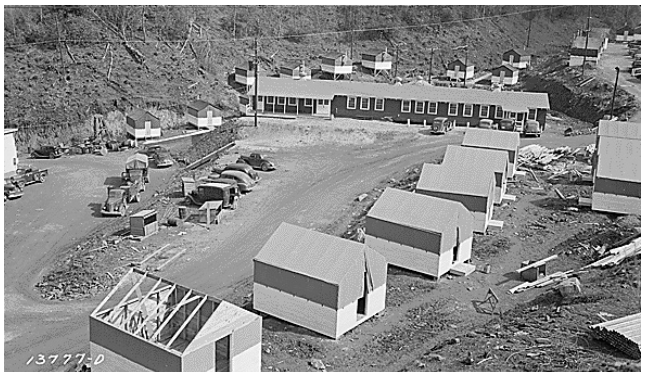
The Civilian Conservation Corps (CCC), a public works program focused on conservation projects, employed over 2.5 million men during its tenure—African American and white women were completely excluded—just 10 percent of whom were African American men.[277] While this was somewhat similar to the percentage of African Americans in the population at large, the conditions of the CCC replicated the racist government intervention seen in other programs, with explicitly limited participation numbers, official segregation at work camps, and with African American workers restricted

to the least-desirable unskilled jobs.[278] For example, in Georgia, local selection agents refused to enroll a single African American applicant for almost a year, and only relented and enrolled a token number of African Americans after federal agents threatened to withhold the state's entire allotment of funds.[279]

Tennessee Valley Authority

The Tennessee Valley Authority was a public utility created by the federal government to bring jobs and development to an area hit especially hard in the Depression. The project included construction, conservation, and social service jobs, and it remains one of the largest utilities in the country today.[280] It too continued the pattern of the other government works programs. African American workers were assigned to work separately on construction projects, and were only allowed to work at all if there were enough African American workers to make up a full segregated crew.[281] African American workers were also denied foreman or supervisory roles.[282]

COURTESY OF NATIONAL ARCHIVES



Tennessee Valley Authority. Fontana Dam, North Carolina. "Negro tent camp." (1942)

Agricultural Adjustment Administration

The federal government created the Agricultural Adjustment Administration (AAA) in 1933 to increase agricultural prices by paying farmers to grow fewer crops.[283] The administration of the AAA harmed African American workers in three specific ways.

First, the program reduced crop planting. For example, the agency limited the amount of land dedicated to cotton farming, but allowed each white landowner to decide *which* acres to stop cultivating, and most often they chose those worked by African American tenant farmers and sharecroppers.[284]

Second, landowners received federal payments, but the federal administration allowed white landowners to act as "trustees" for their African American tenants without oversight from the AAA.[285] Often, landowners never paid their African American tenants.[286]

Third, the AAA allowed disputes over payments to be brought to local elected county committees, and not a single African American farmer served on a county committee throughout the South.[287] The county committees, composed of white landlords and white tenants, ruled against African American tenants and directed the vast majority of benefits for the program to white farm owners.[288] In 1934, Ira De A. Reid of the National Urban League said that "[s]o far as the Negroes in the South are concerned the AAA [and other New Deal Agencies] might just as well be administered by the Ku Klux Klan."[289]

Fair Employment Practices Committee

Faced with enormous activist pressure, President Roosevelt during World War II attempted to protect African American workers, but these actions were temporary and did not have serious enforcement powers. In the lead up to World War II, civil rights activists demanded desegregation of the defense industry. Following a 1941 meeting of civil rights groups from across the country, activists formed the March on Washington Movement with the aim of using mass protest to desegregate the military and industrial workplaces that were central to the war effort.[290] Soon the movement had spread across the country, with local chapters from San Francisco to Washington, D.C.[291]

By June 1941, 100,000 or more African American workers from across the country were expected to march on the nation's capital, alarming President Roosevelt at the prospect of a mass protest in Washington, D.C. on the eve of the country's entry into war.[292] In response, he issued Executive Order 8802, which both banned discrimination on the basis of race in government employment, defense industries, and training programs and created the Fair Employment Practices Committee (FEPC) to investigate and address complaints of race discrimination.[293] While a step forward, FEPC had power over only public-financed wartime industries, and it did not have any real enforcement power. It was only able to issue recommendations, including the cancellation of defense contracts in cases of persistent discrimination.[294]

FEPC's impact varied around the country. From March 1942 to 1944, African American employment in war-production jobs rose from under three percent to over eight percent, and some African American workers found jobs as skilled labor in manufacturing and minor managerial roles.[295] The most progress was made in places where African American activists, progressive unions, and local civil rights organizations worked together with FEPC investigations to pressure for change. In St. Louis, a large March on Washington Movement chapter agitated to reinstate African American workers at a local arms plant, raise wages, and increase hiring of African American

women. The organization used its resources to file and pursue FEPC complaints, justifying the establishment of a regional office to address the concerns of African American works, but pursued this official action hand-in-hand with mass rallies to general grassroots support.[296]

Under the weak enforcement system, other geographic areas were less successful. Both public officials and private employers in several southern cities refused to provide integrated defense employment, and the federal government did not force action.[297] FEPC had no mechanism to act against Alabama Governor Frank Dixon, who supported employment of African American war workers only within the bounds of the segregationist system already in place in the southern states.[298] FEPC disbanded in 1946 as the war ended, thus ending a temporary attempt of limited effectiveness to address labor discrimination.[299]

Between 1964 and the late 1970s, the federal government enacted affirmative action programs which increased the number of minority groups in government contracting work until the Supreme Court and the Reagan Administration effectively ended federal affirmative action in the 1980s.

Gains and Limitations of the Civil Rights Acts

Congress passed a series of civil rights laws in the 1960s prohibiting discrimination in employment, voting, and housing. Title VII of the Civil Rights Act of 1964 outlawed employment discrimination on the basis of race, color, religion, sex, or national origin.[300]

Title VII created strong protection for African American workers throughout the country, making it illegal for an employer to (1) fail to hire or discriminate against a worker, or (2) limit job opportunities because of that worker's "race, color, religion, sex, or national origin."[301]

The law protects workers against current racial discrimination and segregation practices, but does not provide a way to right past wrongs.[302] It exempts "bona fide" seniority systems and professionally developed ability tests.[303] The former are also known as "last hired, first fired" systems, and the latter include tests developed as part of an application process, such as for firefighters, even though these can be employed in a discriminatory manner.[304] Strict adherence to a seniority system means that "last hired" African American workers, who more recently moved into positions now that racist discrimination is outlawed, will be "first fired," under the systems allowed by the law.[305] In 1977, the Supreme Court held that Title VII did not outlaw these seniority systems even when they discriminate against African American workers, stating that a seniority policy "does not become unlawful under Title VII simply because it may perpetuate pre-Act discrimination."[306]

Title VII is limited in other ways as well. The Supreme Court also drew a line between intentional and unintentional discrimination.[307] Currently, Title VII protects an employee if they can show that their employer intended to discriminate against them,[308] which can be difficult to prove. If the employee cannot prove their employer's racist intentions, Title VII protects them only if the challenged employment practice is not "job related" or not "consistent with business necessity."[309] For example, in *Griggs v. Duke Power Company*, the defendant company required a high school diploma or passing an intelligence test for certain jobs. Neither requirement was related to successful job performance, and both requirements disqualified African American applicants at a substantially higher rate than white applicants.[310] The requirements did not fulfill a genuine business need and was thus prohibited by the Act.[311] In 1965, Congress formed a federal agency called the Equal Opportunity Employment Commission to enforce Title VII and other employment statutes and regulations. The commission, which continues today, covers all industries, and not just wartime industries, like its predecessor, the Fair Employment Practices Committee.[312] It also has enforcement powers to assess penalties and issue orders, instead of only making recommendations.[313] However, the agency has been chronically underfunded, which has limited its ability to widely enforce federal protections against racial discrimination in a large number of cases.[314] The agency's staff numbers decreased from 3,390 to 1,968 between 1980 and 2018 despite the U.S. population increasing by more than 44 percent in that time.[315]

Limits of Affirmative Action

As the Civil Rights Acts were only forward-looking, between 1964 and the late 1970s, the federal government enacted affirmative action programs intended to address the effects of past racist discrimination and segregation.[316] These programs increased the number of underrepresented groups in government contracting work until the Supreme Court and the Reagan

Administration in the 1980s effectively brought many federal affirmative action programs to an end.

In 1965, President Lyndon B. Johnson issued Executive Order 11246, which required government contractors to employ affirmative action to expand opportunities for underrepresented groups and established the Office of Federal Contract Compliance to enforce the order.[317] In 1972, the Nixon Administration approved the "Philadelphia Plan," which instituted numerical goals and timetables for the integration of Black and other racial minority workers into federal contracts.[318] In the late 1970s, President Jimmy Carter extended affirmative action requirements to state and local governments, educational institutions, and contractors—nearly every entity that did business with the federal government.[319] These executive actions, along with anti-discrimination laws improved labor market conditions for African Americans.[320] Between 1974 and 1980, the rate of minority employment in businesses that contracted with the federal government rose by 20 percent.[321] Local government set-aside programs also had impact. A 2014 study found that these programs led to a 35 to 40 percent reduction in the Black-white gap in self-employment, which is a proxy for small business ownership, though it appeared that the gains mostly benefited those who were better educated.[322]

By the late 1970s, an organized backlash had developed and a number of lawsuits challenged the constitutionality of affirmative action.[323] In response, the U.S. Supreme Court began narrowing the scope of affirmative action programs. The Court has not held that affirmative action is permissible as redress for past harms. The Court, however, did reject explicit race-based quota systems in *Regents of the University of California v. Bakke* in 1978. There, the Court held that it was permissible for government affirmative action programs—in this case, a state school—to consider an applicant's race in order to advance the interest of diversity, but that it was unconstitutional for an affirmative action program to employ race-based quotas.[324]

By the early 1980s, under President Ronald Reagan, the federal government began to restrict its enforcement of affirmative action requirements, halting the progress made during the preceding administrations.[325]

Housing Segregation Limits African American Job Opportunities

Despite the unquestionable progress made in civil and workers' rights since the Civil Rights Acts, numerous systemic issues continue to harm African American workers.

The government and private actions described in Chapter 5 created a segregated American landscape across the country. This residential segregation created an entrenched type of employment discrimination in the second half of the 20th century.

Following World War II, white workers followed the government incentives described in Chapter 5 and moved to the suburbs. Large industrial employers closed facilities in urban centers and followed the white workers. Black workers, who could not move to the suburbs due to the barriers erected by federal and local governments, were left behind in urban centers.

Following World War II, white workers followed the government incentives described in Chapter 5, Housing Segregation, and moved to the suburbs.[326] Large industrial employers closed facilities in urban centers and followed the white workers.[327] Black workers, who could not move to the suburbs due to the barriers erected by federal and local governments, were left behind in urban centers.[328] These barriers included discriminatory and inequitable government transportation policy decisions that limited urban African Americans' access to jobs,[329] like the Bay Area Rapid Transit (BART) system, designed in the 1960s. In an Oakland neighborhood that is one of the most diverse in the city and one of the densest parts of the region, BART trains run nearly 3 miles without stopping, whereas BART stations are only 1.75 miles apart in suburban areas that are less than half as dense.[330] As one transportation expert explained, "BART was literally designed ... to speed white suburban commuters past Black inner-city residents."[331] For an in depth discussion of transportation discrimination, please see Chapter 7.

Research has produced evidence that the phenomenon of "job suburbanization" caused significant decline in Black employment and increased Black-white labor inequality.[332] Examples of the movement of jobs to the suburbs abound. For instance, the Ford Motor Company moved all engine production sited at its River Rogue plant—at the time, the largest employer of Black workers in the Detroit region—to facilities in suburban

Brook Park, near Cleveland and Dearborn, outside of Detroit.[333] Michigan's *Labor Market Letter* observed the "creation of a very large and alarmingly consistent list of long-term unemployed" Black workers in the region.[334]

This exodus of major employers to the suburbs also prevented African Americans from fully taking advantage of benefits provided by unions. For example, the Communication Workers of America lost thousands of African American members when customer service call centers moved out of New York City and reopened in areas not easily accessible to African Americans living in the city.[335]

Between 1967 and 1987, the number of industrial jobs dropped precipitously in cities with large Black populations: by 64 percent in Philadelphia, by 60 percent in Chicago, by 58 percent in New York, and by 51 percent in Detroit.[336] Oakland and Los Angeles also experienced a decline in manufacturing.[337] Automobile and tire companies that had been prevalent in Los Angeles shuttered or moved to the suburbs as early as the 1950s.[338] An analysis of census data for the 15 largest metropolitan areas of the time found that between 1960 and 1970, the suburbs of these areas saw a 44 percent increase in jobs while central cities saw a seven percent decline.[339] Whereas nearly two thirds of jobs were in urban centers in 1960, by 1970, only 52 percent of jobs were in urban centers and in some cities, the majority of jobs were suburban.[340] Corporate executives occasionally admitted that avoiding Black communities "sometimes" motivated their decisions about where to locate.[341] Federal jobs in urban centers also dropped by more than 41,000 between 1966 and 1973.[342]

Corporate executives occasionally admitted that avoiding Black communities "sometimes" motivated their decisions about where to locate. Between 1970 and 1993, African Americans lost ground in nearly every economic category, with unemployment among African Americans rising from 5.6 percent to 12.9 percent.

By the early 1990s, the African American urban industrial working class had nearly disappeared nationwide. The impact was broad. Between 1970 and 1993, African Americans lost ground in nearly every economic category, with unemployment among African Americans rising from 5.6 percent to 12.9 percent.[343] If new manufacturing was built, for example, by American auto companies, studies have shown a consistent pattern of rural and suburban locations about thirty miles from the African American neighborhood.[344]

COURTESY OF H. ARMSTRONG ROBERTS/CLASSICSTOCK VIA GETTY IMAGES

African American settlement near steel foundry. Workers homes in East St. Louis, Illinois. (c. 1920)

More recently, U.S. trade policy added to the negative impact of automation and changing technology on jobs for African Americans.[345] Free trade policies and the resulting job losses in the manufacturing sector hit African American men especially hard, as this sector has offered relatively higher-paying jobs for those with lower levels of educational attainment.[346] These jobs were also more likely to be unionized and afford a range of attendant benefits, from health care to pensions.[347] African American workers were also disproportionately among those whose call center and customer service jobs were subject to offshoring. One study found that African Americans lost 646,500 good manufacturing jobs between 1998 and 2020, a 30.4 percent decline in total African American manufacturing employment, as part of the overall loss of more than 5 million manufacturing jobs during that time period.[348]

African American workers who have lost their jobs have been less likely than their white counterparts to find a replacement job, and when they found new jobs, they more likely to experience pay cuts.[349] The loss of jobs to free trade also depressed wages in the long term and intensified wealth inequality.[350] The impact has been far reaching. One researcher found that manufacturing decline between 1960 and 2010 had disproportionately harmed African American communities in the areas of wages, employment, marriage rates, house values, poverty rates, death rates, single parenthood, teen motherhood, child poverty, and child mortality.[351]

These harms may continue. More than a quarter of all African American workers are concentrated in 30 jobs at high risk of automation, according to a 2017 finding of the Joint Center for Political and Economic Studies.[352]

According to one meta-study, from 1989 to 2014, employment discrimination against African Americans had not decreased.

Ongoing Discrimination

Legal segregation resulted in social separation between African American and white Americans, with lasting consequences. Employers often hire new employees by relying on their social networks, ethnic loyalties, apprenticeships, and union relationships. Legal segregation prevented Black workers from building these necessary formal and informal networks with white Americans, effectively barring Black workers from entering into new, mostly white workplaces or industries.[353]

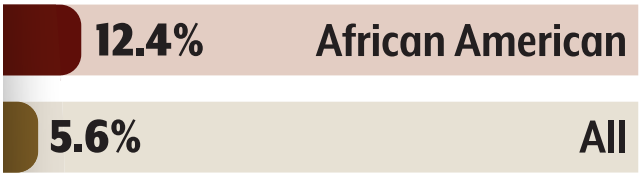
African Americans continue to experience labor discrimination today. One meta-analysis examining a 25-year period starting in 1989 found that discrimination against African Americans in the labor force had not decreased.[354] African Americans receive interview callbacks for jobs at lower rates than white people. In a study where equally qualified resumes with white-sounding and Black-sounding names were sent out, white applicants received 36 percent more callbacks than African American applicants.[355]

Even when researchers enhanced the resumes associated with Black-sounding names to make them stronger, white candidates still received more callbacks.[356] Another study found that African American candidates had stronger odds of being called for an interview when their resumes were stripped of information conveying racial or ethnic background.[357]

Discrimination against job applicants with criminal history is another factor limiting work opportunities for African Americans. As discussed above in the licensure section, this discrimination is mandated in some instances and permitted in others.[358] As mass incarceration has disproportionately impacted African Americans, they have disproportionately suffered post incarceration challenges. By 2010, people with felony convictions accounted for eight percent of all adults and 33 percent of African American adult males.[359] Having a felony conviction is worse for formerly incarcerated African American job applicants than white applicants.[360] One study found that African American men with no criminal history applying for entry-level jobs were less likely to receive a call back than white male applicants who had recently been incarcerated.[361] Research has shown that even in jurisdictions with "ban the box" policies barring employers from asking about a candidate's criminal history on a job application, African American applicants receive significantly fewer callbacks than white job applicants because employers may assume the African American applicants have a criminal history.[362]

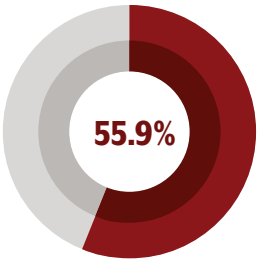
While Black women have endured both racism and sexism and persistently had their labor devalued,[363] African American men experience discrimination in the labor market in unique ways. This is in part due to the criminalization of Black men and boys, examined in Chapter 11, which results in societal distrust and isolation of Black men and boys.[364] Growing emphasis on "soft skills" particularly disadvantages Black male job applicants, as many employers wrongly perceive Black men as lacking in these skills that are viewed as increasingly important.[365] Researchers have found that employers hold false negative beliefs about the dependability, motivation, and attitude of African American men, and are unlikely to change these racist beliefs during a written application or interview.[366]

UNEMPLOYED COLLEGE GRADUATES IN 2013



Racial employment gaps are worse among educated workers.[367] A 2014 study revealed that 12.4 percent of African American college graduates aged 22 to 27 were unemployed in 2013, compared to a rate of 5.6 percent for all college graduates in the same age range. 55.9 percent of employed African American recent college graduates worked in an occupation that typically does not require a four-year college degree.[368] Graduates in areas such as science, technology, math, and engineering fared better, but still experienced high unemployment and underemployment rates.[369] In 2013, African American recent college graduates majoring in nine of 12 broad categories had less than a 50 percent chance of holding a job that required their degree.[370] Another study found that African American individuals who received MBAs from Harvard between 2007 and 2009 began their careers earning approximately $5,000 less their white peers, and by 2015, the racial pay gap had increased to just under $100,000 annually.[371]

African American college graduates with a job that does **not** require a college degree (2013)



California

The historic gap in employment between African American and white individuals is seen in California. By every measure, African American Californians continue to lack access to labor markets available to white Californians and as a result continue to suffer harms that have compounded since before the founding of our country. In March 2022, for example, the most recent data available, the unemployment rate was 10.5 percent for African American Californians and 5.9 percent for white Californians.[372]

Lack of Government Protection

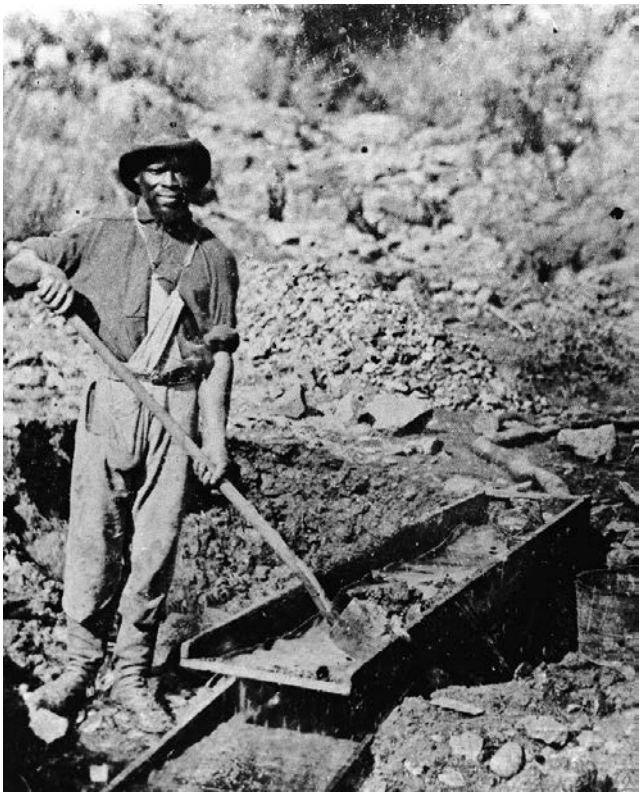
From its earliest days of statehood, California enacted a series of laws limiting the ability of African Americans to participate as full citizens of the state, as discussed in other chapters. These laws limited African Americans' voting rights, property rights, interracial marriage, and testimony in court or serve on a jury.[373] California barred the testimony of African American individuals in both civil and criminal proceedings.[374] These laws left African American Californians with little protection under the law, undermining their ability to advocate for themselves in the workplace, vindicate property rights, or even bear witness to the crimes they suffered.[375]

The discovery of gold in California 1848 drew migrants from across the country and beyond.[376] African Americans were among them. A small group of Black individuals established one of the earliest mining claims in Sacramento County, at "Negro Bar," near what is now Folsom, on property once owned by William Leidesdorff, an Afro-Caribbean businessman.[377] African Americans operated several successful mines, including Horncut Mine, a prosperous quartz mine in Yuba County, and the Washington Mine, a gold mine established in 1869.[378]

African American miners faced a hostile environment. Because African Americans lacked the right to testify in court during this period, African American miners were vulnerable to legal challenges and encroachments on their mining claims.[379] Frustrated by the discrimination they faced in California, including the state's discriminatory testimony and suffrage laws in particular, many Black miners left in the late 1850s for gold fields discovered in British Columbia, though some returned to the United States after the Civil War.[380] To this day, derogatory names like Negro Bar and Negro Flat are still used for locales in the mining region of California.[381] The California Department of Parks and Recreation currently operates the Negro Bar, Folsom Lake State Recreation Area.[382] However, the department is working with local community and stakeholders to change the name.[383]

African American mill workers played a significant role in the lumber industry from 1920 to 1960.[384] Experienced African American workers were actively recruited from the South to staff California mills.[385] Although vital to their employers, African American workers were paid less than their white counterparts and prohibited from undertaking supervisory duties.[386]

COURTESY OF HULTON ARCHIVE VIA GETTY IMAGES



An African-American miner poses with a shovel in Auburn Ravine during the Gold Rush, California. (1852)

During the late 1800s and early 1900s, African American workers were recruited from the South to work farms in the San Joaquin and Imperial Valleys.[387] Many African American farmworkers resisted the racist treatment they faced in California, and used contracted field work

as a way to establish themselves as entrepreneurs, skilled workers, or yeoman farmers.[388] As a result, Californian farmers preferred to hire Mexican nationals and other nonwhite immigrants instead of African American workers.[389] Additionally, growing towns and settlements during the time often explicitly discriminated against and worked to exclude African Americans from living or working there. For example, fliers for the Maywood Colony, a huge development entirely surrounding the town of Corning, California, trumpeted:

> GOOD PEOPLE
> In most communities in California you'll find Chinese, Japs, Dagoes, Mexicans, and Negroes mixing up and working in competition with the white folks. Not so at Maywood Colony. Employment is not given to this element.[390]

In the early 1900s, African American workers were less likely to work in higher paying industrial jobs in the West than in the North.[391] By 1930, over 50 percent of African American men were working in the industrial sectors of the Northeast and Midwest, but no more than 30 percent in the West.[392] While industrial jobs often had significant downsides for African American workers, they offered better pay than unskilled positions.[393] Still, many California companies refused to hire African American workers.[394] For example, in 1940, aviation official W. Gerald Tuttle of the Vultee Aircraft Company in southern California announced, "I regret to say that it is not the policy of this company to employ people other than the Caucasian race."[395]

The interwar period saw a significant influx of African American workers and residents to California. As the number of African American residents increased in cities like San Francisco and Los Angeles, African American workers not only increased in number, but also began to move into professions from which they had previously been completely excluded.

The New Deal in California

As it did across the country, the Great Depression brought significant unemployment to the state. For example, manufacturing employment fell by 30 percent from 1929 to its lowest level in 1932, while payrolls fell by 50 percent, and unemployment among unionized workers rose to 33 percent.[396] The New Deal provided an influx of funding to the state.[397] For example, the Works Progress Administration employed over 100,000 workers in California.[398] Between 1933 and 1939, the federal government sent $2.2 billion to California in the form of grants and loans.[399]

California governments engaged in discriminatory practices as the rest of the country did in disbursing this federal money. Burbank and Glendale invoked city ordinances to exclude a company of African American workers organized under the Civilian Conservation Corps.[400] White residents of Richmond objected to an interracial Civilian Conservation Corps camp in 1935, until it was eventually replaced with an all-white company.[401]

Labor organizing has a long history in California[402] that over time has led to some of the nation's most worker protective laws.[403] The state enacted first enacted its labor code in 1937, consolidating provisions then in existence.[404] California has repeatedly amended its labor and employment laws since then. Like the government, however, California for decades exempted both agricultural and domestic workers from various protections. Assembly Bill 1066, signed into law in 2016, removed exemptions for agricultural employees that had been in place for hours, meal breaks, and other working conditions, including specified wage requirements, and it created phased-in overtime requirements for such workers.[405] California enacted a "bill of rights" for domestic workers in 2013, extending overtime pay rights to some,[406] but these workers remain without certain other protections.[407]

Wartime Integration and Exclusion from Unions

African American workers made large advancements in the Bay Area during World War II, moving into manufacturing and industrial work in large numbers. By 1944, African American workers were employed widely in wartime industries, especially in the shipyards.[408] For example, the City of Richmond saw a massive influx of war workers from 1940-45, when its population grew from 24,000 to 100,000, with the African American population increasing from 270 to 14,000 in those years.[409]

COURTESY OF E. F. JOSEPH/ANTHONY POTTER COLLECTION VIA GETTY IMAGES

African-American trainee welder Josie Lucille Owens working on the construction of the Liberty ship SS George Washington Carver at Kaiser shipyards in Richmond, California. (1943)

The Federal Employment Practices Committee, the federal anti-discrimination agency active during World War II, was largely ineffectual in California.[410] In 1945, FEPC reported: "More than twenty-six percent of the Negro working force were engaged in shipbuilding or ship repair. Another twenty-five percent were employed in servicing water transportation, which was largely government work; these two industries alone, the report concluded, accounted for approximately "12,000 Negro workers."[411] Even so, the boilermakers union, representing shipbuilders, allowed only white workers to join the main branch of the union, and relegated African American workers to an "auxiliary union" where they were not permitted to vote or file grievances, received limited benefits compared to white members, could not be promoted to foreman if the job involved supervising white workers, and were classified and paid as trainees even when qualified for skilled work.[412] In Los Angeles, the International Longshoremen's and Warehousemen's Union, Local 13, for example, excluded African American workers,[413] even though African American workers and organizations sued the boilermakers' union for discrimination.[414]

Federal agency hearings in 1941 concluded that "there were only ten black employees in Douglas Aircraft's workforce of 33,000, only two among Bethlehem Shipbuilding's nearly 3,000 Los Angeles employees, and only 54 among Lockheed Aircraft and Vega Airplane's 48,000 workers."

FEPC helped reveal racist hiring practices at Los Angeles airline manufacturing plants. Hearings in 1941 demonstrated that "there were only ten Black employees in Douglas Aircraft's workforce of 33,000, only two among Bethlehem Shipbuilding's nearly 3,000 Los Angeles employees, and only 54 among Lockheed Aircraft and Vega Airplane's 48,000 workers."[415] African American workers' organizations helped push against this racist hiring to open more of these jobs for African Americans.[416]

Ultimately, FEPC never recommended the cancellation of any defense contracts in California.[417] During and after the war, areas of California continued to experience job segregation.[418] For example, Oakland's employment patterns continued to have African American men and women in separate, lower-skilled, and lower-paid work.[419] When the end of the war brought layoffs, African American workers were disproportionately impacted. By the end of 1946, one third of all African American residents in the Bay Area and 40 percent of African American women were unemployed.[420]

Many African Americans also migrated to California during this period to pursue farming, though they encountered setbacks similar to those in other labor sectors. Approximately 30,000 to 40,000 African Americans travelled to the San Joaquin Valley after World War II. The majority settled in cities such as Fresno and Bakersfield, and about 7,000 settled in the Tulare Lake Basin, farmland owned by J.G. Boswell.[421] Still, African American field workers faced discrimination. Unlike their white counterparts, they were rarely promoted to operate machinery for higher pay, and were instead relegated to more demanding physical work for lower pay.[422] Moreover, like in factories, African American workers also experienced greater injury and danger from farm work.[423]

Fair Employment and Housing and Short Lived Affirmative Action

Several years before the federal government enacted its version of the law, California in 1959 passed the Fair Employment Practices Act, prohibiting employment discrimination on the basis of race by employers.[424] The present day version of the law is the California Fair Employment and Housing Act.[425] The California Department of Fair Employment and Housing currently enforces the Fair EHA, which also prohibits harassment based on several different protected categories, including race.[426] The state agency investigates, prosecutes, and mediates complaints of discrimination.[427]

California's support of the Department of Fair Employment and Housing has not been sufficient to meet the level of need. In 2013, the California Senate Office of Oversight and Outcomes reported that even though California had the strongest antidiscrimination law in the nation, the agency was funded with a "relatively miniscule allotment of resources[,]" which left the Department unable to fully enforce the law and protect workers.[428] The agency's investigations of employment discrimination claims "suffer[ed] from understaffing, poor quality, intake confusion, and premature case grading."[429] The oversight Office also unearthed a secret policy that had given the Governor's Office final say as to whether the discrimination law would be enforced against another California state agency, making it more difficult for government workers to bring a discrimination claim.[430] In the years since this report issued,

the Department's budget has grown, but the number of complaints it receives each year has also risen.[431]

In 2013, a California government watchdog office reported that even though California had the strongest antidiscrimination law in the nation, the state agency tasked with investigating complaints was funded with a "relatively miniscule allotment of resources[,]" which left the Department unable to fully enforce the law and protect workers. The agency's investigations of employment discrimination claims "suffer[ed] from understaffing, poor quality, intake confusion, and premature case grading."

Like the federal government, government agencies in California also implemented affirmative action programs in employment. These programs produced mixed results. For example, between 1977 and 1995, the representation of African American tenured faculty members at the University of California system—which implemented affirmative action in its hiring—grew from 1.8 percent to only 2.5 percent, and for community colleges' faculty between 1984 and 1991, the proportion of African American faculty only grew from 4.9 percent to 5.7 percent.[432]

California's affirmative action programs were banned in 1996, after voters passed Proposition 209.[433] Proposition 209 amended the California Constitution to prohibit state institutions from considering race in hiring, contracting, and education.[434] According to polling data, Proposition 209 was supported by a majority of white and male voters, but opposed by a majority of African American, Latino, Asian American, and female voters.[435]

The evidence regarding Proposition 209's impact on employment opportunities is complex. In the 15-year period that followed Proposition 209 going into effect, the representation of African Americans, Latinos, and women in public sector relative to the private sector did not dramatically increase or decrease.[436] Men and women of color working for the State of California continued to earn less than their white, non-Hispanic male counterparts, and remained under-represented in high-level positions.[437]

Proposition 209's impact on the procurement process was more severe, as state and local governments were forced to abandon race-conscious contracting programs. Prior to Proposition 209's passage, awards of public contracts to businesses owned by people of color and women had been rising, reaching a high of 28 percent in 1994.[438] By 1998, awards had fallen to less than 10 percent, and they never recovered despite the increasing diversity in California.[439]

One study, published in 2006, found that only 32 percent of certified "minority business enterprises" in California's 1996 transportation construction industry were still in business 10 years later, and among those that had survived, businesses owned by African Americans had fared less well than others.[440] Another study published in 2015 found that Proposition 209 had led to a loss of between $1 billion and $1.1 billion annually for businesses owned by people of color or women.[441] As African American employers are more likely than their white counterparts to hire African American job applicants,[442] the closing of African American businesses may have also hurt African American employment.

Activists in California have worked to overturn Proposition 209, but have not been successful. In 2020, voters rejected Proposition 16, which would have repealed Proposition 209.[443]

Occupational Licensure in California

Nearly 21 percent of workers in California must obtain a license to work in their jobs. California required workers to obtain a license for 61 percent of lower-income occupations, ranking it the third most restrictive state nationwide, following only Louisiana and Arizona.[444]

California withholds or restricts access to licenses from persons with certain criminal convictions, which is more likely to harm African American residents. For example, as discussed in Chapter 11, some incarcerated Californians participate in a program to help battle wildfires.[445] Upon release, however, program participants would not be eligible to for jobs in many fire departments, because they cannot obtain an Emergency Medical Technician (EMT) certification.[446] California law specifically prohibits EMT certification for anyone who has been incarcerated for a felony within the past ten years, effectively disqualifying many people who participated in fire camp.[447] In 2020, recent attempts to remediate these issues related to firefighting have had limited success.[448]

California has made some strides in lifting restrictions on occupational licensure in recent years, with the

passage of AB 2138, which prohibits California licensing boards from denying a license for, among other things, many convictions older than seven years and dismissed or expunged convictions.[449] While AB 2138 represents progress, other schemes remain in California which continue to have a racially discriminatory impact.[450]

IV. Discrimination in Government Employment

In addition to supporting legal segregation and enabling private discrimination, the federal and California governments discriminated against African American workers as employers. The federal government in civil and military service has refused to employ African American workers, segregated an integrated workforce, and relegated African American workers to lower paid, less-skilled occupations. The state and local governments in California have had similar patterns of discrimination.

In 1913, President Wilson officially segregated much of the federal workforce, including the Treasury, the Post Office, the Bureau of Engraving and Prints, the Navy, the Interior, the Marine Hospital, the War Department, and the Government Printing Office. The federal government created separate offices, lunchrooms, and bathrooms for white and Black workers.

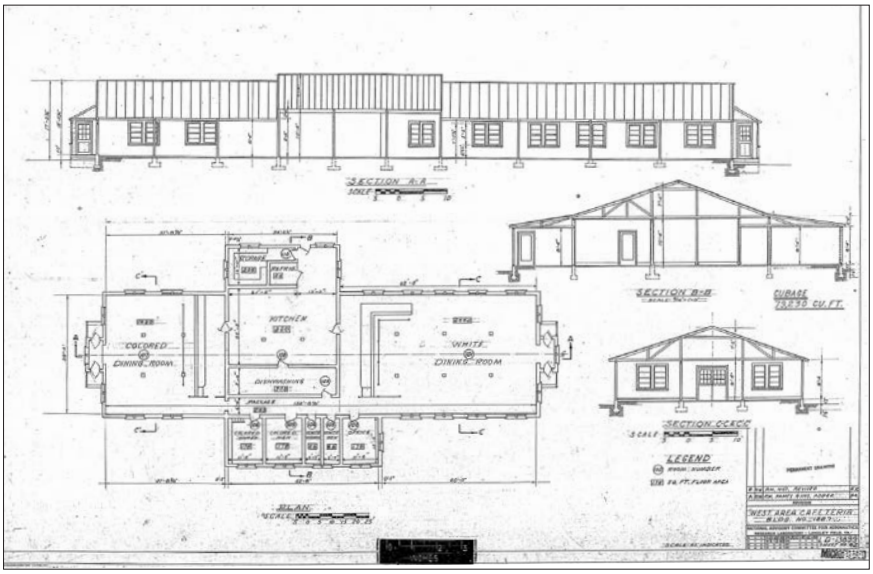
Segregation in the Federal Civilian Service

The federal civilian service reflected and shaped the racist labor environment of private employers. For much of the federal government's history, it was almost totally white or segregated. During the 19th century, there was no blanket ban on African American workers, but different officials were allowed to create a patchwork of regulations forbidding employment of African Americans.[451] The United States Postal Service was a striking example—in 1802, African American workers were banned from carrying mail.[452] African American workers were almost completely excluded from federal employment until 1861—the year an African American man was appointed as a clerk with the United States Postal Service in Boston.[453]

At the turn of the century, African Americans made up about 10 percent of the federal workforce.[454] Many African American workers found steady, valuable jobs in urban post offices, but there was little possibility for advancement.[455] President Roosevelt provided some support for threatened African American workers. In 1903, he refused to allow the town of Indianola, Mississippi, to drive out its African American postmaster, instead suspending service at the Indianola Post Office rather than accept the resignation of Postmaster Minnie Cox.[456] But this lasted only until the next year, when a white Postmaster was appointed.[457] And the tide turned with the election of President William Howard Taft in 1908, who stated in his inaugural address: "[I]t is not the disposition or within the province of the Federal Government to interfere with the regulation by Southern States of their domestic affairs," and that appointing African Americans to federal offices in prejudiced southern communities would do more harm than good.[458]

In 1913, President Wilson officially segregated much of the federal workforce, including the Treasury, the Post Office, the Bureau of Engraving

COURTESY OF SMITH COLLECTION/GADO VIA GETTY IMAGES



Blueprint for NASA/NACA's West Area Cafeteria at the Langley Research Center, showing a "White Dining Room" and a smaller, segregated "Colored Dining Room" for use by African American staff, including "human computers." (1948)

and Prints, the Navy, the Interior, the Marine Hospital, the War Department, and the Government Printing Office.[459] The federal government created separate offices, lunchrooms, and bathrooms for white and African American workers.[460] William McAdoo, Secretary of the Treasury, argued that segregation was necessary "to remove the causes of complaint and irritation where white women have been forced unnecessarily to sit at desks with colored men."[461] The federal government fired African American supervisors, and cut off African American employees' access to promotions and better-paying jobs, and it reserved those jobs for white employees.[462]

Postmaster General Albert S. Burleson segregated, demoted, or fired African American workers.[463] Though no official government records have been found that indicate how many African American postal workers were driven from their jobs, there was a clear pattern to segregate, reclassify, and discharge African American workers.[464]

President Wilson's decision to segregate an integrated federal workforce resulted in lower pay for African American workers cut off from better-paying jobs,[465] and created separate toilets in the Treasury and Interior Departments.[466] This damaged the ability of African Americans to build economic security. For example, in Washington, D.C., home of many federal jobs, African American homeownership fell after President Wilson's actions, in part because African American federal employees no longer had access to those better jobs and salaries.[467]

In 1979, the U.S. General Accounting Office found that exams administered by the Office of Personnel Management to screen applicants for federal jobs disqualified African American candidates at higher rates than white candidates, "offer[ing] no real opportunity for Black job seekers to be fairly assessed for federal jobs."[468] Few African American applicants received scores high enough to have a "realistic chance" of being considered for employment.[469]

A later study, commissioned by the U.S. Office of Personnel Management, examined the cases of all 11,920 federal workers fired in 1992, excluding the Postal Service and uniformed military services, and found that 39 percent of those fired were African American, even though African American workers comprised only 17 percent of the workforce at the time.[470] While federal personnel officials believed that African American employees were fired more often because they tended to be less experienced, less educated, and concentrated in lower-level jobs that experienced more turnover, the study found that, after every measurable factor was discounted, African American workers were still more likely to be fired at nearly every pay grade, from the lower rungs to the senior executive level.[471]

Despite the federal government's history of racism against African American workers, African American workers currently make up more of the federal civil service at over 18 percent than in the general population at 14 percent.[472] However, for the Senior Executive Service, the elite corps of experienced civil servants responsible for leading the federal workforce, only 10 percent are African American.[473]

Segregation in Military Service

The military reflected the rest of the federal government and American society in enacting racist and segregationist policies for much of its history. While African Americans have consistently served in the military since the very beginning of the country, the military has historically paid African American soldiers less than white soldiers and often deemed African Americans unfit for service until the military needed them to fight.[474] The military officially remained segregated until 1950.[475] African American soldiers consistently failed to be recognized for their contributions, and the government failed to follow through on promises of greater opportunities in exchange for service. While military service has provided an avenue for African Americans to achieve a measure of economic stability, it has consistently been a place of racial discrimination and segregation, particularly in the highest ranks. Today, there continues to be a limited number of African Americans in leadership roles.

President Woodrow Wilson's order to segregate the federal work force damaged Black economic security. In Washington, D.C., home of many federal jobs, Black homeownership fell after President Wilson's actions.

The Revolution and the War of 1812

African Americans' military service predates the republic itself, as do the government's actions discriminating against African American soldiers and failing to honor promises in exchange for their service. Both free and enslaved Black soldiers, from all 13 colonies, fought with the Continental Army and state militias in the American Revolution.[476] During the American siege of Yorktown in 1781, British troops, in order to extend dwindling food supplies, expelled all Black volunteer soldiers they had recruited with promises of freedom.[477] One British officer,

admitting the betrayal, stated: "We had used them to good advantage, and set them free, and now, with fear and trembling, they had to face the reward of their cruel masters."[478] While Joseph Ranger, a free African American man from Virginia served in the Navy of Virginia and received wages, a land grant, and later a life pension from the U.S. Government, David Baker, an enslaved man on the Isle of Wight, was forced to join the American navy as a substitute for his enslaver, and was re-enslaved after the war.[479]

After the republic was established, the Second U.S. Congress passed the Militia Law of 1792 allowing only "free able-bodied white male citizen[s]" to serve in the national militia, which became the National Guard.[480] In 1796, James McHenry, the Secretary of War, declared, "No Negro, Mulatto, or Indian is to be recruited [in the Marine Corps]."[481] The U.S. Marine Corps continued this ban on African Americans for the next 167 years.

During the Civil War, Black soldiers took home net pay of $7 per month, compared to $13 per month for white soldiers. And Black soldiers faced a higher mortality rate than their white counterparts, largely due to racist differences in medical care on the battlefield.

During the War of 1812, regardless of the fact that African American soldiers were legally not allowed to serve, African American soldiers made up a significant portion of U.S. Navy forces, and approximately one-quarter of U.S. soldiers at the Battle of Lake Erie were African American.[482] While many volunteer African American soldiers were explicitly promised freedom or equal opportunities in the future in exchange for their service by the state or federal government, these promises never fully materialized.[483]

Like they had done during the Revolutionary War, British troops recruited African American soldiers by promising freedom and land in exchange for service, but they largely failed to deliver. In fact, Francis Scott Key's "The Star-Spangled Banner"—the national anthem—contains a little-known but controversial verse understood by some scholars to have been intended as a threat or admonition to African American soldiers who might have escaped slavery and joined the British cause in a bid for freedom and the means for self-support:

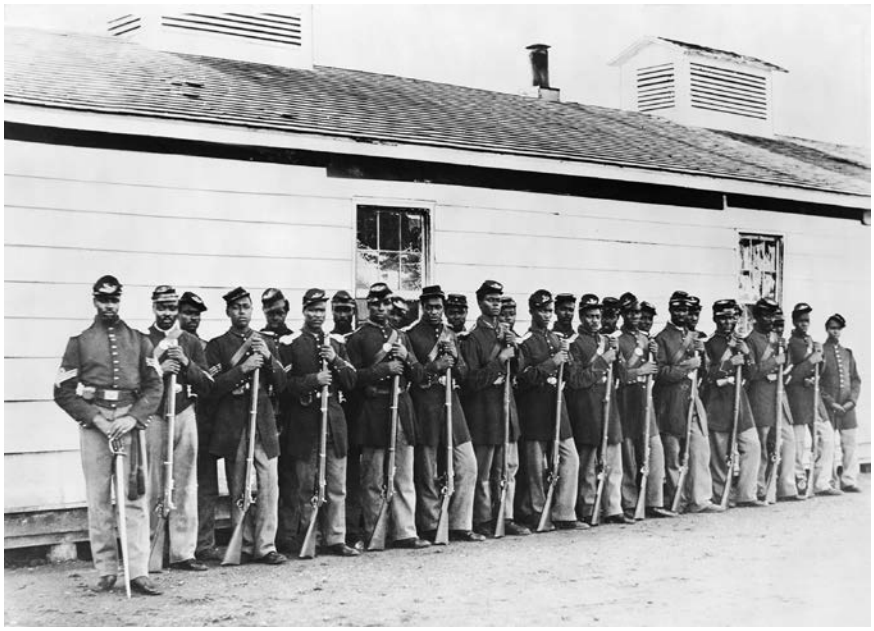
> *No refuge could save the hireling and slave*
> *From the terror of flight or the gloom of the grave,*
> *And the star-spangled banner in triumph doth wave*
> *O'er the land of the free and the home of the brave.*[484]

The Civil War

In the time of the Civil War, African Americans again attempted to join the war effort, notwithstanding the army's racist treatment and failures to follow through on promises. In 1862, Congress amended the law to permit African Americans to enlist in the Union Army, but initially, only in menial construction and camp services roles.[485] African American women labored in refugee camps as servants for Union officers and as laundresses for Union troops.[486] African Americans were finally admitted to military service in the Union following the Emancipation Proclamation in 1863.[487] Eventually, nearly 200,000 African American soldiers, roughly half of whom were formerly enslaved southerners, served in the Union Army.[488]

Once again, African American soldiers were afforded lesser treatment in their military service. African American soldiers were segregated, assigned lowly positions, had

COURTESY OF WILLIAM MORRIS SMITH /BETTMANN VIA GETTY IMAGES



Company E, Fourth Colored Infantry, at Fort Lincoln. African Americans have consistently served in the military since the very beginning of the country, but the military has historically paid Black soldiers less than white soldiers and often deemed African Americans unfit for service until the military needed them to fight. The military officially remained segregated until 1950. (1865)

few opportunities for advancement to officer rank, received lower pay, and faced far more severe disciplinary measures.[489] Second Lieutenant R. H. Isabelle, the target during a purge of African American officers, resigned in disillusionment in 1863, stating that he "joined the [U]nited States army ...with the sole object of laboring for the good of the union supposing that all past prejudice would be suspended for the good of our Country and that all native born [A]mericans would unite together to sacrifice their blood for the cause as our fathers did in 1812 & 15," but he found that "the same prejudice still exist[s]."[490]

During the Civil War, Black soldiers took home net pay of $7 per month, compared to $13 per month for white soldiers.[491] And African American soldiers faced a higher mortality rate than their white counterparts, largely due to racist differences in medical care on the battlefield.[492] One solider lamented: "Wee [sic] are said to be U.S. Soldiers and behold wee [sic] are U.S. Slaves."[493]

In fact, a small number of African American soldiers did not serve willingly in the Civil War.[494] Starting in 1863, some Union officials used tactics similar to enslavers, press gangs, and man-stealers to grow the ranks of the Union Army.[495] One army engineer in 1863 stated that of men forced into service: "My men, Colonel, have not been drafted. They have been kidnapped in the night."[496] Despite President Lincoln declaring in 1865 that "without the military help of the Black freedmen, the war against the south could not have been won,"[497] African American soldiers were not treated on equal footing, and suffered economic and social hardship as a direct result of the government's actions during the war.

World Wars I and II

Following the Civil War, African American soldiers in the 9th and 10th Cavalries and the 24th and 25th Infantries became known as "Buffalo Soldiers."[498] With a few exceptions—West Point graduates Henry O. Flipper, John Hanks Alexander, and Charles Young—these all-Black regiments were led by white U.S. Army officers.[499] Buffalo Soldiers aided in the nation's westward expansion by building roads and participating in military actions that included the Red River War (1874-1875) and the Battle of San Juan Hill during the Spanish American War (1898).[500] These men were also some of the first national park rangers.[501]

However, the legacy of the Buffalo Soldiers is complex. These African American soldiers fought for their rightful citizenship rights by fighting for a white-led government in government in wars to take the Southwest and Great Plains from Native Americans.[502] Between 1870 and 1890, 18 African American Buffalo Soldiers earned Medals of Honor while fighting Native Americans.[503] Despite their service, Buffalo Soldiers faced discrimination.[504] Some were able to access higher education, secure better jobs, and own property, but others returned from service only to be lynched.[505]

While opportunity expanded in the military during the period after the Civil War and more African Americans joined the service, African American soldiers continued to serve in the armed forces under segregated and unequal conditions. But increased military needs prevailed and, by World War I, there were 380,000 Black soldiers out of the four million total soldiers, a proportion similar to that of Black men in the general population.[506]

During World War I, Black men volunteered to serve in eight all-Black army regiments but remained strictly segregated from white soldiers.[507] Black soldiers were subject to humiliations including wearing discarded Civil War uniforms, or performing for the amusement of white solders.[508] One Black soldier at the time lamented that "The spirit of Saint-Nazaire [Army station in France] is the spirit of the South."[509] This played out in the numbers: only 11 percent of Black soldiers saw combat in World War I, while the vast majority were relegated to menial labor.[510] This segregation reflected the larger condition of the American economy in that Black soldiers were prevented from moving up in ranks to supervisory positions, and positions in some specialized corps were blocked altogether.[511]

COURTESY OF NATIONAL ARCHIVES

15th Regiment Infantry New York National Guard. (c. 1919)

This pattern continued in the interwar years and in World War II, when African Americans continued to serve in the military service despite segregation and other racist policies.[512] For example, in 1941, the U.S. Army established the 78th Tank Battalion, the first African American armor unit. It was made up of African American enlisted men and white officers, but without opportunity for the African American soldiers to advance.[513]

Author James Baldwin remarked that the "treatment accorded the Negro during the Second World War [marked] a turning point in the Negro's relation to America...A certain hope died."[514]

During the Vietnam War, Black men were much more likely to die on the frontlines. In 1965, 25% of soldiers killed in action were African American.

This pattern extended to the Congressional actions aimed at helping soldiers returning from fighting in World War II. In 1944, the Congress passed the Serviceman's Readjustment Act of 1944, commonly known as the "GI Bill." The GI Bill included provisions to provide financial assistance for homeownership, opening small businesses, and education, but, like the New Deal legislation before it, it left implementation largely to racist state and local governments and contributed to housing discrimination.[515] As a result, its benefits were not fully realized for returning African American soldiers. For discussion of the role of the Veterans Administration in implementing and maintaining housing segregation, see Chapter 5. For a discussion of the VA's role in education discrimination, see the Chapter 6.

Post-World War II to the Present

In 1941, President Roosevelt issued Executive Order 8802 stating, "I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of workers in defense industries or government because of race, creed, color, or national origin..." The Marine Corps received its first African American recruits, but continued to segregate. "Even though we were all Marines we were kept separate. We didn't have barracks, we lived in huts, built from cardboard, painted green. Camp Lejeune had barracks but we had huts. It was located in the back woods, amid water snakes and bears," said Marine Sergeant Carrel Reavis.[516]

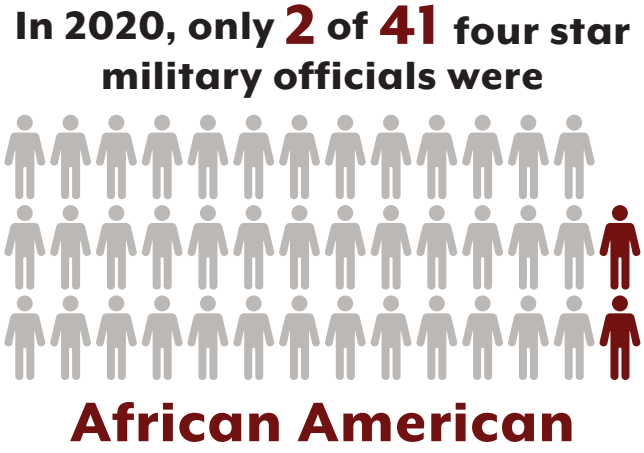
In 1948, President Harry S. Truman issued Executive Order 9981 to desegregate the military.[517] But, while the military formally integrated, serious racial discrimination persisted. For example, the army did not begin in earnest to integrate its forces until the Korean War, when demand for additional troops meant that the army had no choice but to send African American troops to replace white troops killed or injured in battle. Segregated all-Black army units persisted until 1954. In the Marines, full integration did not occur until 1960.[518]

Despite discrimination by the federal government, Black soldiers served and died for their country and have historically used it as a mode of upward mobility out of the South.[519]

The highest proportion of African American individuals ever to serve in an American war came in the Vietnam War.[520] Young Black men were disproportionately drafted during the Vietnam War years due to education and occupation deferments that were unavailable to Black men due to a centuries of education segregation and discrimination.[521]

In the Vietnam War, the American military no longer believed that African American men were not fit for combat.[522] African American men had a much greater chance of being on the front-line and suffered a much higher casualty rate.[523] In 1965 alone, African American soldiers were almost 25 percent of those killed in action.[524]

As the United States moved to an all-volunteer military following the Vietnam War and the end to conscription, African American soldiers enlisted at a much higher rate than white individuals, leading African American representation in the military to be roughly twice their representation in the U.S. population at large.[525]



Today, racial disparities in the military continue. Even as lower-level troops were integrated, leadership remained almost exclusively white. As late as 2020, of the 41 officials holding four-star rank, only two were African Americans.[526] Based on government data received through the Freedom of information Act, researchers have found evidence that African American service members have been substantially more likely than white service members to face military justice or disciplinary action.[527]Anecdotal news reports have presented a deep-rooted culture of racism and discrimination in all branches of the armed services.[528] On January 6, 2021,

insurgents stormed the U.S. Capitol, carried a confederate flag inside the Capitol building, [529] and displayed a noose and gallows in front of it.[530] Of the more than 700 individuals charged in the January 6 insurrection, 81 people have ties to the military.[531]

California

Although African Americans were present in California going back to the Spanish conquest era, they made up only around one percent or less of the population of California until 1920, and under two percent until the 1940s.[532] Still, the pattern seen in the federal civilian service and military service persisted in California at both the state and local levels. African American workers faced segregation and racial discrimination in state and local employment. Even when progress was made, governments failed to meaningfully address past discrimination, and African American workers remained largely shut out of the higher-paid leadership roles—a trend that still exists in the present.

When Bay Area Rapid Transit system was built in 1967, no skilled Black workers were hired. When Oakland built a new central post office during the same period—not a single Black plumber, operating engineer, sheet metal worker, or other skilled laborer was hired.

Up until World War II, African American workers were absent from many public and private sector jobs in San Francisco. For example, no African American worker was employed as a public school teacher, police officer, firefighter, or streetcar conductor nor as a bank teller or bus or cab driver in the city before 1940.[533] There were no African American streetcar workers until 1942—with poet Maya Angelou being one of the first—though this was not due to a lack of available skilled workforce in the area, as evidenced by the fact that within two years there were over 700 African American platform operators.[534]

When Bay Area Rapid Transit (BART) system was built in 1967, no skilled African American workers were hired.[535] The National Labor Relations Board-certified unions did not admit African American members, and BART, though a government agency, refused to use its power to insist on non-discrimination policies by the unions.[536] And it was a similar story when Oakland built a new central post office during the same period—not a single African American plumber, operating engineer, sheet metal worker, iron worker, electrician, or steamfitter was hired for construction of the federally funded government building.[537]

The City of Pasadena in Southern California similarly employed almost no African Americans in government jobs prior to World War II. "In Pasadena they told me they don't hire Black teachers," said Ruby McKnight Williams, the first African American woman to be employed by the city in a professional capacity in the 1940s. When Ms. Williams was hired "I found out...that no [Black] men were employed by the city except garbage men and two or three men who swept City Hall. As for [Black] women, even the attendants in the restrooms at the Rose Bowl had never been colored."[538]

Other types of government actions enforced racist and segregationist policies on African American Californians in different parts of the state. For example, in 1970 Pasadena became the first city outside of the South under a federal court order to desegregate its schools. In its ruling on the matter, the district court concluded that the Pasadena school district had discriminated both in its placement of students and in its allocation of teachers. As the court observed, the district's failures to comply with its own integration policies had occurred "in connection with the teacher assignment, hiring, and promotion policies and practices of the District, its construction policies and practices, and its assignment of students."[539]

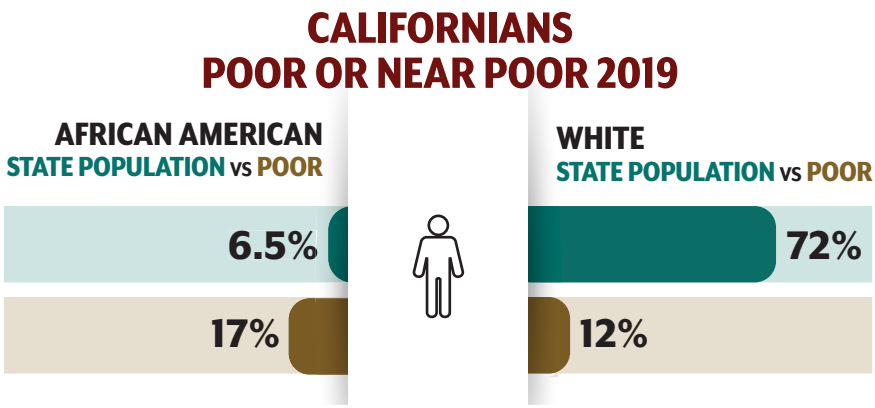
Some segments of the public sector like law enforcement and firefighting continued to discriminate against African American Californians. When they hired African American Californians, hostile work environments sometimes followed.[540] The San Francisco Fire Department, for example, had no African American firefighters before 1955, and by 1970, when African American residents made up 14 percent of the city's population, only four of the Department's 1,800 uniformed firefighters were African American.[541]

Public-sector employers have provided significant opportunities to African American workers, as compared to their private-sector counterparts—including in California. Even still, Black workers continue to encounter barriers to career advancement and higher pay.[542] As of 2018, African American workers account for 9.8 percent of California's state civil service, compared to 5.3 percent of the state's labor force and 5.5 percent of the population. However, that 9.8 percent share has been disproportionately concentrated in lower salary ranges; African American civil servants represented 12.6 percent of employees earning $40,000 or less but only 5.7 percent of workers earning more than $130,000.[543]

V. Effects Today

The cumulative impacts of the federal, state, and local governments' racial discrimination and segregation continue to harm African Americans today. In 2019, the median African American household earned 61 cents for every dollar earned by the median white household.[544] This is a slight increase from 2016, when African American households earned 56 cents to the dollar, a figure *lower* than it had been in 1968, after the passage of the Civil Rights Act in 1964.[545]

As a result of their higher unemployment rate and the persistent wage gap, African Americans experience higher levels of poverty.[546] In 2020, 19.8 percent of African Americans were living in poverty, compared to 8.3 percent of white Americans.[547] Due to a combination of racism and sexism, women have always had a higher rate of poverty than men.[548] Twelve percent of white women are impoverished, compared to 23 percent of African American women.[549] African American families are more likely than white families to have family members who are impoverished.[550] This has a destabilizing effect during periods of emergency. A 2020 study found that 36 percent of white families had enough savings to cover six months of expenses, versus 14 percent of African American families.[551] Another recent survey also found that 36 percent of African American respondents said that they had no money at all set aside for emergencies, compared to 24 percent of white respondents.[552] Without a safety net of savings, African Americans can be more vulnerable to upheavals in the labor market and are more likely to experience homelessness, as discussed in Chapter 5. During the COVID-19 pandemic, African Americans were more likely to hold jobs that exposed them to the novel coronavirus, and more likely to lose their jobs at the same time. They were more likely to see their savings shrink and more likely to not have enough to eat. As was the case after the 2008 recession, they are experiencing the slowest recovery.[553]



While African Americans have made significant advances into occupations and job categories that used to be subject to explicit segregation, or kept African American workers at the margins, there has been a limit to this progress. In 2021, an analysis of the 50 most valuable public companies demonstrated that only eight percent of "C-suite" executives—the highest corporate leaders, usually those that report to the Chief Executive Officer—are African American.[554] At least eight companies list no African American executives among their leadership team, as of December 2021.[555] Moreover, much of the gains that African Americans have made in employment and wages have been offset by the intensifying income inequality in the country as a whole.[556]

California

The numbers are similar for California. In 2019, the Public Policy Institute of California reported that about 17.4 percent of African American Californians were poor or near poor, compared to 12.1 percent of white people.[557] In 2020, the poverty rate was 14.6 percent among African American Californians and 7.9 percent among white residents.[558] Prior to the COVID-19 pandemic, Black families in California were nearly twice as likely to be in the bottom tier of income distribution than would be expected for their share of the population.[559] Factors that lead to African Americans often being first to suffer economic downturn and last to recover also persist in California. During the COVID-19 pandemic, sixty-eight percent of surveyed Black workers in Southern California who had lost their jobs reported that they were still looking for work a year after the start of the pandemic.[560]

African Americans are also under-represented in California's two major industries: Hollywood and Silicon Valley. In Hollywood, for example, in films released between 2015 and 2019, Black actors were less likely to be in lead roles than white actors, and Black actors were often funneled into race-related projects, which are typically less well funded.[561] Emerging African American actors received six leading role opportunities early in their careers, compared with nine for white actors.[562] African American talent is even more underrepresented in positions of creative control—African American directors directed six percent of films released between 2015 and 2019, African American producers produced six percent of those films, and African American

screenwriters wrote four percent of those films.[563] In 2020, the *Los Angeles Times* conducted a study of diversity in Hollywood studios and reported that of 230 senior corporate executives, division heads, and other senior leaders in entertainment companies analyzed by the *Times*, 10 percent were African Americans.[564] Ninety-two percent of film industry C-suite executives were white, making the industry more homogenous than the energy and finance industries.[565]

A 2018 report revealed that in large tech firms in Silicon Valley, African Americans made up only 4.4 percent of all employees. 1.4 percent were executives, 2.5 percent were managers, and 2.9 percent were professionals.

The disparities are worse in Silicon Valley. Although between 2004 to 2014, African American college students were more likely to major in computer science than white students,[566] a 2018 report revealed that in large tech firms in Silicon Valley, African Americans made up only 4.4 percent of all employees. 1.4 percent were executives, 2.5 percent were managers, and 2.9 percent were professionals.[567]

A recent report also found that for every African American individual who is a direct employee of a tech company, there are 1.4 African American contract workers, who generally earn 75 cents for every dollar made by a direct employee and are far less likely to receive health benefits or paid time off.[568]

VI. Conclusion

Enslavement was the nation's original disregard for African American lives and theft of African American labor. Slavery persisted for more than 200 years, and when it formally ended, the nation found new ways, from the Black Codes to Jim Crow, to keep African Americans tethered to the lowest rungs of work. Discrimination, exclusion, and devaluation never ceased. For more than 150 years since the formal end of slavery, African Americans have been denied opportunity and pathways to higher wages and been shunted into the lowest paying, least protected, and oft times most dangerous work, or they have been denied work altogether.

The few instances of affirmative effort to remedy or at least neutralize discrimination were inadequate and short-lived. Severe employment and wage disparities and attendant socioeconomic gaps never closed because the root causes of discrimination, exclusion, and subjugation were never addressed and have been sanctioned by the government and allowed to persist and entrench. Centuries of government-supported and government-protected racism have produced a labor market that is so solidly and structurally anti-Black that it can now stand on its own. It cannot and will not come undone without an affirmative dismantling and concentrated investment in creating opportunity for full participation by African Americans and full valuation of their work.

Endnotes

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[166] Freeman, *The Effect of Occupational Licensure on Black Occupational Attainment* in Occupational Licensure and Regulation (Rottenberg edit., 1980) pp. 165-66; Dept. Treas. Off. Economic Policy et al., Occupational Licensing, *supra*, at fn. 166, p. 41 (noting that "licensing policy falls in the purview of individual States").

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CHAPTER 11 An Unjust Legal System

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Young Black men enslaved as part of the convict labor system of Florida. (1915)

I. Introduction

As discussed in the previous chapters, throughout history, the American government at all levels has treated African Americans as criminals for the purposes of social control, and to maintain an economy based on exploited African American labor. This criminalization of African Americans is an enduring legacy of slavery. These persisting effects of slavery have resulted in the over-policing of African American neighborhoods, the mass incarceration of African Americans, and other inequities in nearly every corner of the American legal system.

This long history of criminalization began with enslavement and has created what some describe as a caste-like system in America where African Americans are in the lowest caste of America's racial hierarchy.[1] As the following chapter will show, this criminalization of African Americans has resulted in a criminal justice system that, overall, physically harms, imprisons, and murders African Americans more than other racial group relative to their percentage of the population. While constitutional amendments[2] and federal civil rights laws[3] have tried to ameliorate this mistreatment of African Americans, the inequities that remain are so significant that some scholars have argued that, as it relates to African Americans, U.S. society has replaced legal segregation with the criminal justice system.[4] African Americans are more likely than white Americans to be arrested, convicted, and to serve lengthy prison sentences. [5] African American adults are 5.9 times as likely to be incarcerated than white people.[6] The experiences of African Americans with the criminal justice system also result in a general mistrust of the civil justice system[7] where African Americans also face barriers to accessing justice such as obtaining a lawyer.[8]

In California, the history of the inequities African Americans experience is similar to the rest of the country's history. Although enslavement did not exist on the same scale in California that it did in southern states, California has contributed to the inequities African Americans have experienced and continue to experience. For example, California law once prohibited African Americans from testifying in court cases involving white people.[9] More recently, California's punitive criminal justice policies, such as the state's three-strikes law, have resulted in large numbers of African

Americans in prisons and jails.[10] Although there is very little scholarship on African Americans' experience in the civil legal system compared to scholarship on their experience in the criminal justice system, there is evidence that African Americans have historically experienced and continue to experience discrimination, such as lack of access to a lawyer[11] and racial bias among jurors.[12]

Well after the Civil War, federal, state, and local governments criminalized African Americans as a way to control and exploit them. Some scholars argue that this system intensified during legal segregation.

Section II will discuss the historical criminalization of African Americans and implicit bias. Section III will discuss discrimination in policing. Section IV will discuss discrimination in trial and sentencing. Section V will discuss discrimination in incarceration. Section VI will discuss the effects of contact with the criminal justice system. Lastly, section VII will discuss the experience of African Americans in the civil legal system.

II. Criminalization of African Americans

It is well established in the historical scholarship that American society has criminalized African Americans starting with enslavement.[13] Federal, state, and local governments, in order to subjugate African Americans and maintain their enslaved status, criminalized African Americans as a way to control them. This system survived the abolition of slavery and the Civil War and as some scholars argue, intensified during legal segregation. Once enslavement ended, white Americans created a new legal and social system to continue to socially control and exploit approximately four million African Americans.[14]

Southern states passed laws which criminalized African Americans by prohibiting every day, harmless behavior and punishing violations with harsh penalties.[15] State and local governments then leased out unjustly accused, prosecuted, and convicted African Americans to private companies to work to pay off their fines.[16] Between approximately the 1870s and 1940s, this system of leasing essentially created a new form of slavery.[17] In the segregated South, laws that segregated African Americans treated African Americans as peripheral in American society by physically separating them from white people.[18] Segregation continued to criminalize African Americans by imposing criminal punishments, such as fines and jail time, for violations of laws discriminating against African Americans.[19]

From approximately the 1950s to the 1990s, "law and order" or "tough on crime" political campaigns and the war on drugs resulted in laws that punished African Americans and resulted in their mass incarceration.[20]

The Slave Codes and the Fugitive Slave Act

The American legal system's early criminalization of African Americans through legalized social control and punitive laws stretches back to the colonial era and became more punitive over time as discussed in Chapter 2, Enslavement. Oppression of African Americans began with cases in the first American colony of Virginia.[21] In the 1640 case of John Punch, the courts punished three servants running away from their employer.[22] This was one of the first documented court cases involving the rights of African Americans.[23] Two of the servants were white and the third was African American, but they all committed the same crime.[24] The court ordered whippings for all three, but ordered that the white servants serve their employer for three more years[25] while it ordered the African American servant, John Punch, to serve his enslaver for the rest of his life.[26]

The first laws also treated African Americans more harshly than whites. Virginia passed the Casual Killing Act of 1669, which declared that if an enslaved person died while resisting their enslaver, the enslaver would not be considered to have acted with malice, which effectively made it legal for enslavers to kill the people they enslaved.[27] According to one scholar, most of the major slave codes were from 1680 to 1682 as they marshalled previously piecemealed legislation into one code. In 1705, Virginia passed "An act concerning Servants and Slaves," which combined older laws regarding forced labor in Virginia. This law prohibited African Americans from engaging in activity that white people were free to do such as resisting a white person,[28] holding weapons,[29] and leaving their plantation without permission.[30] The laws in Virginia became a model for other southern states throughout the slavery era.[31]

Much like Virginia, other colonies adopted their own slave codes and ensured that the law subjected African Americans to criminal penalties more harshly than white people. Eventually, every enslaving state had its own slave code. Slave codes, in territories like the District of Columbia,[32] and states like Alabama[33] and North Carolina,[34] all fundamentally treated African Americans as inferior to white people.

Although Americans frequently believe that the North was not segregated, this was not the case in reality. In 1849, the Massachusetts Supreme Court held that segregated schools were permissible under the state's constitution.[35] The Michigan Supreme Court held in 1855 that a steamboat company could refuse to sell an overnight cabin to African American abolitionist William Howard Day.[36] Courts in southern states even cited to this case—which was in a northern state—when ruling against African Americans in other cases involving segregation in schools, streetcars, and public accommodations.

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Federal laws and court decisions criminalized African Americans for asserting their human right to be free. The Fugitive Slave Acts of 1793[37] and 1850[38] required that all enslaved people seeking freedom by crossing state lines to free states be returned to their enslavers. In 1857, the U.S. Supreme Court held in *Dred Scott v. Sandford* that African Americans—whether enslaved or free—were not citizens of the United States and therefore did not have the rights and privileges of the U.S. Constitution.[39] There are many documented examples of court laws, court decisions, and associated documents[40] during this time that demonstrated that the American legal system treated African Americans as inferior, with fewer rights, and who were therefore subject to more punitive treatment under the law.

After the Emancipation Proclamation and the end of the Civil War, Congress made several efforts to safeguard the rights of African Americans. Congress passed the Thirteenth Amendment, which outlawed slavery.[41] Congress also passed the Civil Rights Act of 1866, which defined African Americans as citizens in order to protect the civil rights of newly freed people.[42] To primarily protect their physical safety, Congress passed the Ku Klux Klan Act to eliminate extralegal violence against formerly enslaved people.[43] Congress also created the Freedmen's Bureau in order to provide food, clothing, fuel, and other forms of assistance to destitute formerly enslaved people.[44]

But, as discussed in previous chapters, white supremacist southern politicians rose to power after the contested U.S. presidential election of 1876. U.S. troops withdrew from key cities in the southern states, and the Freedmen's Bureau had already been dismantled in 1872 because of southern political pressure. As a result, these amendments and statutes were largely ignored or circumvented for a century.[45]

The Black Codes

Southern states passed the Black Codes and vagrancy laws to criminalize, socially control, and maintain formerly enslaved African Americans in a lower social caste and as a source of exploited, free labor.[46] Though often confused with segregation laws, the Black Codes existed to criminalize the everyday activities of African Americans in southern states during the years immediately after the end of slavery until the Reconstruction Act of 1867.[47] If arrested and convicted of violations, African Americans again had little to no control over their own lives. This provided an opportunity for white Americans in economic and political power to continue using Black labor to support the southern economy.[48] Moreover, Black Codes and vagrancy laws were a revival of a legal system that existed during the slavery era and further contributed to the social control of African Americans, enabling their economic exploitation.[49]

During slavery, white Americans generally believed that free African Americans were suspicious, as white Americans saw free African Americans as "masterless" and therefore unhoused or vagrant, and most likely fleeing from the law.[50] In some states, police arrested African Americans if they could not prove that they worked for a white employer.[51] They could not change employers without permission.[52] African Americans could not sign labor contracts without a discharge paper from their previous employer.[53] This placed all the power in employers, much like slavery placed all the power in enslavers, and left African Americans with little control over their ability to find other work.

Other Black Codes supported the forced labor of Black children, as discussed in Chapter 8, Pathologizing the African American Family. As part of the Black Codes, states passed vagrancy laws that declared African Americans who were unemployed and without a permanent residence as vagrants and therefore subject to fines or imprisonment, which criminalized and controlled African Americans.[54]

While the Black Codes ended in the 1860s, ex-Confederate states passed vagrancy laws after the end of Reconstruction.[55] All former states in the confederacy, except Arkansas and Tennessee, passed vagrancy laws by 1865.[56] After the police arrested African Americans for minor infractions, they leased them to a private company or a white private citizen who would pay the fine in exchange for the person's forced labor.[57] Under this system, incarcerated people could often never earn enough to repay the plantation enslaver to their satisfaction, and allowed the plantation enslaver to continue exploiting African American workers for many years.[58]

In a system known as "convict leasing," state laws and the U.S. Constitution allowed private entities to force African Americans into doing the same work, on the same land, and even for the same people as when they were enslaved.

Convict Leasing and Re-enslavement

In a system known as "convict leasing," laws and the U.S. Constitution allowed private entities to force formerly enslaved people and descendants of enslaved people into doing the same work, on the same land, and even for the same people as African Americans would have done when they were enslaved.[59] African American men and boys were arrested on vagrancy charges or minor violations, fined, and forced to pay off their fine through convict leasing. The convict leasing system was legal because the Thirteenth Amendment allowed forced labor for people who had been convicted of a crime.[60] Therefore, the legal system considered incarcerated people to have few rights because, in the words of the Supreme Court of Virginia, they were "slaves of the state."[61]

In some instances, the private citizens who benefitted from this system were former enslavers or even former Confederate soldiers, such as the owner of the Angola State Penitentiary land,[62] which was formerly a plantation, as will be discussed below in the incarceration section of this chapter.

The conditions under which incarcerated people worked in the convict leasing system were oppressive. Unlike in the slavery era, lessees had no incentives to keep incarcerated people healthy or alive, so the convict leasing system was "worse than slavery."[63] Working and living conditions for incarcerated people were dangerous, unhealthy, and violent.[64]

Archaeologists recently discovered a mass grave of incarcerated people's remains in Sugar Land, Texas at the Bullhead Camp Cemetery that was once part of the Central State Prison Farm owned by the State of Texas.[65] In this mass grave, on land that was once owned by enslavers and their descendants, archaeologists found 95 bodies of men and boys and possibly one woman—almost all of whom were African Americans—who were participants in the state-sanctioned convict leasing system, which existed in Texas between 1871 and 1911.[66]

Historical documents showed that incarcerated individuals at this plantation frequently died from heat stroke, malnourishment, extreme physical activity for extended periods of time, and disease.[67] Further, the incarcerated individuals had occupational injuries and wounds from gunshots and corporal punishment.[68] Convict leasing, such as what occurred in Sugar Land, Texas, existed throughout the American South.[69] Further, a variety of individuals and businesses used convict leasing,[70] such as Tennessee Coal, Iron & Railroad Co., which U.S. Steel owned.[71] Scholars indicate that convict leasing gradually ended by around the 1940s,[72] as each state stopped leasing convict labor to private individuals and business.

COURTESY OF THE LIBRARY OF CONGRESS

Convicted children working in the fields. (1903)

Legal Segregation and Racial Terror

During the era of legal segregation, southern state and local governments implemented a system of legalized social control to separate African American and white Americans. As discussed below, these laws were a legacy of slavery because they criminalized African Americans in a post-slavery era by mandating their separation from white Americans and provided for criminal punishments for any violations. The United States Supreme Court case *Plessy v. Ferguson*, which upheld the rule of "separate but equal," legalized laws that required the separation of African Americans and white people in nearly all public places such as parks, businesses, and public transportation.[73] Laws provided for criminal penalties such as fines and imprisonment through the legal justice system—only for African Americans—who violated segregation laws.[74]

In addition, as Chapter 3, Racial Terror, discusses, government actors and private citizens routinely punished African Americans who violated these laws—or even appeared to be breaking racial norms created by white people—through extrajudicial means such as lynching, racial massacre, and social fear-mongering. Lynching also contributed to the popular belief among Americans that African American people were assumed to be guilty.[75] White lynch mobs murdered African American suspects who were later found to be innocent.[76] Sometimes these murders occurred for no reason at all and at least one targeted a pregnant woman and her unborn child.[77] White mobs often framed the lynching as a method of self-defense against African Americans who were portrayed as dangerous criminals who posed a threat to white society.[78]

Segregation laws were legal until the 1950s and 1960s when landmark cases such as *Brown v. Board of Education* and laws like the Civil Rights Act of 1964 found them unconstitutional or made them illegal.[79]

Although Americans often associate segregation laws as a southern phenomenon, the northern legal system also discriminated against African Americans and treated them as inferior after the Civil War through court cases and laws.[80] This discrimination is particularly apparent in a line of cases involving the rights of African Americans on railroad cars.[81] In 1867, the Pennsylvania Supreme Court ruled against Mary Miles who refused to sit in the colored-only section of a streetcar.[82] Courts in southern states, such as the Florida Supreme Court[83] and the Tennessee Supreme Court,[84] later cited the *Miles* case in other cases in which the courts decided against African Americans who sought to sit in the whites-only sections of streetcars.[85] It is also well-established that, from the 1880s to 1960s, northern states had laws that allowed segregation in schools and public accommodations.[86]

Tough on Crime Era and the War on Drugs

The civil rights movement ended legal segregation and made explicit discrimination against African Americans in the text of court cases and statutes illegal. However, scholars argue that legalized social control continues today in the legal system despite existing civil rights laws and regulations.[87] These scholars argue that the incarceration of African Americans, particularly African American men, occurs in our legal system in two stages.[88]

First, police, prosecutors, and judges have significant discretion as to who they may stop, search, arrest, and prosecute even in a supposedly racially neutral system.[89] During this first stage, the implicit bias—which the previously described history of America's criminalization of African Americans created—affects decision makers and results in high numbers of African Americans in prison.[90] Second, as discussed above, several court cases prevented legal challenges to racial discrimination.[91]

White lynch mobs murdered Black suspects who were later found to be innocent. Sometimes these murders occurred for no reason at all, and even targeted Black children. White mobs often framed the lynching as a method of self-defense against African Americans who were portrayed as dangerous criminals who posed a threat to white society.

Several laws in the decades during and after the Nixon administration provided for increasingly harsh penalties on criminal defendants that resulted in a higher likelihood of African Americans in prison than white Americans.[92] During the post-civil rights era, both Republican and Democratic politicians ran on "tough on crime" or "law and order" political platforms that popularized especially punitive criminal laws—particularly laws prohibiting drug sales, distribution, possession, and use—to gain support from voters.[93] John Ehrlichman, who had been Nixon's domestic policy advisor, explained:

"The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and

black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."[94]

Much like what Ehrlichman describes, and many scholars have noted, Republican politicians essentially sought to appeal to the backlash against the civil rights movement by supporting punitive criminal laws.[95] Democratic politicians such as President Bill Clinton also ran on tough on crime platforms during his campaigns and supported punitive laws once in office.[96]

These political campaigns often relied on the negative stereotypes of African Americans as criminals built by the previous three centuries of American law and order. George H.W. Bush produced a series of advertisements for his 1988 presidential campaign against Democratic nominee Michael Dukakis that featured an African American man named Williiam Horton. These advertisements exploited the stereotype of African American men as predators and rapists of white women. William Horton was convicted of murdering a white woman and stabbing her partner while on furlough through a weekend pass from prison. The furlough was granted through a Massachusetts program when Dukakis was governor of Massachusetts. The advertisement primarily consisted of a voice-over summarizing Horton's crimes and a mug shot where he looked particularly threatening. The advertisement also nicknamed Mr. Horton "Willie."[97] The "Willie Horton" advertisements inaccurately portrayed bi-partisan supported furlough programs. These programs were used in all 50 states, and afforded incarcerated individuals the opportunity to leave prison for a certain amount of time to visit family, search for employment, and prepare for life out of prison.[98] Thousands of incarcerated individuals safely took advantage of furlough programs in the nation, and William Horton was the rare tale of a disaster.[99]

Once politicians entered office, racist political campaigns morphed into racist policies. In 1971, President Nixon declared a "War on Drugs."[100] In the speech on it, he described drug abuse as "Public Enemy Number One."[101] This marked the beginning of the federal government's effort to fight illegal drugs by significantly increasing penalties, enforcement, and incarceration of people who possessed, distributed, and sold illegal drugs.[102] Rather than treat drug use as a public health issue, the American government chose to treat illegal drug use as a criminal justice issue.[103] Federal and state governments chose to punish drug users rather than offer medical help. The war on drugs, which continues today, [104] is a cause for the high numbers of imprisoned African Americans, as evidence exists to suggest that African Americans use drugs at approximately the same rate or less than white Americans.[105]

Federal and state governments chose to punish drug users rather than offer medical help. The war on drugs, which continues today, is a cause for the high numbers of imprisoned African Americans, as evidence exists to suggest that African Americans use drugs at approximately the same rate or less than white Americans.

In the decades that followed Nixon's announcement initiating the war on drugs, Congress passed laws that harshly punished criminal defendants. During the presidency of Ronald Reagan, Congress passed the Anti-Drug Abuse Act of 1986, which allocated $1.7 billion to the war on drugs and provided for mandatory minimum sentences for various drug offenses.[106]

The law included far more severe punishment for the distribution of crack cocaine (cocaine in a solid pellet form) than the punishment for powered cocaine (cocaine in a fine powdered form),[107] even though there is no scientific difference between these forms of the drug.[108] The law established a 100 to 1 disparity in the punishment created for the distribution of crack and powdered cocaine.[109] Distribution of only five grams of crack resulted in a minimum five-year federal prison sentence.[110] Meanwhile, distribution of 500 grams of powder cocaine resulted in the same sentence.[111]

In 1988, Congress added even harsher penalties to the law.[112] The change allowed public housing authorities to evict any tenant who allows any form of drug-related criminal activity to occur in or near public housing premises[113] and eliminated many federal benefits, such as student loans, for anyone convicted of a drug offense.[114] An arrest is not required to evict entire families from public housing, as long as an agency employee determines that a household member or guest has

engaged in drug related activity.[115] Scholars have argued that these policies perpetuate residential segregation.[116]

The law also expanded the use of the death penalty for serious drug-related offenses and imposed new mandatory minimums for drug offenses.[117] This Anti-Drug Abuse Act has had a disproportionate effect on African Americans because African Americans have more commonly used crack cocaine rather than powered cocaine.[118] One study found that the probability that a Black man would enroll in college dropped 10 percent after the passage of the Anti-Drug Abuse Act of 1986.[119] Another showed that close to one third of individuals arrested for drug possession in the U.S. are African American adults.[120]

Some scholars argue that other laws passed during this time intensified drug law enforcement by incentivizing local law enforcement to stop, search, prosecute, and/or incarcerate large numbers of people. During the presidency of President Bill Clinton, Congress passed the Violent Crime Control and Law Enforcement Act of 1994 or "The 1994 Crime Bill," which made several changes to the law, such as increased federal penalties for many crimes; made a variety of offenses federal crimes; and provided federal funding in ways that encouraged the growth of a more punitive criminal justice system.[121]

Some scholars have argued that this bill contributed to the exponential growth of the prison population in the United States in part by promising $8 billion to states if they adopted "truth-in-sentencing" laws, which required that incarcerated people serve at least 85 percent of their sentences.[122] To name another example,

In 1984, Congress passed the Comprehensive Forfeiture Act which allows the police to keep assets of people engaging in criminal activity. Numerous studies around the country have found that the police are more likely to seize money and property from Black defendants.

Congress passed the Comprehensive Forfeiture Act of 1984, which as some scholars argue, incentivizes police to engage in over-policing because it allows them to keep assets of people engaging in criminal activity.[123] Numerous studies around the country have found that the police are more likely to seize money and property from African American defendants.[124]

Implicit Bias

As federal, state, and local governments intentionally and methodically criminalized African Americans, Americans, regardless of race, began to associate African Americans with crime. This enduring legacy of slavery has resulted in an American society that is biased against African Americans. Psychologists have documented, for almost 60 years, that the stereotype of African Americans as violent and criminal.[125] This association is not only strong, it is also appears to be automatic (unconscious).[126] Other studies show that in cases involving a white victim, the more stereotypically Black a defendant is perceived to be, the more likely that person is perceived to be dangerous.[127]

A new but growing body of scholarship shows that police officers are frequently biased against African Americans.[128] New policing technologies may perpetuate how police treat African Americans because they use algorithms that replicate human biases.[129]

California

Much like courts in southern states and northern states, California courts and the legislature also discriminated against African Americans throughout history.

In 1874, the California Supreme Court upheld school segregation in San Francisco.[130] In 1919, the California Supreme Court decided a case *against* an African American couple, the Garys, who fought to keep their Los Angeles property against a racially restrictive covenant.[131] These cases show that California courts were actively involved in legitimizing discrimination against African Americans.

In addition to court cases, California also passed discriminatory laws. As discussed in other chapters, in 1850, the state prohibited marriage between African American and white Americans[132] and prohibited African Americans from testifying in civil and[133] criminal court cases that involved white people.[134] The California Supreme Court upheld this law prohibiting testimony from African Americans.[135] Like other states and the federal government, California also passed its own Fugitive Slave Law in 1852.[136] Much like southern states, California also had vagrancy laws.[137]

More recently, California passed the Mulford Act on July 28, 1967, which made it a misdemeanor to carry

loaded firearms in public.[138] The bill was in response to the Black Panther Party for Self-Defense, which was formed in Northern California in 1966 and organized legal armed demonstrations in the state to support and protect African Americans.[139] In February 1967, 20 armed Panthers escorted Malcom X's widow Betty Shabazz to the Malcom X Grassroots Memorial in San Francisco.[140] In April 1967, 12 armed Panthers led a protest against a Contra Costa County Sheriff who killed a young Black man.[141] It was against this backdrop that state Assemblyman Donald Mulford introduced legislation to ban the carrying of firearms in public places.[142] In response to the proposed legislation, a group of Panthers walked inside the Assembly chamber at the California Capitol while carrying firearms to protest.[143]Although Assemblyman Mulford had denied that the legislation was racially motivated, after that demonstration, Assemblyman Mulford added a provision to Assembly Bill 1591 that would also include a ban on carrying loaded weapons in state buildings.[144]

California has also imprisoned African American activists. Romaine "Chip" Fitzgerald and Geronimo Pratt, both influential members of the Black Panther Party, were sentenced to life in prison for separate murders in 1969 and 1971, respectively.[145] Even though by 1990 there was substantial evidence indicating that Geronimo Pratt was framed, the California Supreme Court refused to overturn his conviction at the time and a Los Angeles

COURTESY OF DAVE RANDOLPH/SAN FRANCISCO CHRONICLE VIA GETTY IMAGES

San Francisco Police raid Black Panthers in the Fillmore District (1969)

County Deputy District Attorney argued against Pratt's parole stating, "he is still a revolutionary man." [146] While Fitzgerald remained in prison for over 51 years until his death at age 71,[147] Pratt was eventually released in 1996 after documents confirmed that the government's key witness was an undercover police operative who posed as a member of the Black Panther Party.[148] Advocates argue that other African American political activists currently imprisoned in California should be considered political prisoners because they have been denied parole as a result of their political affiliations.[149]

III. Policing

Police have harassed, brutalized, and killed African Americans since the slavery era. The stereotypes created to support slavery and that have carried through to the modern day have resulted in implicit biases against African Americans in the American public at large and in our police force. Due to implicit bias in policing, and the effects of residential segregation, African American communities are paradoxically both under and over-policed depending on the type of crime.[150] The police and the American public see African Americans not as victims, but as criminals. The legacy of slavery continues to devalue African American lives today as police are more likely to stop, arrest, and kill African Americans than white Americans.

Slave patrols were made up of ordinary citizens, like farmers, hotelkeepers, and brick makers, who banded together to catch, return, and discipline freedom seekers and prevent revolts.

Slave Patrols

Slavery era "slave patrols" were an early form of policing and one of the first patrols began in the Carolina colony in the early 1700s.[151] Slave patrols were made up of ordinary citizens, like farmers, hotelkeepers, and brick makers,[152] who banded together to catch, return, and discipline freedom seekers and prevent revolts.[153] Some slave patrol members were community leaders and the enslavers who enslaved large numbers of people in the region.[154] Some slave patrols had written patrol enforcement instructions, member rosters, and correspondence.[155] Others were more informal and simply consisted of all adult men in a community.[156]

Slave patrols had many similarities with modern police departments. Much like current police departments, some slave patrols had hierarchical organization structures that mimicked military units with ranks such as

captain.[157] Slave patrols also used dogs to attack enslaved people by biting them but also to instill fear, and used bloodhounds to track down enslaved people.[158] Freedom seekers learned to run without shoes and put black pepper in their socks to make the slave patrols' bloodhounds sneeze and throw them off their scent.[159]

Much like slave patrols, police have continued to use dogs against African Americans in the 20th century through the present. Police used dogs against demonstrators during the civil rights movement.[160] The United States Department of Justice noted in its 2015 report that the Ferguson Police Department "exclusively set their dogs against black individuals, often in cases where doing so was not justified by the danger presented." In Baton Rouge, Louisiana, police dogs bit at least 146 people from 2017 to 2019 and almost all of whom were Black.[161]

Law Enforcement Targeting of African American Political Leaders

Law enforcement agencies have not only targeted African Americans and physically hurt them, but the federal government has targeted African American political leaders to neutralize their effectiveness. As discussed in Chapter 3, Racial Terror and Chapter 4, Political Disenfranchisement, the Federal Bureau of Investigation and state intelligence agencies, like the Mississippi Sovereignty Commission, targeted civil rights leaders and activists to deter them. The Mississippi Sovereignty Commission openly discussed murdering civil rights activists[162] and were implicated in false convictions of activists.[163] The Federal Bureau of Investigation has continued surveillance action today against Black Lives Matter organizers.[164]

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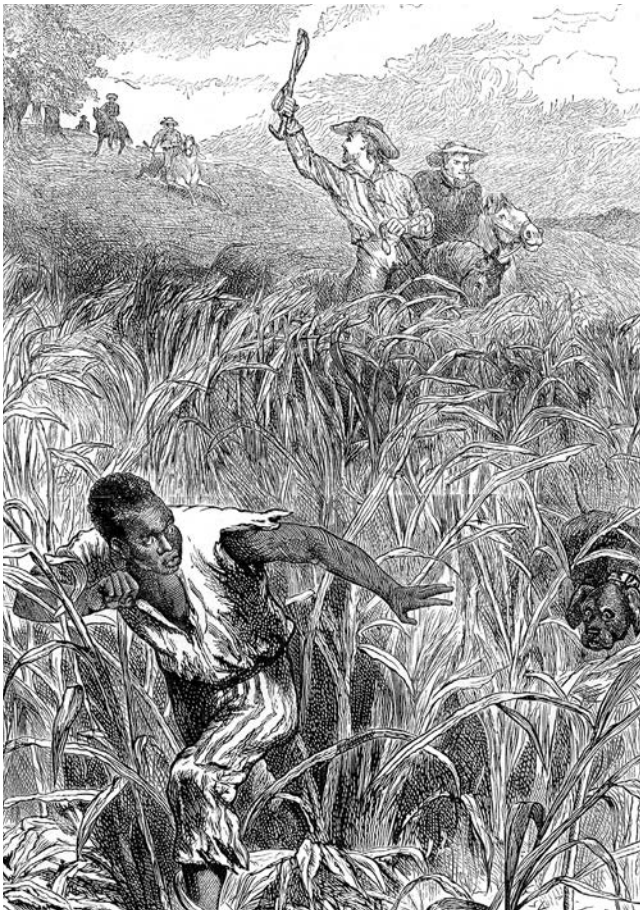


Vintage engraving of an African American man running through long grass chased by men on horseback with dogs. (c. 1880)

Over-Policing

A majority of African Americans live in communities where there are higher rates of violent crime. As described in Chapter 5, Housing Segregation, due to government-sanctioned residential segregation, African Americans are far more likely than white Americans to live in impoverished neighborhoods with higher rates of violent crime.[165] Sixty-two percent of African Americans live in highly segregated, metropolitan areas that experience a high degree of violent crime, while the majority of white Americans live in "highly advantaged" neighborhoods where there is little violent crime.[166] As Dr. Bruce Appleyard testified during the December 7, 2021 Task Force Meeting, there may be a connection with formerly redlined communities and higher rates of police stopping and searching of African Americans.[167]

Studies suggest that police treat African Americans differently than white Americans. Some scholars believe that police arrest large numbers of African Americans for relatively minor crimes, such as loitering, drug possession, and driving infractions. In 2019, African Americans comprised 26 percent of all arrests yet they only made up 13.4 percent of the population.[168] According to a recent large-scale analysis of racial disparities in of nearly 100 million state patrol police stops in 33 states, researchers found that police officers stop African Americans more often than white drivers relative to their share of the driving-age population.[169] Drivers—after controlling for age, gender, time, and location—are more likely to be ticketed, searched, and arrested when they are African American than when they are white.[170] There is also evidence that the bar for searching African American drivers is lower than for searching white Americans.[171] A 2021 study of traffic stop data in Florida shows that approximately 42 percent of police officers in that state discriminate during traffic stops and that minority drivers are less likely to be able to leave with a warning when compared to white drivers.[172] Another study shows that police use more force against African American and Latino suspects in the beginning stages of interactions.[173]

Some early data also indicates that police may have arrested a large number of African Americans, relative to their proportion of the population, for violating social distancing rules during the COVID-19 pandemic.[174]

Some research indicates that American society views African Americans so differently than the rest of the population that marketing professionals have identified and potentially exploited this trend.[175] Marketing has targeted African Americans for consumer products to defy racism and project a middle class identity.[176] Respondents in one study indicated that being well groomed is a way to defy racism by showing worthiness.[177]

The daily ongoing fear of racial profiling has an enduring effect on African Americans. Former First Lady Michelle Obama discussed her fears about her daughters becoming the victims of racial profiling:[178] "The fact that they are good students and polite girls, but maybe they're playing their music a little loud, maybe somebody sees the back of their head and makes an assumption." "Many of us still live in fear as we go to the grocery store, walking our dogs, or allowing our children to get a license." Obama said.[179]

Policing in African American communities, such as through "stop and frisk" techniques, "communicates to Black men that they are objects of disdain by the state and that their citizenship is degraded."[180]

A 2017 study of officer-worn body camera footage showed police officers speaking significantly less respectfully to African Americans than to white Americans in everyday traffic stops after controlling for officer race, infraction severity, stop location, and stop outcome.[181]

Federal programs and nationwide policing practices have contributed to this over-policing. Operation Pipeline is a federal program in which over 300 state and local law enforcement agencies train officers to use pretextual stops and consent searches on a large scale for the interception of the transportation of drugs. "Broken Windows," an aggressive crime prevention strategy, emphasizing arresting people for committing both major and minor offenses, was first implemented in New York City in the 1990s.[182] It resulted in arrests of disproportionate numbers of Latino and African American youth.[183]

Under-Policing and the Dismissal of African American Victims

In addition to perceiving African Americans as more dangerous, Americans and police officers are also less likely to view African Americans as victims of crimes, particularly in areas of violence against women and girls, and mass shootings. Evidence of such under-policing is apparent in the popular news coverage of many cases in which law enforcement authorities appear to have ignored the disappearance of African American women, girls, and children.

Crimes against Black women are poorly investigated and sometimes ignored altogether. When police actually attempt to investigate alleged crimes against Black women, they often believe the victims are not credible.

Although Black women experience more sexual violence, Black women have historically not received the same level of attention as white women following sexual assaults.[184]As one scholar explains: "Crimes against Black women are poorly investigated and sometimes ignored altogether. When police actually attempt to investigate alleged crimes against Black women, they often believe the victims are not credible. Further, the few sexual assault crimes that actually lead to police charges are frequently not pursued by prosecutors[,] . . . denying [Black women] access to justice."[185] Black women and girls are disproportionately more likely to be victims of sex trafficking in the United States than women and girls of other races.[186]

These biases are rooted in history. In 1855, a judge instructed a jury that Missouri's laws protecting women who resist sexual assault did not apply to a 19-year-old enslaved woman, Celia, who killed her enslaver when he was attempting to rape her, after she had already endured five years of rape resulting in the birth of two of his children.[187]

This trend also extends to crimes against African American children. African American children on average remain missing longer than non-Black children.[188] African American women and girls, in particular, go missing in numbers larger than their proportion of the population.[189] Not only the police but also the media[190] typically pay them less attention compared to missing white women and girls.[191] Police and prosecutors sometimes have also improperly handled these cases.[192] In Atlanta, Georgia, during the late 1970s and early 1980s, a serial killer murdered approximately two

dozen children, many of whom were African American boys.[193] Police arrested and prosecutors convicted Wayne Williams of killing two adults, but prosecutors never tried or convicted him of killing any children, even though many believe he murdered the missing children.[194] In fact, prosecutors have never obtained a conviction for the murders of all the missing children.[195]

Similarly, African American transgender and gender non-conforming people receive inadequate police protection, even though they are more likely to suffer violent crime.[196] Advocates have described an increasing "epidemic of violence" against the transgender community,[197] and studies show that Black transgender women are significantly more likely to experience violence or be murdered compared to white transgender women.[198] In 2019, for example, African American transgender women made up 91 percent of all transgender people killed by violent crime.[199] Despite experiencing greater levels of violence, African American transgender people are also less likely to seek and receive help from the police.[200] This is because African American transgender people suffer much higher rates of harassment and assault when interacting with the police.[201]

Some very new and limited scholarship shows that "mass shootings" occur more in Black communities than in other communities and more frequently than is covered in media reports.[202] Part of the reason is due to the fact that the definition of "mass shootings" is different, depending on the government agency, and the media tends only to cover "mass public shooting" rather than mass shootings that grow out of violence between individuals or groups.[203]

Black children on average remain missing longer than non-Black children. Black women and girls, in particular, go missing in numbers larger than their proportion of the population. Not only the police but also the media typically pay them less attention compared to missing white women and girls.

Employment Discrimination

Employment discrimination in police departments against African American applicants may exacerbate discrimination and police brutality against African Americans. The Obama administration's Task Force on 21st Century Policing noted in its recommendations that the diversity of the nation's law enforcement agencies was an important aspect in developing community trust in the police.[204] The United States Equal Employment Opportunity Commission has identified problems with hiring, retention, harassment, and promotion of African American police officers.[205] Police officers have publicly complained in news outlets throughout the country about issues around discrimination and harassment against African American police officers and correctional officers.[206] These conditions have resulted in many departments that have very few African American police officers. Some scholars have argued that this lack of diversity in police departments contributes to discrimination and police brutality against African Americans.

Extrajudicial Police Killings

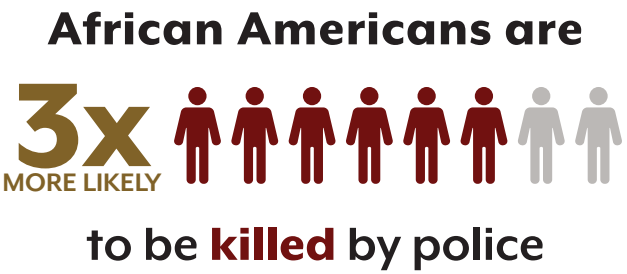
There is a very long history of police officers killings of African Americans throughout the United States, from the slavery era to present day. This history has not been limited to the southern states, but as discussed in Chapter 3, Racial Terror, is also part of California's history.

A study of thousands of use of force incidents has concluded that African Americans are far more likely than other groups to be the victims of police violence.[207] African Americans are 2.9 times more likely to be killed by police than white people.[208] In fact, the statistics may be worse than this because, according to one study of data from 1980 to 2019, more than half of all killings by police in the U.S. go unreported in the USA National Vital Statistics System database from which some analysis is drawn.[209]

There are many well-publicized examples of police killing African Americans such as: George Floyd (Minneapolis, Minnesota) and Breonna Taylor (Louisville, Kentucky).[210] Some have died while in police custody, like Sandra Bland in Waller County, Texas. Others have likely died because of police neglect, such as Mitrice Richardson who disappeared in Malibu, California in 2009.

California

Police violence against African Americans is similar in California.[211] Statistics from California's Racial and Identity Profiling Advisory Board's 2022 report, drawing on data from 18 law enforcement agencies, including



More than half of all killings by police in the U.S. go unreported in the USA National Vital Statistics System database from which some analysis is drawn.

California's 15 largest agencies, shows that police stopped a higher percentage of people perceived to be African American for reasonable suspicion that the person was engaged in criminal activity than any other racial group.[212]

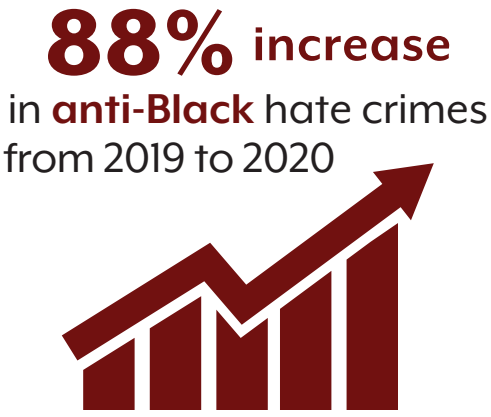
In 2020, African Americans made up about seven percent of the population, but those perceived to be African American made up 17 percent of people police stopped,[213] and 18 percent of the people police have shot or seriously injured.[214] African American Californians are about three times more likely to be seriously injured, shot, or killed by the police relative to their share of the state's population.[215]

Officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more people who the officers perceived as African American than individuals they perceived as white.[216] Search discovery rate analysis showed that individuals who police perceived as African American had the highest search rate.[217] People perceived to be African American were also more likely to have police use force against them compared to people perceived as white.[218] Police officers also reported ultimately taking no action during a stop most frequently when stopping a person they perceived to be African American, [219] suggesting there may have been no legitimate basis for the stop.

As in the rest of the country, the Operation Pipeline Program in California led to racial profiling in the state. In a 1999 report by the California State Legislature, the California Highway Patrol described Operation Pipeline enforcement efforts as a way to find illegal drugs by generating "a very high volume of legal traffic enforcement stops to screen for criminal activity, which may include drug trafficking."[220] As one California Highway Patrol sergeant said in an interview, "It's sheer numbers. . . Our guys make a lot of stops. You've got to kiss a lot of frogs before you find a prince." [221] California Highway Patrol canine units were involved in nearly 34,000 such stops in 1997 and only two percent of those stopped were carrying drugs. [222] In 1999, the American Civil Liberties Union sued the California Highway Patrol and alleged that Operation Pipeline taught officers to stop African American and Latino male drivers for little or no reason.[223] The California Highway Patrol admitted in court documents that its officers were twice as likely to stop Black drivers than white drivers, and were more likely to ask Black drivers for permission to search their cars than white drivers.[224]

Relatedly, an analysis of data from 2000 to 2008 in California showed that African Americans were significantly more likely than white people to be arrested for a marijuana offense.[225] After the legalization of cannabis in California, news reports indicated that Black entrepreneurs who try to start new cannabis related businesses face challenges and delays, including a slow licensing processes.[226] For an in depth discussion of discrimination in licensure, see Chapter 10, Stolen Labor and Hindered Opportunity.

African Americans are also increasingly victims of hate crimes both nationwide and in California. According to the Federal Bureau of Investigation, 48.5 percent of single-bias hate crime incidents were motivated by anti-Black bias in 2019.[227] According to the California Attorney General's report on hate crimes in the state in 2020, 34.3 percent of single-bias hate crimes were motived by anti-Black bias.[228] Anti-Black bias events were the most prevalent of all types of hate crimes and increased 88 percent from 2019 to 2020.[229]



There are numerous high-profile incidents of police killing African Americans in California such as Ezell Ford (Los Angeles); Kendrec McDade (Pasadena); Wakeisha Wilson (Los Angeles); Anthony McClain (Pasadena); Oscar Grant (Oakland); Dijon Kizzee (Los Angeles); Richard Risher (Los Angeles); Stephon Clark (Sacramento); and Alfred Olango (San Diego). These deaths and many others nationwide have sparked increased activism and public awareness on the issue of police brutality. Activists established the first chapter of Black Lives Matter in Los Angeles and it is now a global network of activists.[230]

Police departments throughout the state have histories of violence against African Americans.

In Los Angeles before the turn of the century, the city's police had a history of violence against other historically marginalized groups such as Native Americans, Latinos, and Asian Americans. As more African Americans moved to the city, the time period between the 1920s to the 1960s was characterized by police brutality against African Americans and protests, such as the Watts Rebellion in 1965. Much like many other historical events that are often considered "riots," what occurred in Watts was a reaction to injustice or a "rebellion." For further discussion of rebellions, please see Chapter 3, Racial Terror.

The Los Angeles Police Department, the largest police department in California and one of the largest in the country, once referred to African American suspects as "dog biscuits."

In the 1980s, the Los Angeles Police Department, which is the largest police department in California and one of the largest in the country, referred to African American suspects as "dog biscuits."[231] Victims of police dogs sued and alleged that the department disproportionately used dogs in minority neighborhoods, which resulted in police dogs inflicting 90 percent of their reported bites on African Americans or Latinos.[232] In 2013, the Special Counsel to the Los Angeles County Sheriff's Department, which is the largest sheriff's department in California and the country, found that African Americans and Latinos comprised 89 percent of the total individuals who were bitten by the department's dogs from 2004 to 2012.[233] During the same time, the Special Counsel found that the number of African Americans that police dogs bit increased 33 percent.[234]

Often, such incidents of police brutality led to community protests that, in turn, sometimes continue brutality by police.[235] The beating of Rodney King by the LAPD is one such example.[236] On March 3, 1991, Rodney King stopped his car after leading LAPD officers on a pursuit.[237] Officers beat Rodney King and were captured on video.[238] The officers were charged but, despite strong video evidence against the officers, were ultimately acquitted.[239]

There is also at least some evidence that law enforcement gangs—which are groups of peace officers within an agency that engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing[240]—such as those alleged in the Los Angeles County Sheriff's Department, have exacerbated the brutalization of African Americans by law enforcement in California.[241] In 1990, at least 75 Lynwood resident filed a class action lawsuit alleging that the sheriff's department allowed the "Vikings," a sheriff's department deputy gang, to carry out racially motivated violence in the community.[242]

In Los Angeles County, which is the state and country's most populous county,[243] as of April 2022, police have killed 964 people since 2000, 24 percent of whom were African American even though African Americans comprised only eight percent of the population during that time.[244] Los Angeles police have also historically appeared to ignore the disappearance of African American women.[245] Lonnie David Franklin Jr. was believed to have murdered several African American women and girls in the Los Angeles area.[246] He was not arrested and convicted until 2016, due to what activists believe was police neglect.[247]

In the Bay Area, police brutality became such a concern that the Black Panther Party for Self-Defense, which later became the Black Panther Party, formed to provide protection to African Americans from the police during the 1960s.[248] Two young activists, Huey Newton and Bobby Seale, saw brutality against civil rights protestors as part of a long history of police violence.[249] Eventually, the Black Panther Party for Self-Defense evolved into an organization that provided several other services to the community such as medical clinics and free breakfasts for children.[250] In fact, the Black Panthers even engaged in forms of "counter-mapping," which is a form of activism in which marginalized groups use maps to challenge inequality, to propose the creation of new police districts in Berkeley, California.[251] In the San Francisco Bay Area, according to a study, 27 percent of the people police killed were Black even though they only comprised seven percent of the population at the time.[252]

Discrimination by Californian police against African Americans is not limited to large police departments like the Los Angeles Police Department and the Los Angeles County Sheriff's Department. According to analysis of traffic stops by the San Diego Police Department from 2014 to 2015, officers are more likely to search and question African American drivers than white drivers even though officers were less likely to find them with contraband.[253] An evaluation of 2016 to 2018 data showed that both the San Diego Police Department and Sheriff's Department were more likely to stop, search, and use force against African Americans and people with disabilities than other

groups.[254] Further, African Americans were 4.3 times more likely than white people to be arrested by the police department for drug possession even though research shows that African American and white people use and sell drugs at similar rates.[255] The police department also stopped African Americans at a rate three times higher than white people.[256] Both agencies used higher levels of force against African Americans compared to other groups.[257] Both agencies used more severe levels of force against African Americans than white people at every level of alleged resistance.[258]

After the fatal shooting of Stephon Alonzo Clark by members of the Sacramento Police Department, the Attorney General conducted a review of the Sacramento Police Department's policies, procedures, and training regarding the use of force, and issued two reports to help guide the police department's reform efforts.[259]

COURTESY OF JUSTIN SULLIVAN VIA GETTY IMAGES

Sacramento, California- Hundreds packed a special city council meeting at Sacramento City Hall to address concerns over the shooting death of Stephon Clark by Sacramento police. (2018)

In California's rural and suburban regions, the California Attorney General has investigated[260] and secured a stipulated judgment[261] involving the Kern County Sheriff's Department regarding unlawful practices such as unreasonable use of force, stops, searches, and seizures, and failure to exercise appropriate management and supervision of deputies. The Attorney General has also investigated[262] the Bakersfield Police Department, and secured a stipulated judgment for the police department to strengthen its engagement with the community.[263] The Attorney General is also reviewing the practices of the Torrance Police Department amidst serious allegations of racist text messages, some of which contained disparaging comments about African Americans, and other discriminatory conduct.[264]

As a result of community activism and increased nationwide public awareness of police brutality against African Americans in 2020 in particular, California has recently taken steps to attempt to address the numerous concerns with policing in the state. Assembly Bill 89 raises the minimum qualifying age to be a police officer from 18 to 21 years of age and sets other minimum qualification requirements for peace officers in an effort to reduce uses of deadly force.[265] Assembly Bill 750 makes it a crime for a police officer to make a false statement to another peace officer if that statement is included in a peace officer report.[266] Assembly Bill 1506 requires the California Department of Justice to investigate and review for potential criminal liability all officer-involved shootings that result in the death of unarmed civilians in the state.[267] Senate Bill 2 creates a process to decertify police officers for misconduct, preventing such officers from being able to join any another agency in California.[268] California was one of only four states without that power.[269] Assembly Bill 118 creates pilot programs to allow community organizations to respond to 911 calls rather than police.[270] Assembly Bill 26 requires officers to intervene if they witness another officer using excessive force, and requires officers to report the use of force and prohibits retaliation against reporting officers.[271] But these reforms do not alone address the many years of discrimination African Americans have experienced at the hands of the criminal justice system.

IV. Trial and Sentencing

History

During the slavery era, most states denied African Americans the right to service on juries, as most states linked the ability to serve on juries to the ability to vote.[272] As discussed in Chapter 3, Racial Terror, African Americans were not allowed to vote in most states during this time. Most states also denied African Americans the right and protections of a jury trial, leaving African Americans vulnerable to unjust convictions.[273]

After the Civil War, the Civil Rights Act of 1875 outlawed race based discrimination in jury selection.[274] As discussed in Chapter 4, Political Disenfranchisement, the 14th and 15th Amendments guaranteed African American men the right to vote and serve on juries.[275] In some states, racially integrated juries protected the rights of African American defendants and prosecuted white perpetrators of racial violence.[276]

In the South, after Reconstruction, and until the 1960s, numerous allegations of crimes involving African American defendants and white victims never made it to trial.[277] Instead, the accused African American person was lynched.[278] As discussed in Chapter 3, Racial Terror, prosecutors rarely tried or convicted the white Americans who tortured and murdered African Americans through race massacres and lynchings. The same all-white juries who did not indict white perpetrators of violence convicted African American defendants, imposed harsh sentences for minor crimes, often with little evidence.[279] According to the Select Committee of the Senate outlined in the Report on Alleged Outrages in the Southern States in 1871, "In nine cases out of ten the men who commit the crimes constitute or sit on the grand jury, either they themselves or their near relatives or friends, sympathizers, aiders, or abettors."[280]

The U.S. Supreme Court did not decide until 1935 that excluding African Americans from juries because of race was unconstitutional.[281] In *Norris v. Alabama,* eight African American teenagers were convicted by an all-white jury and sentenced to death for the rape of two white women in Scottsboro, Alabama, despite overwhelming evidence of their innocence.[282] No African American person had served on a jury in Scottsboro in living memory.[283]

After *Norris v. Alabama*, many jurisdictions continued to exclude African Americans from jurors by using peremptory strikes or other pretexts.[284]

Systemic Bias Today

Today, systemic problems in the criminal justice system continue to discriminate against African Americans. Courts throughout the country have and continue to be underfunded, which can result in barriers in accessing justice, such as case delays.[285] Although courts in California are now required to take into account an individual's ability to pay when setting bail,[286] in other parts of the country wealthy defendants can essentially purchase their pre-trial freedom through the cash bail system, whereas low-income defendants might suffer additional harsh consequences solely because of their inability to pay. This occurs despite three waves of attempts to reform the cash bail system nationwide.[287] As discussed in the civil legal system discussion of this chapter, lack of diversity in the legal profession may also exacerbate the discrimination African Americans face in the criminal justice system.[288] Scholars argue that racial bias against African American defendants results in discriminatory choices by prosecutors, who make important decisions in the criminal justice system,[289] although empirical evidence exists of such bias only seems to exist in certain types of crimes.[290]

One study showed that when witnesses knew that the perpetrators were Black, witnesses who claimed to not be racially biased were more likely to incorrectly identify the perpetrator than witnesses who stated they were racially prejudiced.

Discrimination against African Americans in the criminal justice system not only results from racial biases in police, but also in witnesses and jurors. One study showed that when witnesses knew that the perpetrators were African American, witnesses who claimed to not be racially biased were *more* likely to incorrectly identify the perpetrator than witnesses who stated they were racially prejudiced.[291] Lack of diversity on juries continues to be a nationwide problem.[292] A study in North Carolina showing that qualified African American jurors were struck from juries at more than twice the rate of qualified white jurors.[293] Scholars have identified the following as factors contributing to underrepresentation on juries: "racial discrimination in jury selection," socioeconomic barriers preventing participation by African Americans, "judicial discrimination that allows racially demarcated jury representation," and "institutional racism and bureaucratic discrimination in perpetuating judicial inequality."[294]

One scholar has shown that study participants remembered and misremembered legally relevant facts in racially biased ways.[295] The author of the study argues that implicit racial biases affect the way judges and jurors encode, store, and recall, relevant case facts, which leads to the conclusion that implicit memory biases operate in legal decision-making.[296] A lack of jury diversity can also harm African Americans in family courts and the child welfare system, which the Chapter 8, Pathologizing, the African American Family, discusses in more detail.

The lack of diversity in juries can result in poor trial and sentencing outcomes for African Americans.[297] According to a 2017 report from the United States Sentencing Commission, African American men who commit the same crimes as white men are given prison sentences that are about 20% longer, even after controlling for prior criminal history.[298] African Americans are more likely than white Americans to be serving sentences of life, life without parole, or sentences of 50 years or more.[299]

Capital Punishment

As discussed in Chapter 3, Racial Terror, advocates have argued that capital punishment is the modern day, legal equivalent of lynching. The U.S. Supreme of Court has acknowledged that the death penalty has a discriminatory effect on African Americans. In *Furman v. Georgia*, U.S. Supreme Court Justice William Douglas noted that there is evidence of racial discrimination in the imposition of the death penalty[300] and that an African American would be more likely to get the death penalty when convicted for rape when compared to a white American.[301] Regardless, the Supreme Court still decided that the death penalty is constitutional in some circumstances.[302] Currently, 27 states have the death penalty while 23 states and the District of Columbia do not.[303] Three states, such as California, currently have a gubernatorial moratorium on executions.[304]

In the states where executions still occur, African American men are overrepresented among people federal and state governments execute.[305] A 2015 meta-analysis of 30 studies showing that those responsible for the murders of white people were more likely than those responsible for the murders of African American people to face a capital prosecution.[306]

California

Historically, California barred African Americans from serving on juries.[307] Lack of diversity on juries continues to be a widespread problem throughout California as, a 2020 study showed that racial discrimination is an "ever-present" feature of jury selection in California.[308] The study found that California prosecutors' use of peremptory challenges to exclude African Americans from juries is still pervasive.[309] In the last 30 years, the California Supreme Court has reviewed 142 cases involving *Batson* claims, which is the process by which a party can object to a preemptory challenge because of a juror's race, and found a violation only three times.[310] In fact, from 2006 to 2018, California courts held that there was a *Batson* error in just 18 out 683 cases.[311] It has been over 30 years since the California Supreme Court held that there was a *Batson* violation involving a Black juror.[312]

Prosecutorial misconduct, which is generally when a prosecutor violates their duty to refrain from improper methods calculated to produce a wrongful conviction,[313] also continues to be an issue in California's criminal courts as one study of 4,000 state and federal appellate rulings in California from 1997 through 2009 discovered that courts found prosecutorial misconduct in 707 cases, which on average, amounts to about one case a week during that time.[314]

California is one of several states that have a three-strikes law. Although amended by Proposition 36 in 2012 to apply to only serious or violent felonies,[315] California's initial three-strikes law, imposed life sentence for almost any crime—no matter how minor—if the defendant has two prior convictions for crimes that were serious under the California Penal Code. The general goal of the three-strikes law was to deter offenders, particularly violent ones, from committing crimes again.

The cases of Leandro Andrade is an example of how California's three strikes law was especially punitive and led to excessive sentencing.[316] In 1982, Andrade committed three residential burglaries during the same day while unarmed and when nobody was in the homes he burglarized.[317] Then, in 1995, he stole five videotapes, which were worth $84.70 and was arrested for shoplifting.[318] Later that same year, he stole four videotapes, which were worth $68.84 and was arrested for shoplifting.[319] Under California's three strikes law at that time, the third strike could be for any crime and did not necessarily need to be a serious or violent felony.[320] As a result, he received a sentence of 50 years to life.[321]

In *Furman v. Georgia*, U.S. Supreme Court Justice William Douglas noted that there is evidence of racial discrimination in the imposition of the death penalty and that an African American would be more likely to get the death penalty when convicted for rape when compared to a white American.

These policies have resulted in longer sentences for African Americans in California correctional facilities.[322] Recent reforms in California, which this chapter discusses below, have offered alternatives to incarceration for some individuals, but many African Americans still served excessive prison sentences for years.[323]

V. Incarceration

History

The history of criminalization of African Americans since slavery and the inequities in policing, trials, and sentencing have resulted in an overrepresentation of African Americans in jails and prisons, a phenomenon known as mass incarceration. As this chapter has described, American society began to criminalize African Americans starting from the era of slavery through Black Codes, vagrancy laws, and segregation laws. Further, "law and order" or "tough on crime" political campaigns in the 20th century resulted in particularly punitive sentencing and parole systems, which have led to the imprisonment of large numbers of African Americans. Although correctional authorities did not always uniformly collect data on the race of prisoners, there is evidence from the U.S. Department of Justice showing that African Americans have comprised a percentage of prisoners exceeding their percentage of the population outside of correctional facilities, from at least 1926 to 1986.[324]

One study has found that while Black and white incarcerated people were equally likely to break rules, correctional authorities were more likely to report infractions by Black people.

The percentage of prisoners admitted to state and federal institutions who are African American has consistently grown, and which general population trends cannot explain.[325] Although the imprisonment rate of African Americans has generally decreased since 2006,[326] African Americans continue to be overrepresented both nationwide and in California in adult incarceration, solitary confinement, capital punishment, and juvenile incarceration.

Adult Incarceration

The United States has the highest imprisonment rate—the number of people in prison or jail as a percentage of its total population—in the world.[327] Numerous academics, activists, and politicians have called for an end to mass incarceration, and there have been reforms in several states such as Texas, Kansas, Mississippi, South Carolina, Kentucky, and Ohio.[328]

These reforms largely focus on reducing excessive prison sentences. However, advocates argue that these efforts are not sufficient to undo decades of prison expansion. [329] One study estimates that at current rates, it will take 72 years to cut the U.S. prison population in half.[330] Despite reforms, African Americans continue to be overrepresented in prisons nationwide: 20 percent of prisoners in federal and state correctional facilities were African Americans even though they made up just 13.4 percent of the population in 2019.[331] In 2021, African Americans comprise 38.3 percent of people in federal prisons across the country.[332]

In addition to overrepresentation of African Americans in correctional facilities, federal and state officials continue to use the labor of incarcerated people.[333] In fact, some present-day prisons where incarcerated people still perform labor are on land that was once a plantation where enslaved people worked before the Civil War and where southern states similarly enslaved African Americans after the Civil War through convict leasing.[334] Angola Louisiana State Penitentiary shows how, in some ways, the American correctional system continues the legacy of slavery.[335]

Angola, which is currently outside of present day Baton Rouge, was originally a plantation named for the African country from which most of its enslaved people were trafficked.[336] After the Civil War and abolition of slavery, former Confederate Major Samuel Lawrence James received a lease of Louisiana State Penitentiary and all its incarcerated individuals.[337] Under this lease, James subleased the majority of African American people who were incarcerated to land owners to replace enslaved people while others continued to work on levees, railroads, and road construction while others were given clerical and craftsmanship work.[338] Later, there were also attempts to industrialize prison labor by forcing incarcerated people to make shoes and clothing.[339] In 1898, the State of Louisiana banned convict leasing and, in 1901, the State of Louisiana purchased the prison camp and resumed control of its prisoners.[340] More recently, incarcerated people in Angola continue to engage in production to sell goods such as growing crops like wheat, corn, soybeans, cotton, milo,[341] sugar cane,[342] and even producing art.[343] To this day, approximately 65 percent of incarcerated people in Angola are African Americans.[344]

Correctional facilities, such as the Federal Prisons Industries of the Federal Bureau of Prisons, argue that these programs teach marketable job skills.[345] But some academics argue that these work programs are not beneficial.[346]

Correctional Discipline

African Americans also experience discrimination in the correctional disciplinary system. At least one study has found that while African American and white incarcerated people were equally likely to break rules, correctional authorities were more likely to report infractions by African American people.[347]

There is an overrepresentation of African Americans in solitary confinement. Scholars have defined solitary confinement as when correctional facility officials separate incarcerated people from the general population and hold them in their cells for an average of 22 hours or more per day for 15 continuous days or more.[348] A 2018 study showed that both federal and state correctional facilities placed large numbers of African American males in solitary confinement. African American males in prison made up approximately 42.5 percent of the prison population but comprised 46.1 percent of the people in solitary confinement.

Juvenile Incarceration

African Americans are also overrepresented in the juvenile justice system. As discussed in Chapter 8, Pathologizing the African American Family, American culture tends to see African American children not as children, but as adults. African American students are subject to discipline at a higher rate than other groups in schools nationwide. In 43 states and the District of Columbia, Black students are arrested at higher levels relative to their percentage of the population.[349] There is also evidence that these racial disparities in school-based disciplinary actions are associated with county-level rates of racial bias.[350] This sort of disciplinary actions and bias contribute to how African Americans are eventually pushed to incarceration through the school-to-prison pipeline, as described in Chapter 6, Separate and Unequal Education and Chapter 8, Pathologizing the African American Family.

African American youth comprise 41 percent of youth in juvenile facilities even though they make up 15 percent of all youth in America.[351] African American youth are more than four times as likely to be detained or committed in juvenile facilities as their white peers.[352] African American youth are more likely to be in custody than white youth in every state except Hawaii.[353]

As a result of their experiences with the juvenile justice system, many African Americans distrust the system.[354] This report further discusses the enduring impact of the juvenile justice system on African American families in Chapter 8, Pathologizing the African American Family.

California

The previously described history of the criminal justice system in America, such as California three-strikes laws and similar policies that have affected large numbers of African Americans, has led to several conditions that have caused California to lead the way in expansion of prisons in the United States until recent reforms. That history, particularly from the 1980s to present, has contributed to what has been described as "the biggest prison building project in the history of the world" here in California.[355] The City of Los Angeles imprisons more people than any other American city.[356] According to one scholar, law enforcement officials often arrested, incarcerated, and/or instructed African Americans to leave Los Angeles during the 1920s and 1930s.[357]

African Americans are overrepresented in correctional facilities. Approximately 28.3 percent of California's prisoners were African American, when they make up about 6 percent of the population.[358] Further, Black people who are incarcerated in California correctional facilities also experience forms of segregation from the moment they enter a facility.[359]

California has a history of extremely poor conditions in its numerous prisons, which disproportionately harms African Americans, as they are more likely to be in prison and to serve longer sentences due to systemic racism. Like the federal government, California still houses and invests in the incarceration of people in large numbers. It houses approximately 100,000 people in its facilities, has forecasted a budget of approximately $227.2 billion for 2021-22, and operates 35 adult facilities.

In a 2011 U.S. Supreme Court case called *Plata v. Brown*, the Court ordered the State of California to reduce its prison population because the medical and mental health care in California prisons was so bad that it violated the U.S. Constitution's prohibition of cruel and unusual

punishment.[360] Since the decision in 2011, California has been required to decrease the number of people in state correctional facilities.[361] Later that year, the state passed Assembly Bill 109, which reduced overcrowding in state facilities by shifting incarceration responsibilities from state to local authorities for certain people convicted of low-level offenses.

In 2011, the medical and mental health care in California prisons was so bad that the U.S. Supreme Court ordered the State to immediately reduce its prison population because the living conditions grossly violated the U.S. Constitution's prohibition of cruel and unusual punishment.

California also passed several other laws to reduce its prison population including:

- Proposition 36 limits California's three-strikes law to serious or violent felonies for third strike offenders and establishing a process for third strike offenders to ask a court to reduce their term under certain circumstances.
- Assembly Bill 2942 allows courts to resentence a defendant on the recommendation of district attorneys.
- Senate Bill 567 requires criminal courts to only impose a maximum term if a jury considers aggravating facts regarding the offense and permits a criminal defendant and other parties to dispute facts in the record or present additional facts for the purposes of sentencing.
- Senate Bill 73 ended the prohibition against probation and suspended sentencing for certain types of drug offenses.
- Assembly Bill 484 changes the requirement that a person who is granted probation after being convicted of furnishing or transporting certain controlled substances serve 180 days in a county jail as a condition of probation.
- Senate Bill 136 ended a sentence enhancement that added an extra year for anyone convicted of recommitting a felony for each prior prison or felony jail time they already served.
- Assembly Bill 32 prohibits California, as a state, from entering into or renewing a contract with a private, for-profit prison to incarcerate people.
- Other laws attempt to end private financial incentives to incarcerate large numbers of people in correctional facilities.
- Assembly Bill 2542 or the Racial Justice Act, prohibits the use of race, ethnicity, or national origin to seek or obtain convictions or impose sentences. The Racial Justice Act is also an attempt to address previous court decisions and systemic issues in the state's criminal justice system, which have made it nearly impossible for criminal defendants to challenge racial bias.[362]

Many of these laws are new so it is difficult to evaluate their impact on African Americans.

While individuals serve their prison sentences, the State of California uses their labor in many ways. The California Prison Industry Authority produces myriad products such as clothing, furniture, cleaning products, and food.[363] They also perform a wide range of duties in areas such as laundry, kitchen, and general maintenance.[364] The California Department of Forestry and Fire Protection employed around 1,600 incarcerated individuals to fight forest fires in May 2021.[365]

As previously discussed, some scholars have challenged the value of these programs because they do not necessarily provide incarcerated people with marketable job skills. Incarcerated individuals are often tasked with low skill work and obtaining a job as a firefighter can be particularly difficult, even for people without criminal records.[366]

Although California has attempted to reform its juvenile justice system in recent years, it has a well-documented and troubled history of juvenile incarceration.[367] The number of incarcerated youth reached unprecedented heights in the 1990s.[368] California housed over 10,000 youth in 11 facilities throughout the state in 1996.[369] Since that time, the state has attempted to make several systemic reforms to not only reduce the population of incarcerated youth but also to improve the treatment of youth who are in such facilities.[370]

There have also been recent attempts to decentralize the juvenile justice system and provide localized services for juveniles who are accused of crimes.[371] To that end, most recently, Senate Bill 823 provided for the closure of the California Department of Corrections and

Rehabilitation's Division of Juvenile Justice, formerly the California Youth Authority, and established the Office of Youth and Community Restoration in the California Health and Human Services Agency.[372]

But many racial inequities for young African Americans remain. Currently, in California, African American youth are 31.3 times more likely to be committed to imprisonment in the state's juvenile justice system than white youths. As of June 2020, of the total 782 youth in California juvenile detention facilities, 227 were African American. In that same time, African American youth made up 36 percent of those committed to a juvenile detention facility even though they comprised only 14 percent of the population in California.

The number of incarcerated youth reached unprecedented heights in the 1990s. California housed over 10,000 youth in 11 facilities throughout the state in 1996.

The treatment of African American youth as criminals in California begins at an early age when they are in school. School administrators, teachers, and school police, often treat young African American students as criminals. As Jacob Jackson testified at the October 12, 2021 Task Force hearing, he was targeted by his teacher and school police when he was a student at Crenshaw High School in Los Angeles.[373] More information on the juvenile justice system in California is available in Chapter 8, Pathologizing the African American Family.

VI. Effects

The lingering negative impact of contact with the criminal justice system are wide-ranging and far-reaching. African Americans who have had contact with the criminal justice system experience significant discrimination when looking for a home or a job, when they are trying to vote,[374] or serving on juries.[375] Just observing the effects of the criminal justice system can negatively affect the mental health of African Americans,[376] and lead to mistrust of the legal system.[377] Although California has passed laws to limit the lingering harms of the criminal justice system, these changes will not fully address the many years of effects of contact with the criminal justice system that many African Americans have experienced.

Devon Simmons, who served 15 years in prison for crimes he committed as a teenager in Harlem, explained:[378] "You've got to find a way to reinvent yourself and promote yourself to the world. But there's a stigma. For a long time, for example any application for school, housing, a job, you needed to check the box saying you're formerly incarcerated. The disenfranchisement pushes a lot of people into the informal market—selling drugs, for example."[379]

African Americans who have been incarcerated experience significant levels of housing instability soon after they leave prison. The Prison Policy Initiative estimates that returning citizens are almost 10 times more likely to be unhoused than the general public, and the problem among Black returning citizens is worse than other racial groups.

Lingering Discrimination

African Americans who have been incarcerated experience problems finding a permanent place to live. As discussed in the Chapter 5, Housing Segregation, African Americans have experienced homelessness dating back to slavery,[380] regardless of whether they have participated in the criminal justice system.

African Americans who have been incarcerated experience significant levels of housing instability soon after they leave prison.[381] The Prison Policy Initiative estimates that returning citizens are almost 10 times more likely to be unhoused than the general public,[382] and the problem among African American returning citizens is worse than other racial groups.[383] Another study offers an example of the collateral damage of incarceration. Having a recently incarcerated father greatly increases the risk of child homelessness, a phenomenon that is more likely experienced by African American children than white children.[384]

Finding jobs is also difficult for African American returning citizens.[385] Lack of employment opportunities for returning citizens can have a broader, negative impact on their families. Scholars argue that the high number of incarcerated members of African American families contribute to the Black-white wealth gap.[386] Although the Civil Rights Act of 1964 prohibits consideration of a job applicant's criminal history if it negatively impacts African American job applicants, these cases are difficult for plaintiffs to prove. The Equal Employment Opportunity Commission, the federal agency which enforces civil rights laws in employment, recognizes that employers' consideration of a conviction or arrest are factors that are particularly problematic for African American men because they are more likely to have criminal histories.[387]

To address these issues, there is a nationwide movement to prohibit employers from considering a job applicant's criminal history before employers consider their qualifications for a job. This movement is also referred to as the "ban the box" movement. Currently, 36 states and over 150 cities and counties have "banned the box" or prohibited employers from asking about conviction or arrest history, and delay background checks until later in the hiring process. But much like other criminal justice reforms discussed in this chapter, these new laws do little to address the many decades of discrimination African American returning citizens experienced when looking for work throughout American history.

Laws that deprive people with convictions of the right to serve on a jury also disproportionately harm African Americans. Some states exclude people from serving on juries when they commit misdemeanors, although reliable nationwide statistics on the number of African American people who cannot serve on juries is unavailable because no national database exists to track such data. Because African Americans are incarcerated more than other groups, they are also more likely to be excluded from jury participation as well. As discussed above, lack of jury diversity is a legacy of slavery and a serious and nationwide problem.[388]

Some states also deprive people who have criminal convictions of the right to vote. A 2003 study found that regions with large nonwhite prison populations are more likely to pass laws restricting the right of people with convictions to vote.[389] Depriving people who have convictions diminishes the political power of African Americans.[390] The Sentencing Project estimates that approximately 1.3 million African Americans of voting age cannot vote because of past convictions, which is a rate 3.7 times greater than that of non-African Americans.[391] In fact, over 6.2 percent of the African American population cannot vote because of past convictions compared to 1.7 percent of the non-African American population.[392]

Contact with the criminal justice system through incarceration affects the mental health of African Americans. Studies show that incarceration was associated with perceived discrimination, depressive symptoms, and psychological distress,[393] and the impact is long lasting.[394] Incarceration negatively affects the overall physical health of African American people after they leave prisons and jails as discussed in Chapter 12, Mental and Physical Harm and Neglect. As discussed in Chapter 8, Pathologizing the African American Family, there is also evidence that mass incarceration negatively impacts family members of African Americans who have been incarcerated, both during and after their incarceration.

A 2018 study found that a police murder of an unarmed African American triggered days of poor mental health for African Americans living in the state where that murder occurred.

Even for African Americans who have not had direct contact with the criminal justice system, just observing the effects of the criminal justice system takes a toll on African American's mental health. A 2018 study found that a police murder of an unarmed African American triggered days of poor mental health for African Americans living in the state where that murder occurred.[395] This total number of painful days over a year was comparable to the rate diabetics experienced.[396]

These negative experiences with the criminal justice system have caused many African Americans, and African American men in particular,[397] to distrust police.[398] As a result, African Americans are less likely to call the police than Latinos and white people.[399] This distrust likely leads to an underutilization of police and government services in general, such as the civil legal system, as will be discussed below. As the Kerner Commission noted in 1968, "To some Negroes police have come to symbolize white power, white racism, and white repression. And the fact is that many police do reflect and express these white attitudes. The atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in a 'double standard' of justice and protection—one for Negroes and one for whites."[400]

California

In California, as discussed earlier, courts also contributed to the growing body of law that discriminated against African Americans. California's Fair Practice Act specifically and explicitly banned testimony by "negroes, or persons having one-half or more of negro blood" in any civil court case to which a white person was a party.[401] Free African American activists, who were enslaved people's greatest allies, could not be witness in any court proceedings.[402]

Currently, there is some evidence that African Americans experience discrimination in the civil legal system. The civil legal system is the system through which African Americans can obtain remedies, such as money, for the discrimination they experience in nearly every area of their life as identified in the chapters on labor, education, housing, racial terror, and wealth. But African Americans with low incomes face several systemic problems in the underfunded court systems both nationwide and in California when attempting to access justice such as obtaining a lawyer.

There appears appear to be very little scholarship on African Americans' distrust of the legal system as a whole and how that affects their underutilization of the civil law system,[403] but some evidence does indicate that their contact with the criminal justice system negatively affects trust in the civil legal system. The California Judicial Council Advisory Committee on Racial and Ethnic Bias provided some helpful insight when it studied the treatment of minorities in state courts and public perceptions of fairness in 1997.[404]

The Committee noted in 1997 that members of the Council had developed the impression from opinion surveys of over 2,000 Californians and public hearings that "many minority-group members do not believe that they will receive equal justice in the California courts. Several speakers pointed to the large percentage of minority-group members, particularly African American males, who inhabit state's jails and prisons."[405]

In California, returning citizens still experience discrimination in the areas of housing, employment, jury participation, and voting. Much like under federal law, housing providers may lawfully consider the criminal history of returning citizens under California law.[406] As a result, African American returning citizens still face many barriers when obtaining housing. California has made some recent progress towards implementing reforms to mitigate the effects of contact with the criminal justice system in the state[407] by passing the following laws:

- Proposition 47 ("The Safe Neighborhoods and School Act"): This 2015 law essentially allowed people convicted of non-serious felonies to mitigate the effect of their convictions;[408]
- Proposition 57 ("The Public Safety and Rehabilitation Act of 2016"): This 2016 law sought to give people who committed nonviolent crimes an opportunity for early parole;[409]
- Assembly Bill 1076 ("The Clean Slate Act"): This 2018 law allows automatic criminal record relief in certain circumstances and makes several other changes to make it more difficult for employers to discriminate against certain people who have had contact with the criminal justice system;[410]
- Assembly Bill 1008 ("The Fair Chance Act"): This 2018 law made it illegal for most employers in California to ask about the criminal record of job applicants before making a job offer; [411]
- Senate Bill 393 ("Consumer Arrest Record Equity Act"/"C.A.R.E Act"): This 2019 law allows for any person who is arrested but not convicted of a crime to ask a court to seal their record;[412]
- Senate Bill 310 (The Right to a Jury of Your Peers): This 2017 law allows people who were convicted of a felony to serve on juries if they have finished their prison time and are not on parole, probation, or other post-prison supervision; and
- Proposition 17: This 2020 voter initiative restored voting rights to people on parole.

While these new laws certainly help mitigate the negative effect an arrest and conviction can have for someone who has had contact with the criminal justice system—they do very little to remedy the many decades of discrimination African Americans suffered before California passed these laws.

VII. Discrimination in the Civil Justice System

The civil legal system is an especially important part of the legal system in the United States because it is the system through which Americans can solve common and ordinary problems. Americans must use the civil legal system to solve everyday problems in nearly every area of life such as family law, housing, health, finances, employment, government services, wills and estates, and education. Nationwide, approximately 47 percent of Americans experience at least one civil legal problem in their household each year.[413] Unlike in the criminal justice system, there is no constitutional right to counsel in all types of cases in the civil legal system. But a lawyer is crucial to prevailing in any civil case.

Historically, African Americans have experienced discrimination in the civil legal system nationwide and in California. American government and its citizens have used the civil legal system to subjugate African Americans during and after slavery. For an in depth discussion of the impact of the civil legal system on labor and employment rights, see Chapter 10, Stolen Labor and Hindered Opportunity. African Americans today continue to face numerous barriers in access to civil justice, including lack of resources and access to courts, and lack of diversity in the legal profession.

Systemic Barriers

The U.S. Supreme Court notoriously held in *Dred Scott v. Sandford* that African Americans—whether enslaved or free—were not citizens of the United States and therefore did not have the rights and privileges of the U.S. Constitution.[414] After slavery ended, many federal civil decisions harmed African Americans, such as cases that legalized segregation,[415] that prevented the federal government from outlawing racial discrimination by private citizens,[416] and that protected the economic liberties of white Americans over the civil rights of African Americans.[417] Further, in many states throughout the country African Americans could not testify in a case in which a white person was a party.[418] These government actions that occurred after slavery ensured African Americans remained in the lowest caste of the American racial hierarchy.

Evidence exists that African Americans' negative past experiences with the criminal justice system contribute to resistance to seeking help from the civil legal system.[419] One study has shown that Black claimants are underrepresented in federal court cases and white claimants are overrepresented.[420]

Members of historically marginalized communities, including African Americans, have long faced difficulties accessing justice due to systemic problems like underfunding.[421] Underfunded courts have reduced hours and staff, resulting in case delays and a decreased ability to provide services, such as resources for litigants without lawyers. These problems particularly affect people with low incomes, who are disproportionately African American.

According to the Legal Services Corporation, which Congress created to provide attorneys to low-income Americans, approximately 21 percent of people who have family incomes at or below 125 percent of the federal poverty line identified as African American in 2016.[422] In that same year, approximately 71 percent of low-income households experienced at least one civil legal problem, which included issues with domestic violence, veterans' benefits, disability access, housing conditions, and healthcare.[423] Americans with low incomes received inadequate or no legal help for 86 percent of their civil legal problems in 2016.[424]

Lack of Diversity in the Legal Profession

Historically, law schools and bar associations have discriminated against African Americans by preventing their entry into law schools and the profession.[425] As discussed in Chapter 6, Separate and Unequal Education, predominately-white graduate schools like law schools routinely excluded African Americans until the 1960s.[426] The American Bar Association, the main profession association of attorneys in the United States prohibited African Americans from joining until 1943.[427] African American lawyers founded the National Bar Association instead.[428] Chapter 10, Stolen Labor and Hindered

Scholars also argue that the bar exam, the licensure exam for lawyers, is culturally biased against and designed to exclude historically marginalized groups, like African Americans. Nationwide, in 2020, African Americans comprised eight percent of students in law schools, but only about 5 percent of lawyers, even though they were 13.4 percent of the country's population.

Opportunity, provides an in depth discussion of racial discrimination against African Americans by professional guilds and licensure process. The American Bar Association initially rescinded the membership of William H. Lewis in 1912, the first African American assistant U.S. attorney general and two other African American men because leaders determined that they had elected him "in ignorance of material facts" and that "the settled practice of the Association has been to elect only white men as members."[429]

Today, scholars argue that the Law School Admissions Test and law school accreditation continues this discrimination.[430] Scholars also argue that the bar exam, the licensure exam for lawyers, is culturally biased against and designed to exclude historically marginalized groups, like African Americans. Nationwide, in 2020, African Americans comprised eight percent of students in law schools, but only about 5 percent of lawyers,[431] even though they were 13.4 percent of the country's population.[432] Only 61 percent of African Americans passed the 2021 bar examination on their first attempt nationwide, a rate much lower than that of white, Hispanic and Asian test takers.[433]

As a result, African Americans are underrepresented in the national legal profession and federal judiciary. Nationwide, in 2020, African Americans comprised 9.8 percent of federal judges even though African Americans make up 13.4 percent of the population.[434]

In general, lawyers in the legal system are particularly important as they "play a vital role in the preservation of society"[435] and "an officer of the legal system and a public citizen have special responsibilities for the quality of justice."[436] Scholars argue that a law degree is a springboard to lucrative and powerful careers, which are closed off to many African Americans.[437] Advocates argue that African American attorneys provide African American litigants and defendants with much needed and effective culturally appropriate legal services. [438]

California

These same issues exist in California. Much like California criminal courts, the state's civil courts have been historically underfunded,[439] which leads to many conditions that result in inadequate resources for the public such as limited services for self-represented litigants, decrepit facilities, and limited court staff.

As a result of underfunded courts, civil cases move slowly and cases are often not resolved for years. The COVID-19 pandemic, which caused statewide court closures and resulted in continuances of hearings and trials, has also further lengthened the time it takes for civil cases to resolve.[440] Approximately 55 percent of Californians experience at least one civil legal problem in their household each year.[441] But according to the State Bar of California, 85 percent of Californians received no or inadequate legal help for their civil legal problems.[442] People with low incomes, many of whom are African American, struggle with problems related to housing, health, finances, employment, family law issues, disability benefits, and many other civil law issues.[443]

Individuals with Black-sounding names receive half the callbacks of those with white-sounding names in response to calls for legal representation.

California has passed laws that provide for counsel in certain civil cases, like those involving family law issues.[444] But, overall, in the vast majority of civil cases, there is no right to counsel both nationwide and in California. Some studies show that African Americans, in particular, face unique impediments in obtaining access to a lawyer.[445] One study showed that those with Black-sounding names receive one-half the callbacks of those with white-sounding names in response to calls for legal representation.[446]

Although African Americans are not underrepresented in the California judiciary, they are underrepresented in the statewide legal profession. In 2020, eight percent of judges were African American.[447] In California, during 2019, African Americans comprised four percent of lawyers even though they comprise 6 percent of the population in the state.[448] These numbers have "remained stagnant" in the last 30 years.[449]

While this lack of diversity presents a problem for creating trust in both the criminal and civil legal system, it is especially problematic for African Americans because it is the system through which they can address the discrimination they continue to experience as this report discusses in the across all of its chapters.

VIII. Conclusion

Rooted in the tools to maintain slavery, social control of African Americans continued through American history as the Black Codes and segregation laws. Federal and state governments continue the legacy of slavery by criminalizing African Americans today. California court cases and statutes contributed to a national body of law that explicitly discriminated against African Americans. As a result of legalized discrimination against African Americans, the American general public developed and perpetuated biases and stereotypes against African Americans. American politicians capitalized on these racist stereotypes to win office and implement more laws and policies that have imprisoned more African Americans than white Americans compared to their shares in the population. This ensured that African Americans remained in the lowest caste of the American racial hierarchy.

Much like in the criminal justice system, the effects of slavery in the civil legal system have caused African Americans to experience significant inequities. African Americans, particularly those with low incomes, experience numerous barriers in the underfunded court systems, both nationwide and in California, that prevent them from accessing justice in civil courts.

Endnotes

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[23] General Court, *Minutes of the Council and General Court of Colonial Virginia* (July 9, 1640), p. 466 (as of Apr. 24, 2022); Higginbotham, *supra*; the court's sentence suggests that he was not already enslaved as it would be nonsensical to sentence an already enslaved person to a sentence in which they must be enslaved for the rest of their life.

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CHAPTER 12 Mental and Physical Harm and Neglect

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I. Introduction

Scholars have stated that Europeans developed a racial hierarchy in which Black people were relegated to the bottom of humanity, and often placed outside of it altogether, in order to justify the enslavement of African people.[1] The United States is no exception to this global reality. This chapter will describe how federal, state, and local governments subjected enslaved people and their descendants to brutal and dehumanizing conditions, policies, and practices. The United States has treated African Americans as subhuman and engaged in practices harmful to the health of African Americans through forced labor, racial terror, oppression, torture, sexual violence, abusive medical experimentation, discrimination, harmful neglect, and more, as will be explained throughout this chapter. Scholars have stated that racism and enslavement are, at least in part, responsible for the fact that African Americans have had the worst healthcare, health status, and health outcomes of any racial or ethnic group in the United States.[2]

During enslavement, enslaved people were treated like animals, and physicians provided healthcare only to the extent necessary to profit from enslaved peoples' bodies.[3] After the end of slavery in 1865 and a short-lived period of reconstruction, federal, state, and local government officials worked with private citizens to segregate African American communities—damaging African American health, creating unequal healthcare services for African American people; depriving African American communities of safe sanitation and adequate sewage systems; and sacrificing African American health for medical experiments.[4] During the 20th century, federal and state sponsored corporatization of healthcare resulted in rising healthcare costs, the separation of African American doctors from African American patients, and further inequality between white and African Americans.[5]

Centuries of exposure to racism has contributed to a serious decline in African American physical and mental health.[6] African Americans die at disproportionately higher rates from preventable health problems.[7] Doctors are more likely to misdiagnose African Americans, leading to disparate outcomes in mental health.[8] African American women face high rates of maternal death and adverse birth outcomes—even Black women with the highest education attainment have the worst birth outcomes

Black men receiving intravenous treatment in Georgia. (1937)

across *all* women in America.[9] African American children face poverty, malnutrition, and worse health than that of white American children.[10] The mismanagement of public health crises by county, state, and federal governments has resulted in an undue burden of disease and death in African American communities—particularly during the COVID-19 pandemic.[11] Despite this, in the face of overwhelming oppression, African American healthcare providers, patients, and community members, nonetheless, have worked to build healthy communities and fight for a more equitable healthcare system.[12]

Section III of this chapter discusses the racist theories developed and perpetuated by doctors and scientists about African Americans. Section IV describes the health conditions of African Americans during enslavement. Sections V, VI, and VII discuss how systemic discrimination and segregation was established and how it continues in the American health care system. Sections VIII and IX describe the history of medical experimentation on African American bodies throughout American history, and how medical research and technologies harm African Americans. Section X describes the history of racism in mental health and the effects of 400 years of racial oppression on the mental health of African Americans. Sections XI and XII discuss reproductive, gender identity-responsive healthcare, and child health. Section XIII discusses public health crises. Section XIV describes the effects of racial oppression on the physical health of African Americans.

Today, studies have found that a significant number of white medical students and residents hold false beliefs about biological differences between African Americans and white Americans, such as the belief that African Americans have a higher pain threshold than white Americans

II. Pseudoscientific Racism as Foundation of Healthcare

During the enslavement era, scientific racism defined race as an innate biological and genetic trait.[13] Pseudoscientific definitions of Blackness were based on differences in skin color, facial features, hair texture, lip size, and false beliefs about "brain size" and immunity to diseases.[14] Pseudoscientists invented "phrenology"—the baseless "science" of measuring the size of the skull as evidence of intelligence in different races.[15] This pseudoscience was influential across the United States throughout the 1800s.[16] During the slavery era, medical researchers tried to prove that African American people were biologically suited to slavery.[17]

In the 1880s and 1890s, the decades following Reconstruction, false medical theories explained the poverty that African Americans experienced as justified by their "inherent inferiority," instead of as the result of almost three centuries of enslavement.[18] Doctors published influential studies stating that African Americans' "immorality" was responsible for the syphilis and tuberculosis they suffered.[19] In 1880, the New Orleans public health agency claimed that African Americans' naturally weaker immune system and "irregular habits," were the reason that so many African Americans died, rather than inadequate access to sanitation, drinking water, food, and overcrowded uninhabitable housing due to racial segregation.[20] During Congressional debates over the establishment of the Freedmen's Bureau, a program which included government-funded healthcare for newly freed Americans, white legislators argued that healthcare assistance to free African American people would result in dependence.[21] Consequently, federal and state governments relied on racist theories to justify slavery and racist neglect in public policy.[22]

In the 20th century, the federal and state governments supported the eugenics movement, which sought to eliminate nonwhite populations, considered to have undesirable traits.[23] Eugenics is based upon the white supremacist ideology that white Anglo-Saxon people are an inherently superior race.[24] Eugenicists enacted laws resulting in the forced sterilization of undesirable "races," including African American people, to create and maintain a white supremacist nation.[25] By 1931, 30 states had eugenics laws that targeted vulnerable groups across the nation for involuntary sterilization in federally-funded programs.[26] It was not until 1979 that federal sterilization regulations required voluntary consent of the person being sterilized.[27]

Today, studies have found that a significant number of white medical students and residents hold false beliefs about biological differences between African Americans and white Americans, such as the belief that African

Americans have a higher pain threshold than white Americans.[28] Black patients are especially vulnerable to harmful biases and stereotypes, including the undertreatment of their pain.[29] Physicians widely hold racist beliefs that African Americans feel less pain or exaggerate their pain.[30] These beliefs result in racial bias in pain perception and treatment.[31] Consequently, anti-Black pseudo-scientific racism that justified enslavement continues to adversely affect African American health today, as a vestige of enslavement. Despite centuries of pseudoscientific racism and anti-Blackness in the healthcare system, African American doctors, nurses, and healthcare workers have worked tirelessly to provide anti-racist culturally responsive healthcare to African American communities.[32]

California

California civic leaders were some of the most influential proponents of eugenics in the nation and around the world—including in Nazi Germany.[33] They played a key role in popularizing the eugenics movement.[34] The Human Betterment Foundation was a private think tank based in Pasadena, California that promoted sterilization from 1926 to 1943.[35] The Human Betterment Foundation shaped public policy in California by working with state officials, representing the eugenics movement to the public, and collecting data on sterilizations nationwide.[36] The foundation hoped that public support would result in state legislation that would increase the number of sterilizations performed each year.[37] The foundation's members included many prominent leaders of Californian institutions such as David Starr Jordan, Stanford University's first president; *Los Angeles Times* publisher Harry Chandler; Nobel Prize-winning physicist and head of the California Institute of Technology, Robert A. Millikan; and University of Southern California President Rufus B. von KleinSmid.[38]

Thousands of mental health patients were forcibly sterilized across California due to the eugenicist efforts of the Human Betterment Foundation. In 1937, one of Nazi Germany's leading eugenicists wrote to Ezra S. Gosney, the financier who started the Human Betterment Foundation, saying, "You were so kind to send...new information about the sterilization particulars in California. These practical experiences are also very valuable for us in Germany. For this I thank you."

Thousands of mental health patients were forcibly sterilized across California due to the eugenicist efforts of the Human Betterment Foundation.[39] African American patients were more likely to be sterilized than white patients.[40] Paul Popenoe, a self-trained biologist hired by the Human Betterment Foundation, stated that this was not surprising because "studies show that the rate of mental disease among Negroes is high."[41] Hundreds of thousands of studies, pamphlets, and books written by the Human Betterment Foundation were distributed to policymakers, schools, and libraries.[42] In 1937, one of Nazi Germany's leading eugenicists wrote to Ezra S. Gosney, the financier who started the Human Betterment Foundation, saying, "You were so kind to send... new information about the sterilization particulars in California. These practical experiences are also very valuable for us in Germany. For this I thank you."[43]

III. Health and Healthcare during Slavery

Scholars have stated that the institution of slavery has had a lasting legacy in the discriminatory healthcare system that would later emerge in the United States.[44] During the enslavement era, enslavers kept enslaved people in overcrowded, dilapidated living areas, which contributed to the spread of infectious and parasitic diseases.[45] Enslaved people were denied treatment in hospitals and access to mental healthcare.[46] Enslavers freely and openly tortured enslaved people, raped and abused women, and trafficked children with no legal consequence.[47] Physicians used enslaved people for dangerous experimental surgeries and procedures without repercussion.[48] Federal, state, and local governments used the law to further damage the health of enslaved people and dehumanize them, while neglecting to provide public health and healthcare services.[49] Dr. Carolyn Roberts stated during a hearing before the California Task Force to Study and Develop Reparation Proposals for African Americans that, "[t]his was a form of healthcare where medical violence against African and African descended people became an acceptable, normative, and institutionalized practice."[50]

Physical Health

Slavery had disastrous health consequences for enslaved people due to lack of public health regulations and harsh working conditions that led to widespread infectious and nutritional diseases.[51] Infectious and parasitic diseases thrive in poor living conditions and overcrowding.[52] So, they were among the major causes of illness and death for enslaved people.[53] Worm infections were common among enslaved people due to contact with polluted food and soil.[54] Hookworm infestation resulted in low birth weights and high infant mortality.[55] Contagious respiratory diseases were prevalent in the winter months due to the overcrowded quarters and uninhabitable living conditions.[56] Malaria led to low birth weights and high infant mortality.[57]

The lack of federal or state public health regulations resulted in contaminated food and water, nonexistent sanitary facilities or sewage disposal, wastewater leakage, and poor garbage disposal, which contributed to diseases and infections that were more likely to affect enslaved people.[58] There was no government-funded healthcare, or regulations regarding water treatment, sewage disposal, or vaccination and the prevention of disease.[59] Sexually transmitted infections were major public health problems affecting the lives of enslaved people disproportionately due to forced breeding, overcrowded quarters, and lack of access to treatment.[60] Diseases, like pellagra, caused by a lack of nutrition in the diet, weakened the immune systems of enslaved people.[61]

The health of enslaved people was worse than that of white people, because there were hardly any hospitals where they could be treated for disease.[62] With few exceptions, enslaved people and free Black people were not allowed to access hospitals, almshouses, and facilities for the deaf and blind.[63] The welfare of enslaved people was left to enslavers, while free African American people were forced to fend for themselves.[64] In 1798, Congress established a loose network of marine hospitals to care for sick and disabled seamen, however, the U.S. Treasury Department did not allow African American sailors to be treated at these hospitals.[65]

White enslavers tortured enslaved people openly, inflicting cruel punishment upon them without any legal consequences and often permanently damaged their health.[66] Enslavers deprived enslaved people of food and water, whipped them to inflict serious pain, and abused them.[67] The brutal violence of enslavers and the harsh labor conditions they imposed resulted in branding, dog bites, assaults with fists and rods, burns, lacerations, mutilated body parts, and bone fractures for enslaved people.[68]

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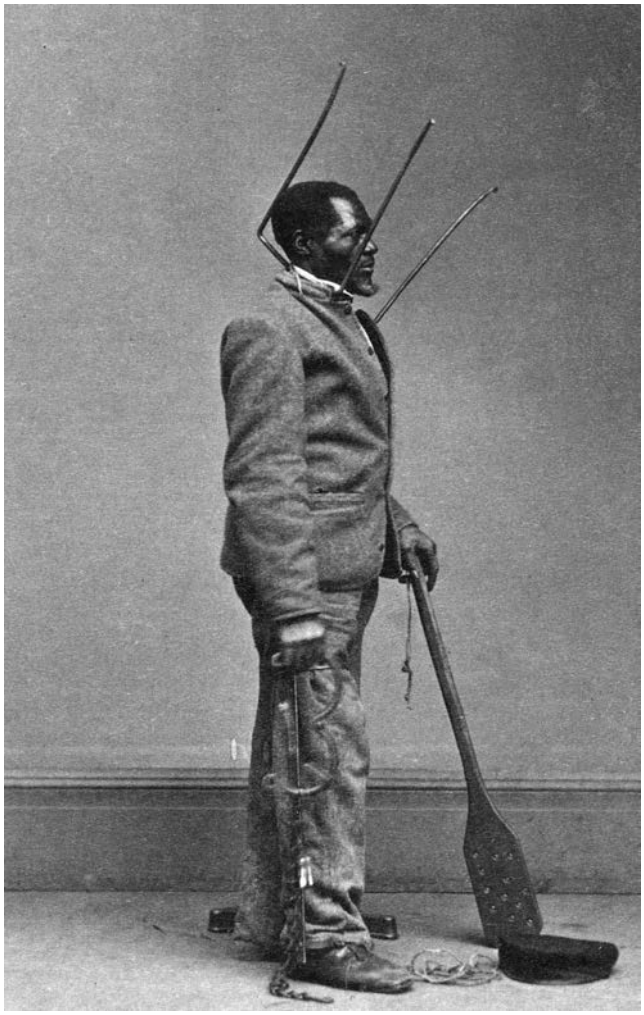

The forehead of Wilson Chinn, a formerly enslaved person from Louisiana, was branded with the initials of his enslaver. Chinn is wearing a punishment collar and posing with other equipment used to punish slaves. (1863)

Gashes from chains and iron restraints resulted in injuries, infections, and permanent disability for enslaved people.[69] Enslaved people were routinely murdered by white enslavers and white people who stabbed, shot, and whipped them to death with impunity.[70] The lack of protections from extreme climates, in addition to harsh laboring conditions, resulted in illness, injury, and disease.[71]

Mental Health

The first public mental hospital in the United States was founded in 1773, in Williamsburg, Virginia.[72] Eventually, a few public mental asylums opened in Maryland, Kentucky, and South Carolina during the antebellum period.[73] Initially, African American patients were only admitted to the asylum in Williamsburg, Virginia—the other public mental health institutions did not allow African American patients to be admitted.[74] There, free

African American patients were funded by the state at much lower rates than whites, so patients received less care and services.[75] Some enslaved people were diagnosed with fictitious mental illnesses, as will be further discussed in Section X of this chapter.[76] Numerous "diseases" that allegedly affected enslaved people were invented by southern doctors, including "drapetomania," the "irrational" desire to run away, and "dysesthesia," a supposed laziness that caused enslaved people to mishandle enslaver property.[77] Doctors recommended torturing enslaved people as "treatment" for these false diseases.[78]

Generally, antebellum mental asylums were segregated or closed to African American patients.[79] If admitted, African American patients were housed in poorer accommodations and forced to work at the asylums under harsher conditions than white patients.[80] They were assigned the dirtiest and most difficult jobs, including meal preparation, and handling the personal hygiene of ill patients.[81] In "Central Lunatic Asylum" in Virginia, enslaved people were forced to labor, frequently on a plantation while being mechanically restrained.[82] In the North, state and local governments typically denied African Americans access to mental healthcare in asylums.[83] For mentally ill free African Americans in the North, the poorhouse and the jail were the only social "welfare" institutions open to them in the antebellum era.[84] Free African Americans did work as janitors in northern mental hospitals and medical schools, but were not allowed to work as direct caregivers.[85] Consequently, enslaved people and free African Americans were deprived of adequate mental healthcare by federal and state governments during the slavery era.

Enslaved Women and Children

Enslavers held unrestrained reproductive control over enslaved women using rape and livestock breeding techniques sanctioned by law.[86] The enslaver, President Thomas Jefferson, wrote in his journal of plantation management, "I consider a woman who brings a child every two years as more profitable than the best man of the farm. [W]hat she produces is an addition to the capital."[87] Jefferson was commenting on the enslaver's practice of using enslaved women to reproduce, like livestock. Enslavers used a variety of tactics to induce enslaved women to bear children—such as punishing and selling women who did not bear children, committing sexual assault, manipulating the marital choices of enslaved people, and forced breeding.[88] State laws stated that children born to enslaved mothers and white men were legally considered to be enslaved, leading enslaved women to be vulnerable to sexual violence inflicted by white men.[89] Furthermore, state laws did not recognize the rape of enslaved women as a crime.[90]

White enslavers were legally allowed to economically profit from raping enslaved women because rape generated a larger workforce of enslaved people—and enslavers could rape freely, without consequence.[91] White women married to enslavers often whipped and tortured enslaved women after they were sexually assaulted by white men.[92] Enslavers inflicted psychological and physical punishment on enslaved women if they did not bear children.[93] Enslavers forced enslaved women to submit to being raped by men and castrated enslaved men who were not fit for "breeding."[94]

The health of enslaved mothers and their babies was greatly damaged due to the treatment of enslaved women as objects to be raped, bred, or abused.[95] On average, enslaved women became mothers earlier than white women due to pressure to reproduce.[96] Enslavers treated enslaved women who did not bear children as "damaged goods"—pawning them off on other enslavers.[97] Southern courts even established rules for sellers of enslaved women who misrepresented their fertility, which were akin to rules governing the sale of commodities—i.e., imposing some sort of fine or consequence for misrepresenting their "merchandise."[98] Mother-child bonding was shattered as white enslavers trafficked children for labor to other plantations or sold them.[99] Records show that expectant mothers only received work relief after the fifth month of pregnancy and often returned to heavy labor within the first month of the infant's life.[100] Enslaved mothers were forced to labor in fields and to breastfeed white children, while neglecting their own.[101]

Numerous "diseases" that allegedly affected enslaved people were invented by Southern doctors, including "drapetomania," the "irrational" desire to run away, and "dysesthesia," a supposed laziness that caused enslaved people to mishandle enslaver property. Doctors recommended torturing enslaved people as "treatment" for these false diseases.

Pregnant enslaved women were whipped routinely by white enslavers.[102] Enslavers dug holes in the ground, forced women to lie face down so that their stomachs would fit inside the holes, and whipped their backs.[103]

This was done to punish enslaved women without damaging the fetus, which was legally considered to be the enslaver's future property.[104] Women became pregnant during winter months when labor was reduced, consequently giving birth during the summer—the time of highest labor demand and greatest sickness—leading to high infant mortality rates.[105] Enslaved women had rich cultural knowledge of natural birth control from their indigenous cultures, which they were forced to conceal from enslavers.[106] African American midwives assisted pregnant enslaved women with inducing and hiding abortions.[107]

Children born into slavery suffered from mortality rates that were double the free population, consumed contaminated and less nutritious food, and experienced stunted growth and health problems throughout childhood.[108] Two-thirds of infants died within their first month of life—due in part to the hard labor enslaved mothers were forced to do.[109] Children were forced to work by the time they turned seven or eight years old.[110]

Medical Experimentation

Courts neglected to protect the health and safety rights of enslaved people, who were rendered legally invisible under the institution of slavery.[111] In many hiring contracts concerning enslaved people, references to medical care of enslaved people were omitted.[112] In legal disputes concerning enslaved people hired out to others, state courts ruled that the hirers need not provide medical care to the enslaved people.[113] Because enslavers wished to avoid paying medical expenses, enslavers often only called physicians as a last resort, when the enslaved person was nearly dead.[114] Physicians actively exploited enslaved people—practicing dangerous experimental procedures on them and using their cadavers for dissection without consent.[115]

White southern doctors were hired by enslavers and insurance companies to accurately determine the market value of Black bodies.[116] Physicians used slavery for economic security and experimented on African American people using dangerous procedures that harmed them, but furthered the physician's professional advancement.[117] African American bodies filled dissecting tables, operating theaters, and experimental facilities.[118] An enslaved person named Sam was experimented on by multiple doctors; he had his lower jaw bone removed without anesthesia for medical research.[119]

James Marion Sims, the "founder of modern gynecology," and an enslaver, experimented upon enslaved women and performed vaginal surgeries upon them against their will.[120] Sims used enslaved women's bodies to perfect surgical instruments and advance his professional status.[121] Sims' enslaved patients worked as his enslaved nurses and surgical assistants, though they did not receive recognition for doing so.[122] After being experimented upon by Sims, the enslaved patients were returned to their enslavers.[123] After it was perfected through medical experimentation upon enslaved women, Sims received numerous invitations to perform the vaginal procedure for European royalty.[124]

Enslaved people were used to test experimental caesarean sections and vaccines.[125] Surgeons often used enslaved people for surgical experiments and experimentation in medication and dosages.[126] Enslaved people's bodies were dissected after death to advance medical knowledge and their remains were found at Virginia Commonwealth University in 1994—findings such as these have occurred in numerous medical schools across the country.[127]

James Marion Sims, the "founder of modern gynecology," and an enslaver, experimented upon enslaved women and performed vaginal surgeries upon them against their will. Sims used enslaved women's bodies to perfect surgical instruments and advance his professional status.

California

During the period of enslavement, white southerners flocked to California with hundreds of enslaved African American people when the Gold Rush began in 1848, forcing them to toil in gold mines and hiring them to cook, serve, and perform manual labor.[128] Some enslaved people were forced to work in the gold fields to make money for their enslavers, despite illness—and if they could not do so, would lose their chance at freedom.[129] African American newspapers described brawls between enslaved people and white enslavers across California.[130]

In 1851, the U.S. Congress created a U.S. Marine Hospital in San Francisco, which was completed in 1853.[131] Marine hospitals were set up to care for sick and disabled seamen by the U.S. Treasury Department.[132] The U.S. Treasury Department distributed strict guidelines specifying that the "Negro slaves" could not receive treatment at these

hospitals.[133] African Americans were relegated to the segregated sections of state hospitals in San Francisco and Sacramento.[134]

In the 1850s, Biddy Mason, moved to California with her enslaver.[135] She lived for five years in California as an enslaved woman, until she challenged her enslaver for her freedom in court.[136] She later became a midwife and nurse, running her own midwifery business and saving enough money to purchase land and establish a church.[137] She donated to many charities, helped feed and shelter the poor, and founded an elementary school for African American children.[138]

IV. Reconstruction Era

The Civil War resulted in large-scale death, destruction, and casualties for formerly enslaved people—30,000 formerly enslaved people died from infectious diseases.[139] Sick African American soldiers died five times more often than their white counterparts.[140] After the war, African Americans lived in large, segregated refugee camps called "contraband camps" because there was nowhere else for them to go.[141] Hospitals, dispensaries, and military camps were unable to serve the masses of enslaved people, African American soldiers, and other refugees who entered the North due to the Civil War.[142] Escaped and abandoned formerly enslaved people settled near or within the Union Army's military camps and battle lines.[143] The camps did not have adequate sanitation, nutrition, or medical care.[144] One out of every four African Americans who lived in the camps died.[145]

Following the Civil War, due to segregation, African Americans were forced to live in overcrowded, unventilated tenements and unsanitary shacks.[146] Excessive mortality rates in African American communities were caused by poor living conditions, lack of access to nutritious food, and lack of access to healthcare.[147] Epidemics such as cholera and smallpox broke out often where African Americans lived.[148]

From 1865 to 1868, Congress created the Bureau of Refugees, Freedmen, and Abandoned Lands, commonly known as the "Freedmen's Bureau," to provide for the welfare of formerly enslaved African Americans, including through "issues of provisions, clothing, and fuel, as [necessary] for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen and their wives and children," according to the statute.[149] The Freedmen's Bureau included a short-lived attempt to provide medical aid to formerly enslaved people in need.[150] The Bureau was hampered by cities and counties that focused on the health of white people and refused to provide healthcare for formerly enslaved people.[151] The Freedmen's Bureau was poorly equipped to provide mental health services to formerly enslaved people.[152]

The Freedmen's Bureau dispensaries did provide thousands with annual treatment and prescriptions.[153] However, many of the white physicians affiliated with the bureau were racist to their African American patients, and sometimes refused to treat them.[154] After two years of operation, with southern legislators claiming the costs were too high, Congress ended the Freedmen's Bureau medical services—just as demand for services was increasing.[155] When the Bureau's medical services ended, formerly enslaved people continued to suffer from illness, destitution, and racial discrimination from physicians and were left with little to no access to medical care.[156] The Freedmen's Bureau failed to provide for the health and welfare of newly-freed African Americans, despite the promises made by the federal government.[157]

V. Racial Segregation Era

Following the Freedmen's Bureau's failed attempts to provide healthcare to African Americans, the Jim Crow era of racial segregation and discrimination greatly degraded the health of African American communities. White hospitals discriminated against African American doctors and nurses and treated African American patients only in "colored wings."[158] African American hospitals suffered from underfunding and resource constraints, such as struggles with licensing accreditation, and developing links with municipal hospitals.[159] In 1946, Congress passed the Hill-Burton Act, which provided federal funding to segregated healthcare facilities—further entrenching discrimination and segregation in the healthcare system.[160] The racial segregation of the Jim Crow era was a vestige of enslavement during which African Americans suffered dire health consequences.[161]

African American Patients and Medical Professionals

During the Jim Crow era, African American hospitals and segregated units within predominantly white hospitals were the only viable sources for medical services for African Americans, due to pervasive racial discrimination, poverty, and lack of geographic accessibility.[162] Some white hospitals operated small wards for African American patients, but they were in the worst areas of hospitals—in basements or crowded "colored wings."[163] These white hospitals did not hire African American doctors, and white doctors often treated African American patients with disdain.[164]

During World War I and after, millions of African Americans living in southern states migrated to the urban Northeast and Midwest in the Great Migration.[165] During this time, underfunded and under-resourced African American hospitals were not able to provide care for local African Americans and newly arriving migrants.[166] In northern cities, African American patients who sought treatment in large city hospitals were forced to compete for healthcare resources with poor European immigrants.[167] Private doctors were unaffordable for most African Americans.[168]

From the 1880s to 1964, southern states segregated African American people from white Americans in every aspect of life, including healthcare.[169] The Hill-Burton Act allocated separate funds for African American and white hospitals, resulting in a disparity in hospital beds available for African American patients.[170] African American women often could not afford to have physicians deliver babies in hospitals, and were instead treated by African American midwives in the rural regions of the South.[171] White patients refused to be treated next to African American patients and by African American doctors or nurses.[172] Most poor African Americans could not afford hospital care.[173]

White hospitals received public and private funds to establish models of care based on the newest scientific developments, while Black hospitals had to rely on their own small community of patients for funding. Black hospitals were forced to open in older, outdated hospital structures that were abandoned by prior white founders.

Some African American doctors could have their African American patients admitted to white hospitals—however, the African American doctors themselves were barred from working as physicians at those white hospitals.[174]

White doctors refused to treat Black patients—like the son of scholar W.E.B. Du Bois, Burghardt, who suffered from diphtheria.[175] Du Bois tried in vain to find a Black physician, but his son died when he was about one and a half years old.[176] Baby Burghardt's death mirrored the many deaths of enslaved children from the same disease.[177] While white public health leaders and professionals ignored the needs of the African American community, African American physicians and health leaders traveled to churches, schools, and community meetings to give healthcare education presentations.[178]

COURTESY OF RUSSELL LEE/LIBRARY OF CONGRESS

A waiting room in a Black hospital in Chicago in 1941. Black hospitals were the only viable sources for healthcare for Black Americans because many white hospitals did not admit Black patients or provided discriminatory care.

Because African Americans were denied medical education, they founded their own medical schools. The first African American medical school, Howard University Medical Department, was founded in 1867.[179] It was the first of 14 African American medical schools founded between 1868 and 1900.[180] In 1910, the Carnegie Foundation commissioned a report to evaluate every medical school in the U.S. and Canada.[181] In the wake of the report, most Black medical schools closed.[182] By 1915, five of the eight African American medical schools established in the 1880s and 1990s had closed.[183] By 1923, only two training sites were left for African American doctors and other medical professionals—Howard University in Washington, D.C. and Meharry Medical College in Tennessee.[184]

At the time, there was intense pressure in the medical field to modernize and redesign medical facilities with higher clinical and operational standards.[185] African American hospitals thus faced greater problems—adhering to these new modernized standards without the funds or institutional support of major industrialists, premier academic institutions, and political leaders, while also caring for growing healthcare needs of African Americans in the Jim Crow era.[186] Due

partly to racism, African American medical schools were not able to link with modernized hospitals to train their students.[187] Without a means of training students, and a lack of teaching and funding resources, African American medical schools were no longer viable institutions for a medical education.[188] From 1900 to 1980, only about two percent of medical professionals were African American.[189] As of 2018, just five percent of physicians were African American.[190] Consequently, African American medical schools shut down, in part, due to systemic racial discrimination and lack of government support—resulting in the underrepresentation of African Americans in the medical field.

African American professionals experienced constant racial discrimination and exclusion from medical institutions and professional associations during legal segregation.[191] African American doctors were not allowed to treat African American patients in some white southern hospitals.[192] African American interns, residents, and registered nursing personnel were excluded from white hospitals in the South.[193] African American pharmacists were limited to employment in "colored drugstores."[194] Many African American women who entered the nursing profession were discriminated against and not allowed to enter the nation's major government and charitable health agencies.[195]

African American hospitals were the only viable sources for healthcare for African Americans because many white hospitals did not admit African American patients or provided discriminatory care.[196] As late as 1945, Chicago only had one hospital operated by African American healthcare providers that served roughly 270,000 African American residents.[197] Philadelphia had two African American hospitals.[198] Southern African American women relied on private physicians and hospitals for maternity care.[199] Even in 1949, when an increasing number of white women were assisted by physicians during birth, most African American women had no physician present for birth.[200]

Until 1954, when the Veterans Administration announced the end of segregation in agency hospitals, African American veterans received worse treatment than white veterans due to separate and unequal facilities.[201] White hospitals received public and private funds to establish models of care based on the newest scientific developments, while African American hospitals had to rely on their own small community of patients for funding.[202] African American hospitals were forced to open in older, outdated hospital structures that were abandoned by prior white founders.[203]

The American Medical Association (AMA) is the most powerful umbrella organization for physician advocacy and lobbying in the United States.[204] The AMA actively discriminated against African American medical professionals and supported state-sanctioned discrimination.[205] From about 1846 to 1888, the AMA did not allow African American doctors to join.[206] This policy of tolerating racial exclusion was pivotal in creating a two-tier system of medicine in the United States.[207] In response to the AMA's racial discrimination, in 1895, African American physicians formed their own professional association, the National Medical Association.[208]

From the 1870s through the late 1960s, the AMA excluded and discriminated against African American physicians, hindering their professional advancement, and creating discriminatory barriers to adequate healthcare for African American patients.[209] During this period, the AMA was made up of local physician societies.[210] Societies that were in segregationist states freely denied African American physicians entry, yet remained part of the national AMA.[211]

In 1946, Congress passed the Hill-Burton Act, which provided federal construction grants and loans to states that needed health care facilities. Ultimately, Congress included the "separate but equal" provision in the Hill-Burton Act to appease the Southern states.

Consequently, African American physicians were denied membership in state, county, and municipal medical societies throughout the South and in many border states.[212] Exclusion from these medical societies restricted access to training and limited professional contacts.[213] Since membership in a state medical society was required by most southern hospitals, this policy resulted in the denial of admitting privileges, which meant that African American physicians could not admit African American patients to southern hospitals.[214] This, in turn, created barriers to healthcare for African Americans and barriers to professional advancement for African American physicians.[215] Furthermore, the AMA was silent in debates over the Civil Rights Act of 1964 and did not support efforts to amend the "separate but equal" provision of the Hill-Burton Act.[216]

The Hill-Burton Act (1946)

In 1946, Congress passed the Hill-Burton Act, which provided federal construction grants and loans to states that needed health care facilities.[217] However, the Hill-Burton Act allowed "separate but equal" healthcare facilities.[218] In congressional debates, northern Senators William

Langer and Harold Burton called for nondiscrimination in the use of federal funds.[219] Southern Senators, such as Lister Hill from Alabama, claimed that state legislatures and local hospital authorities had the right to set policy without federal interference.[220] Ultimately, Congress included the "separate but equal" provision in the Hill-Burton Act to appease the southern states.[221]

Southern states received a significant portion of the federal funds allotted through the Hill-Burton Act.[222] Because Hill-Burton Act funds were disbursed through regional, state, and local offices, states that were highly segregated continued to engage in racial exclusion.[223] By 1962, 98 hospitals in the South banned African American patients outright, while others only allowed African American patients in segregated areas.[224] The Hill-Burton Act allowed patients to be denied admittance into hospitals on account of race.[225] The Hill-Burton Act thus permitted racial segregation and discrimination in healthcare, a legacy of the racism that existed during slavery and continued through the legal segregation era.

Healthcare During Legal Segregation Era

Due to discrimination and segregation instituted and allowed by federal and state governments during the legal segregation era, African Americans suffered from inadequate care.[226] Studies conducted on the African American community in the mid-20th century, revealed high rates of syphilis, tuberculosis, maternal and infant mortality, and disparities in life expectancy—healthcare concerns that continue.[227] Communicable childhood diseases such as whooping cough, measles, meningitis, diphtheria, and scarlet fever were twice as frequent among African American children than white children—reflecting inadequate access to modern medical treatment.[228] The infant death rate for African American children was twice that of white children in the late 1950s.[229] The African American maternal mortality rate was four times greater than the white maternal mortality rate.[230] Compared to white Americans, African Americans died at earlier ages of heart disease and respiratory cancer.[231]

A contributing factor to premature death for African Americans was that the federal government prohibited African Americans from accessing antipoverty programs.[232] As a result, they could not afford or access quality healthcare.[233] Government-sanctioned racial segregation and discrimination extended the legacy of slavery, impacting the healthcare system far into the 20th century and until today.

California

In the late 1940s, Fresno lost its only Black doctor, Dr. Henry C. Wallace.[234] At the time, young Earl Meyers, a Black teenager in Fresno, was impressed by Dr. Wallace.[235] "Dr. Wallace inspired him ... He was Earl's mother's doctor and he healed her," Mattie Meyers, Earl Meyers' former wife, said. "At that time, there weren't any black doctors here. Dr. Wallace was Earl's mentor," she said. Earl Meyers then left Fresno to receive his medical degree at Tennessee's Meharry Medical College—one of the only Black medical schools left in the United States.[236]

Communicable childhood diseases such as whooping cough, measles, meningitis, diphtheria, and scarlet fever were twice as frequent among Black children than white children—reflecting inadequate access to modern medical treatment. The infant death rate for Black children was twice that of white children in the late 1950s. The Black maternal mortality rate was four times greater than the white maternal mortality rate.

Many of the Black residents of Fresno described the difficulty they had in getting medical care from white doctors and asked Dr. Meyers to return to his hometown.[237] Dr. Meyers did return home to Fresno, where he established a medical clinic.[238] He also established a dispensary and made prescriptions available at wholesale cost—often refusing to charge impoverished patients for his services.[239]

In 1950 **65%** of hospitals in Los Angeles **racially segregated** African American patients

Hospitals in California that received Hill-Burton Act funds[240] discriminated against African American patients and physicians. From 1947 to 1971, Hill-Burton Act funds contributed to 427 projects at 284 facilities in 165 communities in California.[241] A 1950 survey of Los Angeles hospitals found that 11 of the 17 hospitals racially segregated patients.[242] A separate, 1956 study found that only 24.8 percent of African American physicians in Los Angeles served at predominately white hospitals.[243] The

legacy of this discrimination carries through today. In 2021, a nonpartisan health organization found that Los Angeles tied Atlanta for the highest number of "least inclusive hospitals."[244] Consequently, California has a history of healthcare discrimination against African American Californians, due to the segregation of hospitals in California and the inadequacy of access to healthcare for African American Californians, which is a legacy of slavery that carries through to today.

VI. Post-Civil Rights Act Era

The Civil Rights Act brought marked improvements in addressing healthcare discrimination.[245] However, the United States healthcare system was built upon a foundation of enslavement and segregation, which has never been dismantled. Scholars have stated that the legacy of enslavement and segregation persists in the legal barriers to medical education for African Americans, the anti-Black discrimination in the healthcare profession, and the transformation of hospitals and healthcare into a high profit industry that has neglected to provide care for African Americans.[246] This legacy of enslavement continues to harm African Americans today, as some scholars have stated, resulting in continued inequities in medical treatment and health outcomes.[247]

Medical Education

The U.S. Supreme Court's ban on race-based quotas in affirmative-action programs for medical schools led to a dearth of African American doctors.[248] In the 1960s, white medical and dental schools began efforts to increase African American enrollment through affirmative action programs to recruit and graduate higher numbers of African American medical students.[249] Affirmative action programs increased the number of African American medical school students from 783—or 2.2 percent of all medical students in 1969—to 3,456—or 7.5 percent of all medical students by 1975.[250] Of all those who treated African American communities and patient populations, African American physicians provided the most care.[251]

Racism by white doctors has led to unconscious bias that has resulted in African Americans receiving inferior medical care as compared to white Americans. Across virtually every type of diagnostic and treatment intervention, African Americans receive fewer procedures and poorer-quality medical care than white Americans.

The University of California, Davis opened a medical school with an affirmative action program in 1966.[252] However, in 1978, the U.S. Supreme Court ruled that the racial quotas used in this program were unconstitutional in *Regents of the University of California v. Bakke*.[253] This ruling reduced the number of African American students admitted in the nation's medical schools—particularly middle- and lower-ranked schools, where the percentage of African American students admitted dropped to miniscule levels.[254] There were fewer Black men in U.S. medical schools in 2014 than in 1978.[255] Medical education began to use a "color-blind" model of selecting and training African American professionals based upon the *Bakke* ruling, which has contributed to racial health disparities that exist today.[256]

Major growth of the medical sector eventually led the bulk of the nation's hospitals to be operated by the government, large corporations, and not-for-profit healthcare businesses.[257] Due to the transformation of healthcare from a largely government provided service to a for-profit industry, African American physicians were separated from African American patient populations.[258] African American hospitals were closed and taken over by large corporate entities.[259] African American hospitals were not funded by government, corporate, and non-profit economic circles and consequently could not afford to remain open.[260] They closed, merged into larger hospital systems, or were renovated into nursing homes by the mid-1980s.[261] The mainstream medical establishment was unorganized, and spread out geographically.[262] African American doctors who used to serve African American patients concentrated in African American geographic areas were consequently scattered and unable to continue serving African American patient populations in clinics and hospitals.[263]

Research has shown that diversity among physicians leads to better outcomes for African American patients.[264] Non-African American medical students' explicit racist attitudes are associated with decreased intent to practice with underserved or minority populations.[265] One study found that African American patients assigned to an African American doctor increased their demand for preventive care, brought up more medical issues, and were more likely to seek medical advice.[266]

Racism by white doctors has led to unconscious bias that has resulted in African Americans receiving inferior medical care as compared to white Americans.[267] Higher implicit bias scores among physicians are associated with biased treatment recommendations for the care of African American patients.[268] Providers' implicit bias affects their nonverbal behavior, which is associated with poorer quality of patient-provider communication.[269] Across virtually every type of diagnostic and treatment intervention, African Americans receive fewer procedures and poorer-quality medical care than do white Americans.[270]

Discrimination in Healthcare

Prior to the Civil Rights Act of 1964, federally-funded hospitals refused to provide care to African American patients.[271] Barriers to equality in care for African American patients remained even after the passage of the Civil Rights Act.[272] Due to insufficient government-funded healthcare services, as well as the disempowerment and neglect of African American patients by healthcare institutions, African American communities suffered major gaps in healthcare delivery in the impoverished neighborhoods where they lived.[273] African American residents who lived in urban poverty received medical care from crowded emergency rooms and outpatient services at overburdened public hospitals, or at small practices of private African American physicians.[274]

In 1960, there was only one African American doctor for every 5,000 African American patients, compared to the national average of one doctor for every 670 Americans.[275] Poor African American women could not afford safe abortions through private doctors and could not receive adequate care at the hospitals and clinics in their communities.[276] Hospitals in African American neighborhoods were older than public general hospitals.[277] They were usually administered by nonprofit bodies and funded by voluntary contributions and paying patients.[278] They were insufficiently staffed and were in too poor of a physical condition to provide the medical services needed by the African American communities around them.[279]

In 1960, there was only 1 Black doctor per 5,000 African Americans

compared to 1 white doctor for every 670 Americans

As a result, between 1950 to 1970, life expectancy for African Americans remained almost a decade shorter than that of white Americans.[280] Death rates from pneumonia, influenza, and tuberculosis were two to three times higher for African Americans than white Americans due to lack of access to hospital care.[281] Similarly, maternal mortality rates for African American mothers remained four times higher than that of white mothers.[282] African American mortality from sexually transmitted infections and tuberculosis remained much higher than that of white Americans.[283] African Americans also continued to suffer from chronic illness at higher rates than white people.[284]

In the 1950s and 1960s, the National Association for the Advancement of Colored People brought several lawsuits to force government funded hospitals to hire African American doctors, treat African American patients, and desegregate facilities.[285] The federal government filed a brief in support of African American patients in *Simkins v. Moses H. Cone Memorial Hospital*; however, the government did not always strictly enforce the Civil Rights Act against medical segregation, sometimes leaving African American medical professionals to fight case by case in the courts for desegregation.[286]

As a result, between 1950 to 1970, life expectancy for African Americans remained almost a decade shorter than that of white Americans.

Health` Insurance

Insurance status predicts the quality of care a patient will receive.[287] Health insurance is necessary to pay for healthcare procedures, such as preventive care, screenings, disease management, and prescription drugs.[288] In the United States, health insurance is dependent upon employment.[289] In 1942, during World War II, rising prices and competing wages led the federal government to put a cap on wages.[290] Health insurance was an exception to that wage cap and employer contributions to health insurance premiums were tax-free.[291] Employers began paying for health insurance to lure employees.[292] Eventually, this led employees with higher-paying jobs to receive more benefits from their health coverage than those with lower incomes.[293] Healthcare became a

privilege for those with good jobs, rather than a right for all.[294] As discussed in Chapter 10, African Americans have historically not been able to access jobs that provide medical insurance through employers due to barriers to education, employment, and discrimination.[295] Due to employment discrimination, private, job-based, health care systems excluded African Americans.[296] Consequently, as of 2018, only 46 percent of African Americans are covered by employer-sponsored health insurance. [297]

In the 1960s, President Lyndon B. Johnson's Great Society legislation and the Civil Rights Act and Voting Rights Act contained the seeds for creating a nationwide health care system for all citizens.[298] However, the Medicaid and Medicare programs did not eliminate racial inequality in healthcare.[299] Medicare and Medicaid are health insurance programs paid for by the federal government.[300] Medicare serves people with disabilities and people who are 65 years or older.[301] Medicaid serves people who are low-income.[302]

Before Medicaid and Medicare, southern states were resistant to a nationwide health insurance system for all, due to desegregation brought about by the civil rights legislation.[303] They wanted limited federal involvement while continuing to run their own health programs for low-income residents.[304] Before Medicaid's enactment, states had control over federal health insurance programs for low-income residents, which disproportionately included African Americans.[305] These programs were underfunded, and states with large populations of African Americans—Texas, Arkansas, Louisiana, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina, and North Carolina, referred to as the "Black Belt" states—refused to participate in federal health insurance programs.[306] A state-run Medicaid program would limit federal involvement while allowing states to determine eligibility for health insurance programs on their own.[307]

The enactment of Medicaid as a program implemented by state governments allowed states to disproportionately exclude African American, low-income populations who otherwise would have qualified for the program.[308] Medicaid provided insurance to low-income and unemployed people—about one-fifth of the African American population was considered poor enough to qualify for Medicaid.[309] Consequently, in the 1970s, 25 percent of the African American population was uninsured, while only 12 percent of the general population was uninsured.[310]

However, in the 1990s, the Black Belt states changed their income criteria, lowering the threshold income for Medicaid so much that many poor African American families were not considered poor enough to qualify for Medicaid.[311] Reimbursement policies established by government and health insurance regulators limited hospitals and physicians in the type and number of patients they could treat.[312] Consequently, private physicians and hospitals preferred not to treat Medicaid recipients, who lacked the funds to access care in a wide range of hospitals.[313] Due to this, throughout the 1990s, about 20 percent of the nation's African American population lacked health insurance, while 17 percent of all Americans lacked health insurance.[314]

The Affordable Care Act, passed in 2010, greatly reduced the number of uninsured people in the United States.[315] Three million African American people previously uninsured obtained insurance.[316] However, the U.S. Supreme Court made expansion of Medicaid eligibility under the Affordable Care Act optional to states rather than mandatory.[317] The expansion of Medicaid eligibility would have increased access to screening and preventive care, resulted in earlier diagnosis of chronic conditions, and improved mental health.[318] However, the states that chose not to expand Medicaid were primarily the Black Belt states—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas.[319] African Americans are among the most likely to be uninsured compared to other populations, further inhibiting African Americans from accessing quality healthcare.[320]

Medicare does not cover all healthcare services that an individual may need, and often supplemental coverage is needed.[321] This coverage is sold by private insurance companies, or may be provided by employer-sponsored retiree benefits.[322] However, due to the low levels of employer-sponsored health coverage for African Americans and the expense of private insurance, older African Americans are far more likely than white Americans to rely solely on the Medicare program, or may supplement it with Medicaid.[323] About a quarter of African Americans lack supplemental coverage, while only 10 percent of white Americans lack supplemental coverage.[324] The lack of supplemental insurance exposes African Americans to higher out of pocket costs and delayed medical care.[325] Discrimination in Medicare extends to the quality of medical services. Ten percent

In early 1970, the Black Panther Party published in its newspaper an account of "the disrespectful, unprofessional, and even authoritarian encounters between physicians and their patients at San Francisco General."

of African Americans receiving Medicare report unwanted delays in getting an appointment and problems finding a new specialist, while only six percent of white Americans report similar problems.[326] Consequently, the discriminatory health insurance system has resulted in worse health for older African Americans who rely on Medicare.

African American physicians in California have alleged that the Medical Board of California disciplines African American doctors more than white doctors. Research shows that African American physicians in California were more likely to receive complaints and have their complaints escalated to investigations than white physicians, but these investigations were not more likely to result in disciplinary action.

California

To address the lack of healthcare services and medical discrimination experienced by Black Californians, the Black Panther Party attempted to provide free healthcare clinics to administer basic healthcare services.[327] In early 1970, the Black Panther Party published in its newspaper an account of "the disrespectful, unprofessional, and even authoritarian encounters between physicians and their patients at San Francisco General."[328] Shortly after, the Black Panther Party established a few free, community-based clinics, known as People's Free Medical Clinics. [329] At the clinics, medical professionals trained health workers to administer basic services.[330]

However, local governments retaliated against the Black Panther Party's clinics. The Oakland Police Department, on the order of the Federal Bureau of Investigation, hounded the Black Panther Party for soliciting clinic funds without proper permits.[331] In 1969, police in Los Angeles raided the local Black Panther Party chapter's headquarters, where the party was planning to open the Bunchy Carter People's Free Medical Clinic.[332] The raid severely damaged the clinic building enough that its forthcoming opening was postponed.[333]

Today, discrimination against African American Californians in healthcare is exacerbated by the fact that there are not enough African American physicians in California to meet the needs of California's African American population. In California, African American physicians are less than three percent of the entire medical profession, despite African Americans making up six percent of the state's population.[334] The passage of Proposition 209 in 1996 in California, prohibited the consideration of race, ethnicity, or national origin in public education, employment, and contracting.[335] As a result, in California's private medical schools, the proportion of African American students matriculating fell from six percent in 1990 to five percent in 2019.[336]

African American physicians in California have alleged that the Medical Board of California disciplines African American doctors more than white doctors.[337] Research shows that African American physicians in California were more likely to receive complaints and have their complaints escalated to investigations than white physicians, but these investigations were not more likely to result in disciplinary action.[338] African American physicians have been historically underrepresented in California's medical field and continue to be underrepresented and discriminated against today.

African American Californians continue to face discrimination in healthcare and disparities in health outcomes.[339] In 1965, in the Watts neighborhood of Los Angeles, an area with a large African American population, only 106 doctors were serving over 250,000 residents—a doctor to patient ratio of one to 2,377.[340] The United States today has a doctor to patient ratio of about one doctor per 384 patients.[341] Today, Black Californians experience racism in their interactions with the healthcare system and many have wanted more access to Black physicians.[342] In a study conducted in 2021 where 100 Black Californians were interviewed, some recounted experiences of delayed or missed diagnoses due to inattentive healthcare providers.[343] One Black man from the Central Valley said, "I couldn't hold down any food. I couldn't walk. I couldn't eat, do anything. So, I went to a clinic and I told them what was wrong. And they prescribed naproxen, which is generic for Midol and Advil. [So] I went to the hospital and had dual kidney infections... I just don't think they take me seriously...I don't think they take me as seriously as they would a white man or a white woman."[344]

VII. Medical Experimentation

Federal and state governments have allowed doctors and scientists to experiment on the bodies of African Americans and have at times conducted dangerous medical experiments on African Americans. In 1932, the U.S. Public Health Service began its study of syphilis, known as the Tuskegee Syphilis Study, which promised free medical care to hundreds of poor African American sharecroppers in Alabama.[345] Over the course of 40 years, the government did not treat the subjects, though treatment was available, and sought to ensure that the subjects of the study did not receive treatment from other sources.[346] Forty of the wives of the African American sharecroppers and at least 19 children contracted syphilis during the study.[347] The government did not prosecute anyone for the deaths and injuries that were caused.[348]

COURTESY OF NATIONAL ARCHIVES

Subjects of the Tuskegee Syphilis Study. In 1932, the U.S. Public Health Service began its study of syphilis, known as the Tuskegee Syphilis Study, which promised free medical care to hundreds of poor Black sharecroppers in Alabama. Over the course of 40 years, the government did not treat the subjects, though treatment was available, and sought to ensure that the subjects of the study did not receive treatment from other sources.

African American bodies have been used for major medical advancements and experimentation, without any compensation given to those who were involved, or to their families. For instance, scientists at Johns Hopkins University were treating Henrietta Lacks, an African American woman, for cervical cancer in the 1950s.[349] Without compensation to her family or permission from them, her cells were used extensively in scientific research to develop modern vaccines, cancer treatments, in vitro fertilization techniques, among other medical advancements.[350] Doctors and scientists repeatedly failed to ask her family for consent as they revealed her name publicly and gave her medical records to the media.[351] Like so many enslaved people, Lacks' body was used for medical experimentation without her consent and without compensation.

The U.S. Food and Drug Administration approved contraceptives, such as Norplant, which were disproportionately distributed to poor African American women and young girls in schools.[352] States offered poor women financial incentives for using Norplant—however, due to concerns about complications and effectiveness, Norplant's distributor eventually discontinued it in 2002.[353] Similarly, in 1973, many African American women had filed lawsuits alleging that they were coerced into sterilization, often under the threat that their welfare benefits would be taken away if they did not submit to the procedure.[354] The coercive use of contraception and sterilization by the legal system and welfare system has forced African American women to choose between financial freedom or prison time.[355]

African Americans have also been subjected to harmful experiments conducted, facilitated, or allowed by the government. In the 1950s, the Central Intelligence Agency reportedly attempted to test biological weapons by breeding millions of mosquitos and releasing them in African American housing developments in Florida and Georgia.[356] Residents living in these areas showed symptoms of dengue fever and yellow fever and some died from these illnesses.[357] In Pennsylvania's Holmesburg Prison, Dr. Albert M. Kligman conducted numerous experiments on mostly African American incarcerated Americans throughout the 1960s.[358] Incarcerated individuals filed lawsuits for their injuries due to this abusive experimentation.[359] Dr. Kligman was temporarily banned from experimentation by the Food and Drug Administration in 1966, however, clinical research on incarcerated people was not banned by the government until decades later.[360] In the 1990s, the New York State Psychiatric Institute and Columbia University conducted experiments on African American boys by giving them doses of the now-banned drug fenfluramine to test a theory that violent or criminal behavior may be predicted by levels of certain brain chemicals.[361] Consequently, federal and state governments allowed or participated in abusive experimentation on African American children and incarcerated people throughout the nation.

California

Home to an extensive eugenics movement, California had the highest number of sterilizations in the United States.[362] In the 1920s African American people constituted just over one percent of California's population, but they accounted for four percent of total sterilizations by the State of California.[363] By 1964, the State of California sterilized over 20,000 people—one-third of

all sterilizations in the U.S. and more than any other state.[364] The sterilizations were authorized by law and performed in state institutions, hospitals, and prisons.[365]

By 1964, the State of California sterilized over 20,000 people which accounts for 1/3 of all sterilizations in the U.S.

Dr. Leo Stanley, a eugenicist, performed forced sterilizations at San Quentin State Prison and was responsible for further segregation of the prison medical facilities.[366] He also used the testicular glands of an executed African American man for his experiments, without obtaining the consent of the man's family because his body was not "claimed."[367] In 2018, the California Department of Corrections and Rehabilitation glowingly described Dr. Stanley as a doctor who "push[ed] prison medicine into [the] 20th century."[368]

Between 2006 and 2010, almost 150 people imprisoned in California's women's prisons were sterilized without proper authorization while giving birth.[369] Many of the women subjected to forced sterilization were African American and Latina.[370] Kelli Dillon was forcibly sterilized while incarcerated at the Central California women's facility in Chowchilla when she was told she needed a surgery to treat an ovarian cyst.[371] She was not aware of the sterilization until she requested her medical records with the help of a lawyer.[372] Dillon said, "It was like my life wasn't worth anything," she said. "Somebody felt I had nothing to contribute to the point where they had to find this sneaky and diabolical way to take my ability to have children."[373] After her release from prison, Dillon founded Back to Basics, an organization fighting for justice for survivors of forced sterilizations in California.[374] In 2021, California became the third state to offer reparations payments, setting aside $7.5 million for victims of forced sterilization.[375]

In the State of California, Elmer Allen was illegally injected with plutonium at the University of California, San Francisco medical hospital in San Francisco—he was likely never informed of the consequences of this.[376] The university later acknowledged that the injection was not of therapeutic benefit to him, which was a requirement for medical experiments on people.[377] The federal government created a committee to investigate the government-sponsored radiation experiments, after which President Clinton issued an apology.[378]

VIII. Medical Therapies, and Technology

The history of experimentation and discrimination has led to the exclusion of African Americans from modern clinical trials, due to the mistrust this has sowed among African Americans—resulting in continuing health disparities that harm African Americans.[379] Prior to modern research, there has been a long history of Black bodies being stolen for dissection and anatomical investigation without informed consent.[380] The Freedman's Cemetery in Dallas, excavated in the 1990s, contained the remains of African Americans, which were illegally used for dissection or stolen.[381] Today, African Americans are less likely to be in clinical trials for the development of medication, vaccines, or other treatment, which can exacerbate health disparities.[382] For example, although sickle cell disease primarily affects African Americans, there is a great disparity in research funding and attention paid to this genetic condition.[383]

Algorithms are widely used in U.S. hospitals to refer people to health programs that improve a patient's care—however, at least one widely-used algorithm was found to systematically discriminate against Black patients.[384] This algorithm led to African American patients receiving

COURTESY OF *DISSECTION: PHOTOGRAPHS OF A RITE OF PASSAGE IN AMERICAN MEDICINE, 1880-1930*, PAGE 101

Students at the University of Maryland School of Medicine, 1898. The English sociologist Harriet Martineau wrote in 1838 that "...the bodies of coloured people exclusively are taken for dissection because the whites do not like it, and the coloured people cannot resist."

less referrals for programs that provided personalized care—despite being just as sick as white patients.[385]

African Americans are less likely to be treated for skin diseases due to the lack of medical research and training for diagnosing skin conditions for those with darker skin.[386] Most medical textbooks and journals that assist dermatologists in diagnosing skin disorders do not include images of skin conditions as they appear on African Americans.[387] Images of darker skin with skin conditions caused by COVID-19, skin cancer, psoriasis, rosacea, and melanoma often do not appear in medical textbooks and journals.[388] Doctors routinely miss these diagnoses for African American patients because they are not trained to identify or treat skin conditions for African American patients.[389] Consequently, discriminatory medical research and technology has resulted in worsening health disparities that harm African Americans.

IX. Mental Health

Steve Biko, the South African anti-apartheid activist observed that "the most potent weapon in the hands of the oppressor is the mind of the oppressed."[390] Historically, the dehumanization of African Americans has grown into structural, institutional, and individual racism today.[391] Poor mental health among Black youth and adults must be understood in the context of historical race-based exclusion from access to resources.[392] The harsh impact of multigenerational racism on African American mental health and inherent racism within the discipline of psychology has contributed to disastrous mental health consequences for African Americans.

In the 1970s, due to systemic racism, psychiatrists were taught that clinical depression was nonexistent among African Americans. Black military personnel under conditions of intense racial discrimination received higher rates of severe mental illness diagnoses, such as paranoid schizophrenia.

History of Racism in Mental Health

The federal government and state governments, including the State of California, have historically discriminated against African Americans in the provision of mental healthcare. Established in 1773, the Public Hospital for Persons of Insane and Disordered Minds in Williamsburg, Virginia, was the first public psychiatric hospital in the United States.[393] However, the asylum prioritized white people over enslaved people for admission.[394] The asylum used enslaved labor to operate and accepted enslaved people as payment for care and treatment of white people.[395]

Psychiatric hospitals in the first half of the 19th century were some of the United States' first officially segregated institutions.[396] One of the American Psychiatric Association's founding members refused to admit African American patients to his mental hospital.[397] He influenced the design of the Government Hospital for the Insane in Washington, D.C., which housed African American patients in a separate building—far away from the better facilities for the white patients.[398] Before 1861, African American patients were rarely admitted into southern asylums because they supposedly did not suffer from severe mental illness.[399] The racist notion that only white people suffered from mental illness was written into the law in Virginia.[400] African American patients experienced outright denial of services, and when they were admitted, they were housed in worse circumstances than white patients.[401]

By the 1960s and 1970s, African Americans were left with a mental health system that proved ineffective at addressing the root causes of mental illness—such as racism and poverty.[402] In 1970, African Americans were 52 percent more of the population in mental health institutions than white Americans.[403] However, there were nine times more African Americans than white Americans in correctional settings.[404]

White mental health staff at federally-funded clinics and hospitals often diagnosed African American patients as schizophrenic, when they should have been diagnosed with depression.[405] In the 1970s, due to systemic racism, psychiatrists were taught that clinical depression was nonexistent among African Americans.[406] African American military personnel under conditions of intense racial discrimination received higher rates of severe mental illness diagnoses, such as paranoid schizophrenia.[407] Studies of the diagnoses of African American patients at Veterans Affairs facilities have also shown that misdiagnosis has remained a problem for African American communities due to clinicians'

prejudice and misinterpretation of African American patients' behaviors.[408]

The American Psychological Association and the Discipline of Psychology

The American Psychological Association (APA), in conjunction with federal and state governments, played a significant role in the ongoing oppression of African Americans.[409] In 2020, the APA issued an apology for its role in promoting, perpetuating, and failing to challenge racism in the U.S.[410] The APA helped establish racist scientific theories, opposition to inter-racial marriage, and support of segregation and forced sterilization.[411] The APA also promoted the idea that racial difference is biologically-based, created discriminatory psychological tests, and failed to take action to end racist testing practices.[412] For centuries, the APA has failed to represent the approaches, practices, voices, and concerns of African Americans within the field of psychology and within society.[413]

Throughout American history, the field of psychology has also influenced federal and state eugenics policies.[414] In 1895, an article published in an APA journal argued that white people had a superior, more evolved intelligence.[415] In 1913, a study reported the inferiority of school performance among African American children in integrated schools in New York.[416] Racial difference was used to argue against improved schooling opportunities for African American children.[417] One psychologist, Raymond Cattell, argued that race-mixing was dangerous and would lead to a society of "lower intelligence" through the early 1990s.[418]

In 1917, the federal government conducted psychological tests on nearly two million soldiers.[419] Due to culturally-biased questions, the study labeled 89 percent of African American recruits as "morons."[420] Throughout the 1930s, African American psychologists conducted studies countering the racist findings of white psychologists.[421] Their studies suggested that environment plays a central role in shaping intelligence scores and outlined the impact white examiners have on the test scores of African American test takers.[422] However, these studies were often dismissed.[423] The APA continued to support the use of testing to validate theories about innate racial hierarchy.[424]

From the 1950s on, psychologists received funding from white supremacist organizations to support segregation and other racist projects.[425] In 1952, former APA president, Henry E. Garrett, testified in support of segregation in *Davis v. County School Board,* one of five federal court cases combined into *Brown v. Board of Education*.[426] He testified that segregation would not harm African American students, and the three-judge panel that ruled in favor of segregation agreed.[427] Garrett also testified before Congress in opposition to the passage of the Civil Rights Act of 1968.[428] He argued that African Americans could not reach the intelligence levels of white Americans.[429] Garrett promoted the idea of an innate racial hierarchy and worked with racial extremist and neo-Nazi groups.[430]

In 1968, 75 African American psychologists left the APA in protest and formed the Association of Black Psychologists.[431] However, published articles in top psychological journals continued to be overtly racist and neglect issues and topics beneficial to African Americans. Between 1970 and 1989, just 3.6 percent of published articles focused on African Americans.[432] Most of the work is focused on standardized testing and none on healthy personality development and the competent intellectual functioning of African Americans.[433] As late as 1985, white psychologists published articles arguing that African Americans evolved to have lower intelligence, have more children, care for them poorly, and commit more crime.[434] The legacy of the discriminatory practices of the APA and the discipline of psychology is evident in the underrepresentation of African Americans in the psychology workforce, as will be discussed in the next subsection.

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Racism in Mental Health Today

Structural racism continues to be embedded in the mental health system. Studies document continued and consistent patterns of misdiagnosis, mistreatment, and disparities in quality of and access to mental healthcare for African Americans.[435] African American patients are more likely to receive higher doses of antipsychotics despite evidence that they have more adverse side effects.[436]

There is a dearth of African American psychologists and culturally appropriate treatment for African Americans.[437] As of 2014, only four percent of the psychology workforce in the United States is African American.[438] White psychology curriculums dominate higher education—and seven percent of psychology doctoral students are African American, though 14 percent of Americans are African American.[439]

African American clients' experiences of microaggressions from white therapists have negatively impacted their satisfaction with both counselors and counseling in general.[440] Many African Americans feel worse after their counseling experiences.[441] Racial bias and stereotypes by clinicians have led to misdiagnoses of African Americans in some cases.[442] This leads to further disparities in quality of mental healthcare for African American patients due to the implicit biases of mental health providers.[443]

Mental health problems among Black youth often result in school punishment or incarceration, rather than mental healthcare.

African Americans face barriers to accessing mental healthcare today.[444] These barriers include stigma from mental health professionals, unavailability of treatment, overdiagnosis and misdiagnosis, being unable to afford the cost of healthcare, lacking insurance, and being unable to access transportation.[445] Due to these barriers, African American men who are depressed underutilize mental health treatment and have depression that is more persistent, disabling, and resistant to treatment than white men.[446] This extends to youth. Mental health problems among African American youth often result in school punishment or incarceration, rather than mental healthcare.[447] Overall, African Americans are less likely to receive care than white Americans for mood and anxiety disorders, which may contribute to chronic mental health issues.[448] Consequently, African Americans face institutional and individual racism in the mental health system, which is the legacy of historical anti-Black discrimination, and is especially harmful to African American mental health today.

Impact of Anti-Black Racism on African American Mental Health

For centuries, nearly every institution of the Western world has—explicitly and implicitly—reinforced the message that African Americans are to be devalued.[449] Within this context, it is inevitable that African American mental health and well-being has suffered.[450] The psychic effects of this anti-Black narrative include cultural trauma, cultural imperialism, and internalized racism.[451] Cultural trauma is "a dramatic loss of identity and meaning, a tear in the social fabric affecting a group of people that has achieved some degree of cohesion[.]"[452] Cultural imperialism is when the culture of one society is forced onto another society or group of people.[453] Internalized racism is "the process of accepting the racial stereotypes of the oppressor."[454]

Anti-Black racism leads to racial stress, which causes adverse psychological effects.[455] This can profoundly affect African American children by undermining their emotional and physical well-being and their academic success.[456] African American women identify racial discrimination as a persistent stressor occurring throughout their lives.[457] These experiences having long-lasting effects on their identities and on how they perceive encounters with others, particularly white Americans.[458] Many African American women describe ruminating on past experiences, developing defense mechanisms in anticipation of future threats, and feeling the need to overcompensate for negative stereotypes.[459] They may work harder to prove themselves, suppress emotions, and code switch.[460] African American women may feel an obligation to present an image of strength, suppress emotions, resist being vulnerable or dependent on others, determined to succeed despite limited resources, and feel an obligation to help others.[461] This may lead to chronic psychological distress, which is associated with physiological processes, such as chronic inflammation, abdominal obesity, and heart disease.[462]

The overwhelming amount of racial stress caused by racism can result in trauma.[463] Racial trauma, a form of race-based stress, is defined by psychologists as persistent psychological injury caused by racism.[464] This trauma may produce mental illnesses or psychological wounds tied to historical traumatic experiences, like slavery.[465] Studies have shown that racial and ethnic discrimination may play an important role in the development of Post-Traumatic Stress Disorder (PTSD) for African American people.[466] Racial trauma can cause symptoms similar to PTSD, including hypervigilance, flashbacks, nightmares, avoidance, suspiciousness, and physical symptoms such as headaches, heart palpitations, and other such symptoms.[467] Studies have also shown that public racial discrimination against African Americans is linked to an increase in depressive symptoms.[468]

Cultural trauma is "a dramatic loss of identity and meaning, a tear in the social fabric affecting a group of people that has achieved some degree of cohesion[.]"

Historical trauma is the legacy of numerous traumatic events inflicted on a group of people and experienced over generations.[469] The health consequences of historical racism and discrimination can be passed down psychologically, socially, and emotionally from one generation to the next resulting in intergenerational harm to African American mental health due to racism.[470] Long-term adverse health impacts linked to legal segregation laws illustrate the long reach of institutional racism.[471] Historical trauma studies show that children of African American parents who have been affected by trauma, also exhibit symptoms of PTSD, or "historical trauma response."[472]

Studies have shown that racial and ethnic discrimination may play an important role in the development of Post-Traumatic Stress Disorder (PTSD) for Black people. Racial trauma can cause symptoms similar to PTSD. Studies have also shown that public racial discrimination against African Americans is linked to an increase in depressive symptoms.

Traumatization can occur at a community level as well. Highly publicized police killings of unarmed African Americans affect the mental health of African Americans in the region where the killing occurs.[473] In one study, the impact was felt for months afterwards, whereas no negative effects were found for white Americans in those same localities.[474] A 2013-2016 study on the mental impacts of killings of African Americans in certain states found that African Americans had more poor mental health days, whereas white people were not affected in the same way.[475]

California

Psychological institutions have contributed to overincarceration, forced sterilization, and denial of educational opportunities for African American Californians. In 1915, psychologists leading the California Bureau of Juvenile Research at Whittier State School oversaw some of the earliest eugenics projects, examining family trees and conducting psychological testing of boys confined at the institution.[476] The results of this project harmed African American youth in California by increasing incarceration rates and promoting sterilization.[477] Psychological tests were used by the state's public education system to block educational and economic opportunities for African American youth in California.[478] In 1979, the Federal District Court of Northern California ruled in favor of five African American students who had been placed in special education classes due to their performance on psychological tests.[479]

The mental health system in California has discriminated against African American Californians through inaccurate diagnoses, use of involuntary force, high cost, and a lack of culturally-competent services.[480] In comparison to other racial and ethnic groups, it takes longer for African American Californians to be removed from inpatient mental health care settings to a less restrictive level of care.[481] Despite higher rates of inpatient treatment, over 50 percent of African American Californians must wait more than eight days to step down from an inpatient setting to a lower level of care.[482] It takes twice as long for African American Californians than it does for most other racial or ethnic groups, despite no evidence of less need.[483] These racial disparities also exist in California's small counties, despite fewer numbers of people from nonwhite communities.[484]

Many African American Californians suffer from high rates of serious psychological distress, depression, suicidal ideation, dual diagnoses, and other mental health issues.[485] Unmet mental health needs are higher among African American Californians, as compared with white Californians.[486] This includes being unable to access mental healthcare and substance abuse services.[487] Across racial groups, the highest percentage of serious psychological distress and attempted suicide was found among African American Californians.[488] African American Californians had the highest percentage of missed days of days of work and daily activities due to mental health concerns.[489] African American people are over-represented in vulnerable groups at risk for mental illness, such as unhoused people; current and formerly incarcerated people; children in foster care; and veterans.[490] These groups have an increased risk for developing Post-Traumatic Stress Disorder.[491]

California budget cuts in funding for indigent care have disproportionately affected African American communities, who are more likely to be indigent and in need of mental health services.[492] The lack of recruitment and retention of African American psychiatrists in Los Angeles has negatively affected African American Californians, who are more likely to seek services from someone with

the same racial background.[493] African American mentally ill incarcerated Californians are overrepresented in Los Angeles County jails.[494] Records indicate that they receive more mental health services while incarcerated than while they are out in the community, which is illustrative of how poor community mental health services are for African American Californians.[495]

Across racial groups, the highest percentage of serious psychological distress and attempted suicide was found among Black Californians. Black Californians had the highest percentage of missed days of work and daily activities due to mental health concerns.

African American Californians represent only 11 percent of Alameda County's population, but make up 47 percent of the county's unhoused population, 48 percent of the jail system's population, and 53 percent of people who cycle in and out of both the criminal and hospital systems.[496] The State of California has repeatedly awarded state and county contracts to agencies that continually fail to meet a minimum level of culturally relevant care for African Americans.[497]

X. Reproductive and Gender Identity Responsive Health

The federal and state governments have historically policed the childbearing practices of African American women and denied reproductive rights and healthcare.[498] African American women have been used as tools of reproduction for capitalist profit—or forcibly sterilized and denied reproductive freedom.[499] Black Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Americans are less likely to access healthcare.[500] As a result, African American women and LGBTQ Americans have suffered, in part, due to the legacy of enslavement.

Expecting and new Black mothers often find that their reports of painful symptoms are overlooked or minimized by medical practitioners. Black women must wait longer for prenatal appointments and are ignored, scolded, demeaned, and bullied into having C-sections.

Maternal Health

African American women were denied autonomy over their reproduction during the slavery era and denied their rights as mothers.[501] State and federal governments forcibly sterilized African American women in 19th and 20th centuries.[502] Later, state policies included plans to distribute experimental birth control, like Norplant, in African American communities.[503] States criminalized and sterilized African American women for giving birth if traces of controlled substances were found in them or their babies.[504] Coercive welfare policies mandated long-term contraceptive insertion, with harmful health consequences, as a condition for receiving welfare benefits.[505]

Historically, state and federal governments have refused to subsidize reproductive care, such as abortion for poor women.[506] This especially harms African American women's access to reproductive care. African American women rely on publicly funded clinics in higher numbers, due to lack of access to private health insurance or income for a private physician.[507] African American women are also less likely to have access to information about informed consent, sterilization, and side effects of contraceptives.[508] Forced sterilization, mentioned earlier, was used in conjunction with these policies, to deny African American women autonomy over their own bodies and their reproductive health.[509]

Studies show that Black women suffer from disproportionate infertility in comparison to other groups.[510] This disparity stems from untreated sexually transmitted infections, nutritional deficiencies, complications from childbirth and abortion, and environmental hazards.[511] African American women are treated as infertile by doctors who underdiagnose endometriosis in African American women.[512] Many reproductive technologies are unaffordable or inaccessible to African American women experiencing fertility issues.[513]

One of the most harmful legacies of slavery is the disproportionate maternal and infant death of Black women

and children today due to lack of access to adequate reproductive healthcare.[514] African American women experience disproportionate racial discrimination in access to and quality of prenatal care.[515] Expecting and new African American mothers often find that their reports of painful symptoms are overlooked or minimized by medical practitioners.[516] Black women must wait longer for prenatal appointments and are ignored, scolded, demeaned, and bullied into having C-sections.[517] Even wealthier African American women suffer the racist disregard of medical providers.[518] Serena Williams, the renowned tennis champion, was ignored by medical providers who dismissed her concern regarding a post-pregnancy blood clot.[519] After insistence by Williams that she undergo a CT scan, doctors found a clot in her lungs.[520]

African American women disproportionately experience adverse birth outcomes and adverse maternal health.[521] Researchers have found evidence that this may be influenced by the uniquely high level of racism-induced stress experienced by African American women, as discussed above.[522] Structural racism is a stressor that harms African American women at both physiological and genetic levels.[523] Structural racism contributes to maternal and infant death disparities. In the United States, pregnancy-related mortality is three to four times higher among African American women than among white women.[524] Adequate prenatal care does not reduce racial disparities for African American women, who are still at elevated risk for preterm birth.[525] Hypertension, which has been linked to the stress of living in a racist society, contributes to racial disparities in pregnancy-related complications, such as eclampsia.[526] Black mothers are less likely to breastfeed their babies than white mothers due to numerous historical factors, including predatory marketing practices.[527] Lower breastfeeding rates are associated with higher risk of medical issues before and after childbirth, and maternal mental health issues.[528]

Health of African American LGBTQ Americans

African American Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Americans experience discrimination in healthcare.[529] They are also more likely to be uninsured.[530] For African American transgender Americans, this results in difficulties in seeing healthcare providers and receiving gender-affirming care due to cost.[531] Studies have indicated that Black LGBTQ Americans experience assumptions, judgment, stigma, and discrimination in the healthcare system.[532] It is difficult for them to establish a personal bond, trust, and familiarity with providers, who do not often meet their needs with respect to their sexual and gender identities.[533]

African American LGBTQ Americans suffer from especially poor health outcomes. African American LGBTQ people who identify as women have higher diagnoses of hypertension, stroke, and diabetes.[534] Many Black LGBTQ Americans are at higher risk for HIV when compared with white cisgender, heterosexual Americans.[535] As of 2015, African American transgender women had HIV at the rate of 19 percent, while 1.4 percent of the transgender population at large had HIV.[536] African American LGBTQ Americans have also been found to have higher rates of asthma, heart attacks, and cancer.[537]

Compared to all transgender Americans, transgender African Americans are

5x MORE LIKELY to be infected with HIV

A large proportion of African American LGBTQ Americans have suffered verbal insults or abuse, threats of violence, physical or sexual assault, and robbery or property destruction.[538] African American LGBTQ Americans are almost twice as likely to report a diagnosis of depression compared to African American non-LGBTQ adults.[539] Researchers posit that such mental and physical health outcomes are linked to a combination of anti-Black racial discrimination, and anti-LGBTQ prejudice.[540] Stigma and discrimination can create a stressful social environment that may lead to mental and physical health problems for African Americans in the LGBTQ community.[541]

California

In California, as well as nationally, Black women are substantially more likely than white women to suffer severe health complications during pregnancy, give premature birth, die in childbirth, and lose their babies.[542] From 2014 to 2016, the pregnancy-related mortality ratio for African American women in California was four to six times greater than the mortality ratio for other ethnic groups.[543] In fact, African American women were overrepresented for pregnancy-related deaths for all causes, but most notably for deaths during pregnancy or during hospitalization post-delivery.[544] Over the past decade, African American babies died at almost five times the rate of white babies in San Francisco.[545] In a comprehensive study of 1.8 million hospital births, it was found that when an African American doctor is the primary charge on these cases, the infant mortality rate is cut in half.[546]

The high rates of preterm birth and maternal mortality for African American women are due, in part, to complications

from underestimated or undiagnosed health conditions.[547] In 2006, in Los Angeles, Bettye Jean Ford gave preterm birth to a baby who did not survive.548 "Giving birth was horrible," she said. "It was just an awful experience emotionally, physically."[549] African American people giving birth experience the highest rates of postpartum depression and mortality during childbirth.[550] California passed the Dignity in Pregnancy and Childbirth Act in 2019, which aims to address implicit bias in healthcare and collect data on maternal health.[551] However, experts state that the bill is difficult to enforce, since physicians contract with hospitals and are not subject to the same oversight as ordinary employees.[552] It is left to healthcare facilities to implement practices to address implicit bias—which is not likely to occur.[553]

A survey in California found that African American women disproportionately reported unfair treatment, harsh language, and rough handling during their hospital stay, as compared to white women.[554] Doulas are trained professionals who provide physical, emotional, and informational support to mothers.[555] Evidence shows that women who had the support of doulas were less likely to have C-sections and have healthier babies.[556] Doulas play an important role as advocates for African American women in the medical system when medical providers do not believe African American women or address their needs.[557] However, during the COVID-19 pandemic, the California state legislature failed to pass an initiative to provide doula care for pregnant and postpartum people in the 14 California counties with the highest birth disparities.[558]

Over the past decade, African American babies died at almost five times the rate of white babies in San Francisco. In a comprehensive study of 1.8 million hospital births, it was found that when an African American doctor is the primary charge on these cases, the infant mortality rate is cut in half.

In California, compared to all women, African American women were

4-6x MORE LIKELY to die during or after pregnancy or birth

In the American West, African American LGBTQ Americans are more likely to be uninsured, diagnosed with depression, and diagnosed with asthma, diabetes, high blood pressure, high cholesterol, heart disease, and cancer.[559] A 2021 study of transgender women in the San Francisco Bay Area revealed that African American transgender women are at a higher risk for suffering from hate crimes because of the intersectional effects of racism and transphobia.[560] African American transgender women had a higher tendency to be the victim of battery with a weapon, a potentially fatal form of violence, compared to white transgender women who participated in the study.[561]

XI. Child and Youth Health

Some scholars have stated that the legacy of slavery, and the segregation and racial terror that occurred in the years after, has resulted in high rates of infant mortality and damaged health.[562] Discriminatory care has continued through the centuries—resulting in lasting health disparities affecting African American children and youth.[563] As will be discussed in this section, the public school, foster care, and carceral systems further damage the health of African American youth due to the discriminatory and violent treatment African American youth receive at the hands of state and local officials.

Pediatric Care

Racial segregation in hospitals has resulted in lower quality care for African American babies, contributing, in part to low birth weight and premature birth for African American infants.[564] The infant death rate for African American babies is the highest in the nation.[565] African American infants are twice as likely to die as white infants—11.3 per 1,000 African American babies die, compared with 4.9 per 1,000 white babies.[566] This racial disparity is wider than that of 1850, when African Americans were enslaved.[567] Studies show that education does not mitigate this problem. African American women with advanced degrees are more likely to lose their babies than white women with less than an eighth-grade education.[568] Federal and state governments have not addressed this problem, since, as of March 2022, only nine states investigate racial disparities when conducting reviews of pregnancy-related deaths.[569] Racial disparities in infant mortality and low birth weight have been associated with racial discrimination and

African American students are 2.9 times more likely to be labeled with a disability than white students, resulting in disproportionate placement of Black students in special education, where they are less likely than white students to return to regular instruction and are prescribed unnecessary psychotropic medications.

maternal stress.[570] Studies show that African American physicians' care of African American newborns significantly reduces the African American infant death rate; however, African American physicians are disproportionately underrepresented in the field of medicine.[571]

The American Academy of Pediatrics has stated that racism is a social determinant of health which has a profound impact on the health of children.[572] African American children experience worse health outcomes than white American children, due to unequal access to care, in part, because of parental unemployment and lower household net worth.[573] (For a more detailed discussion of wealth disparities, please see Chapter 13 on the Wealth Gap.) The impact of racism has been linked to birth disparities and health problems in African American children and adolescents.[574] Chronic stress leads to increased and prolonged levels of exposure to stress hormones, which lead to inflammatory reactions that predispose children to chronic disease.[575] Increased stress related to racial discrimination experienced by African American children has been associated with increased asthma risk and severity.[576] African American children are more likely to die from asthma.[577] Children's exposure to discrimination has also been linked with higher rates of attention deficit hyperactivity disorder, anxiety, depression, and decreased general health.[578]

African American youth disproportionately suffer from obesity and being overweight due to social and environmental circumstances that produce psychological stress—including less access to education and more exposure to racial discrimination.[579] African American children are referred less quickly for kidney transplants than white children.[580] They are also more likely to die following surgery.[581] The underdiagnosing of African American children is linked to the lack of African American pediatricians, which has resulted in inadequate access to pediatric care for African American children.[582]

School, Foster Care, and Carceral Systems

African American youth are overrepresented in the foster care system and suffer disproportionately worse health outcomes in the system.[583] African American youth suffer from greater rates of child abuse and neglect as well as negative impacts on mental health in state-run foster care systems.[584] They may be placed on psychotropic drugs which alter behavior patterns and increase the risk for suicide and illness.[585]

African American students experience disparate health outcomes and discrimination in public school systems.[586] Racial disparities in educational access and attainment, along with racism experienced in schools, affect the trajectory of academic achievement for African American youth and ultimately harm their health.[587] (For a more detailed discussion of discrimination in education, please see Chapter 6 on Separate and Unequal Education.) African American students are 2.9 times more likely to be labeled with a disability than white students, resulting in disproportionate placement of African American students in special education, where they are less likely than white students to return to regular instruction and are prescribed unnecessary psychotropic medications.[588]

In public schools, despite health screenings and low academic scores that indicate mental illness, a learning disability, or developmental delay— African American youth are over-diagnosed for conduct disorder and under-diagnosed for depression.[589] The closure of public schools during the COVID-19 pandemic resulted in missed meals, negatively impacting African American children's health, nutrition, and food security because African American students are more likely to be eligible for free or reduced-price meals.[590]

African American youth are overrepresented at every level of the juvenile justice system, from initial contact with law enforcement to sentencing and incarceration, which has led to worsening health.[591] Among youth who are arrested, African American youth are three times as likely to be incarcerated in the juvenile justice system and less likely to be diverted to non-carceral settings than white youth.[592] African American youth involved in the carceral system have worse mental and physical health, during and after incarceration.[593] This is due to communicable diseases, which spread in juvenile facilities, physical and sexual trauma, as well as erosion of mental health.[594] African American youth are overprescribed psychotropic medication and misdiagnosed by the carceral system, when compared with white youth.[595] Within juvenile justice settings, African American boys are 40 percent more likely to be diagnosed with conduct disorder than white youth, while African American girls are 54 percent more likely—even when controlling for trauma, behavioral indicators, and criminal offense charges.[596]

California

Malnutrition rates are higher for Black children in California, when compared with other racial groups.[597] For instance, 20.2 percent of Black Californian households reported having children who did not have enough to eat, which is higher than the 15.9 percent of all Californian households that reported not having enough food to eat.[598] According to data from 2018, almost three times as many African American Californian children live in poverty when compared with white children.[599] Poverty results in worse cognitive, socio-emotional, and physical health.[600] This is particularly prevalent for African American children in California, due to their overrepresentation among poor children at large.[601]

Black youth are three times as likely to be incarcerated in the juvenile justice system and less likely to be diverted to non-carceral settings than white youth. African American youth involved in the carceral system have worse mental and physical health, during and after incarceration. This is due to communicable diseases, which spread in juvenile facilities, physical and sexual trauma, as well as erosion of mental health.

In California, African American youth are more likely to be incarcerated than their white peers, and have likely had prior exposure to toxic stress.[602] The poor living conditions among incarcerated youth intensify health problems.[603] The carceral system inadequately serves the health needs of African American incarcerated youth.[604] Tanisha Denard, an African American teenager, was in high school when she violated her probation due to unpaid truancy tickets and was sent to juvenile hall.[605] Her time in juvenile hall severely harmed her mental health.[606] "Being locked down make you feel that you are worthless to society," she said. "You start to think about any way to escape, even if it means suicide."[607] While incarcerated she was subjected to solitary confinement, not allowed to use the restroom, and forced to sleep on bedsheets stained with urine, blood, and feces.[608] The juvenile justice system lacks policies, practices, and interventions specific to serving African American youth like Denard.[609]

XII. Public Health Crises

Scholars have theorized that the federal and state governments' racist public health practices, along with centuries of slavery, segregation, and white oppression have resulted in entrenched systemic racism, which has harmed African American health.[610] The public health crises described in this section are not an exhaustive list of the mismanagement of health crises; rather, they are selected illustrative examples. Today, African Americans continue to be at the highest risk for negative health impacts from public health crises.[611]

Infectious Diseases

In 1793, anti-Black racism on the part of state officials in Pennsylvania resulted in the death of hundreds of African Americans during the yellow fever epidemic.[612] At the time, medical historians and prominent white leaders, assuming African American people were immune to the disease, encouraged African Americans to assist with managing the epidemic.[613] Many African American residents remained in the city, instead of fleeing, participating in the epidemic relief effort, caring for the ill and burying the dead.[614] In the end, hundreds of African Americans died from yellow fever.[615]

In the post-Reconstruction era, tuberculosis was a deadly health problem for African Americans.[616] In 1900, there were large disparities in tuberculosis rates between white and African American populations because segregated African American neighborhoods were impoverished, had congested housing, and could not access basic healthcare information.[617] In the early 1900s, state and local public health agencies, hospitals, and physicians portrayed African American people as a hazardous population to the white public.[618]

In 1964, African American tuberculosis rates were two to three times higher than for white Americans.[619] Substandard and segregated housing, in addition to concentrated poverty, contributed to high HIV and tuberculosis rates in the 1980s and 1990s.[620] The disease spread widely in prisons, hospitals, cramped housing, and homeless shelters, leading tuberculosis rates to increase among African Americans.[621] Due to a combination of government neglect and systemic racism, African Americans have been harmed by the spread of infectious diseases.

Drug Addiction

Internationally, public health officials have recognized that drug addiction should be treated as a health disorder and not as a criminal behavior.[622] The federal government has chosen to respond to rising drug addiction as a criminal justice issue, instead of as a public health issue.[623] This has resulted in state action against African American people in need of substance abuse services.[624] According to healthcare providers and experts, the government should treat drug addiction as a public health issue.[625] Drug addiction is a medical condition, not a flaw in character.[626] Punishment for substance abuse disorders does not treat addiction—it leads to higher risk of drug overdose.[627]

By the 1980s, the government embarked upon a rigorous crackdown on the usage of crack, a crystalized type of cocaine which is highly addictive and relatively cheap.[628] During the 1970s, hospital emergency rooms began testing pregnant women for suspected drug use and reporting them to police authorities.[629] In many cases, hospitals imprisoned women, shackled them while they gave birth, or took temporary or permanent custody of their children.[630] Hospitals reported African American pregnant women 10 times more frequently to government health authorities than white women.[631]

From 1991-2016, compared to whites, African American crack users were

7x MORE LIKELY to be sent to federal prison for their offense

State policy leaders did not address the need for increasing preventive mental illness and rehabilitation resources.[632] Nor did they address the psychosocial origins for the demand for crack.[633] Police crackdowns and incarceration for drug possession did not relieve the social conditions that spawned the crack cocaine epidemic, but rather created harmful consequences for African Americans.[634] State actions exacerbated them by treating drug addiction as a crime, as opposed to a public health issue.[635] By the year 2000, over 80 percent of those charged with crack-related crimes were African American, while less than six percent were white.[636] Throughout the course of the crack epidemic, sentencing disparities caused African Americans to receive excessive sentences in prison, and many continue to serve such excessive sentences today.[637]

HIV/AIDS

During the 1980s, AIDS harmed African American communities severely, especially LGBTQ African American populations and African American intravenous drug users, who were overrepresented among AIDS victims.[638] Today, the prevalence of HIV is especially high within the African American LGBTQ community.[639] African American gay and bisexual men are infected by HIV more than any other group in the United States today and have the highest HIV death rate.[640] Between 2010 and 2019, the number of HIV infections among white gay men decreased significantly while the number of infections among African American gay men did not decrease.[641] Longstanding inequities in access to and delivery of healthcare to African Americans has led to this disparity.[642] African American women accounted for the largest share of women living with an HIV diagnosis in 2017.[643]

Black gay and bisexual men are infected by HIV more than any other group in the United States today and have the highest HIV death rate.

Due to the lack of federal or state-funded healthcare resources for the AIDS epidemic, African American healthcare leaders and organizers worked to connect AIDS victims to medical services, benefits, and health education.[644] Churches and community organizations formed to educate African Americans about sexual health and AIDS prevention.[645] They worked with African American LGBTQ populations to educate them about safe sex practices and to provide outreach and health services to people with AIDS.[646] Despite this work by African American communities, the Centers for Disease Control and Prevention planned to cut funding from dozens of groups operating AIDS services.[647]

Nutrition

African Americans are more likely to live in food deserts—areas with limited access to healthy, affordable food.[648] (For a more detailed discussion of discrimination in infrastructure, please see Chapter 7 on Racism in Environment and Infrastructure.) Tobacco products, such as menthol cigarettes, have been historically marketed to African American communities by tobacco companies at higher rates than white communities.[649] Despite regulating and banning other products, the federal government did not consider banning menthol flavored tobacco products until 2021.[650] Additionally, the overconcentration of liquor stores

in African American neighborhoods is correlated to African American health problems.[651]

The makers of sugar sweetened beverages, fast foods, and other products also often target Black communities in marketing schemes.[652] These food products contribute to overconsumption, leading to diabetes, obesity, and other health problems.[653] Between 2005 and 2008, African American adults consumed nearly nine percent of their daily calories from sugar drinks, compared to about five percent for white adults.[654] Black children and teens see more than twice as many ads for certain sugar drinks than their white peers.[655] Lower-income African American neighborhoods have disproportionately more outdoor ads on billboards, bus benches, sidewalk signs, murals, and store window posters for sugar drinks.[656] Sugar has had disproportionately negative consequences for African American people, and is linked to diabetes, obesity, and hypertension.[657] Marketing companies are protected by law under the First Amendment, while African American youth are not protected from the harmful consequences of their actions.[658]

Natural Disasters

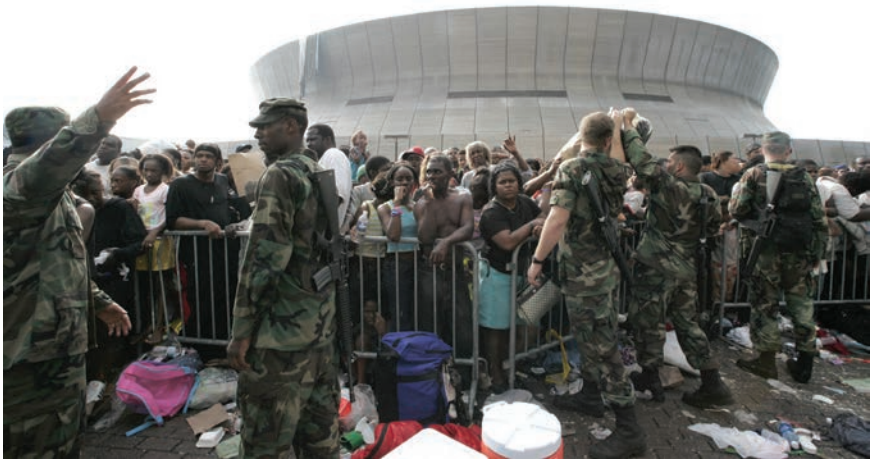
The federal government has engaged in the racist mismanagement of natural disasters like hurricanes—a prime example is Hurricane Katrina. Racial health disparities among African American communities in New Orleans existed prior to Hurricane Katrina.[659] This was due to lack of health insurance for low-income residents, high levels of infant mortality, and high levels of chronic disease.[660] Charity Hospital, a state hospital in New Orleans, had been the center of hospital care for poor African Americans prior to Hurricane Katrina.[661] Three quarters of its patients were African American, with incomes below $20,000.[662] The hospital provided care for HIV/AIDS, drug abuse, psychiatric care, and trauma care.[663] After the hurricane, the state did not reopen Charity Hospital—leaving poor African Americans in New Orleans without medical care.[664]

Following Hurricane Katrina, Black communities received diminished medical care that amplified health disparities, while white communities were restored to even better conditions than they had lived in before the hurricane hit.[665] By 2010, 34 percent of the African American population in New Orleans was living in poverty, compared to 14 percent of white people.[666] African American youth in New Orleans were four times more likely to die from any cause than their white counterparts.[667] There were increased death rates for African Americans from kidney disease and HIV.[668] From 2009 to 2011, one-third of African American residents lacked health insurance, double that of white Americans.[669] The federal government directed funding to repair the buildings, bridges, and streets of New Orleans.[670] However, the government did not address the rampant poverty and health disparities among African American people that had been exacerbated by Hurricane Katrina.[671]

COVID-19

Today, African Americans are disproportionately at risk for COVID-19 infection and death due to structural factors such as healthcare access, density of households, employment, and pervasive discrimination.[672] As of March 2022, African Americans are 1.1 times more likely to contract COVID-19, 2.4 times more likely to be hospitalized due to COVID-19, and 1.7 times more likely to die from COVID-19 than white Americans.[673] The federal government suggests that long standing racial inequities contribute to worse COVID-19 outcomes for African American people.[674] Factors that increase COVID-19 risk for African Americans include: unaffordable housing, lack of healthy food, environmental pollution, poor quality healthcare, poor health insurance, essential worker jobs, lower incomes, greater debt, and poorer access to high quality education.[675] All of these factors disproportionately harm African Americans due to systemic racism.

COURTESY OF JAMES NIELSEN/AFP VIA GETTY IMAGES



National Guardsmen stand watch at barricades outside the Superdome as emotional refugees driven from their homes by Hurricane Katrina await evacuation from the flooded city of New Orleans, La. Following Hurricane Katrina, African Americans in New Orleans received worse medical care than white Americans, which made pre-existing disparities worse. Living conditions for white Americans in New Orleans were restored or improved upon when compared with conditions before the hurricane hit. (Sept. 1, 2005)

California

The State of California has also engaged in the mismanagement of public crises in ways that have harmed African Americans. In California, the criminal justice system excessively targeted African Americans during the crack cocaine epidemic. In Los Angeles, African American Californians would receive up to a 10-year federal sentence, while white Americans prosecuted in state court faced a maximum of five years and often received no more than a year in jail.[676] From 1987 to 1992, a University of California Los Angeles study found there were no white Americans among the 71 defendants prosecuted federally by the U.S. attorney's office in Los Angeles.[677] This discriminatory prosecution occurred even though studies showed that white Americans accounted for the majority of people who used crack cocaine in Los Angeles.[678]

As of March 2022, African Americans are 1.1 times more likely to contract COVID-19, 2.4 times more likely to be hospitalized due to COVID-19, and 1.7 times more likely to die from COVID-19 than white Americans.

As of 2017, California incarcerated African American men at 10 times the rates of white American men, resulting in devastating health impacts for the African American community.[679] African American women are imprisoned at a rate that is more than five times that of white women in California.[680] Black Californians are also overrepresented among California's unhoused.[681] The overrepresentation of African American Californians among the unhoused and incarcerated populations, both of which are vulnerable to COVID-19, means that African American Californians are consequently at higher risk of contracting COVID-19 and other illnesses.[682]

California is also home to many food deserts that harm African American health. In South Los Angeles, many African American Californians do not have enough grocery stores, access to organic produce, thriving small businesses, affordable housing, or medical services.[683] In View Park area, a majority African American South Los Angeles neighborhood, the nearest grocery store is an Albertsons more than a mile away.[684] African American residents have been forced to engage in urban micro-farming, building community gardens, and mini markets to compensate for the lack of healthy available food.[685]

The trifecta of liquor stores, smoke shops, and marijuana dispensaries in African American neighborhoods in California has resulted in inadequate access to healthy foods.[686] Maria Rutledge, an African American resident of South Los Angeles, said, "We are in desperate need of a real grocery market in the area that is welcoming to families, provides healthy food choices, and that supports a safer environment."[687] In addition to the lack of grocery stores, there is an overabundance of liquor stores.[688] During the early 1990s, there were 728 liquor stores in a 54-square-mile radius encompassing South Los Angeles.[689] While that number has decreased, South Los Angeles communities are still overrun by liquor stores, with approximately 8.5 liquor stores per square mile compared to 1.97 liquor stores per square mile in West Los Angeles, a majority white neighborhood.[690] The trifecta of liquor stores, smoke shops, and marijuana dispensaries in African American neighborhoods have indirectly resulted in sexual harassment, violence, and a climate of fear—leading to poor mental and physical health for African American Californians.[691]

In California, COVID-19 infections disproportionately affect African Americans. As of March 2022, the death rate for African American Californians due to COVID-19 is 18 percent higher than the COVID-19 death rate for all Californians.[692] According to a survey conducted by the Association of Black Psychologists, about 40% of Black Californians wished they had more support during the COVID-19 pandemic.[693]

XIII. Impact of Racism on African American Health

Systemic racism has culminated over centuries in severely damaged physiological health for African Americans.[694] Some scholars have argued that medical discrimination in the United States against African Americans is so severe that it is a form of biological terrorism.[695] Low life expectancy, lack of access to health insurance, and high rates of disease have resulted in great physiological harm to African Americans.[696] State-sanctioned systemic racism has led to environmental racism, urban poverty, and over-incarceration—all of which have harmed the health of African Americans.[697] The cumulative effect of institutional racism by federal

and state governments has led to racial trauma that has had intergenerational impacts on the mental health of African Americans.[698]

Health Outcomes

African Americans have higher rates of morbidity and mortality than white Americans for almost all health outcomes in the United States, an inequality that increases with age.[699] African Americans suffer disproportionately from cardiovascular disease relative to white people.[700] In surveys of hospitals across the country, African American patients with heart disease receive older, cheaper, and more conservative treatments than their white counterparts.[701] They also suffer from higher rates of diabetes, hypertension, hyperlipidemia, and obesity.[702] These are all risk factors for cardiovascular disease.[703]

This is linked to the fact that African Americans suffer from weathering—constant stress from chronic exposure to social and economic disadvantage, which leads to accelerated decline in physical health.[704] Social environments that pose a persistent threat of hostility, denigration, and disrespect lead to chronically high levels of inflammation.[705] Studies have shown that African American youth who are exposed to discrimination and segregation have worse cases of adult inflammation due to race-related stressors.[706] In fact, race-related stress has a greater impact on health among African Americans than their diet, exercise, smoking, or being low income.[707] Cortisol, which is a stress hormone, locates itself in bodies in response to racism—consequently African American adults have higher rates of cortisol than their white counterparts, and this is linked to cardiovascular disease.[708] Therefore, exposure to racism as a child or adolescent lays the foundation for inflammation and subsequent health disparities. Even middle- and upper-class African Americans manifest high rates of chronic illness and disability.[709]

Discriminatory attitudes and behaviors by healthcare professionals may also contribute to misdiagnosis and mismanagement of cardiovascular disease among African American patients. African Americans disproportionately lack access to renal transplants due to racial bias exhibited by physicians, as well as institutionalized racism.[710] African Americans are less likely to be identified as transplant candidates, referred for evaluation, be put on the kidney transplant waitlist, receive a kidney transplant, and receive a higher-quality kidney from a living donor.[711] African American patients with sickle cell disease are discriminated against by medical providers who display racist attitudes and accuse people with sickle cell disease of faking their pain.[712] This results in inadequate treatment.[713] There are many reports of African American children with sickle cell disease who do not receive screening tests and treatment necessary to prevent strokes that can occur due to the disease.[714]

Racial disparities in African American health outcomes occur today as a culmination of historical racial inequality, discriminatory health policy, and persistent racial discrimination in many sectors of life in the United States.[715] Discriminatory health systems and healthcare providers contribute to racial and ethnic disparities in healthcare.[716] The U.S. Office for Civil Rights within the U.S. Department of Health and Human Services is charged with enforcing several relevant federal statutes and regulations that prohibit discrimination in healthcare, such as Title VI of the 1964 Civil Rights Act.[717] However, the agency is under-resourced and has not been proactive in investigating healthcare related complaints from the public, conducting compliance reviews of healthcare facilities, or initiating enforcement proceedings for civil rights violators.[718] For example, the Office for Civil Rights could identify examples of discriminatory practices, require the collection and reporting of demographic data, and conduct investigations.[719]

Studies have shown that Black youth who are exposed to discrimination and segregation have worse cases of adult inflammation due to race-related stressors. In fact, race-related stress has a greater impact on health among African Americans than their diet, exercise, smoking, or being low income.

Policing and Incarceration

Policing and incarceration have clear adverse consequences for the health of African Americans. Racial inequality and racial bias occur in all aspects of the criminal legal system, with federal and state governments overincarcerating and disproportionately punishing African Americans.[720] (For a more detailed discussion of discrimination in the criminal justice system, please see Chapter 11 on An Unjust Legal System.) Police violence kills hundreds of African Americans and injures thousands each year.[721] Incarcerated people—who are disproportionately African American—face a high risk of death after they are released from prisons and jails due to poor health as a result of incarceration.[722] Prisons and jails have been major sites of disease transmission.[723] The churn in and out of

incarceration can result in community spread of sexually transmitted infections or other infectious diseases.[724]

African Americans are overrepresented in state carceral facilities, are less likely to receive the latest psychiatric medications, and have greater difficulty in achieving successful community integration once they leave carceral facilities—further harming their mental health.[725] State prisons often force incarcerated African Americans into solitary confinement at higher rates.[726] Solitary confinement has serious documented harmful mental health effects.[727]

Anti-Black government action harms the mental health of African American communities. Police violence can harm mental and physical health for African American communities through constant surveillance and threats of violence.[728] Studies have shown that African Americans who view racist materials experience an increase in blood pressure.[729] Scientific evidence shows that police killings of unarmed African Americans have adverse effects on mental health among African American adults in the general population.[730] Mental health screening tools used in state and federal carceral facilities reproduce racial disparities, resulting in fewer African Americans screening positive for mental illness.[731] Thus, African Americans remain under-referred and undetected in the jail population.[732]

Environment

State and federal underfunding of medical resources combined with unhealthy physical environments, unemployment, and poverty in African American communities has led to a public health crisis.[733] Urban neighborhoods have the highest rates of preventable diseases, and lack health insurance and adequate housing.[734] By 1980, urban neighborhoods were where 60 percent of the nation's African American population lived due to redlining and historical housing segregation.[735] African American communities continue to experience disproportionately high rates of chronic diseases linked to environmental racism.[736] (For a more detailed discussion of environmental racism, please see Chapter 7 on Racism in Environment and Infrastructure.) Built-up pollution from abandoned industrial and commercial work sites resides in soil, water, structures, and air.[737] Asthma, cancer, and childhood disorders that affect African American communities are linked to polluted environmental conditions such as toxic waste exposure and lead poisoning.[738]

Segregation adversely affects the availability and affordability of care—creating a lack of access to high-quality primary and specialty care, as well as pharmacy services.[739] A review of nearly 50 empirical studies generally found that government-facilitated segregation was associated with poorer health.[740] The state-perpetrated discriminatory practice of redlining officially ended in 1968, but it created residential segregation, which continues today.[741] Segregation has been found to be positively associated with later-stage diagnosis, elevated mortality, and lower survival rates for both breast and lung cancers for African American people.[742]

Housing segregation excessively exposes African American communities to pollution and isolates African Americans from healthcare resources, including pharmacies, clinics, hospitals, and healthy food stores.[743] Disparities in life expectancies between African American and white people are rooted in policies that oppressed and segregated African Americans.[744] Evidence shows that gaps between white and African American life expectancy are dependent on zip codes and housing segregation.[745]

There may be other cumulative negative effects of institutional and systemic racism which have yet to be studied by scientists. A public health study conducted in 2021, for example, revealed that repeated use of chemical irritants for crowd-control by local and federal law enforcement during racial justice protests in the U.S. likely harmed people's mental and physical health.[746]

California

African American Californians experience the shortest life expectancy than any other race or ethnicity.[747] In the San Francisco Bay Area, life expectancy is more than five years greater in white neighborhoods (84 years) than highly segregated African American neighborhoods (79 years).[748] African American Californians have the highest mortality rate in nine out of the top ten causes of death in San Francisco.[749] A high number of African American Californians live in Southwest Fresno, an area

Housing segregation excessively exposes Black communities to pollution and isolates African Americans from healthcare resources, including pharmacies, clinics, hospitals, and healthy food stores.

with lower life expectancy than the affluent neighborhoods of Fresno.[750] African American Californians suffer from the highest cancer rates among all races in colorectal, prostate, and lung cancer.[751] African American men are dying of prostate cancer at almost five times the rate of white men in California.[752] In 2015, African American Californians had the highest rate of preventable hospitalizations for diabetes, heart disease, asthma, and angina.[753] African American youth suffer from the highest number of asthma cases in California.[754] African American children in California tend to live in areas with higher levels of traffic related pollution, which contributes to higher levels of asthma.[755] Historically redlined census tracts in California have significantly higher rates of emergency department visits due to asthma.[756] This evidence suggests that redlining might be contributing to racial and ethnic asthma health disparities.[757]

Compared to white Californian men, African American Californian men are

5x MORE LIKELY to die from prostate cancer

African American Californians are the most disproportionately affected by the HIV epidemic due to racism, in part.[758] In 2018, African American Californians were approximately six percent of California's population, but they were 18 percent of California's HIV positive population.[759] Among women newly diagnosed with HIV, 31 percent were African American Californians.[760] African American transgender people were for 14 percent of those who were newly diagnosed with HIV.[761] Consequently, African American Californians are overrepresented among the HIV population.

Police violence and incarceration have greatly damaged the health of African American Californians. African American Californians account for 20 percent of serious injuries and fatalities due to police use of force, even though they are only six percent of the population.[762] More than four in 10 Californians shot by police were identified as suffering from a mental health condition, having an alcohol- or drug-related disorder, or both, according to hospital data.[763] In *Brown v. Plata*, the Ninth Circuit Court of Appeals ordered the State of California to reduce overcrowding in its prison population due to inadequate healthcare for incarcerated people.[764] Black Californians in Los Angeles' jails who have mental health conditions report receiving harsher sentences and less alternative treatment programs than their white counterparts.[765] Due to the overrepresentation of African American Californians in the prison and jail systems, inadequate prison healthcare greatly diminishes the overall health of African American Californians.[766]

XIV. Conclusion

The legacy of slavery has destroyed the health of African American communities through segregation, racial terror, abusive experimentation, systemic racist oppression, and harmful racist neglect. Today, African Americans face racial discrimination from healthcare providers across the entire healthcare system, which has contributed to the overall destruction of African American health.[767] African Americans suffer from low life expectancy and high mortality rates across virtually every category of health.[768] Due to historical and contemporary traumatization from racist violence, racist microaggressions, and institutional racism, African Americans often suffer from serious psychological distress.[769] The mismanagement of public health crises by state and federal governments has resulted in additional adverse health consequences and deaths in African American communities—most recently during the COVID-19 pandemic.[770] In some cases, the racial health disparities between African Americans and white Americans are worse today than they were during the period of enslavement.[771]

The racist dehumanization of African Americans in the United States began with the institution of enslavement and its degradation of African American health. Since then, this racist dehumanization has been sustained by a healthcare system that destroys African American health through overt and covert discrimination by medical providers, public policies that neglect African Americans' health needs, hospital systems that continue to be segregated, medical schools that systematically exclude African Americans, and a health insurance system designed to be inaccessible to poor African Americans.[772] The United States' healthcare system was designed during the time of enslavement to keep enslaved people alive for profit, but not to take care of their health.[773] After slavery was abolished in name, this healthcare system continued to operate in the same manner—segregating, excluding, harming, abusing, experimenting upon, and slowly degrading African American health.[774] To atone for the violence of slavery and its destructive impact on Black health, health-based reparations must be awarded to African Americans.[775]

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CHAPTER 13 The Wealth Gap

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I. Introduction

Wealth—what you own minus what you owe—is the key to economic security.[1] It is what enables families to build a better future.[2] Wealth functions in many ways. It provides economic stability during lean times. It opens doors to improving quality of life. It is a dam against the floodwaters of economic catastrophes. It provides access to political power and it allows us to live and retire with dignity.

Wealth can also be passed down through generations, allowing children to live better lives than their parents and grandparents. It allows parents to pay for their children's college education. It allows grandparents to help a young family buy their first home. Throughout American history, government policies at all levels have helped white families collect these tools while preventing or undermining African American families' ability to do the same.

As a result, the wealth gap between African American and white Americans is enormous and roughly the same today as it had been two years before the Civil Rights Act was passed in 1964.[3] In 2019, the median African American household had a net worth of $24,100, less than 13 percent of the median net worth of white households at $188,200.[4]

This wealth gap persists regardless of education level and family structure.[5] For example, at the median, single African American women over the age of 60 with a college degree— at $11,000—have less than three percent of the wealth of single white women over the age of 60 with a college degree— at $384,000.[6] Single white parents have more than double the wealth ($35,000), at the median, than married African American parents ($16,000).[7]

The wealth gap is present across all income levels. In 2016, estimates drawn from the Survey of Consumer Finances indicate the median white household in the bottom fifth of incomes, or the poorest "quintile" of white households, had a net worth of $21,700, which is greater than the median net worth of $18,601 for *all* Black households.[8] Black households in the bottom fifth of incomes had a median net worth of $2,700, less than one eighth as much as the poorest quintile of white households.[9]

Burnt residences and businesses following the Tulsa Race Massacre. Tulsa, Oklahoma. (June 1921)

The trend is the same across social classes. In 2019, the median white working-class household had a net worth of $114,270, while the median African American professional-managerial household had a net worth of $38,800. In the same year, white professional-managerial households—at $276,000—had a median net worth that was eight times the median African American professional-managerial household and *19 times* the median African American working-class household.[10]

This wealth gap is the result of the discrimination that African Americans experience, as described in the previous chapters.[11] The American government at the federal, state, and local levels has systematically prevented African American communities from building, maintaining, and passing on wealth. These harms cascade over a lifetime and compound over generations.

The wealth gap was roughly the same in 2016 as it was in 1962.

The historical causes of the wealth gap is based in enslavement and legal segregation and continues through ongoing racial inequality and racism today. They include direct government creation of white wealth and destruction of African American wealth through the support of racial terror, disenfranchisement, land theft, mass incarceration, exclusion of African Americans from government benefits, and banking discrimination. Unequal homeownership, fewer assets, and lower business ownership continue to drive the wealth gap today. This has resulted in racial differences in the capacity of African Americans to transmit resources across generations, lower financial resilience during crises, and homelessness.

Section II discusses estimates of the contemporary racial wealth gap for the nation as whole, for California, by gender, and for descendants of Africans enslaved in the United States. Section III describes historical causes of the racial wealth gap during enslavement and post-enslavement, including racial terror, land theft, mass incarceration, and discrimination in government benefits, the labor market, and banking. Section IV discusses the drivers of the contemporary wealth gap today include unequal homeownership, fewer assets, and lower business ownership. Section V discusses the harmful effects of the wealth gap, which has resulted in racial differences in the capacity of African Americans to transmit resources across generations, lower financial resilience during crisis, and increased homelessness.

II. The Contemporary Racial Wealth Gap

National and California Estimates

Significant research demonstrate that white Americans have long had a higher net worth than African Americans. The gap has changed little since 1989, when the median white household wealth was $143,000, and the median African American household wealth was $9,000, approximately 94 percent less than white household wealth.[12] The wealth gap was roughly the same in 2016 as it was in 1962,[13] two years before the Civil Rights Act. Preliminary research suggests that, despite rapid accumulation of wealth by African Americans in the decades after slavery and a narrowing of the racial wealth gap during World War II and the Civil Rights era, this progress halted by the mid-20th century with the racial wealth gap widening over the last several decades.[14] From 2005 to 2019, an interval that captures much of the impact of the Great Recession, median household wealth —all assets minus all debt—among African Americans fell 53 percent, compared with a drop of 16 percent among white Americans.[15]

An asset is anything you own that adds financial value, as opposed to a liability, which is money you owe.[16] Examples of personal assets include: a home or other property, such as a rental house or commercial property; a checking or savings account; cars; financial and retirement accounts; gold, jewelry, and coins; collectibles and art; and life insurance policies.[17]

Wealth estimates can be demonstrated in median and mean figures, both of which are provided in this chapter. A median figure shows the worth of the middle household in each community.[18] A mean figure shows the worth of the average household in the community.[19] Some researchers suggest that the median is a more useful measure for estimating differences in wealth between African American and white people because it is not affected by exceptions like the few extremely rich individuals who would skew the average higher than is representative.[20] However, researchers also suggest that the mean is the appropriate target measure for calculating the sum required to eliminate the racial wealth gap.[21]

Policymakers have usually focused on the median gap in wealth, which some researchers argue is not representative of what is happening to the average African American or white person in reality.[22] Comparing African American and white wealth at the mean—for the average household in each community—shows a far larger wealth gap.[23]

Today, white American households continue to be far more likely to hold assets, and the types of assets they hold are worth, on average, more than that of African American households.[24] In 2019, the most recent year for which data is available, the total financial assets of white households is nine times higher than African American households.[25] The median African American household wealth was approximately $24,100, while the median white household wealth was approximately $188,200—a difference of $164,100.[26] The mean for African American household wealth is $142,300, while the mean for white household wealth is close to $1 million at $983,400—a difference of $840,900.[27]

This wealth disparity cannot be explained by lack of personal motivation and effort, lack of financial literacy, family instability, lack of education, lack of homeownership, or lack of entrepreneurship on the part of African Americans.[28] For instance, there is very little, if any, evidence to support the claim that African American saving behavior is the source of the enormous racial wealth gap.[29] There is no significant difference in savings between African American and white families with similar income levels, nor a difference in rates of return on their personal investments.[30] In fact, in some income categories, African American people display a higher rate of savings.[31] And though African Americans have more family obligations on their income than white Americans because their relatives are more likely to need help than white Americans, the savings rate among African American people is comparable to the savings rate at each level of household income among white people.[32]

Differences in family structure also do not explain the racial wealth gap.[33] Single white women with children have a higher median net worth than African American women with no children.[34] At the median, single white parents have more than two times the wealth ($35,000) than married African American parents ($16,000).[35]

This wealth disparity cannot be explained by lack of personal motivation and effort, family instability, or lack of education. For example, in 2019, black professional-managerial households had a net worth of $38,800, while white professional-managerial households had a net worth of $276,000. Single white parents had more than two times the wealth— at $35,000 —of married black parents— at $16,000.

Nor does effort or education. For comparable levels of family socioeconomic status, Black youth obtain more years of schooling and credentials, including college degrees, than white youth.[36] And the wealth gap exists between African American and white women regardless of whether or not they have a bachelor's degree.[37]

Although the wealth gap and its causes in California and the nation is an under-studied area, preliminary studies suggest that the racial wealth gap in California is the same or worse than it is at the national level.

Some studies extrapolate California's racial wealth gap from national estimates.[38] Direct California estimates of the racial wealth gap are only available for a single metropolitan area: Los Angeles.[39] In 2016, while the median net worth of white Angelino households (assets minus debts) was $355,000, median net worth of native-born African American Angelino households was $4,000.[40] The average African American household in Los Angeles had only just had one percent of the median wealth of the average white household, far worse than the national average of 10 to 15 percent.[41]

Gender-Specific Issues

The wealth gap between African American men and African American women, which is small,[42] functions differently than the wealth gap between white men and white women, which is much larger. African American men and women have similarly low wealth, although for slightly different reasons.[43]

The wealth gap between white men and women is largely because white men have traditionally had access to

jobs that provide retirement accounts and other benefits available to careers not available to women.[44] This difference in access does not exist between African American men and women, as African Americans of all genders historically have been excluded from these benefits due labor discrimination, as discussed in Chapter 10, Stolen Labor and Hindered Opportunity.

The median wealth for single African American women is $200, while the median wealth of single African American men is $300.[45] Studies that show a greater wealth gap between Black women and men do not appear to take into account incarcerated Black men, who are deprived of their ability to build wealth for themselves and their family during a prison sentence.[46]

2015 MEDIAN WEALTH FOR SINGLES

Federal statistical agencies, including the U.S. Census Bureau, collect little information about people who are incarcerated, and they are excluded from household samples in national surveys.[47] As a result, these individuals are invisible to most mainstream social institutions, lawmakers, and nearly all social science research not directly related to crime or criminal justice.[48] And since African Americans are six times more likely to be incarcerated than white Americans, this has the effect of making it appear that African Americans are better off financially than they really are.[49] As discussed below in section III, criminal convictions also create numerous barriers to wealth building even after the sentence ends.

Still, African American women face barriers to wealth building due to the combination of racism and sexism. As a result, there are vast differences in wealth between African American women and both white men and white women.[50] One study reports that, in 2019, single Black women's median net wealth was $7,000, while median net wealth for white women was $85,000 and $92,000 for single white men.[51] While white men's median wealth was $28,900 in 2015, African American women's median wealth was $200, less than one cent on every dollar of white men's median wealth.[52]

The large wealth gap faced by single Black women is particularly important because Black women are more and increasingly likely to be single and breadwinners.[53] The marriage rate of Americans aged 25 to 54 has declined since the early 1960s across all groups, but especially for Black women for whom it has halved to less than 40 percent.[54] One-third of Black women aged 25 to 54 are single with children in the household.[55] Among Black mothers, more than 80 percent are breadwinners compared to 50 percent of white mothers.[56] At least half of unmarried Black women have zero or negative assets.[57] On average, Black women do not accumulate net worth approaching retirement; they have no financial assets at age 50 and do not accumulate any more as they age.[58]

African American men also face a stark wealth gap with white women and men. One study reports that, in 2015, median net wealth for African American men was 15 percent of the median net wealth for white men and 16 percent of the wealth of white women.[59] While white men's median wealth was $28,900 in 2015, African American men's median was $300, about one cent on every dollar of white men's wealth.[60]

There does not appear to be extensive research on wealth gap estimates for African American LGBTQ populations.

Estimates Based on Immigration and Migration Patterns

Today, approximately 41.1 million African American people live in the United States, according to the 2020 census.[61] Of those 41.1 million African American individuals, experts differ on how many are the descendants of African American people enslaved in the United States.

About 12 percent of Black people in America were born in a foreign country.[62] Nine percent of African Americans have at least one foreign-born parent.[63] By 2060, the Black foreign-born population is projected to make up about one-third of the U.S. Black population.[64] Fifty-eight percent of Black immigrants arrived in the United

States after 2000.[65] Of the current 2.8 million African American Californians, 244,969 are foreign born, according to the U.S. Census Bureau.[66]

Every U.S. census conducted since 1970 has found that African American immigrants from the English speaking Caribbean earn more, are more likely to be employed than U.S.-born African Americans, are more likely to hold more financial assets,[67] are more likely to own their home,[68] and most are more likely to be healthy than U.S.-born African Americans.[69]

There appears to be no data at the national and state level and limited scholarship at the city level describing the wealth gap between descendants of African American people enslaved in the United States, recent African American immigrants, and white Americans.[70] Very few of the city level studies present findings on the wealth gap that disaggregates the racial category of African American by national origin.[71] Some scholars argue that the effects of systemic racism have uniquely harmed African American descendants of slavery when compared to African American immigrants who do not have the same experience of systemic racial discrimination in the United States.[72]

One study, "*The Color of Wealth in Los Angeles*," included separate data for U.S. born African Americans and recent immigrants from Africa.[73] National origin and race were both self-reported in this study. [74] On average, white Angelinos were far more likely to hold assets in stocks, mutual funds, and investment trusts than both U.S.-born and African Black Angelinos.[75]

But, African Black Angelinos were likely to hold more assets than U.S.-born Black Angelinos. For example, 87 percent of African Black Angelinos owned liquid assets versus 62 percent of Black Angelinos born in the United States.[76] Eighty percent of African Black Angelinos had a checking account versus 68 percent of U.S.-born African Americans.[77] Eighty percent of African Black Angelinos had a savings account versus 56 percent of U.S.-born Black Angelinos.[78] Such studies in other cities reflect comparable wealth gaps between U.S.-born African Americans and recent immigrants.[79]

III. Historical Causes of the Racial Wealth Gap

The modern racial wealth gap between African Americans and other racial groups began with enslavement. But scholars debate whether enslavement should be the basis for reparations given that today's wealth gap is the cumulative effects of racism over centuries.[80] This section describes historical causes of the racial wealth gap during and post-slavery, including racial terror, land theft, mass incarceration, and discrimination in government benefits, the labor market, and banking.

Enslavement

Several scholars have estimated the slavery bill for reparations.[81] Most of these estimates require a calculation in today's dollars for unpaid wages, the purchase prices of the human property, or the land promised to the formerly enslaved.[82] These estimates are generated by multiplying earlier values by a compounding interest rate.[83] For example, Thomas Craemer's calculations for unpaid wages owed to enslaved people amounts to $19.4 trillion in today's dollars.[84] He arrives at this number by multiplying the prevailing average market wage by the number of hours worked for each 24-hour day by those enslaved over the interval of 1776 to 1865 and applies a three percent interest rate.[85] Merely doubling the interest rate to the more realistic six percent would increase the total estimate to $6.6 quadrillion in 2019 dollars.[86]

Similar to Craemer's estimates is James Marketti's bill using the idea of income diverted from enslaved persons, arriving at a figure of $2.1 trillion as of 1983.[87] Using a six percent interest rate; the 2018 value amounts to $17.1 trillion.[88] Other estimates are reached by calculating the value in today's dollars of the wealth held in enslaved

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White homesteaders in El Monte. The federal government essentially gave land away for free to mostly white families through the Homestead Act. (1936)

people as property. For example, Judah P. Benjamin, a critical member of Jefferson Davis's Confederate Cabinet proclaimed the value of enslaved persons in 1860 to be four billion dollars, which compounds to $42.2 trillion by 2019 at a six percent interest rate.[89] Other scholars argue that these large sums are underestimates because they do not account for the physical and emotional harms of enslavement, the coercive nature of the system, the denial of the ability to acquire property, or the deprivation of autonomy.[90]

Post-Enslavement

The case for reparation extends beyond slavery to the near-century-long era of legal segregation, violence and terror, and the atrocities that continue today: mass incarceration; police killings of unarmed African Americans; sustained credit, housing, employment discrimination; and the immense Black-white wealth disparity.[91] Scholars have divided post-slavery American history into five overlapping phases of federal government policies, which created the modern racial wealth gap. They involve white wealth creation through government land grants and mortgage subsidies and African American wealth destruction through racial terror, eminent domain, and mass incarceration.

Between 1868 and 1934, the federal government gave 246 million acres of land essentially for free to mostly white Americans—an area close to the size of California and Texas combined. More than 1.5 million white families received land patents, and today as many as 46 million of their living descendants reap the wealth benefits, approximately one-quarter of the adult population of the United States.

White Wealth Creation through Government Land Grants

From 1862 to 1976, the federal government transferred massive amounts of land mostly to white families. Some scholars have named this phase the Wagon Train phase, after the covered-wagon caravans romanticized by 1950s television shows, which carried white families to seek their fortunes in the West.[92]

In 1862, the federal government established the Homestead Act, which distributed land until about 1980, although more occasionally after the 1920s.[93] The Homestead Act encouraged western migration by providing American citizens—and immigrants soon to be citizens—up to 160 acres of public lands, which was increased to 320 acres in 1909—for $0 if they continuously lived on the property for five years and paid a small $10 filing fee.[94]

Homesteaders also had the option of paying $1.25 per acre if they lived on the property for six months.[95] While the language of the act did not exclude people based on race, African Americans were unable to secure land allocations under the act for four years until the Civil Rights Act of 1866 clarified that they were citizens.[96] California's homestead laws similarly excluded African Americans before 1900 because they required a homesteader to be a white citizen.[97]

Though African American homesteaders were able to secure land allocations under the Act after 1866, they were few in comparison to the multitudes of white settlers and had to settle for the least desirable land.[98] Between 1868 and 1934, the federal government gave 246 million acres of land essentially for free to mostly white, native-born and immigrant Americans—an area close to the size of California and Texas combined.[99] More than 1.5 million white families received land patents, and today as many as 46 million of their living descendants reap the wealth benefits, approximately one-quarter of the adult population of the United States.[100] In comparison and as an example, approximately 3,500 African American claimants succeeded in obtaining their patents from the General Land Office in the Great Plains, granting them ownership of approximately 650,000 acres of prairie land.[101]

The federal government undermined other efforts to allocate land to the formerly enslaved. Another estimate of reparations to African Americans can be made by calculating the value in today's dollars of the unfulfilled land distribution of "forty acres and a mule" promised to the formerly enslaved beginning in 1865.[102] On January 16, 1865, upon seizing the coastline from Charleston, South Carolina to St. John's River, Florida,[103] General Sherman issued Special Field Orders No. 15 that established the provision "of not more than (40) forty acres of tillable ground" designated "for the settlement of the negroes now made free by the acts of war and the proclamation of the President of the United States."[104]

The order carved out 400,000 acres of land confiscated or abandoned by Confederates. Each family of formerly enslaved African American people would get up to 40 acres.[105] The Army would lend them mules no longer in use.[106] Further, the Freedmen's Bureau Act of March 3,

1865, had an explicit racial land redistribution provision that specified that "not more than 40 acres" of land was to be provided to refugee or freed male citizens at three years' annual rent not exceeding six percent of the value of the land based on appraisal of the state tax authorities in 1860. [107] At the end of three years of occupying the land, they could purchase it and receive title.[108] Similar provisions were included in the postwar Southern Homestead Act of 1866. Freedmen were to receive land in the southern states at a price of $5 for 80 acres.[109]

General William Tecumseh Sherman's famous 40 acres and a mule field order, given in 1865, amounts to $1.3 trillion at six percent interest, in today's dollars.

President Andrew Johnson intensely opposed these acts and neither were effectively implemented on behalf of the formerly enslaved.[110] By the end of 1865, Johnson also had ordered the removal of thousands of formerly enslaved persons from the lands they had settled under Sherman's Special Field Orders No. 15,[111] which were ultimately given back to former enslavers.[112] With the exception of a small number who had legal land titles, freed African American people were removed from the land as a result of President Johnson's "restoration" program.[113]

If four million enslaved persons had gained emancipation by 1865, and the land allocation rule meant that roughly 40 acres would go to families of four, each formerly enslaved individual would have been allocated about 10 acres. This implies a total distribution of at least 40 million acres of land.

Using a conservative estimate of $10 per acre, the total value of the projected distribution of land to the freedmen would have been $400 million in 1865.[114] The value in today's dollars at a six percent interest rate would be $1.3 trillion. This number would be much higher if the conditions of the Southern Homestead Act, which provided for 80 acres of land to be sold to freedman at $5 total were treated as a debt to be paid to the descendants of the formerly enslaved.[115] If, as some scholars interpret, *each* freedman was eligible to receive 40 acres of land, it would have led to a much higher total value of the land to be distributed to freedmen after the war—amounting to $1.6 billion in 1865 and compounding to $12.6 trillion at a six percent interest rate in 2019.[116]

African American Wealth Destruction through Racial Terror

From 1865 to the present, federal, state and local government actors refused to protect African Americans as they faced violence and land theft. Sometimes, government actors joined, led, or supported the violence.[117] As detailed in Chapter 3, Racial Terror, white federal, state, and local government officials, working jointly with private citizens, terrorized African Americans to prevent them from accumulating political and economic power.

White mobs destroyed thriving African American communities in racial massacres nationwide in Louisiana, North Carolina, Michigan, Delaware, Nebraska, Florida, Illinois, Oklahoma, Texas, and elsewhere.[118] The most well-known was the destruction of the Greenwood district in Tulsa, Oklahoma. The Greenwood district was known popularly as "Black Wall Street."[119] Scholars estimate that the present value of destroyed African American property in Tulsa is at least $100 million.[120] The 1919 massacre in Elaine, Arkansas destroyed $10 million of African American wealth.[121]

Evidence exists that murders of African Americans continue to be driven by underlying economic incentives.[122] Police killings of unarmed African Americans frequently occur in neighborhoods undergoing white gentrification.[123]

White Wealth Creation through Mortgage Subsidies

In the 19th century, federal, state, and local governments passed laws and implemented practices that heavily subsidized the creation of the white middle class while substantively crippling the ability of African American people to do the same. [124] Federal policies, implemented by private citizens, focused on helping mostly white Americans buy single-family homes.[125] As discussed in Chapter 5, The Root of Many Evils: Housing Segregation, the Veterans Administration, the Federal Housing Administration, and the Home Owner's Loan Corporation helped white families buy single family homes in the suburbs while preventing African American families from doing the same.[126]

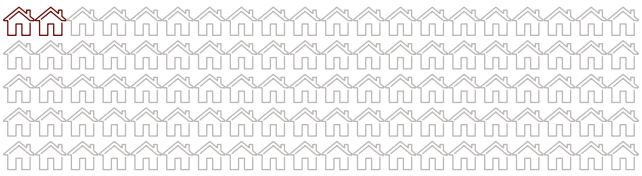
Scholars estimate that the present value of destroyed Black property in Tulsa is at least $100 million.

Beginning in the 1930s and 1940s, the federal government created programs that subsidized low-cost loans and opened up home ownership to millions of average Americans for the first time.[127] At the same time, government underwriters introduced a national appraisal system, tying property value and loan eligibility in part to neighborhood racial composition, which designated predominantly nonwhite neighborhoods as hazardous and coloring these areas red—a process known as redlining.[128]

White communities received the highest ratings and benefited from low-cost, government backed loans. Minority and mixed neighborhoods—and especially African American neighborhoods—received the lowest ratings and were denied these loans.[129] This functionally concentrated African Americans into impoverished neighborhoods in America's urban centers.[130] Of the $120 billion worth of new housing subsidized between 1934 and 1962, less than two percent went to nonwhite families—virtually locking them out of homeownership.[131]

Today, approximately three in four neighborhoods—74 percent—that the federal government deemed "hazardous" in the 1930s remain low- to moderate-income, and more than 60 percent are predominantly nonwhite.[132]

<2% of subsidized new housing **went to nonwhite families** from 1934 – 1962



African American Wealth Destruction through Disenfranchisement and Land Theft

As described in Chapter 5, Housing Segregation, the federal government passed the National Highway Act of 1956 and urban renewal legislation.[133] Funded by the federal government, state and local officials used eminent domain to destroy thriving African American communities in the name of highway construction and urban renewal, erasing generations of accumulated African American wealth.[134] African American business districts were cleaved by the highways, and never recovered.[135]

In the mid-20th century, the United States Department of Agriculture's (USDA) policies discriminated against and displaced African Americans.[136] During the civil rights era, federal anti-discrimination statutes that applied to the USDA were diluted by the time they reached the local level, and did not provide protection for African American farmers.[137] White USDA administrators gave millions of dollars in funding to all-white Southern local agricultural committees.[138] These powerful committees were county arms of the USDA and did not want African American farmers on their boards, so they would prevent their election by splitting the African American vote or through voter intimidation tactics.[139] These boards made decisions on loan recipients, acreage allotments, appropriate crop yields, hardship adjustments, and preferred farming methods benefitting white farmers.[140]

Funded by the federal government, state and local officials used eminent domain to destroy countless thriving Black communities in the name of highway and park construction, and urban renewal, erasing generations of accumulated Black wealth. African American business districts were cleaved, and never recovered.

The Farmers Home Administration was another agency that discriminated against and displaced African American farmers.[141] The agency offered loans and credit to poor farmers for home construction and improvement.[142] But instead of going to badly-needed rural housing in the South, these loans went to segregated swimming pools, picnic areas, tennis courts, and golf courses in white communities.[143] Loan requirements were stringent and often subjective, such as whether an applicant was a good citizen.[144] Loans went to the white and wealthy while African American farmers were turned down.[145] Even if an African American farmer received a loan, agency administrators would seek to get rid of them by luring them into debt and then foreclosing and auctioning off their machinery.[146]

As a result, African American farmers were pushed off their land.[147] Lawrence Lucas, President Emeritus of the United States Department of Agriculture Coalition of Minority Employees testified that the USDA's programs continue to discriminate against African American

farmers and that "a culture of systemic racism at the USDA that denies Black farmers their dignity, that denies Black farmers a right to farm, denies Black farmers the right to the same programs and services that white farmers get in this country" is still present today."[148]

In 1910, Black farmers owned 16 million acres of land. In 2007, they owned 3.2 million acres, an 80% loss.[149] In 1999, Black farmers filed a class action lawsuit against the USDA for unlawful discrimination against them in denying their farm loan applications.[150] The lawsuit, *Pigford v. Glickman*, ultimately settled for money damages, but no policy changes at the USDA.[151] While many claims have been paid, the USDA nonetheless has been slow to pay out all the claims, and has spent extensive resources in fighting claims.[152] In the 2021 coronavirus relief bill, $4 billion was set aside for debt relief for socially disadvantaged farmers, including African American farmers, but payments have been stopped do to an ongoing lawsuit alleging it is reverse-racism and a "windfall" for some farmers.[153]

African American Wealth Destruction through Mass Incarceration

In the late 1980s mass incarceration and the war on drugs continued the American government's historical criminalization of African Americans.[154] As discussed in Chapter 11, An Unjust Legal System, African Americans have experienced marginalization, physical harm, and death, at the hands of the American criminal justice system at both the federal and state level beginning in slavery and continuing today.[155]

During the slavery era, federal and state governments criminalized African Americans as a method of establishing, maintaining, and socially controlling African Americans as a lower class of human being than white Americans.[156] Today, mass incarceration continue to separate families and dehumanize the descendants of enslaved African American people.[157] In the 156 years since slavery was abolished, African American people in the United States have gone from being considered less than human under the law to being treated as less than human by a criminal justice system that punishes them more harshly than white people.[158]

Until the 1940s, state laws and the U.S. Constitution allowed private entities to force African Americans into doing the same work, on the same land, and even for the same people as during slavery in a system called convict leasing.[159] People who were "leased" were treated even more brutally than enslaved people because plantation owners had a financial incentive to keep enslaved people alive.[160] Working and living conditions for incarcerated people were dangerous, unhealthy, and violent.[161] Most incarcerated people who were leased for labor did not survive to complete 10-year sentences.[162] Until the mid-1950s, states routinely forced chain gangs of imprisoned people to do public works projects while wearing chains weighing as much as 20 pounds.[163]

American politicians ran on "law and order" or "tough on crime" platforms and passed laws and policies that punished African Americans more than white Americans, often for similar crimes.[164] This has contributed to mass incarceration and overrepresentation of African Americans in the criminal justice system to present day, nationwide and in California.[165] Nearly 70 percent of young Black men will be imprisoned at some point in their lives, and poor Black men with low levels of education make up a disproportionate share of incarcerated Americans.[166]

Mass incarceration creates a vicious cycle. Studies have shown that lower wealth increases the likelihood of incarceration and incarceration decreases the ability to build or maintain wealth.

Mass incarcerations create a vicious cycle. Studies have shown that lower wealth increases the likelihood of incarceration and incarceration decreases the ability to build or maintain wealth.[167]

African Americans, who have lower family wealth than white Americans,[168] are especially vulnerable to incarceration.[169] Growing up with less family wealth means living in poorer neighborhoods with lower-quality

education and a greater exposure to high "street" crime and high imprisonment areas. Sixty-two percent of African Americans live in highly segregated, inner-city neighborhoods where socioeconomic vulnerabilities contribute to higher rates of violent crime,[170] while the majority of white Americans live in "highly advantaged" neighborhoods where there is little violent crime.[171]

Mass incarceration has been catastrophic to the ability of African American families to build and maintain wealth by reducing household assets and income, and lowering homeownership rates. As discussed in detail in Chapter 11, An Unjust Legal System, the criminalization of African Americans has contributed to racial disparities at every step of the criminal justice system.

In 2019, African Americans comprised 26 percent of all arrests yet they only made up 13.4 percent of the population.[172] According to a recent large-scale analysis of racial disparities in over 60 million state patrol police stops in 20 states, including California, researchers found that police officers stop African Americans more often than white drivers relative to their share of the driving-age population.[173] Further, these researchers found that, after controlling for age, gender, time, and location, police are more likely to ticket, search, and arrest African American drivers than white Americans.[174] Thus in practice, the bar for searching African American drivers is lower than for searching white Americans.[175]

Low family wealth can also mean being unable to afford additional education and delaying entering the labor market, leading to higher risks of incarceration.[176]

Once released, criminal convictions make it harder for returning citizens to find and maintain jobs, find leases, and be approved for mortgages.

Once a person is a criminal defendant, low family wealth makes it hard to post bond or to hire lawyers to help navigate the criminal justice system, making incarceration more likely.[177]

In 2009, African Americans made up less than 13 percent of the U.S. population, but comprised over a third of all the people in prison.[178] As explained in Chapter 11, An Unjust Legal System, African Americans are also more likely to be convicted and experience lengthy prison sentences.[179]

Involvement in the criminal justice system increases legal debt.[180] Incarceration means loss of income and may lead to missed mortgage payments and other debts.[181] This increases interest obligations and penalties, which in turn can send an incarcerated individual's credit score plummeting.[182] Incarceration also means household instability, placing an additional barrier to building wealth.[183]

As Chapter 11 explains, federal and state prisons continue to exploit the labor of predominantly African American incarcerated people.[184] While convict leasing as an official practice has ended, underpaid or unpaid prison labor continues today as incarcerated people are not protected by labor laws.[185]

For example, in-house prison labor, the most common type of prison labor, typically refers to jobs within and related to the prison including kitchen duty, cleaning, or grounds keeping.[186] Workers can be punished and sent to solitary confinement for taking a sick day, including in the eight states where the labor is unpaid.[187] In states where prison labor is paid, the average rates across the U.S. range from 14 to 63 cents per hour. These are the rates before wage garnishment, which can account for up to half of one's earnings, although some advocates argue that wage garnishment serves as appropriate sources for victims' restitution.[188]

In addition to jobs within the prison, incarcerated people also provide underpaid and unprotected industry labor unrelated to maintaining the prison, like phone banking, packaging, and textile work.[189] Participating private companies must pay minimum wage, which the prison garnishes for the incarcerated person's room and board in prison cells.[190] The garnishment only applies to basic room and board, and the incarcerated person must pay additionally for stamps, paper, toiletries, supplementary food, or phone calls.[191] Advocates argue that such costs are not fairly calculated and that the American criminal justice system is filled with fees that shift the costs of incarceration not only to the incarcerated, but also to their families.[192]

Scholars argue that work programs in incarceration are not beneficial to incarcerated people when they seek work after their incarceration.[193] Once released from incarceration, criminal convictions make it harder to find and maintain jobs, find leases, and be approved for mortgages.[194] A record of previous incarceration also has wide-ranging immediate and future consequences that act as a barrier to employment, thus lowering

earnings.[195] A criminal conviction makes it difficult to build wealth because of stigmatization and lack of access to supportive social institutions and credit.[196]

Exclusion and Discrimination in Government Benefits

African Americans have consistently been excluded from numerous major categories of government benefits, which have generally benefited white Americans. Government benefits refer to assistance programs that provide either cash assistance or in-kind benefits to individuals and families from a governmental entity. There are two major types of government benefit programs: social welfare programs and social insurance programs.

Benefits received from social welfare programs are usually based on low income. Benefits received from social insurance programs are usually based on other criteria, such as age, employment status, or being a veteran. Some of the major federal, state, and local social insurance programs are Social Security, veteran's benefits, unemployment insurance compensation, and workers' compensation.

Social insurance programs can provide important support in times of crisis. Unemployment insurance, a state level program, helps protect against unexpected drops in income by paying cash benefits to unemployed workers who have lost jobs through no fault of their own.[197] The federal Supplemental Nutrition Assistance Program (SNAP), also known as food stamps, gives money to low-income families to buy food, and expands to provide important support when people lose their jobs.[198] Recipients have improved food security, health, and reduced healthcare expenses.[199]

Historically, federal policy decisions dealing with welfare, work, and war in the 1930s and 1940s excluded or discriminated against the vast majority of African Americans.[200] The exclusion and discrimination continued due to the Congressional representatives elected from southern states that created barriers to African Americans voting.[201]

Among other things, southern legislators prevented Congress from including anti-discrimination provisions in an expansive range of social welfare programs, such as community health services, school lunches, and hospital construction grants—all the programs that distributed funds to the South.[202] As a result, when federal policies provided most white Americans with valuable tools to build wealth—insure their old age, get good jobs, acquire economic security, build assets, and gain middle-class status—most African Americans were left out.[203]

Social Security, passed and signed by President Roosevelt in 1935, left out most African Americans for the first quarter century of its existence.[204] Southern congressional representatives heavily influenced the Social Security Act with devastating results.[205] The federal government gave the power to control benefit levels, eligibility, and administration of such programs to the states and excluded occupations mostly held by African Americans.[206] At the time, sixty-five percent of African Americans fell outside of eligibility for the Social Security program—and between 70 and 80 percent fell outside eligibility requirements in different parts of the South.[207]

Historically, federal policy decisions dealing with welfare, work, and war excluded or discriminated against the vast majority of African Americans.

For example, in 1940, the year Social Security payments for seniors began, the Social Security Board identified nearly 2.3 million African American workers as eligible for old age insurance, but the majority of those identified were disqualified because they were farm or domestic workers.[208] These exclusions continued until 1954, when the occupational exclusions were eliminated.[209]

This exclusion also left most African American workers out of unemployment insurance under the act.[210] When African American workers qualified by working in eligible industrial and commercial jobs, they often were left out because they lacked a history of regular, stable employment.[211] When they received benefits, the benefits tended to be smaller than those received by white workers.[212]

Another example of federal government discrimination in benefits are the mortgage subsidies, which not only intensified residential segregation as discussed in detail in Chapter 5, Housing Segregation, but also helped white families build wealth and enter the middle class. The federal government supported the creation and maintenance of the white middle class through other programs as well. The New Deal was a collection of government programs with the goal of lifting America out of the Great Depression.[213]

One example of a New Deal policy was the Serviceman's Readjustment Act of 1944, also known as the GI Bill,

which was reinforced in 1948 with the Integration of the Armed Forces Act. Through these laws, the federal government aimed to offer unprecedented benefits to veterans including mortgages to buy homes, job placement services, money for vocational and university education, and loans for small businesses.[214] However, these programs were administered by the states, which discriminated against southern African American veterans.[215] While white World War II veterans sent themselves and their children to college and obtained housing and small business grants, African American veterans were not able to do so in the same way.[216]

Social Security, passed and signed by President Roosevelt in 1935, left out most African Americans and scholars have argued that it was characterized "by a form of policy apartheid" for the first quarter century of its existence.

Part of this stemmed from discrimination in the military. African American soldiers were more likely to be issued neutral and dishonorable discharges, sometimes used to exclude African American veterans from GI Bill benefits.[217] Ira Katznelson argues that severe discrimination in the GI Bill administration system prevented African American veterans from obtaining home mortgages, small business and farm loans.[218]

Chapter 10, Stolen Labor and Hindered Opportunity, discusses how other New Deal programs excluded African Americans in detail.

Today, African American families continue to have trouble accessing government benefits. Because welfare programs are often administered at the state and local levels, state and especially local governments have been able to introduce racial bias into welfare administration contributing to racially disparate outcomes.[219] States have been significantly more likely to both adopt and impose welfare sanctions if they have higher proportions of non-white welfare recipients.[220] States with higher African American populations—generally in the South—tend to provide fewer unemployment payments for a shorter time.[221] Additionally, in many places, part-time workers—who are disproportionately African American—are not eligible for unemployment payments.[222]

Despite having higher unemployment rates in general, African American workers receive unemployment benefits at lower rates than white Americans.[223] A report by the Government Accountability Office found that 73 percent of African American unemployment applicants received unemployment payments during the pandemic versus 80.2 percent of white applicants.[224] Although governments have waived work requirements for some SNAP recipients during certain national crises like the COVID-19 pandemic, studies have found that work requirements disproportionately cut off African American adults from SNAP benefits, which may be partially due to discrimination in the labor market making the job search more difficult for African American people.[225]

COURTESY OF WALLY MCNAMEE/CORBIS/CORBIS VIA GETTY IMAGES

Protesters at the landmark civil rights demonstration, the March on Washington. (1963)

During the COVID-19 pandemic, most households received several stimulus checks from the federal government. Studies have found that these payments were "likely crucial" to help households that lost jobs that pay their expenses.[226] The federal government supplemented state unemployment payments with up to $600/week for unemployed workers, extended the duration of benefits, and gave benefits to workers traditionally left out of unemployment insurance programs.[227] The federal government also instituted the Paycheck Protection Program to provide loans that enable businesses suffering from COVID-19's economic shocks to pay their employees and other costs.[228]

During the pandemic, even though African Americans were more likely to hold the types of jobs most severely impacted by the pandemic, white households received their COVID-19 stimulus checks faster than African American households.[229]

This was likely due to the Internal Revenue Service focused structure of the program, which made receiving the payment more complicated for unbanked families and families who did not file taxes. African American people are more likely to be among both groups.[230]

Studies of pandemic-era federal loans have found that 29 percent of Black applicants were successful in obtaining loans for their businesses versus 60 percent of white applicants.[231] Businesses in majority-Black neighborhoods were also more likely to receive federal loans later than businesses in majority-white neighborhoods.[232] Federal money was paid out through large banks, which historically excluded Black businesses.[233] African American business owners may have been less likely to obtain them, despite being more likely than white business owners to have at risk or distressed businesses even before the pandemic. [234]

College degrees do little to close the racial wealth gap. For example, college-educated African American households have 30 to 33 percent less wealth at the median than non-college educated white households. Average wealth for white Americans in this category is $180,500, while the African American average is $23,400.

Education Segregation and Debt

Higher education for African Americans can have a positive effect on their income, but does not translate into a reduction in the wealth gap.[235] College degrees do little to close the racial wealth gap. [236] For example, college-educated African American households have 30 to 33 percent less wealth at the median than non-college educated white households. Average wealth for white Americans in this category is $180,500, while the African American average is $23,400.[237] As Rucker C. Johnson testified before the Reparations Task Force, affluent African American households with incomes above $75,000 still live in more under-resourced neighborhoods with under-resourced school than their white counterparts, which disadvantages African American students from the start of childhood.[238]

Black students carry more student loan debt because they receive a higher interest on their student loans and they borrow more because their families are less wealthy than white students.[239] For example, 20 to 29-year-old single white women who have completed college have a median net worth of $3,400. Single African American women of a similar age and level of education have a median net worth of *negative* $11,000.[240]

Labor Market Discrimination

Income is different from wealth. Income represents how much a person earns in a lifetime, both from work and from a yearly return on their investments.[241] Wealth represents a person's total net worth calculated from assets minus debts.[242] While income plays a modest role in the ability to generate wealth, as lower income translates to reduced capacity for savings or investments, income does not explain massive Black-white wealth disparities in the United States. Without savings or wealth of some form, which can be passed from generation to generation, economic stability quickly falls apart when income is cut or disrupted through job loss, reduced work hours or reduced wages, or if families suffer from an unexpected health emergency.[243] In fact, the intergenerational transfer and impact of wealth is one of the reasons why racial wealth inequities have become entrenched.[244]

As detailed in Chapter 10, Stolen Labor and Hindered Opportunity, labor market discrimination significantly contributes to the wealth gap.[245] Some scholars have based their estimates for reparations on more recent economic injustices such as labor market discrimination.[246] Bernadette Chachere and Gerald Udinsky estimated the monetary benefits that white workers gained from employment discrimination between 1929 and 1969. [247] They concluded that by the mid-1980s, white workers gained in $1.6 trillion from employment discrimination at the expense of African American workers, assuming that 40 percent of the Black-white income gap was because of labor market discrimination.[248]

David Swinton concludes that even if one subtracted the total cost of government benefits programs including Social Security, Medicare, Medicaid, unemployment insurance, and other welfare programs—which are often argued to be reparations—over the same time span from the Chachere and Udinsky estimate, there would be still

be a $500 billion net benefit to white people from labor market discrimination by the mid-1980s.[249]

But, income alone cannot explain the racial wealth gap. A reduction in racial differences in income would leave as much as three-fourths of the wealth gap unaddressed.[250]

Similar achievements do not lead to similar wealth for African Americans in comparison to white Americans.[251] For example, between 1984 and 2009, every dollar increase in average income for white households added $5.19 in wealth. The same increase in average incomes for African American households added only $0.69 in wealth.[252]

Scholars estimate that 40 percent of the Black-white income gap is due to labor discrimination. As a result, by the mid-1980s, white workers gained in $1.6 trillion at the expense of Black workers.

In fact, the racial wealth gap increases as income increases. The wealth gap between African Americans and whites in the bottom fifth of income levels is $7,400, but the wealth gap between comparable African Americans and whites in the top fifth of income levels is $264,700.[253] And, while white households have five to 10 times the net worth of African American households, they only earn twice as much as African American households.[254] Within the same income brackets, African American wealth is less than one-half that of white people.[255] White people in the bottom fifth of the income distribution have more than 10 times the median wealth of African Americans in the bottom fifth.[256]

Lower incomes for African Americans because of labor market discrimination affect wealth only to the extent that it reduces capacity for savings that can be passed across generations. There is no evidence that African Americans have a lower savings rate than white Americans once household income is taken into account.[257] One study found that once income is taken into account, if anything, African American families actually have a slightly higher savings rate than their white counterparts.[258] In fact, white households spend 1.3 times as much as African American households with similar incomes.[259]

At high income levels, African Americans save more than white people who tend to invest.[260] In addition to savings from income or "active savings," a family's wealth can also increase because of "passive savings" or when the value of a family's assets rises or appreciates. Data collected before the predatory subprime mortgage market crisis shows that there is no significant racial advantage in "passive savings" for white families with positive assets after family income is taken into account.[261]

Discrimination in Banking

African Americans have historically faced systemic discrimination in banking which has impacted their ability to accumulate wealth. Banks established by the federal government discriminated against African Americans and deprived them of wealth. The Freedmen's Fund, Free Labor and Union Army Military Banks, and the Freedman's Bank were three banking institutions established by the federal government in the early to mid-1860s, which provided recently emancipated African Americans with the means to save the money they earned.[262] But racist paternalistic attitudes by government officials prevented African Americans from investing their own money and accumulating wealth.[263]Bank employees improperly invested client savings and lost approximately $2.9 million, or $63 million in 2017 dollars, harming freedmen and their descendants for generations to come.[264]

In another example, Union army chaplain John Eaton created the Freedmen's Fund in 1862, to hold the wages of formerly enslaved African Americans who fled to Union or who worked for Union troops.[265] These freedmen had no access to their individual wages or savings, nor did they have any say in how their own wages or the money that was donated for their benefit would be used.[266] Instead, Eaton pooled the wages in the fund to collectively provide food, shelter, and other needs, essentially treating freedmen as contract laborers.[267]

Eaton also stole all their wealth. Soldiers confiscated horses, wagons, money, and other valuables that self-emancipated African Americans brought with them to the Union lines.[268] Eaton took anything that the soldiers and quartermasters did not steal for themselves.[269] By 1864, he had formalized his contract labor system to negotiate contracts for and hired out Black workers on abandoned plantations that the federal government had leased to northerners and to some southerners who supported the Union.[270] Any profits from the cash crops that Black workers grew and harvested were placed in the Freedmen's Fund.[271] Eaton also used the fund for other expenses.[272] In one year alone, Eaton stole $103,000 or $1.6 million in 2017 dollars from Black depositors to pay for the Union Army's

incidental expenses; $5,000 in medical expenses; the salaries of all hospital stewards and medical assistants.[273] The Free Labor and Union Army Military Banks first established in 1864, was another Bank that used an exploitative model of contracting African American people's labor similar to Eaton's freedmen's fund.

In 1865, Congress created the Freedman's Bank and Trust Company, also known as the Freedman's Savings Bank, seeding the bank with unclaimed deposits from the free labor and military banks.[274] The initial charter designated an all-white board of trustees with broad discretion to oversee the bank, and intended to hold only the deposits of the survivors of enslavement and their descendants.[275] Despite this nominal limitation, the bank welcomed customers of all races and regardless of whether they were formerly enslaved, though formerly enslaved people made up the vast majority of bank customers.[276] And though the charter made clear that its purpose was to invest the deposits in low-risk treasury notes and conservative U.S. securities, it vaguely stated that a third of the deposits, called "available funds," could be invested anywhere, leaving an opening for abuse.[277]

The Freedman's Bank used a number of aggressive methods and tactics to solicit deposits and to convince African American patrons that their money was safe and that they could grow wealth.[278] Passbooks and other bank literature contained numerous slogans and poems on the ways of thrift and savings.[279] Bank advertisements often included the names of prominent government officials, such as Abraham Lincoln and Oliver Otis Howard, misleading customers and the public into believing that the federal government protected and guaranteed their deposits.[280] Depositors were reminded during public meetings and other bank-sponsored gatherings that the bank was under Congressional charter, and thus under its complete protection.[281]

With such assurances that their deposits were safe, African Americans from a wide variety of backgrounds and occupations, many excited to be receiving a wage for their services for the first time in their lives, opened accounts with the Freedman's Bank between 1868 and 1874 at an extraordinary rate. Within 10 years, 75,000 depositors—who were virtually all African Americans—trusted the bank by depositing more than $75 million, approximately $1.5 billion in today's dollars.[282] Most of these deposits were being saved to buy land and other productive goods such as tools or agricultural supplies as depositors were told to do.[283]

But the bank turned quickly from a savings bank to a risky private investment bank controlled by a small minority of trustees.[284] Against the bank's original Congressional charter and without the knowledge of the African American customers, who were largely unable to secure loans from the bank, the bank invested the money in risky railroad and real estate holdings to benefit white businessmen and bank managers.[285] When, on June 29, 1874, the bank failed and closed due to fraud, 61,131 mostly African American depositors lost about $2.9 million or $63 million in 2017 dollars..[286] One study estimated the average amount owed to depositors across 71 bank failures of federally chartered banks between 1865 to 1933,[287] and the Freedman's Savings Bank ranked third for the largest amount owed to depositors at the time of bank failure.[288]

Because the bank had represented much more than just a place to store money, the African Americans who lost their money also lost their trust in the federal government and in banks in general.[289]

State and private banks following emancipation refused to serve the credit needs of freedmen during the late 19th century, which meant that they had to rely on more expensive and exploitive credit systems.[290] General stores became an important means of accessing short-term credit.[291] Prices were at the discretion of the merchant.[292] One price for goods purchased with cash and a higher price (often by 25 percent) for goods purchased with credit.[293] Goods purchased on credit were charged interest of eight to 15 percent, as determined by the personal judgment of the merchant, based on the creditworthiness of the borrower.[294]

Bank officials at the government charterd Freedmen's Bank improperly invested the savings of newly freed enslaved people, leading to the loss of approximately $2.9 million or $63 million in 2017 dollars. This loss of wealth devastated newly freed enslaved people and their descendants for generations.

Black-owned banks were established to provide banking services to Black communities.[295] Approximately 130 Black-owned banks were established between 1900 and 1934. Fifty savings and loans and credit unions were also established during this period. Only eight banks

survived the Great Depression out of 130 Black-owned banks.[296] Today, there are only 21 Black-owned banks nationwide, and 32 Black-owned financial institutions overall, including credit unions.[297]

The federal government prevented the success of Black-owned banks by excluding them from full participation in the banking market.[298] African American bank deposits were smaller and were more frequently withdrawn than white bank deposits, which made them more risky.[299] Most African American depositors had no wealth to invest in the bank and were just depositing money from their wages while keeping small amounts to live on.[300] They put their money into Black-owned banks not only for safekeeping, but also as rainy-day funds during bad times that came often.[301]

Because their deposits experienced high risk, Black-owned banks had to keep more cash as reserves or invest in other more liquid assets such as government securities, which were safer than loans.[302] They needed to make sure they always had enough cash at the bank to pay out to depositors. Black-owned banks also held very high capital ratios to offset this risk.[303] For example, in 1920, the mean capital ratio for white banks was 18 percent, while African American banks had an average capital ratio of 32.9 percent.[304] This meant that the African American bank owners invested more of their own money and earnings in the bank to keep it secure, but this severely lessened their ability to make a profit or lend money.[305]

Another source of vulnerability for African American banks was their assets or loan portfolios.[306] The fate of African American banks was tied up with the fate of African American businesses, which meant that African American banks lacked the diversified investments needed for safe, and profitable banking.[307] Most thriving banks hold a mix of commercial and real estate loans, but Black-owned banks made almost exclusively home loans because the vast majority of African American businesses were small service operations with no need for bank financing.[308]

As described in Chapter 5, Housing Segregation, the federal government generally labeled African American homeowners and African American neighborhoods as being at higher risk of default, and white-owned banks generally refused to issue mortgages to African American homeowners. Black-owned banks often met the need and provided home loans to African American homebuyers.[309]

Before the Great Depression, there were 130 Black-owned Banks. Today there are only 21 Black-owned banks.

Since homes owned by African Americans were undervalued due to government redlining, the property held for collateral during the term of the loan immediately diminished in value, upholding the perception that these loans were inherently risky investments.[310] Therefore, there was no market for mortgages held by African Americans because of the devaluation of property owned by African Americans and the assumption that loans held by African Americans were inherently risky.[311] This in turn meant that it was difficult for Black-owned banks to earn a profit from an investment portfolio that was largely composed of home loans to African American homebuyers.[312]

California

In California, Black homesteaders can be traced back to 1900, when agricultural settlements were promoted at various times after the turn of the century in Yolo, San Bernardino, Tulare, and Fresno counties.[313] At least two different efforts at colonization occurred in San Bernardino County between 1900 and 1910, including solicitation of families to homestead government land in the Sidewinder Valley, desert land near Victorville.[314] Black homesteaders also established an agricultural settlement in 1908 in the town of Allensworth in Tulare County, which ultimately was depleted of a water supply necessary to sustain the settlement.[315]

The racial climate around African American colonies ranged from welcoming or neutral to hostile, although none have been reported to experience the kind of everyday violence and intimidation African Americans regularly experienced in the South.[316]

COURTESY OF JASON ARMOND / LOS ANGELES TIMES VIA GETTY IMAGES

Incarcerated firefighters from Eel River Conservation Camp continue to tackle the Caldor Fire as the fire's footprint continues to expand southwest of the Lake Tahoe Basin. (Aug. 27, 2021)

Incarcerated people in California produces myriad products such as clothing, furniture, cleaning products and food.[317] They also perform a wide range of duties in areas such as laundry, kitchen, and general maintenance.[318] The California Department of Forestry and Fire Protection employed around 1,600 incarcerated individuals to fight forest fires in May 2021.[319] Some are paid as little as $1.45 a day.[320] As discussed in Chapter 10, An Unjust Legal System, advocates argue that this is exploitive and does not necessarily help the incarcerated firefighters to be find jobs once they are released.[321]

The costs of higher education are a larger burden for African American Californians.[322] Generally, white Americans are twice as likely as African Americans to receive financial assistance from their families for higher education.[323] Only 16 percent of very low-income African American Californian students receive a CalGrant award.[324] The state financial aid African Americans do receive is often insufficient, especially with respect to housing.[325] Fifteen percent of white households in Los Angeles had student loan debt, in contrast with 20.5 percent of households headed by African Americans.[326]

Structural racial disparities regarding access to unemployment insurance, food stamps, and COVID-19 federal loans in a crisis, and benefits for businesses also exist in California. From March through June 2020, 84.9 percent of California's African American labor force filed for unemployment benefits, compared to 39.1 percent of the state's white labor force.[327] African American Californians who received unemployment insurance during the pandemic received $293.90, the smallest median weekly benefit of any racial group, versus white claimants who received $394.90.[328]

Generally, white students are twice as likely as Black students to receive financial help from their family for higher education. Only 16 percent of very low-income Black Californian students receive a CalGrant award.

California's version of food stamps, CalFresh, generally maintains the same work requirements that disproportionately cut African American adults off from food assistance at the federal level.[329] In 2016, California enrolled only 72 percent of eligible residents in CalFresh, the fifth lowest rate in the nation.[330] It is also one of 10 states that manage food assistance programs at the county level, which tends to be more expensive and variable than administering the program at the state level.[331] African American Californians make up 6.5 percent of the state's population,[332] but 14.7 percent of participating CalFresh households.[333] During the pandemic, one survey found that 20.2 percent of Black households with children sometimes or often did not have enough to eat in a four week period spanning June and July, compared to 8.8 percent of white households with children.[334]

CALIFORNIA
UNEMPLOYMENT INSURANCE MARCH TO JUNE 2020
Weekly benefit amount

In California, an analysis of the distribution of federal loans found disparate distribution by race: African American neighborhoods received $445 per resident, while white neighborhoods received $666 per resident, partially due to lower concentration of small businesses or small business employees in African American neighborhoods.[335] However, another analysis revealed that in most major metro areas in the country—including Los Angeles, San Francisco, and San Diego—businesses in majority-white areas also received federal loans at a greater rate than businesses in majority-African American areas.[336]

Proposition 209 (Prop 209) has also disadvantaged Black-owned businesses in the state seeking public contracts with the State of California and local governments. Passed in November 1996, Proposition 209 caused state and local governments to end race-conscious contracting programs, resulting in a loss of $1 billion to $1.1 billion every year for minority and women-owned businesses.[337] The biggest contract loss for minority and women-owned businesses was with the State of California where $823 million has been lost each year since Prop 209.[338] Before Prop 209 passed, in fiscal year 1994-1995, $519 million was contracted to minority and women-owned businesses or about $823 million in October 2014 dollars. When California ended its program for minority and women-owned businesses, only a few got back their contracts with the state and some never recovered.[339] There was only an insignificant increase in Small Business Enterprise procurement with the state after Prop 209, which is the main way that state contracts would be available for many of these businesses.[340] The City and County of San Francisco lost about

$200 million per year in minority and women-owned business contracts.[341] Some of this loss emerged immediately after Prop 209. More losses followed the 2004 Coral Construction case, which ultimately ended San Francisco's race-conscious procurement program. Prop 209 also resulted in the loss of about $30 million per year in minority and women-owned business contracts with the City of Oakland. It also resulted in an estimated $20 million loss per year in such contracts with the City of San Jose after the 2000 Hi-Voltage Wire Works case, which ultimately ended San Jose's race-conscious contracting program.[342]

IV. Drivers of the Wealth Gap Today

Unequal Homeownership

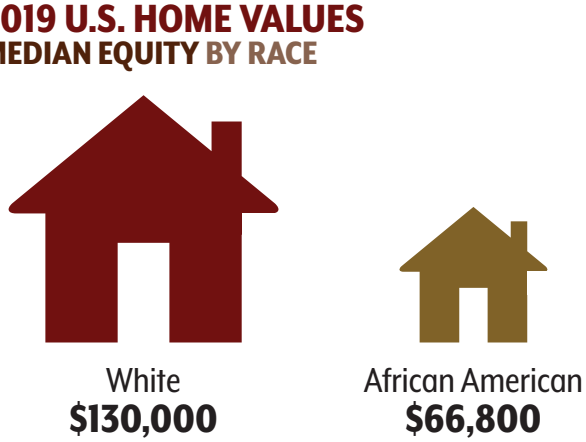
Homes are one of the most important wealth assets that households can possess.[343] People who own homes can use them to borrow money to pay for expenses or pay off high-interest debt in times of crisis.[344] Homeowners are able to generate wealth through home equity, so long as their home increases or appreciates in value. Homeownership is also believed to be more beneficial than renting because owners build equity, and obtain additional tax benefits.[345] Homeowners may also face less housing instability than renters—partially because they tend to be more well-off in general—especially during a crisis, and may therefore be less likely to lose their housing.[346] Housing affordability problems—where an occupant must pay more than 30 percent of gross income for housing costs, including utilities[347]—are more than twice as common among renters than homeowners.[348]

Nationally, In 2019, 42.8 percent of African Americans owned homes versus 73.3 percent of white Americans. Only 33 percent of Black Californians owned homes.

As discussed in Chapter 5, Housing Segregation, and above, government discrimination made it difficult for African Americans to buy real estate, gain wealth through real estate, and transfer that wealth to successive generations.[349] Widespread homeownership in the United States was created through government action, starting with New Deal legislation.[350] The New Deal created relatively safe long-term mortgage markets and reduced down payment requirements for homeownership. This transformed the housing landscape, allowing many working-class households to move from the rental lifestyle to owning a home.[351] Yet, as described above and in Chapter 5, Housing Segregation, the path to homeownership has been riddled with entrenched racism.[352]

Today, African Americans are in a worse position than white Americans to have homes as assets to aid them in a crisis. The racial homeownership gap was 19 percent in 1940, and grew to 28 percent in 2009. As of the second quarter of 2020, out of $30.8 trillion in real estate assets in the U.S., Black households held five percent and white households held 78 percent.[353] In 2019, 42.8 percent of African Americans owned homes versus 73.3 percent of white Americans, and are more likely to face affordability issues in securing capital to purchase and sustain housing at 30 percent of their gross income, including utilities.[354] In the same year, researchers for the National Bureau of Economic Research also found that African American mortgage borrowers were charged higher interest rates than white borrowers were and were denied mortgages that would have been approved for white applicants.[355]

African Americans who own homes have a greater reliance on the house as a source of wealth than white households.[356] In 2014, home equity accounted for 92 percent of African Americans' net worth.[357] There is a gap between the appreciation of a home owned by a white family and the appreciation of a similar home owned by an African American family.[358] When African Americans do own homes, they tend to be appraised for less than comparable white homes, limiting the amount of money that can be taken out of their home equity. Race affects the rate of return on home asset.[359] African American



homeowners had a median home equity of $66,800 in 2019.[360] White homeowners had a median home equity of $130,000 in the same year.[361]

Residential segregation contributes to the undervaluing of houses in African American neighborhoods.[362] African American homeowners tend to own homes appraised for less in neighborhoods deemed less valuable,[363] which decreases their available equity relative to white homeowners.[364] Even controlling for factors like neighborhood or home quality, a study has found systemic undervaluation of homes in African American neighborhoods attributable to anti-Black bias.[365] Major companies offering real estate insurance have been accused of targeting inner city neighborhoods where Black families live by denying claims as fraudulent.[366] All of this limits African Americans' access to the benefits of home equity in a crisis.[367]

African Americans also experience significant housing cost burdens.[368] Without sufficient wealth in the first place, African American households have limited means to invest in homeownership.[369]

In 2019, 43 percent of African American households spent more than 30 percent of their income on housing—compared with 25 percent of white households.[370] Discrimination in mortgage lending may also make it more difficult for Black homeowners to access their home equity through cash-out refinancing,[371] a means of accessing home equity that has been increasingly popular during the pandemic.[372] Between April 2020 and January 2021, less than a quarter of African American homeowners who could have saved $200 a month by refinancing did so, compared to 40 percent of similarly situated white homeowners.[373]

But closing the homeownership gap alone will not close the racial wealth gap; the homeownership gap alone does not explain the racial wealth gap.[374] Among African American and white American households who do not own a home, white households still have 31 times more wealth than African American households.[375]

Fewer Assets

African American households hold less assets than white households overall, but African American households hold a higher proportion of assets in their cars and homes, and less in net liquid and net business assets.[376] African American households are also generally less likely to hold financial assets.[377] African Americans have substantially fewer assets than white people at every income level, including bank deposits, stocks, bonds, and loans.[378]

African Americans tend to have fewer investments. Some studies argue that African American investment patterns generally show risk aversion and lack of education on stocks and investments.[379] They argue that wealthier African Americans tend to save more and invest less[380] compared to wealthier white Americans, and that white Americans are more likely than African Americans to invest in high-risk, high-reward assets.[381] For example, in 2004, African American families were less likely than white families to have investment accounts and retirement accounts. Only 44 percent of African Americans have retirement savings accounts, with a typical balance of around $20,000, compared to 65 percent of white Americans, who have an average balance of $50,000, according to the Federal Reserve.[382] And only 34 percent of African Americans own any stocks or mutual funds, compared to more than half of white people.[383] Some studies claim that this can be attributed to familial influence—Black families are less likely to have investment accounts if their parents didn't have any.[384] Other studies argue that African Americans are not significantly more risk averse or less financially literate than white people with similar levels of income and wealth. Further, African Americans engage in entrepreneurship, which presents inherent risk, at higher rates than white Americans with similar levels of income and wealth. Low wealth, lack of financial inclusion, and financial constraints on choice often forces Black borrowers to use predatory and abusive alternative financial services rather than financial illiteracy.[385]

2019 LIQUID ASSETS
AMOUNT BY RACE

White
$8,100

African American
$1,500

African Americans have less liquid assets. Liquid assets accessible as cash in times of crisis include cash savings, checking accounts, savings accounts, money market funds, certificates of deposit, and government bonds.[386] Access to liquid assets is important in a crisis, as it enables people to continue to pay bills in the event of a sudden loss of income, or pay for emergency expenses such as medical costs. Lack of access to liquid assets can

heighten the impact of crises by making it harder to afford basic necessities.[387] People may also turn to family for economic support in times of hardship.[388] In addition, access to government aid such as unemployment insurance, nutrition subsidies, and crisis-specific programs, such as stimulus checks and small business loans, help people and their businesses stay afloat.[389] These resources are vital for surviving economic crises. For example, liquid assets such as cash savings help people pay bills in the event of a job loss or weather emergency expenses like a medical emergency.[390] Similarly, people who have homes, stocks, or retirement funds may leverage their home value for a loan,[391] liquidate stocks, or borrow from or against their retirement accounts to pay for expenses during difficult economic times.[392]

African American households tend to disproportionately lack access to many of these resources, often due to the persistence of historical disparities and racism that continues today.[393] In 2019, while 96.8 percent of African American families had some kind of liquid asset—such as a checking account, savings account, or pre-paid card—typical African American families with liquid assets had $1,500 in liquid savings, compared to $8,100 for white families with liquid assets.[394] Racism in the banking system today still create barriers to liquid assets for African American customers. African American customers are sometimes profiled,[395] viewed with suspicion just for entering a bank,[396] and questioned[397] over the most basic transactions.[398]

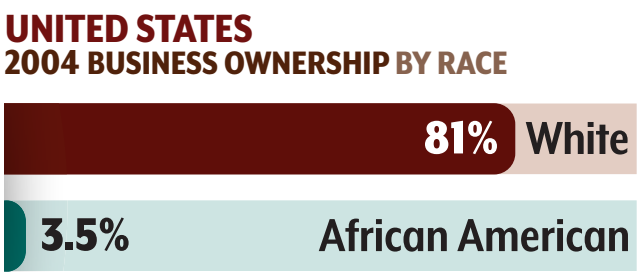
African Americans have less non-liquid assets. In general, non-liquid assets such as homes, stocks, and retirement funds can support financial security by increasing resources necessary to weather a crisis or invest in wealth-generating assets for the future.[399] As discussed above, African Americans experience myriad barriers to homeownership and the mortgage market. Stocks and mutual funds, which can be sold, and retirement funds, which can be liquidated or borrowed against, also provide potential sources of aid in a crisis.[400] African Americans are also less likely to own stocks than white Americans, and African Americans who own stocks have less equity than white Americans do.[401] While 61 percent of white households own any form of stocks, only 33.5 percent of African American households do.[402] Among families who own stocks, the typical white family has access to $50,600 they could tap in an emergency, compared to $14,400 for the typical African American family.[403]

While African Americans are more likely to have access to retirement accounts than homes or other types of stocks, they are still less likely than white Americans to have them.[404] Around 55 percent of African American working-age families have access to an employer-sponsored retirement plan, and 45 percent participate.[405] Seventy percent of white working-age families have access to an employer-sponsored retirement plan, and 60 percent of them participate.[406] Among working-age white families with balances in such accounts, the typical white family has approximately $50,000 saved, whereas the comparable African American family has approximately $20,000 saved.[407] During the pandemic, a survey found that African American households with retirement accounts were much more likely to report that they planned on withdrawing from or borrowing against them (48 percent and 45 percent) than white households (29 percent and 29 percent) due to relative lack of other assets.[408] However, withdrawing money from retirement accounts can incur tax and other penalties.[409]

African American business owners typically start their businesses with half the capital of white business owners despite the fact that they demonstrate a greater need for start-up financing. The median loan amount for African American business owners who are approved for credit is less than half of the loan amounts extended to their white counterparts.

Lower Business Ownership

Business ownership allows African Americans to participate in local, regional, and global markets from which they have historically been excluded due to systemic racism and discrimination.[410] Equity in a business is among one of the types of assets that are more unequally distributed by race.[411] Lower wealth for African Americans leads to lower business ownership and self-employment.[412] Studies have demonstrated the substantial wealth advantages to self-employment and have shown that those who become self-employed show much stronger gains in wealth compared to individuals who never become self-employed.[413]



This is especially true for Black business owners given that the median net worth for Black business owners is 12 times higher than Black non-business owners.[414] Further, Black business ownership is a viable path to creating wealth not only for Black business owners, but also for Black communities at large.[415] Most small businesses tend to hire from the community, which tends to create job opportunities for community residents.[416] Therefore, the success of Black-owned businesses is a critical path for economic empowerment in Black communities.[417]

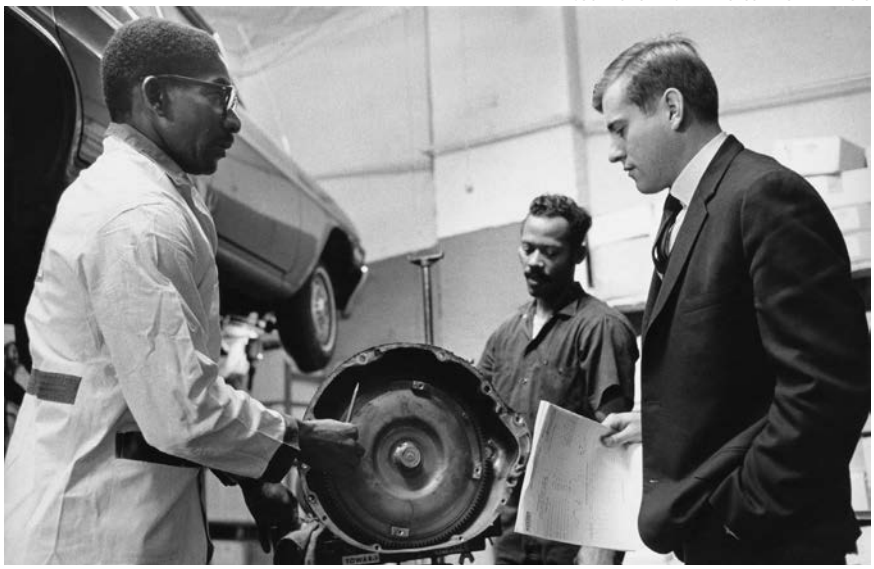
The Center for Financial Household Stability and the Federal Reserve Board of St. Louis have documented that, compared to white individuals, African Americans own fewer of their assets in the form of business assets.[418] In terms of market share, Black-owned businesses are significantly underrepresented in comparison to white and other minority-owned businesses.[419] In 2017, only 3.5 percent of all United States businesses were Black-owned compared to 81 percent white-owned.[420] Although Black business ownership has been steadily increasing in the United States, growth has been tremendously slow.[421] Several factors contribute to the racial disparity in American business ownership such as systemic barriers to securing start-up capital and the relatively small size of Black businesses.[422]

African Americans face many systemic barriers when seeking the social and financial capital necessary to start their own businesses that make it increasingly difficult for African American entrepreneurs to secure the financial capital necessary to launch or grow their own businesses.[423] As a result, African American business owners typically start their businesses with half the capital of white business owners despite the fact that they demonstrate a greater need for start-up financing.[424] According to Pepperdine's Private Capital Access Index report, approximately 80 percent of African American businesses sought financing for planned business growth or expansions compared to only 55 percent of all respondents.[425] Although African American businesses demonstrate a greater desire and need to secure financing, due to discriminatory lending practices, African American business owners receive lower loan amounts, and with less frequency than white business owners.[426] For example, the median loan amount for African American business owners who are approved for credit is less than half of the loan amounts extended to their white counterparts.[427]

Another barrier to the growth and development of African American businesses is the fact that, on average, the businesses owned by African Americans are smaller than those owned by white Americans.[428] A key factor for measuring the size of a business is whether the business has employees and statistics show that Black-owned businesses are much less likely to have employees than white-owned businesses.[429] In 2012, for example, 23.9 percent of businesses owned by white men had employees whereas only six percent of businesses owned by African American men had employees.[430] Although the size of a business has a significant influence on the profitability of a business, even Black-owned businesses with employees tend to be much less profitable than white-owned businesses with employees.[431] In 2014, 63.4 percent of white-owned businesses with employees indicated that they were profitable compared to the reported profitability of only 45.6 percent of Black-owned businesses with employees.[432] In addition, the top 100 Black-owned businesses combined earned less than $30 billion in 2014. Walmart earned $482 billion, or sixteen times that.[433]

The challenges faced by African American business owners were further exacerbated by the economic hardships

COURTESY OF ARCHIVE PHOTOS VIA GETTY IMAGES



First Black Owned Aamco Transmission Franchise (c. 1970)

caused by the COVID-19 pandemic.[434] The Federal Reserve Bank of New York reports that about 58 percent of Black-owned businesses were at risk of financial distress before the pandemic, compared to approximately 27 percent of white-owned businesses.[435] The financial instability experienced by Black-owned businesses made these businesses particularly vulnerable at the onset of the pandemic.[436] According to a report by the House Committee on Small Business, Black business ownership declined approximately 40 percent, more than any other racial group, during the first few months of the pandemic.[437] Black business owners such as Richard Anderson, the owner of Kinfolk Brass Band and Music Group, experienced significant economic distress as a result of the pandemic.[438] Before the pandemic, Kinfolk Brass Band was one of the most popular bands in New Orleans and frequently performed at weddings and music festivals around the world.[439] However, lockdown measures enacted to reduce the spread of COVID-19 forced all large events and gatherings to cease.[440] Without any events to perform at, Kinfolk Brass Band and its band members, including owner Richard Anderson, suffered a significant loss of income in 2020.[441]

During the housing crisis of the 2000s, California had the country's highest foreclosure rates, with Los Angeles leading the state. African American household foreclosure rates were 1.9 times that of white Americans, due to discriminatory banking practices.

California

African American Californians are much more likely to be renters and much more likely to be housing cost-burdened. For instance, 58.4 percent of African American Californians are renters versus 34.1 percent for white Californians.[442] African American Californians less likely to have access to the credit and housing stability that owning a home can provide in a crisis.[443] Homeownership for African American Californians lags behind the nationwide African American homeownership rate—33.3 percent versus 44 percent nationally in 2019.[444]

63 percent of white Californians own their homes, while only 33 percent of African American Californians do.[445] Homeownership rates for African American households have fallen every decade for the last 30 years, both unconditionally and after controlling for income and demographics.[446] African American Californians face higher priced loans, more predatory lending, and more risk.[447] During the housing crisis of the 2000s, California had the country's highest foreclosure rates, with Los Angeles leading the state.[448] African American household foreclosure rates were 1.9 times that of white Americans, likely due to increased targeting of minority communities for predatory lending as discussed above.[449]

African American Californians have less non-liquid assets. African Americans in Los Angeles own fewer stocks, mutual funds, investment trusts, individual retirement account and/or private annuity than white Angelinos.[450] Eighteen percent of U.S.-born Black households in Los Angeles do not have a car, the lowest of all reported ethnicities.[451] While Californians, in general, face long commute times, African American Californians in Los Angeles, on average, have a 7.5 percent longer commute.[452]

In Los Angeles, 11.7 percent of white households own a business versus 3.1 percent of African American households.[453]

V. Effects of Wealth Gap

The harmful effects of the wealth gap, which cascade across generations, have resulted in racial differences in the capacity of African Americans to transmit resources across generations and lower financial resilience during crisis, and discriminatory tax structures.

Fewer Intergenerational Wealth Transfers

Lower assets of African Americans means that intergenerational wealth transfers are less likely and tend to be smaller. Inheritance, intergenerational wealth transfers, or parental wealth are primary sources of the capacity for sustained wealth building.[454] Wealth, more than income, can be used to invest in appreciating assets for children, such as a college education, an unpaid internship in a high rent city, a new business, a property in a better residential neighborhood, or a job in the family firm.[455] Without wealth transfers, regardless of income, these assets are harder to attain.[456]

The fewer resources the older generation has to transfer to the next, the lower the wealth position attained by the

younger generation.[457] At least 26 percent of an adult's wealth position is directly due to inheritance or gift money—a conservative estimate. The true effect could be as high as 50 percent.[458] Greater familial assistance contributes to white families' greater ability to buy better housing and get better deals on mortgages earlier in life, further compounding the homeownership and wealth gap and giving white families better security in crisis.[459] An Urban Institute study estimates that the shortfall in large gifts and inheritances accounts for 12 percent of the Black-white wealth gap.[460]

Between 26-50 percent of an adult's wealth position is directly due to inheritance or gift money. Larger family contributions earlier in life help white families buy better houses and get better mortgages, and create better financial security to combat a crisis.

The impact of fewer intergenerational transfers is reflected in the wealth gap between African American and white American millennials. While the typical white millennial family has about $88,000 in wealth, the typical African American millennial family has only about $5,000 in wealth. White millennial families made huge strides between 2016 and 2019, and they now lag previous generations of white families by only about five percent.[461] Between 2007 and 2019, however, African American millennials fell further and further behind—not just compared with white millennials, but compared with previous generations of African Americans.[462] While white millennials trail the wealth of previous generations of white Americans by only five percent, African American millennials trail previous generations of African Americans by 52 percent.[463] The typical African American millennial has $5,700 less in net worth than counterparts in previous generations.[464]

There are several reasons for these deep disparities between African American and white millennials.[465] First, white millennials are more likely to benefit from having wealthy parents. Greater familial assistance contributes to white families' greater ability to buy better housing and get better deals on mortgages earlier in life, further compounding the homeownership and wealth gap and giving white families better security in crisis.[466] Their parents have more resources, for example, to help them with down payments on their first house or to help them pay off their student loans.[467] About 80 percent of African American millennials with at least a bachelor's degree still have student loan debt, compared with about half of white millennials. White millennials are also more likely to own assets like stocks and homes, which have ballooned in value in recent years.[468] While about two-thirds of white millennials own homes, less than a third of African American millennials own homes.[469]

In 2019, 71.9 percent of white families expected that they could get $3,000 from friends or family during a crisis, versus less than 40.9 percent of African American families. Lack of access to liquid assets can also force people into financially risky options during a crisis, such as taking out predatory payday loans or high-interest credit card debt.

Lower Financial Resilience during Crisis

Support from family networks can provide a "private safety net" to aid with cash transfers, housing, or childcare in times of material hardship.[470] Cash transfers can provide additional income, multigenerational housing can provide shelter, and family-provided childcare can permit a parent to work and earn income as well as avoid childcare expenses.[471] For example, during the COVID-19 pandemic, almost a quarter of renters borrowed money from friends or family.[472]

While African Americans receive assistance from family members at high rates, their overall tendency to lack resources may reduce the available quantity of such assistance, and may result in economic harm to the giver.[473] African American families are more likely than white families to have high-poverty family networks and more likely to make repeated cash transfers, which hinders their ability to accumulate wealth.[474]

For example, in 2019, 71.9 percent of white families expected that they could get $3,000 from friends or family during a crisis, versus less than 40.9 percent of African American families.[475] While new African American mothers are more likely to live in a relative's home, host a family member, and give or receive money than white mothers, helping family members in poverty may have negative consequences for struggling families.[476]

A pre-pandemic study found that while 31.7 percent of white households are liquid-asset poor (meaning that they could not use their savings to live for three months at the federal poverty rate), 62.7 percent of African American households are.[477] And a 2020 study found that 36 percent of white families had enough savings to cover six months of expenses, versus 14 percent of African American families.[478] In one February 2021 survey of "disadvantaged workers," 42 percent of white households reported that they could not pay for a $400 emergency expense without taking on additional debt, drawing down retirement accounts, or selling items, compared to 59 percent of African American households.[479]

African Americans are more likely to suffer from economic crises such as the COVID-19 pandemic. For example, a June 2020 survey found that while only 27 percent of white households had experienced financial hardship as a result of the pandemic, 40 percent of African American households had.[480] In addition, lack of access to liquid assets can also force people into financially risky options during a crisis, such as taking out predatory payday loans or high-interest credit card debt.[481] Lack of access to liquid assets can also make it harder to afford food and rent.[482] June 2020 census data showed that, among households where a job was lost during the COVID-19 pandemic, 31 percent of African American households lacked sufficient food in the prior week, compared to 12 percent of white households.[483] The data also showed that, compared to white renters, African American renters were less likely to have paid their rent in the previous month and more likely to predict that they would not be able to make their next rent payment.[484] In a May 2020 survey, African American respondents were more than twice as likely as white respondents to report missing a credit card, utility, internet, rent, mortgage, or other "important payment" since the beginning of the pandemic.[485] African American families with liquid assets also use them up more rapidly than white families during a crisis.[486] African American families with emergency savings at the start of the pandemic were twice as likely as white households to have needed to use them by May, and more than twice as likely to have already spent at least a quarter of their savings.[487]

Discriminatory Tax Structures

More than 50 years after the passage of the Civil Rights Act, many wealth-building policies still continue to heavily favor households that do not need help building wealth—mostly wealthy, predominantly white households—while doing little or nothing for low-wealth African American households, among other households of color.[488] The largest and most powerful of these programs operate through the U.S. tax code.[489]

These federal tax programs overwhelmingly favor building the wealth of the wealthy, and has contributed to the extreme rise in overall wealth inequality over the past several decades.[490] Tax policies have drastically different impacts on African American and white families and many were created during a time when African American families paid into the system without having the same legal rights to live, work, marry, vote, or receive an education as their white peers.[491]

The modern income tax system traces its roots to the Revenue Act of 1913, which instituted a progressive income tax system where tax rates increase as income increases but did not envision African Americans as taxpayers at all.[492] Even as African Americans eventually paid into the tax system after amendments and several new laws, they were unable to reap its benefits.[493] Today, African Americans are paying more in taxes than their white peers because U.S. tax laws were designed with white Americans in mind.[494]

The federal government has spent more than $8 trillion in the past twenty years on tax programs to help families build long-term wealth through saving for retirement, buying a home, starting a business, or accessing higher education.[495] This spending has resulted in the typical millionaire receiving about $145,000 in public tax benefits to grow their wealth, while working families get a total average of $174.[496]

Although the Internal Revenue Service does not collect race or ethnicity data, recent research indicates that the overwhelming amount of the federal tax benefits goes to white households at all income levels.

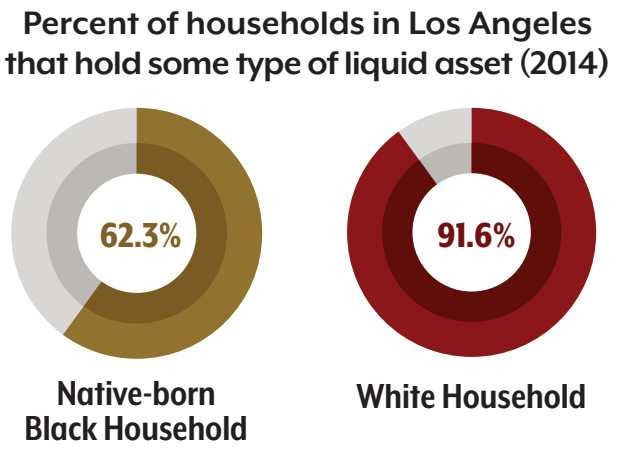
Although the Internal Revenue Service does not collect race or ethnicity data, recent research indicates that overwhelming amount of the spending the federal government does through the tax code goes to white households at all income levels.[497] Examining individuals earning $103,466 or more reveals that white people accounted for 79 percent of those respective

filers, while African American people accounted for only six percent.[498] These individuals also took greater advantage of high-value tax benefits, which cost the government hundreds of billions of dollars each year. For example, in 2012, white people made up 83 percent of the residents in the ZIP codes with the highest percentage of tax returns reporting capital gains and mortgage interest deductions.[499] But, African Americans made up just three percent of residents in the ZIP codes reporting the highest rates of capital gains income and six percent of residents in ZIP codes reporting the highest rates of mortgage interest deductions. These two tax programs together cost the federal government more than $100 billion during that year.[500]

California

In California, Los Angeles provides a stark version of nationwide racial disparities in liquid assets accessible during a crisis.[501] A 2014 study of the Los Angeles metro area found that the median value of liquid assets for U.S.-African American households was $200, compared to $110,000 for white households.[502]

While 91.6 percent of white households had some kind of liquid asset, only 62.3 percent of U.S.-born African American households did. Further, 90.1 percent of white households had a checking account, versus 68.1 percent of U.S.-born African American households.[503] In addition, 71.9 percent of white households had a savings account, versus 55.5 percent of U.S.-born African American households.[504] While 40.7 percent of white households had stocks, mutual funds, or investment trusts, only 21.5 percent of U.S.-born African American households did.[505] Finally, 63.6 percent of white households had an individual retirement account or private annuity, versus 37.9 percent of U.S.-born African American households.[506]



In California, many current state tax policies benefit Californians with higher incomes and wealth—predominantly white and Asian Californians—and give little to no benefits to other Californians, including African American Californians.[507] For example, many tax benefits are only available to those who opt to itemize their tax deductions, and people who itemize tend to have higher incomes. California's four largest personal income tax deductions provide most benefits to families with incomes over $100,000, while providing nearly no benefits to those with incomes below $20,000.[508] African American Californians are more likely to have low incomes, so they are less likely to benefit from these tax breaks.[509]

California's several tax benefits for homeowners, including the deductions for mortgage interest and property taxes, are also unlikely to benefit African American Californians who have been blocked from homeownership through racist policies and practices, often lack funds for a down payment, and have lower value homes due to residential segregation and racist appraisal practices.[510]

VI. Conclusion

The legacy of slavery continues to reach into the lives of African Americans today. For hundreds of years, the American government at the federal, state, and local levels has systematically prevented African American communities from building, maintaining, and passing on wealth due to the racial hierarchy established to maintain enslavement.

Segregation, racial terror, harmful racist neglect, and other atrocities in nearly every sector of civil society have inflicted harms, which cascade over a lifetime and compound over generations. As a result, African Americans today experience a large and persistent wealth gap when compared to white Americans. Addressing this persistent racial wealth gap means undoing long-standing institutional arrangements that have kept African American households from building and growing wealth at the same rate as white households to the present day.

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[478] Bhutta et al., *supra*.

[479] Akabas et al., *supra.*

[480] Gladstone et al., *supra*.

[481] Watkins and Akabas, *The Savings Gap for Americans is A Key Component of Economic Stability – Here's what we Can Do About it* (July 1, 2020) Bipartisan Policy Center (as of Aug. 18, 2021).

[482] *Ibid.*

[483] Gladstone et al., *supra*.

[484] *Ibid.*

[485] *Ibid.*

[486] *Ibid.*

[487] *Ibid.*

[488] Asante-Muhammad, et al, Corporation for Economic Development, *The Ever-Growing Gap: Without Change, African-American and Latino Families Won't Match White Wealth for Centuries* (Aug. 2016), (as of Apr. 11, 2022).

[489] *Ibid.*

[490] *Ibid.*

[491] Brown, The Whiteness of Wealth (2021) p. 16.

[492] *Id.* at p. 12.

[493] *Id.* at pp. 14-15.

[494] *Id.* at p. 21.

[495] Asante-Muhammad, et al, *supra*, p. 17.

[496] *Ibid.*

[497] *Id.* at p. 18.

[498] *Ibid.*

[499] *Ibid.*

[500] *Ibid.*

[501] De La Cruz-Viesca et al., The Color of Wealth in Los Angeles, *supra*.

[502] *Id.* at p. 38.

[503] *Id.* at p. 25.

[504] *Ibid.*

[505] *Id.* at p. 6.

[506] *Id.* at pp. 6-7.

[507] *Ibid.*

[508] *Id.* at p. 4.

[509] *Ibid.*

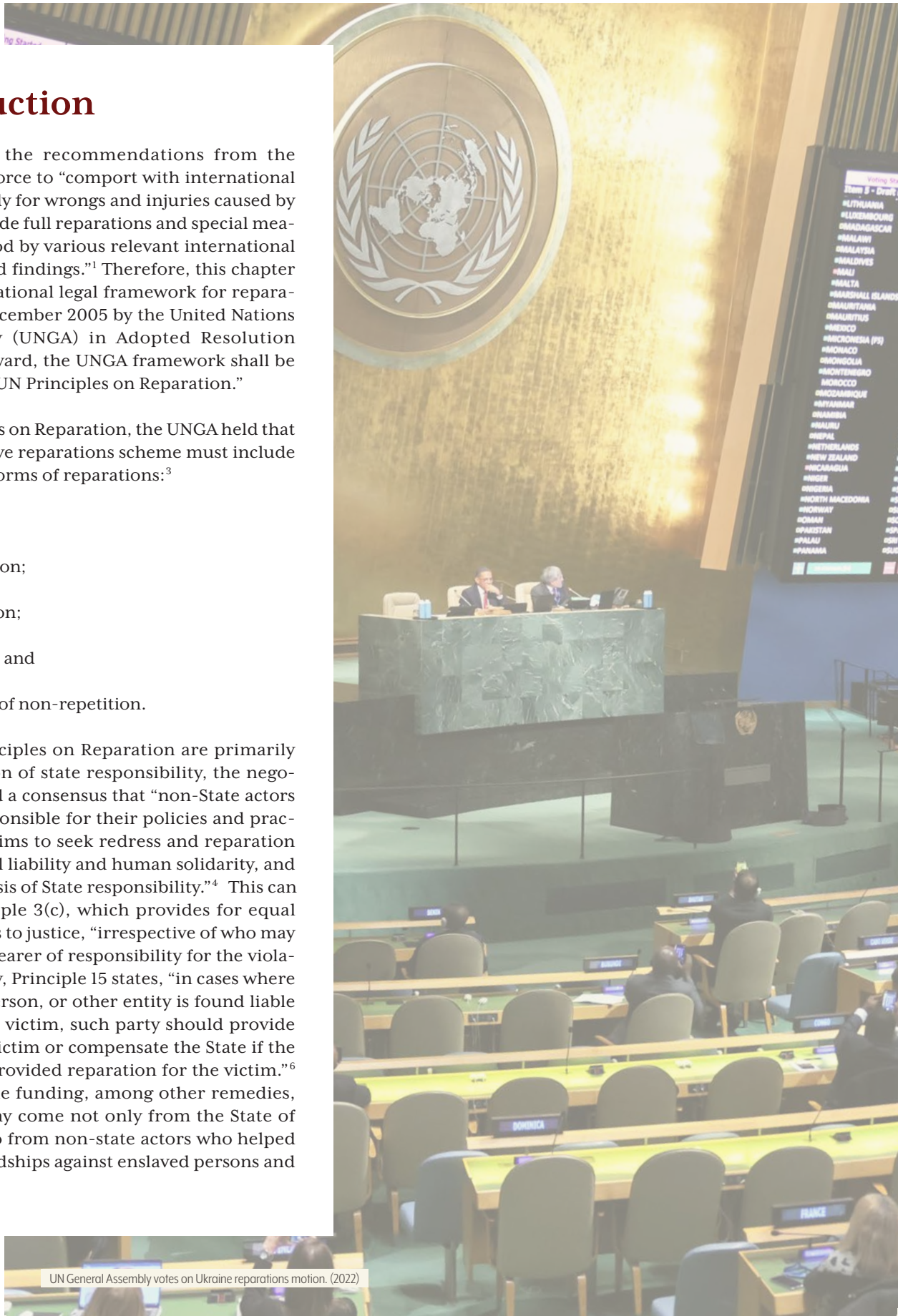
[510] *Id.* at p. 5.

PART II

INTERNATIONAL PRINCIPLES OF REPARATION AND EXAMPLES OF REPARATIVE EFFORTS

CHAPTER 14 International Reparations Framework

COURTESY OF MICHAEL M. SANTIAGO VIA GETTY IMAGES



UN General Assembly votes on Ukraine reparations motion. (2022)

I. Introduction

AB 3121 required the recommendations from the Reparations Task Force to "comport with international standards of remedy for wrongs and injuries caused by the state, that include full reparations and special measures, as understood by various relevant international protocols, laws, and findings."[1] Therefore, this chapter lays out the international legal framework for reparations created in December 2005 by the United Nations General Assembly (UNGA) in Adopted Resolution 60/147.[2] Going forward, the UNGA framework shall be referred to as the "UN Principles on Reparation."

In the UN Principles on Reparation, the UNGA held that any full and effective reparations scheme must include the following five forms of reparations:[3]

1. Restitution;
2. Compensation;
3. Rehabilitation;
4. Satisfaction; and
5. Guarantees of non-repetition.

While the UN Principles on Reparation are primarily based on the notion of state responsibility, the negotiators also reached a consensus that "non-State actors are to be held responsible for their policies and practices, allowing victims to seek redress and reparation on the basis of legal liability and human solidarity, and not [just] on the basis of State responsibility."[4] This can be found in Principle 3(c), which provides for equal and effective access to justice, "irrespective of who may ultimately be the bearer of responsibility for the violation."[5] Additionally, Principle 15 states, "in cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation for the victim."[6] This means that the funding, among other remedies, for reparations may come not only from the State of California, but also from non-state actors who helped perpetuate the hardships against enslaved persons and their descendants.

II. International Legal Framework for Reparations

Overview

This section sets forth the legal framework for reparations under international law, specifically the UN Principles on Reparation, "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."[7]

Who Qualifies for Reparations Under the UN Principles on Reparation?

According to the international legal framework laid out by the UN Principles on Reparation, victims of gross violations of international human rights law and serious violations of international humanitarian law should be provided with full and effective reparations.[8]

The UN Principles on Reparation define victims as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law."[9] Furthermore, "the term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."[10] Additionally, "a person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim."[11]

According to the ICJ, a "victim is not only the person who was the direct target of the violation, but any person affected by it directly or indirectly."

In its 2018 practitioners' guide on "The Right to a Remedy and Reparation for Gross Human Rights Violations," the International Commission of Jurists (ICJ) highlighted that the word "victim" has many different meanings across international human rights systems.[12] However, the ICJ specified that for purposes of the UN Principles on Reparation, the definition of "victim" was meant to be broad.[13] According to the ICJ, a "victim is not only the person who was the direct target of the violation, but any person affected by it directly or indirectly."[14] The ICJ cited how certain authorities "disfavor the distinction between direct and indirect victims," so "reparations [programs] should use a wide and comprehensive definition of 'victim' and should not distinguish between direct and indirect victims."[15] A comprehensive definition of the word "victim" should include family members who have endured "unique forms of suffering as a direct result" of what happened to their loved ones.[16]

What Constitutes Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Under the UN Principles on Reparation?

While the UN Principles on Reparation did not formally define either "gross violations of international human rights law" or "serious violations of international humanitarian law," the ICJ elucidated the definitions of these terms.[17] Specifically, the ICJ defined "gross violations" and "serious violations" collectively as the "types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person."[18] The ICJ's examples of gross and serious violations include "genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination."[19] The ICJ also held that "harm should be presumed in cases of gross human rights violations."[20]

What Are Victims' Rights to Remedies Under the UN Principles on Reparation?

Victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to certain remedies under international law:

a. Equal and effective access to justice;

b. Adequate, effective and prompt reparation for harm suffered;

c. Access to relevant information concerning violations and reparation mechanisms.[21]

According to the UN Human Rights Committee, the right to an effective remedy necessarily entails the right to reparation[22] An effective remedy refers to procedural remedies whereas the right to reparation refers to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In short, victims are entitled to have effective procedural remedies available to them, which will in turn help them receive the reparations to which they are entitled. To provide effective access to justice, a state must "establish functioning courts of law or other tribunals presided over by independent, impartial and competent individuals exercising judicial functions" and have "competent authorities to enforce the law and any such remedies that are granted by the courts and tribunals." [23]

What Must Full and Effective Reparations Include Under the UN Principles on Reparation?

According to the international legal framework laid out by the UN Principles on Reparation, full and effective reparations must include: (1) Restitution; (2) Compensation; (3) Rehabilitation; (4) Satisfaction; and (5) Guarantees of non-repetition.[24]

Restitution

"Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property." [25]

According to the ICJ's interpretation of the UN Principles on Reparation, where a state can return a victim to the status quo, the state has "an obligation to ensure measures for its restoration."[26] However, even though restitution is considered the primary form of reparation, the ICJ acknowledges that "in practice [restitution] is the least frequent, because it is mostly impossible to completely return [a victim] to the situation [they were in] before the violation, especially because of the moral damage caused to victims and their relatives."[27] So, the ICJ holds that where complete restitution is not possible, as will often be the case, the state must "take measures to achieve a status as approximate as possible."[28]

Compensation

"Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

a. Physical or mental harm;

b. Lost opportunities, including employment, education and social benefits;

c. Material damages and loss of earnings, including loss of earning potential;

d. Moral damage;

e. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services." [29]

According to the ICJ's interpretation of the UN Principles on Reparation, compensation is "the specific form of reparation seeking to provide economic or monetary awards for certain losses, be they of material or immaterial, of pecuniary or non-pecuniary nature."[30] The ICJ highlighted compensation previously awarded by claims commissions for cases with claims of "material and immaterial damage" and especially for cases with claims of "wrongful death or deprivation of liberty."[31] The United Nations recognized a right to compensation "even where it is not explicitly mentioned" in a particular treaty, and the Human Rights Committee "recommends, as a matter of practice, that [s]tates should award compensation"[32] for state-sanctioned harms, based on the International Covenant on Civil and Political Rights.[33]

To provide effective access to justice, a state must "establish functioning courts of law or other tribunals presided over by independent, impartial and competent individuals exercising judicial functions" and have "competent authorities to enforce the law and any such remedies that are granted by the courts and tribunals."

It is important to note that international jurisprudence divides compensation into two categories: "material damages" and "moral damages."[34] Material damages include, among other things, loss of actual or future earnings, loss of movable and immovable property, and legal costs.[35] Per the UN Principles on Reparation, any reparation proposals involving compensation for material damages must cover "lost opportunities, including employment, education and social benefits."[36] Additionally, according to the European Court of Human Rights, in order for a victim to receive compensation, "there [generally] must be a clear and causal connection between the damage claimed by the applicant and the violation."[37] However, "as far as existence of material damage can be demonstrated, the award does not depend on whether the victim can give detailed evidence of the precise amounts, as it is frequently impossible to prove such exact figures."[38] Therefore, in the likely event that a victim lacks detailed information, "compensation [ought to be] granted on the basis of equity" as long as there is a "causal link between the violation and the damage."[39]

Per the UN Principles on Reparation, any reparation proposals involving compensation for moral damages must "encompass financial reparation for physical or mental suffering."[40] Since "this [type of] damage is not economically quantifiable, the assessment must be made in equity."[41] Furthermore, "since it is difficult to provide evidence for certain moral or psychological effects of violations, mental harm should always be presumed as a consequence of gross violations of human rights."[42] Finally, "for persons other than close relatives, harm may have to be shown so as to limit the number of persons who may claim compensation" but "the conditions for claiming compensation should not be impossible to meet."[43]

Rehabilitation

"Rehabilitation should include medical and psychological care as well as legal and social services." [44]

According to the ICJ's interpretation of the UN Principles on Reparation, "victims are entitled to rehabilitation of their dignity, their social situation and their legal situation, and their vocational situation."[45] Relying on the Convention Against Torture's assessment of rehabilitation, the ICJ also provided "rehabilitation must be specific to the victim, based on an independent, holistic and professional evaluation of the individual's needs, and ensure that the victim participates in the choice of service providers."[46] Furthermore, "the obligation to provide the means for as full rehabilitation as possible may not be postponed and does not depend on the available resources of the [s]tate."[47] Finally, rehabilitation "should include a wide range of inter-disciplinary services, such as medical and psychological care, as well as legal [rectification of criminal records or invalidation of unlawful convictions] and social services, community and family-oriented assistance and services; vocational training and education."[48]

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Satisfaction

"Satisfaction should include, where applicable, any or all of the following:

a. Effective measures aimed at the cessation of continuing violations;

b. Verification of the facts and full and public disclo-sure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

c. The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

d. An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

e. Public apology, including acknowledgment of the facts and acceptance of responsibility;

f. Judicial and administrative sanctions against persons liable for the violations;

g. Commemorations and tributes to the victims;

h. Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels." [49]

According to the ICJ's interpretation of the UN Principles on Reparation, satisfaction is a "non-financial form of reparation for moral damage or damage to the dignity or reputation" and can come in the form of a condemnatory judgment, the acknowledgment of truth, or the acknowledgment of responsibility and fault.[50] Satisfaction includes "the punishment of the authors of the violation."[51] Furthermore, "the UN Updated Principles on Impunity recommend that the final report of truth commissions be made public in full."[52] This is supported by the UN Human Rights Commission's resolution on impunity which recognizes that "for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including the accomplices, of these violations are essential steps towards rehabilitation and reconciliation."[53]

Another important factor when it comes to satisfaction is a public apology as well as a public commemoration.[54] The public apology is to help "in restoring the [honor], reputation or dignity of a [victim]."[55] The public commemoration "is particularly important in cases of violations of the rights of groups or a high number of persons, sometimes not individually identified, or in cases of violations that occurred a long time in the past."[56] A public commemoration "in these cases has a symbolic value and constitutes a measure of reparation for current but also future generations."[57]

Guarantees of non-repetition

"Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

a. Ensuring effective civilian control of military and security forces;

b. Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

c. Strengthening the independence of the judiciary;

d. Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

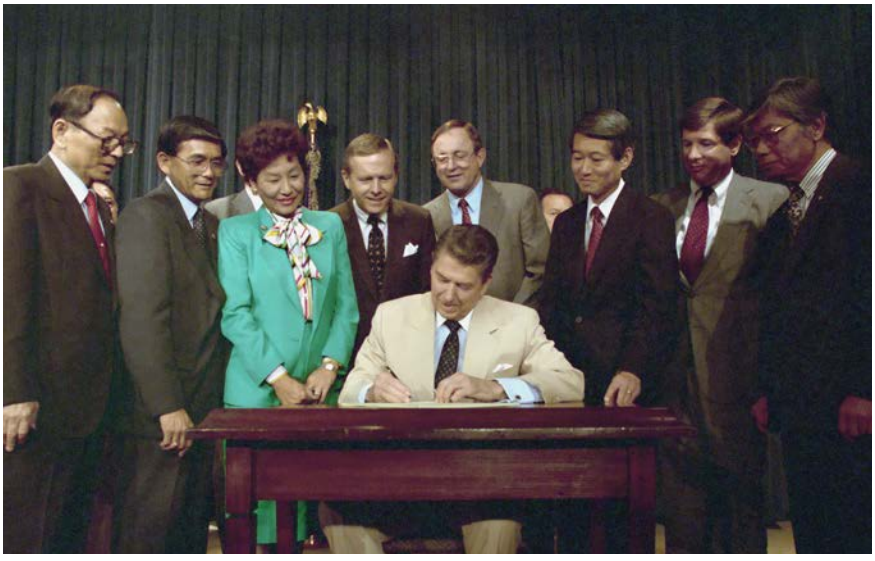
e. Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

f. Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

g. Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

h. Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."[58]

COURTESY OF NATIONAL ARCHIVES



President Ronald Reagan signs the Reparations Bill for Japanese-Americans. (1988)

According to the ICJ's interpretation of the UN Principles on Reparation, the guarantee of non-repetition derives from general international law.[59] A guarantee of non-repetition is an aspect of "restoration and repair of the legal relationship affected by the breach."[60] According to the International Law Commission, "[a]ssurances and guarantees are concerned with the restoration of confidence in a continuing

relationship."[61] Guarantees of non-repetition overlap with international human rights law because "States have a duty to prevent human rights violations."[62] A guarantee of non-repetition is "required expressly" as part of the "legal consequences of [a state's] decisions or judgments."[63] This express requirement is supported by the UN Commission on Human Rights, the Human Rights Committee, the Inter-American Court and Commission on Human Rights, the Committee of Ministers and Parliamentary Assembly of the Council of Europe, and the African Commission on Human and Peoples' Rights.[64] Another measure that falls under the guarantee of non-repetition is "the necessity to remove officials implicated in gross human rights violations from office."[65] Finally, a guarantee of non-repetition can and often must involve "structural changes" that must be "achieved through legislative measures" to ensure that the violations cannot ever happen again.[66]

International and National Genocide Framework

The term "genocide" was first coined by Raphael Lemkin, a Polish-Jewish jurist who advocated for legal protections for ethnic, religious, and social groups. In his 1944 book, *Axis Rule in Occupied Europe*, Lemkin wrote:

> By 'genocide' we mean the destruction of a nation or of an ethnic group. . . . Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.[67]

A guarantee of non-repetition can and often must involve "structural changes" that must be "achieved through legislative measures" to ensure that the violations cannot ever happen again.

Lemkin argued for international law to recognize genocide as a crime, and in 1948, the United Nations General Assembly passed the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).[68] The Genocide Convention has since been ratified by 153 states.[69]

COURTESY OF MARVIN BOLOTSKY/UN PHOTO

The Convention on the Prevention and Punishment of Genocide received the necessary numbers of instruments of ratification or accession to permit it to be brought into force. (1950)

As the United Nations has noted, the "popular understanding of what constitutes genocide tends to be broader" than as it is legally defined.[70] The Genocide Convention defines genocide with a mental element (*mens rea*) and a physical element (*actus reus*).[71] For the mental element, a perpetrator must have the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.[72] The physical element is described as the act of killing or causing serious bodily or mental harm, the imposition of measures intended to prevent births within such group, the deliberate inflicting of conditions of life calculated to bring about the group's physical destruction, or the forcible transferring of children of the group to another group.[73] The Genocide Convention does not specify a punishment for genocide, only that persons charged with genocide "shall be tried by a competent tribunal of the [s]tate in the territory of which the act was committed" or by an international tribunal with jurisdiction over the territory.[74]

The 1948 Genocide Convention takes the position that "cultural destruction does not suffice, nor does an intention to simply disperse a group," as genocide.[75] Prior to the passage of the Genocide Convention, the United Nations had passed a resolution defining the crime of genocide as "a denial of the right of existence of entire human groups" with no mention of intent.[76]

After "intense political brokering" by United States officials who feared being accused of genocide for the United States' treatment of African Americans and for government officials' involvement in lynchings and participation in the Ku Klux Klan, the 1948 Genocide Convention was adopted without mention of cultural destruction and with the added mental element requiring demonstration of intent.[77]

Although then-President Harry Truman's administration supported the Genocide Convention during its development in the United Nations, it encountered strong resistance in Congress and among academics over concerns of domestic sovereignty. A representative of the American Bar Association criticized the Convention on the grounds that it could be used to classify attacks on individual African Americans as "genocide."[78] As a result, the Genocide Convention was not ratified during Truman's term. The next administration, under President Dwight Eisenhower, withdrew executive branch support for the Convention for domestic political reasons.[79] Presidents John F. Kennedy and Lyndon Johnson took no action to reverse course, and when President Richard Nixon endorsed ratification, Senate hearing witnesses again raised warnings that the Convention could expose the United States to foreign judgment on racial issues and on America's military behavior in Vietnam.[80]

COURTESY OF CORBIS HISTORICAL VIA GETTY IMAGES

The long struggle for ratification of the Geneva Convention began with President Truman and was finally realized with President Reagan nearly 40 years later. From left to right are President Ronald Reagan and former presidents Gerald Ford, Jimmy Carter and Richard Nixon. (1981)

Finally under President Ronald Reagan, nearly 40 years after the United Nations approved the Genocide Convention, the United States implemented legislation to ratify the Convention, with the Genocide Convention Implementation Act of 1987 (Genocide Act), becoming the 98th nation to do so.[81] The Genocide Act added the crime of genocide to the federal criminal code, but with a more heightened intent requirement than is found in the Genocide Convention. Under the Genocide Act, the offense of genocide is committed when an individual, with "the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group," kills members of that group, causes serious bodily injury or permanent mental impairment through drugs, torture, or similar techniques to members of that group, imposes measures intended to prevent births within the group, subjects members of the group to conditions of life that are intended to cause the physical destruction of the group, or forcibly transfers children of the group to another group.[82] To be covered by the statute, the offense must be committed within the United States or be committed by a person who is a citizen or permanent resident of the United States, a stateless person whose habitual residence is in the United States, or present in the United States.[83] A person who attempts or conspires to commit the offense of genocide faces the same punishment as one who completes the offense.[84]

When the acts perpetrated upon African Americans have been committed with the intent to destroy them, in whole or in part, as a group, African Americans have been victims of genocide, as the Genocide Convention defines the term.

Genocide scholars have developed other frameworks outside of the narrow legal frameworks of the Genocide Convention and the Genocide Act. For example, in his early writings on genocide, Lemkin viewed genocide as a process, rather than an event, that involved "one destruction of the national pattern of the oppressed groups; the other, the imposition of the national pattern of the oppressor," a view that encompasses "structural" genocide.[85] Since the 1960s, scholars have developed the conception of genocide as encompassing structural and institutional violence; this type of violence can include discrimination by institutions, the globalization of food systems that lead to poverty and starvation, and the effects of internal colonialism by government institutions on indigenous populations.[86] Cultural genocide (known as "ethnocide"),[87] also derived from Lemkin's early writings,[88] encompasses "the destruction of a group's cultural, linguistic, and existential underpinnings, without necessarily killing members of the group."[89]

Applicability to African Americans

When the acts perpetrated upon African Americans have been committed with the intent to destroy them, in whole or in part, as a group, African Americans have been victims of genocide, as the Genocide Convention defines the term. While the intent requirement is understood to be the more difficult element of genocide to prove,[90] a number of scholars regard the acts committed by the United States federal government, state and local governments, and its citizens against African Americans, from enslavement onward, as constituting genocide under the Convention.[91] When alternative frameworks for understanding genocide are employed, there is less room for debate that genocidal acts have been committed against African Americans in the United States. African Americans for centuries have suffered harms and atrocities, inflicted on the basis of race and without regard for their humanity. Slavery inflicted death and serious bodily and mental harms,[92] and the trafficking of enslaved people caused the "forcible transfers of children" from their families to plantations unknown.[93] The Ku Klux Klan and others committed innumerable

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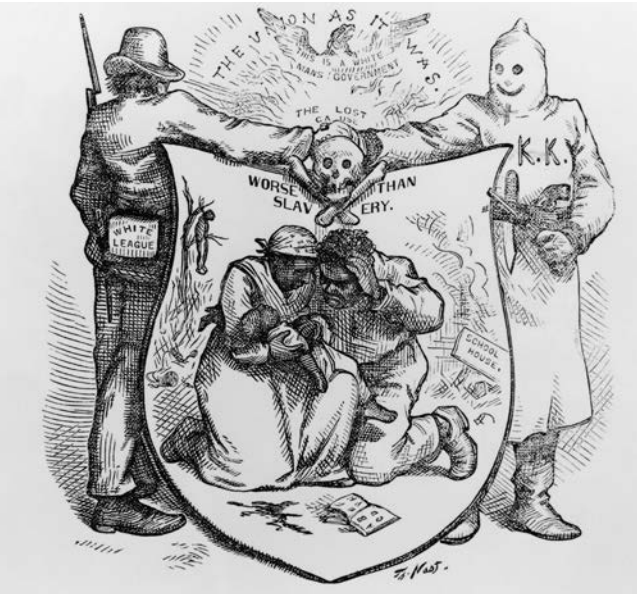

Engraving of White League and Ku Klux Klan Figures joining hand over an escutcheon showing crouching Black family with heading 'Worse Than Slavery' by Thomas Nast in Harpers Weekly. (c. 1874)

lynchings and systematically visited racial terror against African Americans, killing and causing serious bodily harm while government officials participated or turned a blind eye.[94] By 1931, at least 30 states had passed eugenics laws that deliberately targeted African Americans for involuntary sterilization, an imposition of "measures intended to prevent births."[95]

Acts against African Americans that constitute genocide when committed with the requisite intent continued after the United States ratified the Genocide Convention. To this day, the American legal system continues to over-police African American communities, disproportionately kill and commit acts of violence against African Americans, and disproportionately imprison and execute African Americans, causing serious physical and mental impairment and having the effect of separating families and preventing births.[96] Although the last recorded lynching in the United States was in 1981, the civil rights organization Julian has identified at least eight suspected lynchings in Mississippi alone since 2000.[97] Seven of these deaths were by hanging and each ruled as a suicide by law enforcement, despite suspicious circumstances; the other was a racially-motivated beating of an African-American man by a group of 10 white teenagers.[98] Academics have also identified the involuntary sterilization of African American women through welfare incentive programs in the 1990s as an example of a violation of the Genocide Convention—specifically, its prohibition against the systemic elimination of specific populations.[99]

The framing of the United States' treatment of African Americans as a genocide is not new. Even before the Genocide Convention, in 1946, the National Negro Congress delivered an eight-page petition (1946 Petition) to the U.N. Secretary-General asking him to take action to address the subjugation of African Americans, particularly in the South, where 10 million Black people lived in deplorable conditions.[100] Although the U.N. declined to act, the 1946 Petition successfully drew attention to the plight of African Americans.[101]

Further, on October 23, 1947, in order to spur the United States government's slow pace of racial reform, the NAACP, led by W.E.B. Du Bois, presented U.N. officials with a 95-page "Appeal to the World!" (1947 Petition). Intended as an improvement of the 1946 Petition[102] Du Bois framed the petition as "a frank and earnest appeal to all the world for elemental justice against the treatment which the United States has visited upon [African Americans] for three centuries."[103] The detailed 1947 Petition lambasted the United States for denying a host of human rights to its African American minority population and garnered much more attention than the previous 1946 Petition.[104] Du Bois sought support from First Lady Eleanor Roosevelt, a member of the American delegation to the United Nations, but Roosevelt informed him that the matter was "embarrassing" to the State Department and that "no good could come from such a discussion."[105] Although Du Bois extensively publicized the petition, providing a copy to each U.N. ambassador with a request that the topic be placed before the General Assembly, no U.N. committees or commissions took action.[106]

Next, in December 1951, less than a year after the Genocide Convention went into effect, the Civil Rights Congress, a civil rights organization fighting discrimination in the United States,[107] headed by Paul Robeson and William L. Patterson, presented a 240 page petition entitled *We Charge Genocide* (1951 Petition) to the United Nations.[108] *We Charge Genocide*, one of the very first petitions presented to the United Nations on the subject of genocide, detailed 152 lynchings and 344 other crimes of violence towards African Americans by lynch mobs and police between 1945, the year the U.N. was established, and 1951, in addition to the thousands of crimes committed prior to 1945.[109] The 1951 Petition also emphasized the countless African Americans who died each year as a result of discrimination in health care, employment, education and housing.[110]

American representatives at the United Nations, including Eleanor Roosevelt, fiercely argued against the introduction of the 1951 Petition, claiming that the United States government was anti-discrimination and anti-segregation.[111] Partly to sway the United States to ratify the Convention he was lobbying for, the 1951 Petition was even dismissed by Lemkin himself. Lemkin portrayed the petition as a maneuver by "communist sympathizers" to divert attention from the genocide of "Soviet-subjugated people,"[112] though one scholar noted that *We Charge Genocide* presented America's violence against African Americans in a manner that was consonant with Lemkin's early writings, in which he presented a more holistic conception of genocide.[113] Other opponents similarly stigmatized the Civil Rights Congress as "disloyal" and the petition as "Communist propaganda."[114] In the face of opposition from the United States and the hostile environment created by the Cold War and the Red Scare, the United Nations refused to accept the 1951 Petition.[115]

In 1964, Malcolm X and the staff of the Organization of African-American Unity drafted a document entitled "Outline for Petition to the United Nations Charging Genocide Against 22 Million Black Americans" (1964 Petition) and enquired about procedural mechanisms to bring a genocide case in front of the U.N. Commission on Human Rights.[116] The 1964 Petition charged economic genocide, including the denial of fair housing and jobs, committed against African Americans as illustrative of "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" and segregation, discrimination, and racial terror as causing "serious mental harm" to African Americans, in violation of Articles II(b) and II(c) of the Genocide Convention.[117] The 1964 Petition further charged police, the Ku Klux Klan and White Citizens Councils with targeted killings on the basis of race, in violation of Article II, Section I of the Genocide Convention.[118] The 1964 Petition asserted that law enforcement and government officials were complicit in these acts of violence and also liable under Article III's ban on conspiracies and complicity to commit genocide.[119] Malcolm X was assassinated before he could present the 1964 Petition to the United Nations and it was not advanced after his killing.[120]

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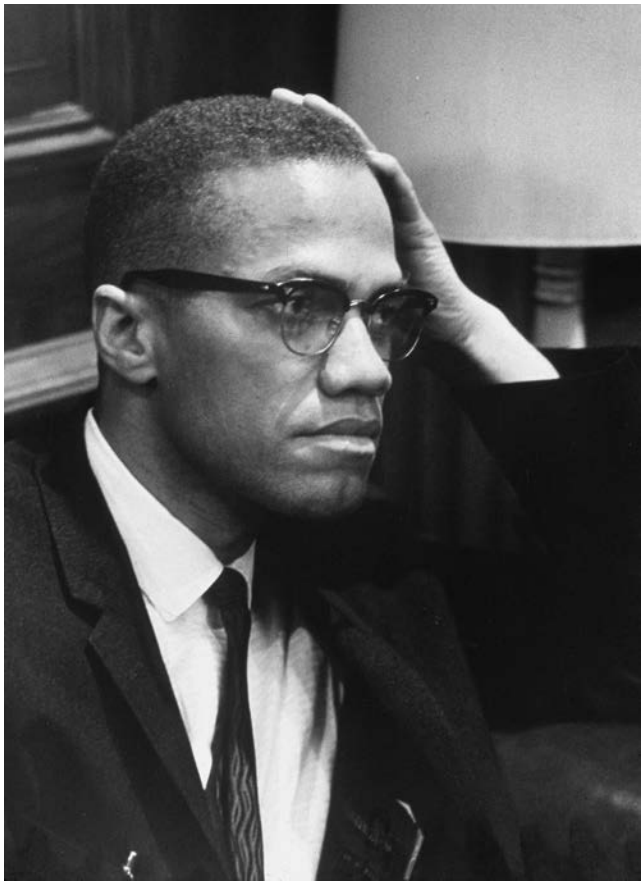

Malcolm X at a press conference given by Martin Luther King, Jr. (1964)

Nearly 60 years later, debate remains over whether the atrocities committed against African Americans fit within the *legal* framework set forth in the Genocide Convention and the Genocide Act.[121] The opponents of charging genocide claim that the specific intent to destroy African Americans required to legally prove genocide is too difficult to establish.[122] This can be unsurprising given the efforts the United States undertook to bring about a legal framework for genocide that would exclude its own conduct.[123] As one scholar notes, however, the dispute over the requirement of genocidal intent does not negate that the United States' "treatment of Black Americans before and after WW II satisfied the *actus reus* of genocide,"[124] meaning that the result of genocide still occurred, regardless of intent. *We Charge*

Genocide is richly supported by disturbing detail concerning the tens of thousands of Black men and women killed for no reason other than their race, the massive mental trauma caused by segregation and other legalized forms of discrimination, and the appalling conditions of life to which Black people were deliberately subjected.[125]

While cognizant of the legal definition's *mens rea* requirement, other scholars have identified the American system of slavery as genocide, pointing out that the institution of slavery and the trans-Atlantic slave trade, by "utilizing every genocidal strategy listed in the UN Genocide Convention's definition" inflicted

> *incalculable demographic and social losses. . . . The killing and destruction were clearly intentional, whatever the counter-incentives to preserve survivors of the Atlantic passage for labor exploitation. . . . If an institution is deliberately maintained and expanded by discernible agents, though all are aware of the hecatombs of casualties it is inflicting on a definable human group, then why should this not qualify as genocide?*[126]

Additionally, enslavers

> *were very much aware of the outcomes of their activities [demonstrating the intent required by the legal definition of genocide]. . . . [T]he traumatization of slaves was practiced, refined, and intentional. How to beat, abuse, torture, publicly humiliate, and terrorize slaves to control and motivate them to obey and work were the basis of endless discussion, exchange, consultation, and advisement among slave masters.*[127]

One scholar labeled slavery a "multi-generational holocaust" because the damage done by slavery, including abuse and trauma, "went on long enough and occurred frequently enough for post-traumatic stress disorder (PTSD) to become intrinsic to African American culture."[128]

Outside of the narrow legal frameworks of the United Nations and the United States, academics acknowledge that the cultural destruction, social death, and subjugation of African Americans has resulted in the equivalent of a cultural and social genocide.[129] Furthermore, even scholars who take the very narrow definition of genocide as framed in the Genocide Convention and Genocide Act nonetheless acknowledge that the United States' treatment of African Americans can be described as gross crimes against humanity including persecution, extermination, and apartheid.[130] Regardless of which definition of genocide is used, slavery and the slave trade, murder, kidnapping, rape, torture or other cruel, inhuman or degrading treatment or punishment as well as systematic racial discrimination—atrocities and harms that have purposefully and collectively been visited upon African Americans—are all recognized as "gross violations of international human rights law" or "serious violations of international humanitarian law" that warrant reparations.[131]

One scholar labeled slavery a "multi-generational holocaust" because the damage done by slavery, including abuse and trauma, "went on long enough and occurred frequently enough for post-traumatic stress disorder (PTSD) to become intrinsic to African American culture."

III. Statutes of Limitations

When it comes to reparations, there are no statutes of limitation. "Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law."[132]

Endnotes

[1] Gov. Code, § 8301.1, subd. (b)(3)(A).

[2] U.N. Gen. Assem., Adopted Resolution 60/147: 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 (Mar. 21, 2006) (as of May 18, 2023).

[3] *Id.* at pp. 7-9.

[4] Van Boven, *The United Nations 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* United Nations Audiovisual Library of International Law, at p. 3.

[5] Adopted Resolution 60/147: 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, *supra,* at p. 5.

[6] *Id.* at p. 7.

[7] *Id.* at p. 1.

[8] *Id.* at p. 7.

[9] *Id.* at p. 5.

[10] *Ibid.*

[11] *Id.* at p. 6

[12] Internat. Com. of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (Revised Edition, 2018), at p. 35 (as of May 18, 2023).

[13] *Id.* at p. 36.

[14] *Id.* at p. 34.

[15] *Ibid.*

[16] *Ibid.*

[17] *Id.* at p. xii.

[18] *Ibid.*

[19] *Ibid.*

[20] *Id.* at p. 42.

[21] Adopted Resolution 60/147: 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, *supra,* at p. 6.

[22] U.N. Human Rights Com., General Comment No. 31 (80), The Nature of the General Legal Obligation Imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights (Mar. 29, 2004) at p. 6,, par. 16 (as of May 18, 2023).

[23] *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, *supra,* at p. 55.

[24] *Id.* at pp. 24-25.

[25] *Id.* at pp. 162-163.

[26] Id. at p. 173

[27] *Ibid.*

[28] *Ibid.*

[29] Adopted Resolution 60/147: 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, *supra,* at pp. 7-8.

[30] *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, *supra,* at p. 174.

[31] *Id.* at p. 176

[32] *Id.* p. 177.

[33] *Ibid.*; U.N. Gen. Assem., International Covenant on Civil and Political Rights (Dec. 16, 1966) Res. No. 2200A (XXI), at Article 2(3)(a) (as of May 18, 2023).

[34] *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, *supra,* at p. 180.

[35] *Id.* at p. 181.

[36] *Id.* at p. 187.

[37] *Id.* at p. 182.

[38] *Id.* at p. 189.

[39] *Ibid.*

[40] *Id.* at p. 204.

[41] *Ibid.*

[42] *Ibid.*

[43] *Ibid.*

[44] Adopted Resolution 60/147: 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, *supra,* at p. 8.

[45] *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, *supra,* at p. 206.

[46] *Id.* at p. 207.

[47] *Ibid.*

[48] *Ibid.*

[49] Adopted Resolution 60/147: 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, *supra,* at p. 8.

[50] *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, *supra,* at pp. 207-209.

[51] *Id.* at p. 209.

[52] *Ibid.*

[53] *Id.* at p. 210; see also U.N. Human Rights Commission Resolutions: 2001/70, par. 8; 2002/79, par. 9; 2003/72, par. 8.

[54] *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, *supra*, at p. 211.

[55] *Ibid.*

[56] *Ibid.*

[57] *Ibid.*

[58] Adopted Resolution 60/147: 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, *supra,* at pp. 8-9.

[59] The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide, *supra,* at p. 135.

[60] *Id.* at p. 136.

[61] *Id.* at p. 137.

[62] *Ibid.*

[63] *Ibid.*

[64] *Id.* at pp. 138-139.

[65] *Id.* at p. 140.

[66] *Ibid.*

[67] U.S. Holocaust Memorial Museum, Holocaust Encyclopedia, *Coining a Word and Championing a Cause: The Story of Raphael Lemkin* (as of May 18, 2023).

[68] U.N. Office on Genocide Prevention and the Responsibility to Protect, Genocide (as of May 18, 2023).

[69] *Ibid.*

[70] *Ibid.*

[71] *Ibid.*

[72] U.N., Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948) (as of May 18, 2023).

[73] *Ibid.*

[74] *Ibid.*

[75] Genocide, *supra*.

[76] U.N. Gen. Assem., The Crime of Genocide (Dec. 11, 1946) Res. No. 96(1) (as of May 18, 2023).

[77] Hinton, *Black Genocide and the Limits of Law*, Opinio Juris (Jan. 13, 2022) (as of May 18, 2023).

[78] Martin, *Internationalizing "The American Dilemma": The Civil Rights Congress and the 1951 Genocide Petition to the United Nations* (Summer 1997) 16:4 J. of American Ethnic History 35, 43.

[79] *Id.* at p. 54.

[80] *Id.* at p. 55.

[81] Roberts, *Reagan Signs Bill Ratifying U.N. Genocide Pact*, N.Y. Times (Nov. 5, 1988) (as of May 18, 2023).

[82] See Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091, subd. (a)-(b), Pub.L. No. 100-606 (Nov. 4, 1988). The code was later amended to include a punishment by death. See Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 1091, Pub.L. No. 103-322 (Sept. 13, 1994).

[83] 18 U.S.C. § 1091, subd. (e).

[84] *Id.* at subd. (d).

[85] *Black Genocide and the Limits of Law*, *supra*; see also Jones, Genocide: A Comprehensive Introduction (3rd ed. 2017), at p. 89.

[86] *Id.* at pp. 27-28, 40.

[87] *Id.* at p. 22.

[88] See *id.*, at p. 10 ("Genocide does not necessarily mean the immediate destruction of a nation. . . . It is intended rather to signify a coordinate plan . . . with the aim of . . . disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups.").

[89] *Id.*, at p. 95.

[90] Genocide, *supra*.

[91] See Genocide: A Comprehensive Introduction, *supra*, at p. 115; James, *The Dead Zone: Stumbling at the Crossroads of Party Politics, Genocide, and Postracial Racism* (Summer 2009) 108:3 South Atlantic Q. 459, 460-467; Bowser, et al., *Ongoing Genocides and the Need for Healing: The Cases of Native and African Americans* (Dec. 21, 2021) 15:3 Genocide Studies and Prevention 83, 85.

[92] See California Task Force to Study and Develop Reparations Proposals for African Americans, *Interim Report* (June 2022), at pp. 59-64 (as of May 18, 2023).

[93] See *id.* at *pp.* 59-60.

[94] See *id.* at pp. 96-117.

[95] See *id.* at p. 407.

[96] See *id.* at pp. 377-389.

[97] Brown, *Lynchings in Mississippi Never Stopped*, Wash. Post (Aug. 8, 2021) (as of May 18, 2023); see, e.g., Julian, Willie (as of May 18, 2023).

[98] *Lynchings in Mississippi Never Stopped*, *supra*.

[99] Muhammad, *The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations* (2013) 3 Colum. J. Race & L. 147, 200 (as of May 18, 2023); see also Nolan, *The Unconstitutional Conditions Doctrine and Mandating Norplant for Women on Welfare Discourse* (1994) 3 Am. U. J. Gender & L. 15, 21, fn. 55 (as of May 18, 2023) (identifying state legislation that conditioned receipt of welfare benefits on Norplant use by mothers of beneficiaries, who at the time were disproportionately African American children in those states, and explaining that states did not fund Norplant removal despite a medical provider being needed to remove the implant).

[100] Hinton, *70 Years Ago Black Activists Accused the U.S. of Genocide. They Should Have Been Taken Seriously*, Politico (Dec. 26, 2021) (as of May 18, 2023).

[101] *Ibid.*

[102] *Ibid.*

[103] *Ibid.*; *Internationalizing "The American Dilemma": The Civil Rights Congress and the 1951 Genocide Petition to the United Nations*, *supra*, at pp. 38-39.

[104] *70 Years Ago Black Activists Accused the U.S. of Genocide. They Should Have Been Taken Seriously*, *supra*.

[105] *Internationalizing "The American Dilemma": The Civil Rights Congress and the 1951 Genocide Petition to the United Nations*, *supra*, at p. 39.

[106] *Id.* at p. 41.

[107] Encyclopedia Britannica, *Civil Rights Congress* (as of May 16, 2023).

[108] *70 Years Ago Black Activists Accused the U.S. of Genocide. They Should Have Been Taken Seriously*, *supra*.

[109] Glenn, *"We Charge Genocide" The 1951 Black Lives Matter Campaign*, U. of Wash. Mapping American Social Movements Project (as of May 18, 2023).

[110] *Ibid.*

[111] *Internationalizing "The American Dilemma": The Civil Rights Congress and the 1951 Genocide Petition to the United Nations*, *supra*, at pp. 50-51.

[112] *70 Years Ago Black Activists Accused the U.S. of Genocide. They Should Have Been Taken Seriously*, *supra*.

[113] *Ibid.* (referencing Moses, *Raphael Lemkin, Culture, and the Concept of Genocide*).

[114] *Internationalizing "The American Dilemma": The Civil Rights Congress and the 1951 Genocide Petition to the United Nations*, *supra*, at p. 56.

[115] *Id.* at p. 54; Genocide: A Comprehensive Introduction, *supra*, at p. 115.

[116] Nier, *Guilty as Charged: Malcolm X and His Vision of Racial Justice for African Americans Through Utilization of the United Nations Human Rights Provisions and Institutions* (1997) 16:1 Pa. State Intl. L. Rev. 149, 178-179.

[117] *Id.* at pp. 180-181.

[118] *Id.* at p. 181.

[119] *Id.* at pp. 181-182.

[120] *Id.* at p. 179.

[121] See Heller, *Is "Structural Genocide" Legally Genocide? A Response to Hinton*, Opinio Juris (Dec. 30, 2021) (as of May 18, 2023); Genocide: A Comprehensive Introduction, *supra*, at p. 114.

[122] *Ibid.*

[123] *Black Genocide and the Limits of Law*, *supra*.

[124] *Ibid.*, internal quotation marks omitted.

[125] *Ibid.*

[126] Genocide: A Comprehensive Introduction, *supra*, at p. 115.

[127] *Ongoing Genocides and the Need for Healing: The Cases of Native and African Americans*, *supra,*, at p. 85.

[128] *Id.* at p. 88.

[129] *Black Genocide and the Limits of Law*, *supra*.

[130] *Is "Structural Genocide" Legally Genocide? A Response to Hinton*, *supra*.

[131] Adopted Resolution 60/147: 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, *supra*, at p. 5.

[132] *Ibid.*

CHAPTER 15 Examples of Other Reparatory Efforts

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I. Introduction

AB 3121 directed that the Task Force address how its recommendations "comport with international standards of remedy for wrongs and injuries caused by the state, that include full reparations and special measures, as understood by various relevant international protocols, laws, and findings."[1] The preceding chapter provides an overview of the United Nations Principles on Reparations and the manner in which those principles have been interpreted. This chapter provides examples of reparatory efforts and special measures that preceded AB 3121 or that are ongoing. Examples of reparatory efforts by other countries are followed by such efforts in the United States at the federal, state, and local level.

The reparatory efforts detailed below are not exhaustive of those that have been completed or otherwise begun across the globe or elsewhere in the United States. For example, the Task Force heard testimony from representatives of numerous California localities that are in the process of endeavoring to craftmeasures for the harms and atrocities committed against African Americans who reside or previously resided in those jurisdictions, and the Task Force is aware of other similar efforts.[2] Also not included here are other reparatory efforts,[3] instances of litigation seeking reparations,[4] and reparatory efforts of private institutions such as universities that played an active role in or otherwise profited from enslavement.[5] The decision not to include these efforts at atonement does not reflect any judgment regarding their value.

Many a well-intentioned effort to provide reparations has fallen short of meeting the standard set by the United Nations. In fact, it is difficult to point to an example as to which there is universal agreement that the outcome was a model of fully satisfying all five of the elements that the United Nations requires for true reparations—namely, restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition.[6] Some point to the reparations made by Germany after World War II as the example that comes closest to doing so. Interestingly, those reparations were crafted more than 50 years before the United Nations issued its Principles on Reparations.

Japanese Americans walk among the incarceration sheds of the Manzanar War Relocation Center in Owens Valley (1942)

Many of the programs described in this chapter are thus more properly classified as racial equity measures rather than reparations. A not infrequent basis for this conclusion is where the monetary component of the reparatory effort has fallen short of being commensurate with the nature of the atrocity and the harm that was suffered. A program can also fall short if it only compensates a small number of beneficiaries, as compared to the number who suffered the harms. These are just two of the more common critiques that can arise. But one may observe that given efforts have not met the bar set by the United Nations and still see where there has been value in those efforts.

The Nuremberg Laws were two race-based measures that were approved by the Nazi Party at its convention in Nuremberg in 1935. American citizenship and anti-miscegenation laws, which oppressed African Americans in the United States, directly influenced the Nazi Party in formulating these two laws.

The Task Force has considered the examples in this chapter, seeking through the recommendations in this report to build on their positive aspects and learn from their challenges and shortfalls. The lessons learned from these examples as well as witness testimony, public comment, research, analysis, and debate across the Task Force have been brought to bear on the full panoply of the Task Force's recommendations, as set forth in the chapters that follow—all for the purpose of ensuring that the reparations program contemplated by AB 3121 and enacted by California will fully meet the required elements of restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition and provide the justice demanded of the Task Force and the State.

The examples offered below are instructive in one additional regard that bears repeating. As the below cases and others illustrate, our federal government *has* undertaken reparatory efforts in several instances.[7] Although the outcomes of these programs have been far from perfect, they are an inescapable indictment of the federal government's failure to undertake reparations for the harms and atrocities of slavery and its ongoing legacy. The Task Force trusts that its work will help spur the federal government to begin to address America's crimes against humanity flowing from enslavement.

II. International Reparatory Efforts

Germany-Israel

In September 1952, representatives of the newly established State of Israel and the newly formed Federal Republic of Germany (FRG) met at Luxembourg and signed an agreement that required the FRG to pay reparations to Israel for the material damage caused by the criminal acts perpetrated against the Jewish people during the Third Reich.[8] Although the 1952 Luxembourg Agreement (Luxembourg Agreement) predates the United Nations General Assembly's Resolution,[9] which identifies the five requirements for a full and effective reparations scheme, the Agreement comes close to fully embodying those principles. In particular, its provisions make significant attempts at providing effective compensation for the victims of war and genocide even though the moral debt for the harm the victims suffered was one that could never "be quantified and ... would remain eternal."[10]

The Luxembourg Agreement consisted of three parts, two of which were protocols. The first part of the Luxembourg Agreement required the FRG to pay Israel 3,000 million Deutsche Mark (DM) or DM3 billion to help resettle Jewish refugees in the new State of Israel.[11] The DM3 billion sum would be paid in annual installments.[12] The second part, Protocol 1, required the FRG to enact laws to pay individual compensation to "former German citizens, refugees, and stateless persons" for harms suffered during the Third Reich.[13] And the third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Conference on Jewish Material Claims against Germany (Claims Conference) DM450 million for the "relief, rehabilitation and resettlement of Jewish victims" of Nazi persecution living outside of Israel.[14] In total, the FRG agreed to pay DM3,450 million, the equivalent of $820 million U.S. dollars in 1952.[15]

The Luxembourg Agreement was intended to address the harms inflicted on Jewish people living in Germany or in territories controlled by Germany during the Third Reich, the regime that ruled Germany from 1933 to 1945.[16] Beginning in 1933, the Third Reich implemented

several reforms that were intended to control and limit the citizenship and freedom of its Jewish citizens. The Nuremberg Laws were two race-based measures that were approved by the Nazi Party at its convention in Nuremberg in 1935.[17] American citizenship and anti-miscegenation laws, which oppressed African Americans in the United States, directly influenced the Nazi Party in formulating these two laws.[18] One of the laws, the Reichsbürgergesetz, or the "Law of the Reich Citizen," deprived German Jews of citizenship, designating them as "subjects of the state."[19] The other law prohibited miscegenation between Jews and "citizens of German or kindred blood."[20]

Other laws were passed which excluded Jewish citizens from certain positions, schools, and professions.[21] For example, Jews were barred from earning university degrees, owning businesses, and providing legal and medical services to non-Jews.[22] Jews were also barred from participating in German social life. They were "denied entry to theatres, forced to travel in separate compartments on trains, and excluded from German schools."[23]

During the Third Reich, the Nazis also confiscated Jewish property in a program called "Aryanization."[24] It is estimated that around $6 billion in property was stolen from the Jewish people living in Germany and the territories controlled by Germany.[25]

After the war began and Germany expanded its territories, more Jewish people came under German control.[26] The Nazi response was to create "ghettos" and force the Jewish population to live there until the German government decided what to do with them.[27] Eventually, these acts culminated in the "Final Solution," which was the murder of Jewish citizens in concentration camps throughout Germany and territories controlled by Germany.[28] Although there is some debate about when the Nazis decided to kill Jewish people, it is undisputed that "in June of 1941, the Nazis began the systematic killing of Jews."[29]

In Germany and its controlled territories,

$6 Billion was STOLEN

in property owned by Jewish people

Just two months after his election, Konrad Adenauer, the Chancellor of the newly formed FRG, expressed a willingness to address claims of reparations for the harms inflicted on the Jewish people by Nazi Germany.[30] He acknowledged that "unspeakable crimes were committed in the name of the German people, which create a duty of moral and material reparations. . . ."[31]

COURTESY OF BETTMANN VIA GETTY IMAGES

The Star of David attached to the top of this street car indicates it is in use for residents of Warsaw's ghetto, wherein lived Jews from every Nazi occupied country of Europe. (1939)

The idea of providing reparations to Holocaust survivors or the heirs of those who died, did not begin with Adenauer, however. Beginning in 1949, the Council of States in the American-occupied zone established a law of compensation.[32] They implemented a reparations or restitution scheme that was designed to restore to Jewish citizens the property taken from them.[33] By including concepts like the right of displaced people to compensation and the categories of harm that constitute persecution, the law of compensation "established the foundations of the first nationwide law on reparations. . . ."[34]

Discussions about reparations were being held in the Jewish community even earlier—at the beginning of the war.[35] The idea gained support and was discussed at the War Emergency Conference organized by the World Jewish Congress in 1944.[36] In the Jewish community, both in the diaspora and Israel, there was strong opposition to the idea of reparations, however. The opposition was so intense that the head of the Jewish World Congress had to have "clandestine discussions" with Chancellor Adenauer until they could produce an agreement that would be acceptable to both sides.[37]

The Luxembourg Agreement was eventually signed in September 1952.[38] The first part of the Agreement required the FRG to pay DM3 billion in installments to Israel to help meet the costs of resettling Jewish refugees who fled Nazi Germany and other territories that were formerly under Nazi Germany control.[39] Specifically, those funds provided the means for Israel "to expand[] opportunities for the settlement and rehabilitation of Jewish refugees in Israel."[40] Israel invested those funds into its industrial development by purchasing goods and services from the FRG to build and expand its infrastructure.[41] In addition to providing Israel with funds to purchase goods and services, the Luxembourg Agreement required the FRG to ensure the delivery of goods and services to Israel.[42] To ensure the participation of German suppliers, the Agreement provided incentives like tax refunds to suppliers "on deliveries of commodities in pursuance of the Agreement."[43]

COURTESY OF ULLSTEIN BILD VIA GETTY IMAGES

The signing of the Luxembourg Agreement. (1952)

The payments would be paid according to the schedule in the Luxembourg Agreement.[44] The first installment was made in two payments in 1952. The first payment of DM60 million was due on the day the Agreement was entered into force.[45] The remaining DM140 million was due three months later.[46] For 1953, the FRG was required to pay DM200 million.[47] The remaining funds would be paid in nine annual installments of DM310 million plus a tenth installment of DM260 million.[48] After 1954, if the FRG determined that it could not comply with the obligation, it was required to give Israel notice in writing that there would be a reduction in the amount of the installments, but in no way could any of the installments be reduced below DM250 million.[49]

Four agencies were established to ensure that the Agreement would be carried out.[50] The Israeli Mission was the sole agency that could place orders with German suppliers on behalf of the Israeli Government.[51] But jurisdiction was conferred on German courts to decide disputes arising out of the performance of *individual* transactions involving individual German suppliers.[52] The second agency was the agency designated by the FRG to examine all orders placed by Israel to ensure that they conformed to the Agreement.[53]

The third agency was the Mixed Commission, which was responsible for supervising the operation of the Agreement.[54] Its members were appointed by their respective governments.[55] It had no adjudicative power.[56]

The fourth agency, the Arbitral Commission had adjudicative power over disputes between Israel and the FRG, except for those disputes that involved individual German suppliers.[57] Each country appointed one arbitrator, and the arbitrators, by mutual agreement, appointed an umpire who could not be a national of either contracting party.[58] If the parties could not agree on the appointment of an umpire, the President of the International Court of Justice would select one.[59] The arbitrators serve five years and were eligible to serve another term once their five-year term expired.[60]

Individual Compensation

The second part of the Agreement, Protocol 1, required the FRG to enact laws for payment of individual compensation to former German citizens, refugees, and stateless persons.[61] The FRG enacted the first supplementary law for the compensation of victims in compliance with Protocol 1 in 1953.[62] The Federal Supplementary Law covered harms that occurred between January 30, 1933, the beginning of the Third Reich, and May 8, 1945.[63] Preceding the Federal Supplementary Law was a general acknowledgment of the wrongs committed by the Nazi regime:

In Recognition of the Fact that wrongs have been committed against persons who under the oppressive National Socialist regime, were persecuted because of their political opposition to National Socialism or because of the race, religion or ideology, that the resistance to the National socialist regime based on conviction, faith or conscience was a service to the welfare of the German people and state and, that democratic, religious and economic organizations, too, have suffered damages by the oppressive National Socialist regime in contravention of the law, the Bundestag with the consent of the Bundesrat has enacted the following Law[.][64]

The Federal Supplementary Law identified the following categories of harm that were eligible for compensation:

- **Compensation for Life:** Under this category, widows, children, and dependent relatives could apply for an annuity for wrongful death, based on the amount paid to families of civil servants.[65]

- **Compensation for Health**: Under this category, claimants were entitled to medical care for "'not insignificant' damage to health or spirit." For damages beyond claims for medical care, claimants could apply for an annuity but had to prove that the persecution caused certain health damages that led to at least a 30 percent reduction in their earning capacity.[66]

- **Compensation for Damages to Freedom:** This category included claimants subjected to political or military jail, interrogation custody, correctional custody, concentration camp, ghetto, or punishment entity. It also included forced labor "insofar as the persecuted lived under jail-like conditions." [67]

- **Compensation for Property, Assets, and Discriminatory Taxes:** Claimants could file claims for the loss of property that occurred because the claimant fled the country, emigrated, or was robbed of their freedom. They were also entitled to compensation for property damage and paying discriminatory taxes such as the Reich Flight tax.[68]

- **Compensation for Damages to Career or Economic Advancement:** This category entitled self-employed and privately employed claimants from the time persecution began until January 1, 1947. The exact amount would be calculated at two-thirds of the relevant civil servant's pay. If a claimant was unable to resume their career, they could elect to receive their pension early. The amount of the pension was two-thirds that of a civil servant's pension. Those who wanted to reestablish their business were entitled to a loan of up to DM30,000. Claimants could also claim assistance to make up for their missed education.[69]

- **Compensation for Loss of Life or Pension Insurance:** The claimant could claim up to DM10,000.[70]

Claimants could pursue compensation for harm endured under each of the various categories simultaneously, meaning they were not limited to one category when filing claims.[71] If a claim was denied, the victim could file a case in court.[72] For damage to body or health claims, the claimant would have to be interviewed and examined by court-nominated experts.[73]

There were some deficiencies in the 1953 Federal Supplementary Law, which Parliament tried to fix in the 1956 Federal Compensation Law.[74] The 1956 law increased the maximum compensation for loss of life to DM25,000 and improved the claims process to make it easier for claimants.[75] The 1956 law still excluded those persecuted outside of Germany, forced laborers, victims of forced sterilization, the "antisocial," Communists, Gypsies, and homosexuals.[76]

Claimants could pursue compensation for harm endured under each of the various categories simultaneously, meaning they were not limited to one category when filing claims.

In 1965, the FRG enacted the Federal Compensation Final Law.[77] The Final Law made the following changes:

- It created a hardship fund of DM1.2 billion ($300 million U.S. dollars) to support refugees from Eastern Europe who were previously ineligible for compensation, primarily emigrants from 1953 to 1965.[78]

- Compensation for Health: Eased burden on claimants to prove damages to their health were caused by their earlier persecution by including a presumption that if the claimant had been incarcerated for a year in a concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime.[79]

- The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after.[80]

- The ceiling for education claims was increased to DM10,000.[81]

- Claims already adjudicated were to be revised based on the new law.[82]

- The Final Law did not include a category for compensation for work performed by slave or forced labor.[83]

Over the course of the reparations process, the German government received over 4.3 million claims for individual compensation, of which 2 million were approved.[84] It is estimated that by 2000, Germany had paid more than DM82 billion in individual reparations or $38.6 billion U.S. dollars.[85]

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Protocol 2: Claims Conference

The third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Claims Conference DM450 million, the equivalent of $107 million U.S. dollars,[86] for the "relief, rehabilitation and resettlement of Jewish victims" of Nazi persecution living outside of Israel.[87] The money would be paid to Israel and Israel would disburse the funds to the Claims Conference for it to disburse the money.[88]

Post 1952 Luxembourg Agreement Measures

The 1953, 1956, and 1965 compensation laws excluded compensation for forced labor and slave labor. The process for compensating these harms began in the German parliament in 1998.[89] The World Jewish Congress and the Claims Conference began placing pressure on German companies that benefited from slave labor and forced labor during World War II to pay reparations.[90] These companies also faced foreign political pressure from governments like the United States.[91] There was no political pressure from organizations like the United Nations, however.[92] Lawsuits in the United States against German companies that operated in the United States also applied pressure to the German government and the German companies to provide compensation for the labor they benefited from during the war.[93]

These efforts culminated in the enactment of the Forced and Slave Labor Compensation Law in July 2000.[94] Eight countries were involved: Germany, the United States, Russia, Israel, Poland, the Czech Republic, Belarus, and Ukraine.[95]

The fund contained DM8.1 billion to compensate slave and forced laborers.[96] The compensation scheme implemented "rough justice."[97] Former slave laborers[98] received DM15,000 or the equivalent of $7,500 U.S. dollars.[99] Former forced laborers received DM5,000 or $2,500 U.S. dollars.[100] Payments were limited to claimants only and not extended to descendants.[101] However, heirs of anyone who died on or after February 16, 1999, the date negotiations regarding compensation began, could file a claim.[102]

The law also allowed for compensation for all non-Jewish survivors living outside the five Eastern European countries.[103] The International Organization for Migration processed those claims.[104] Claimants had to complete applications by December 31, 2001.[105] By the deadline, the International Organization of Migration had received 306,000 claims.[106]

In filing their claims, claimants had to provide details of previous claims and a copy of their IDs.[107] They were also required to declare whether they received slave labor compensation directly from a German company.[108] They also had to identify a place where they were forced to perform slave or forced labor and waive their legal rights against the German government and in connection with Nazi-era activities against all German companies.[109]

Every check that was issued under the Forced and Slave Labor compensation law had the following apology from the President of Germany included:

This compensation comes too late for all those who lost their lives back then, just as it is for all those who died in the intervening years. It is now therefore even more important that all survivors receive, as soon as possible, the humanitarian agreement agreed today. I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice.

The World Jewish Congress and the Claims Conference began placing pressure on German companies that benefited from slave labor and forced labor during World War II to pay reparations. These companies also faced foreign political pressure from governments like the United States.

I pay tribute to all those who were subjected to slave and forced labor under German rule and, in the name of the German people, beg forgiveness. We will not forget their suffering.[110]

Assessments of the FRG-Israel Reparations Scheme

Initially, there was significant opposition to the idea of reparations in Germany.[111] Chancellor Adenauer's reparations initiative did not have the full support of German citizens.[112] Germans considered themselves victims of the war.[113] And the majority believed that German widows and orphans should receive support first, with Jewish citizens at the bottom of the list.[114] Government officials were also against reparations. One concern was that a potentially large expenditure, as reparations would likely require, could be risky for Germany given its financial position after the war.[115]

There was also opposition in the Jewish community. This initial opposition was so intense that the initial negotiations were held in secret until they could reach an agreement that would be acceptable to both countries.[116] Underlying the opposition was the idea that the Jewish people should not accept money to absolve the German people of the harm they caused.[117] The debt the Germans had incurred was a moral one that could not be paid off.[118] Pragmatism eventually won. Reparations could help develop Israel so that the country would be stronger and could save Jews from all over the world quickly in another crisis.[119] But it was understood that the moral debt Germany had acquired because of its actions towards the Jewish people could not be "quantified and hence would remain eternal."[120]

Scholars have noted that the Luxembourg Agreement was unique in many ways. It was the first reparations agreement that required a country to compensate another country that was not the victor in a war.[121] Further, it was the first reparations program where the perpetrator paid reparations "on its own volition in order to facilitate self-rehabilitation."[122] And the Agreement was formed by two states that were "'descendant' entities of the perpetrators and victims."[123] The program was the largest reparations program ever implemented.[124] And it had significant economic and political consequences for both Israel and the FRG.[125] The treaty enabled a substantial trade relationship between the two countries.[126] When reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.[127]

Chile

Under the 1973 to 1990 dictatorship of General Augusto Pinochet, the people of Chile were subjected to a systematic campaign of torture and state violence: an estimated 2,600 to 3,400 Chilean citizens were executed or "disappeared," while another estimated 30,000 to 100,000 were tortured.[128]

The dictatorship began with a coup the morning of September 11, 1973, under the guidance of U.S. Secretary of State Henry Kissinger to seize the democratic socialist government of Dr. Salvador Allende.[129] Pinochet's military junta seized power, ending Chile's long tradition of constitutional government.[130] Pinochet's military dictatorship defined segments of the Chilean population as ideological enemies – the "subversive" – and detained, tortured, and murdered suspected opponents of the dictatorship.[131] According to the 2004 Valech Report on Political Imprisonment and Torture, at least 27,255 people were tortured from 1973 to 1990, and approximately 2,296 people were killed or "disappeared," although an additional 1,000 still remain unaccounted for.[132] The National Truth and Reconciliation Commission found 899 additional cases of individuals "disappeared" or killed by state agents in the same period.[133]

COURTESY OF HORACIO VILLALOBOS/CORBIS VIA GETTY IMAGES

Tanks are coming towards La Moneda at ten in the morning during the coup d'etat led by Commander of the Army General Augusto Pinochet. (1973)

In 1988, a national plebiscite, or referendum, was held to determine whether General Augusto Pinochet should remain president of the country.[134] The plebiscite voted against his continuation. In March 1990, Patricio Aylwin was sworn in as President of the Republic of Chile and one month later, he created the National Truth and Reconciliation Commission.[135] This eight-member commission was tasked with disclosing the human rights

violations that occurred under the previous dictatorship, gathering evidence to allow for victims to be identified, and recommending reparations in a legal, financial, medical, and administrative capacity.[136] In February 1991, the Commission delivered its first report, the Retting Report, to the President.[137] The report determined that between September 11, 1973 and March 11, 1990, 2,298 persons had died as a result of human rights violations or political violence.[138] The Chilean armed forces and Supreme Court officially rejected the report, arguing that it did not take into account the historical and political context in which these acts occurred.[139] Despite such criticism, however, the actual content of the Retting Report was not denied.[140] President Aylwin sent a draft bill on reparations for the victims to Congress using the recommended measures of reparations from the Retting Report. The bill was approved and signed into law (Law 19.123) on February 8, 1992.

Law 19.123 established the National Corporation for Reparation and Reconciliation with the purpose of coordinating, carrying out, and promoting actions needed to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission.[141] As written in Law 19.123, the national corporation would, but not be limited to, do the following:

- Promote reparations for the moral injury caused to the victims and provide the social and legal assistance needed by their families so that they can access the benefits provided for in Law 19.123.[142]

- Promote and assist in actions aimed at determining the whereabouts and circumstances surrounding the disappearance or death of the detained or disappeared persons and of those persons whose bodies have not been located, even though their death has been legally recognized. In pursuing this objective, the corporation should collect, analyze, and systematize all information useful for this purpose.[143]

- Serve as a depository for the information collected by the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation, and all information on cases and matters similar to those treated by it that may be compiled in the future. It may also request, collect, and process existing information in the possession of public and private institutions in relation to human rights violations or political violence referred to in the Report of the National Truth and Reconciliation Commission.[144]

- Compile background information and perform the inquiries necessary to rule on the cases that were brought before the National Truth and Reconciliation Commission, in which it was not possible to reach a well-founded conclusion as to whether the person detrimentally impacted was a victim of human rights violations or political violence, or rule on cases that were not brought before the Commission in a timely fashion, or, if they were, in which the Commission did not reach a decision due to lack of sufficient information.[145]

- Enter into agreements with nonprofit institutions or corporations so that they may provide the professional assistance needed to carry out the aims of the Corporation, including medical benefits.[146]

- Make proposals for consolidating a culture of respect for human rights in the country.[147]

Law 19.123 also established a monthly reparations pension for the families of the victims of human rights violations or political violence as identified in the report by the National Truth and Reconciliation Commission.[148] The Institute of Pension Normalization was placed in charge of paying the pensions throughout the country.[149] In 1996, the monthly pension amounted to $226,667 Chilean pesos (US $537).[150] This figure was used as a reference for estimating the different amounts provided to each type of beneficiary as defined in Law 19.123.

Family members received a portion of the monthly pension dependent upon the type of beneficiary as defined in Law 19.123:

- A surviving spouse received 40 percent of the total, or $90,667 pesos (US $215);[151]

- The mother of the petitioner or, in her absence, the father, received 30 percent of the total, or $68,000 pesos (US $161);[152]

- A surviving mother or father of a victim's out-of-wedlock offspring received 15 percent of the total, or $34,000 pesos (US $80);[153]

- Each of the children of a disappeared person received 15%, or $34,000 pesos (US $80), until the age of twenty-five. There was no age limit for children with disabilities.[154]

A one-time compensatory bonus equivalent to twelve months of pension payments was also awarded.[155]

A beneficiary would also receive the pension in the proportion determined by the law, even if there were no other beneficiaries in the family.[156] Also, if the amount required by the number of beneficiaries exceeded the reference amount, each of them still received the percentage established by law.[157]

At the time of the passage of Law 19.123, other smaller programs were created to remedy specific issues, including a program within the Chilean Ministry of Health, financed by the United States Agency for International Development, to provide comprehensive physical and psychological health care for those who were most affected by human rights violations.[158]

There have been public criticisms of the reparations measures implemented by the government. Critics have objected to the declaration of the presumed death of the victims, the creation of a public interest corporation with no juridical faculties to investigate the whereabouts of disappeared detainees, and an unfair single pension model that does not take into account the number of members in each family.[159]

There were also notable issues with Law 19.123, which excluded certain beneficiaries (unmarried partners, victims without children, and mothers of children born outside of marriage) and lacked recognition or remedy for specific victims (those illegally detained and tortured).[160]

On December 31, 1996, under new presidential leadership, the Corporation closed down and issued a final report, declaring that the work of the institution had contributed effectively to political reconciliation, but that the pending cases of more than 1,000 disappeared detainees undermined these efforts and that some of the obligations assigned to the Corporation had not been fulfilled.[161] With these unfulfilled obligations, and with an obligation to continue searching for disappeared victims under Article 6 of Law 19.123, the state continued some of the work of the Corporation following its closure. On April 25, 1997, the state issued Supreme Decree Num. 1.005, which established that a new "follow-up program" be created to follow up on specific duties and responsibilities of Law 19.123.[162] This included:

- Implementation of the recommendations by the Truth and Reconciliation Commission.[163]
- Provision of legal and social assistance for the families of the victims upon request.[164]
- Preservation and safekeeping of documents and archival records collected by the National Truth and Reconciliation Commission and the former National Corporation of Reparations.[165]

The next president, Eduardo Frei Ruiz-Tagle, continued this work on reparations and initiated roundtables on human rights between 1999 and 2000.[166] These roundtables culminated in a supplementary report of 200 new cases of disappeared detainees.[167] In response, elements of the follow up program for Law 19.123 were integrated into the Human Rights Program of the Ministry of Interior. The new program continued to work with families, and a newly reorganized judicial program provided logistical support to special judges conducting investigations in regiments, clandestine cemeteries, and other places indicated in the report by the armed forces.[168]

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately US $200 per month) and free education, housing, and health care.

In August 2003, the next president, Ricardo Lagos, proposed and sent three bills to Congress to strengthen the work of the Follow-Up Program, increase pension amounts, and expand beneficiary access to pensions.[169] The President argued that the human rights violations of the dictatorship represented a social, political, and moral scar that required additional meaningful reparation measures and a responsible recognition of the magnitude of the problem.[170] In September 2003, President Lagos created the National Commission on Political Imprisonment and Torture Report (Valech Commission) to continue the work of reparations by identifying victims, proposing new measures of reparations, and producing a final report.[171] On November 10, 2004, the Valech Commission delivered its first 1,200-page report to President Lagos, who then presented it to the nation in a televised speech later than month.[172] The President asked the Valech Commission to produce a complementary report taking into account approximately 1,000 additional cases submitted by victims and their families.[173] That report was delivered in June 2005.[174]

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately US $200 per month) and free education, housing, and health care.[175] In 2009, the Chilean Congress passed Law No.

20.405 creating the Institute for Human Rights.[176] Under this law, Chilean President Michelle Bachelet was tasked with creating a consultative commission, the Valech II Commission, for the qualification for reparations for disappeared detainees, persons killed by extrajudicial executions, prisoners of conscience, and victims of torture.[177] At this time, the Chilean government entered into international networks to help address the human rights abuses that occurred in Chile. In 2009, Chile joined the Rome Statue of the International Criminal Court in 2009.[178] In 2015, Chile became a signatory party to the Agreement on the Status and Functions of the International Commissions on Missing Persons.[179] Today, the Chilean government continues to work to address past human right abuses through new commissions and instruments, including the Chilean System of National DNA Databases to test and match DNA samples between relatives and missing persons.[180]

"Apartheid was an institutional regime of racial segregation and systematic oppression, implemented in South Africa for the purpose of depriving the majority black population of basic rights and securing the white minority's power over the country's government, economy, and resources."

South Africa

"Apartheid was an institutional regime of racial segregation and systematic oppression, implemented in South Africa for the purpose of depriving the majority black population of basic rights and securing the white minority's power over the country's government, economy, and resources."[181] Following the election of Nelson Mandela as the country's first non-white president, the South African government passed the Promotion of National Unity and Reconciliation Act (the Act) to help transition South Africa out of the apartheid era and into an era of democracy in which Black South Africans would have full participation. To make that transition, the Act created the Truth and Reconciliation Commission (Commission), which operated through three committees. One committee was the Committee on Human Rights Violations (CHRV) which investigated the gross human rights violations committed during the apartheid regime. Another committee of the Commission was the Amnesty Committee, which was responsible for determining which perpetrators of gross human rights violations would receive amnesty, that is, immunity from civil and criminal liability for their crimes. And the final committee was the Committee on Reparations and Rehabilitation (CRR) which was responsible for developing an urgent interim reparations program and submitting final reparations policy recommendations to the government.

Included in the final reparations policy recommendations were financial and symbolic reparations as well as community rehabilitation programs and institutional reforms. The financial reparations recommendation was that the government pay individual reparations grants to 22,000 confirmed victims each year, for six years. To ensure successful implementation, the CRR also recommended that the government appoint a national body to implement the reparations program and a secretariat within the office of the President or the Vice President to oversee implementation.

The government adopted some of the CRR's symbolic reparations recommendations, its community rehabilitation program recommendations, and its institutional reforms. The government did not adopt the recommendation for a national implementing body. Nor did it adopt the CRR's recommendation that it pay individual reparation grants for six years. Instead, in 2003, five years after the CRR submitted its final reparations policy recommendations, the South African government paid a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars to some of the 22,000 victims.[182] The payment was about one-fifth of the amount the CRR recommended to justly compensate victims for their suffering.[183] By 2004, only 10 percent of the confirmed victims had received their payment.

The History of the Apartheid and Gross Human Rights Violations

De jure racial segregation was widely practiced in South Africa since the first white settlers arrived in South Africa.[184] When the National Party gained control of the government in 1948, it expanded the policy of racial segregation, naming the system apartheid.[185] This system of "separate development" was furthered by the Population Registration Act of 1950, which classified all South Africans as either Bantu (all Black Africans), "Coloured" (those of mixed race), or white.[186] Another piece of legislation, the Group Areas Act of 1950, established residential and business sections in urban areas for each race, and barred members of other races from living, operating businesses, or owning land in areas designated for a different race.[187] The law was designed to remove thousands of "Coloureds," Blacks, and Indians from areas classified for white occupation.[188] As a result of the confluence of laws, specifically, the Population Registration Act, the Group

Areas Act, and several "Land Acts" adopted between 1913 and 1955, more than 80 percent of South Africa's land was set aside for the white minority.[189]

The government also passed laws limiting education for Black South Africans. Specifically, the Bantu Education Act enacted in 1953, provided for the creation of state-run schools, which Black children were required to attend.[190] The goal of these state-run schools was to train Black children for "manual labour and menial jobs" the government "deemed suitable" for their race.[191] Black South Africans were also barred from attending universities in South Africa.[192]

To help enforce the segregation of the races and prevent Black South Africans from encroaching on white areas, the government strengthened existing "pass" laws, requiring "nonwhites to carry documents authorizing their presence in restricted areas."[193] Many private companies, including ones based in the United States and Europe, enabled apartheid by manufacturing the military and police vehicles[194] used to enforce segregation and by creating the document system that stripped Black South Africans of their citizenship and their rights.[195]

Responses to violations of apartheid laws were brutal. Under South African law, police officers could commit acts of violence, that is, torture or kill, in the pursuit of their official duties.[196] One confirmed victim of gross human rights abuses was tortured by police on four different occasions.[197] On one occasion he was electrocuted.[198] On another, "they put a tire around [his] neck, placed [his] hands behind [his] back and threw matches at [his] hair."[199] On one occasion, he was tortured for five days.[200] And on yet another occasion, he was detained for six months without charges and tortured.[201]

There were also numerous large-scale shooting incidents that involved police officers roaming through Black townships in vehicles called Hippos and shooting Black people, including children.[202] In one incident in 1985, a thirteen-year-old was shot and killed by security forces while traveling from his grandmother's house to his home to pick up his schoolbooks.[203] Other children were shot and killed while playing outside with friends.[204]

The Commission's Final Report documented the "extreme violence necessary to maintain the apartheid regime."[205] In essence, the system of apartheid was held in place by gross human rights violations, "including prolonged arbitrary detention, forced exile, forced relocation, revocation of citizenship, forced and exploited labor, extrajudicial killings, and torture" committed by state and private actors.[206]

COURTESY OF HULTON ARCHIVE VIA GETTY IMAGES

South African police beating women with clubs after they raided and set a beer hall on fire in protest against apartheid, Durban, South Africa. (1959)

There was resistance to apartheid from the beginning. One of the first demonstrations against apartheid took place in Sharpeville on March 21, 1960.[207] As a result of the demonstration, police officers opened fire on the crowd, "killing about 69 Black Africans and wounding many more."[208] The primary political group that spearheaded the fight to eliminate apartheid was the African National Congress (ANC).[209] The government banned the ANC from 1960 to 1990.[210] Eventually, there was outside economic pressure on South Africa to abandon apartheid, including from the United States and Europe, which imposed selective economic sanctions on South Africa.[211]

Secret negotiations between the National Party, the ruling apartheid party, and the ANC, the resistance, to end apartheid began under President Botha and concluded under President F.W. de Klerk on February 2, 1990, when he announced that he would release all political prisoners and unban anti-apartheid organizations, like the ANC.[212] De Klerk's announcement began formal negotiations to end apartheid.[213] The bargain struck required the NP to give up power and allow free elections in exchange for amnesty.[214] Those negotiations culminated in the Interim Constitution, which enfranchised Black South Africans and provided for elections in 1994.[215]

Eventually, there was outside economic pressure on South Africa to abandon apartheid, including from the United States and Europe, which imposed selective economic sanctions on South Africa.

The Interim Constitution required the new Parliament to draft a final constitution and draft the framework for the new government of South Africa.[216]

The Interim Constitution also included an unnumbered section called the coda, post-amble, or epilogue, which provided for amnesty for the outgoing government in exchange for it giving up power peacefully and having the votes of everyone respected.[217] The coda also included language calling for reparations: "[T]he violent effects of apartheid 'can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparations but not for retaliation, a need for ubuntu but not for victimization'."[218] Essentially the bargain struck during the negotiations to end apartheid called for the perpetrators of gross human rights violations to receive amnesty and the victims to receive reparations.[219]

The Promotion of National Unity and Reconciliation Act identified the need for reparations as a primary concern, requiring the Commission "to provide for ... the taking of measures aimed at the granting of reparations to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights."

Reparations and the Creation of the Truth and Reconciliation Commission

In addition to creating the Commission and outlining the duties of its three committees, the Promotion of National Unity and Reconciliation Act (the Act) identified the need for reparations as a primary concern, requiring the Commission "to provide for . . . the taking of measures aimed at the granting of reparations to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights."[220] It also defined several key terms that would be used throughout the reparations process. First, it defined reparations using a very broad and open-ended definition: "'any form of compensation, *ex gratia* payment,[221] restitution, rehabilitation or recognition'."[222] The Act also distinguished between a longer-term reparations policy and an interim urgent reparations policy that would provide urgent reparations to "victims."[223] The urgent reparations would go to those "victims not expected to outlive the Commission" and "those who had 'urgent medical, emotional, educational, material, and/symbolic needs'."[224]

A "victim" was defined as a person who "'suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights, (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted'."[225] "A gross violation of human rights is defined as '(a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit [killing, abduction, torture or severe ill-treatment]'."[226]

The Act also provided for but did not require, the creation of a President's Fund (Fund) that would hold and disburse funds as reparations.[227] The Fund would hold and invest money appropriated to it by Parliament and money donated by nongovernmental sources.[228]

Even though it addressed reparations, the Act did not codify or otherwise guarantee the right to reparations.[229] Nor did it grant the Commission power to implement any of the final reparations policy proposals.[230] The Commission's power ended with the submission of the final report.

The Committee on Human Rights Violations (CHRV)

The Commission's CHRV was responsible for investigating human rights abuses. One significant limit set on the work of the CHRV was that it could only investigate *gross* violations of human rights defined as killing, abduction, torture, and severe ill-treatment that were politically motivated and which occurred between 1960 and 1994.[231] This definition of gross human rights violations meant that forced removals to unfertile land, wholesale appropriation of land that left the majority of the population living on 13 percent of the land, oppressive labor conditions in mines and on farms, educational deprivations, and legal restrictions from birth to death would not be investigated.[232] Nor would any of the racially-based abuses that occurred before 1960 be included.[233] Also excluded from investigation were practices that excluded Black South Africans from educational institutions and professions or restricted access to resources based on race.[234]

The Act also required a victim's claim of gross human rights violations to be corroborated before the victim could qualify for reparations.[235] There was a documented massive document destruction campaign revealed during the reparations process, however, which likely affected the ability of many victims to obtain corroborating evidence of human rights abuses they suffered.[236]

Further, there were outside critiques that the requirement for corroboration "placed an insurmountable burden on many individuals who lacked supporting evidence of their experiences of being tortured, kidnapped, or losing loved ones."[237]

With these limitations, the CHRV dispatched "specially trained statement-takers" to all parts of the nation to take statements of victims.[238] From the thousands of statements they received, several "individuals whose stories would shed light on the broader patterns of abuses" were asked to tell their stories during televised hearings held throughout the country between 1996 and 1997.[239] Of the three committees, the CHRV's work is the most well-known because of the televised hearings showcasing the victims' stories.

COURTESY OF PHILIP LITTLETON/AFP VIA GETTY IMAGES

People take part at the opening session of the Truth and Reconciliation Commission. (1996)

Once a claim was filed, an investigation was conducted to determine whether there was enough to corroborate that the individual was a victim of gross human rights violations.[240] If the claim was corroborated, the victim received a letter confirming their status as a "victim" of human rights abuses.[241] If the claim could not be corroborated, the person was also informed by letter and notified of their right to appeal the decision.[242] Ultimately, 22,000 individuals were identified as victims of gross human rights violations.[243]

Amnesty Committee (AC)

Several clauses in the Act guaranteed amnesty, that is, immunity from criminal and civil liability, for perpetrators of gross human rights violations, which included individuals and the State itself.[244] Perpetrators of human rights abuses and/or violations could apply for amnesty for acts associated with a political objective in the course of the conflicts of the past as long as they made full disclosure of all relevant facts.[245] They did not have to express regret or remorseor offer an apology or request forgiveness to be granted amnesty.[246] Ultimately, the Commission granted amnesty to approximately 1,200 individuals, turning down 5,000.[247] If amnesty was granted, that meant a victim of the gross human rights violation could not pursue civil or criminal remedies against the perpetrator for the harms suffered. Instead, victims had to rely on the new government for reparations.[248]

Six months after the Commission began its work, three widows of victims of the security forces and the Azanian People's Organization (AZAPO) challenged the constitutionality of the Act based on the amnesty provisions, which absolved individuals and the state from civil and criminal liability for the human rights violations committed during apartheid.[249] The Constitutional Court held that the Act was constitutional despite the amnesty provisions because the amnesty provisions made it possible for "the truth of human rights violations to be known and the cause of reconciliation and reconstruction to be furthered."[250] The State authorized "Parliament to balance the rights of victims against the broad reconstructive goals of the Constitution."[251]

The Committee on Reparations and Rehabilitation (CRR)

The Commission's CCR was responsible for developing both the Urgent Interim Reparations policy program (UIR) and making final reparations policy recommendations to the President. The policy recommendations for the urgent interim reparations policy were to be implemented during the life of the CRR and the CRR would be responsible for implementing those recommendations.[252] The CRR was also responsible for determining which individuals qualified as victims under the Act's definition.[253] This obligation required it to review referrals from both the CHRV and the Amnesty Committee and "'make recommendations . . . in an endeavor to restore the human and civil dignity of such victim'."[254] The work of the CRR ended once the final reparations policy recommendations were submitted to the president.

Development and Implementation of the UIR Program

The UIR was an interim financial reparations program. CRR sent UIR policy recommendations to the government in September 1996.[255] The government did not pass regulations to implement the UIR until April 1998.[256] The UIR regulations required information and referrals to services and financial assistance to access services that were necessary to meet urgent medical, emotional, educational, material, and symbolic needs be provided to applicants whose needs the CRR deemed urgent.[257] Those applicants whose needs were deemed urgent included individuals who:

- Were terminally ill and would not survive beyond the term of the Commission
- Had no fixed home or shelter
- Were orphaned because of the violation
- Had physical impairments that markedly affected their social functioning
- Required special education because of mental or physical disability.[258]

The UIR payments were calculated based on need and the number of dependents the person supported, ranging from a maximum of R2000 (US $250) for a victim with no dependents to a maximum of R5705 (US $713) for beneficiaries with five or more dependents.[259] The regulations prohibited UIR funds from being transferred or ceded by victims.[260] Further, the proceeds could not be attached as part of a court judgment or pass to the victim's estate.[261]

The first UIR payments were made in July 1998.[262] The UIR "process was mostly completed in April 2001."[263] The President's Fund paid out about R44,000,000 (US $5.5 million) in cash payments to 14,000 victims for three years.[264] Those payments ranged from R2000 (US $250) to R5600 (US $700).[265]

By 2001, South Africa had paid about

$5.5 Million

(R 44 million) in reparations to 14,000 victims for three years

The reactions of the beneficiaries who received reparations under the UIR program were mixed.[266] None of the beneficiaries considered the reparations "blood money" that was used to buy their silence.[267] Some of the victims interpreted the funds, not as compensation for the harm suffered, but as a symbolic gesture acknowledging their suffering.[268] Others felt the compensation was inadequate to meet "the tangible challenges of daily suffering" they experienced because of apartheid.[269] This group believed the UIR, even as a symbolic gesture, was inadequate.[270] The recipients of UIR also were sometimes threatened by those who did not receive UIR payments.[271]

Some critics of the UIR program contend that one inadequacy of the program was the lack of information shared with victims about the Commission.[272] Specifically, victims were not given information about how the Commission was organized or how it functioned.[273] Thus, they were not empowered to engage with the Commission, nor were they knowledgeable about the next steps in the reparations process.[274] And they received little information regarding the perpetrators the Amnesty Committee was considering for amnesty.[275]

One evaluation of the UIR program concluded that it "has not made a meaningful and substantial impact on the lives of recipients and cannot, therefore, be considered a significant or even adequate attempt at reparations."

One evaluation of the UIR program concluded that it "has not 'made a meaningful and substantial impact on the lives of recipients and cannot, therefore, be considered a significant or even adequate attempt at reparations'." [276] Another critique was that the process for determining who would receive payments and providing payments to those individuals who qualified under the UIR took longer than expected.[277] Although the CRR sent recommendations to the government in September 1996, the government did not pass regulations until April 1998, more than a year later.[278] The government's delay in passing regulations caused the CRR to abandon the step in the process that called for the formation of a body that would coordinate and disburse the UIR reparations benefits.[279] The CRR assumed those duties instead.[280]

Final Reparations Policy Recommendations

The CRR was also responsible for developing final reparations policy recommendations that were submitted to the President for review. Once the final recommendations were submitted to the President, the President would review them and submit a set of policy proposals, including some of his own to the Parliament for debate.[281] After a debate, the Parliament would pass a resolution approving the reparations policy recommendations.[282] Once the parliamentary resolution was passed, the President was required to "publish the appropriate regulations to enact the resolution."[283] The regulations determined the basis and conditions upon which reparations would be granted and the authority responsible for implementing them.[284] The regulations

also provided for revision, discontinuance, or reduction of reparations where the President deemed fit to ensure the efficient application of the regulations.[285]

In creating its reparation policy recommendations, the CRR could consider all forms of reparations, including financial, symbolic, and community-wide benefits.[286] The CRR could also make recommendations for the "creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights."[287]

In developing its proposals, the CRR turned to international sources and structured its policies around the five international reparations principles: redress, restitution, rehabilitation, restoration of dignity, and reassurance of non-recurrence.[288] Once it defined the principles that would serve as the foundation for its reparations recommendations, the CRR began a consultative process with individuals, victim advocacy groups, NGOs, churches, civil society, and human rights organizations to develop a final reparations policy.[289]

The final reparations policy the CRR submitted to the President observed that "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation."[290] More specifically, reparations were "necessary to counterbalance amnesty" given the perpetrators.[291] The CRR reminded the government that reparations were a moral requirement for the transition out of apartheid and that moral obligation required substantial reparation grants not token awards to victims.[292] Granting reparations to the victims added value to the truth-seeking process by enabling survivors to experience the state's acknowledgment of the harm victims, their families, and South Africa as a whole experienced from apartheid.[293] Reparations also restored the survivors' dignity and affirmed the values, interests, aspirations, and rights of those who suffered.[294] Just as important, granting reparations also raised consciousness about the public's moral responsibility to participate in healing survivors and facilitating nation-building.[295]

The Commission through the work of its committees identified 22,000 victims.[296] Although victim advocates urged the CRR to keep the list of victims open so that victims who came forward later could qualify for reparations, it declined to do so for two reasons.[297] It concluded that the government was unlikely to accept an open-ended list.[298] And the CRR was without power to expand the definition of a victim under the language of the Act to expand the list of people who qualified as victims beyond the 22,000 identified victims.[299] The CRR made the following final reparations policy recommendations:

Individual Reparations Cash Grants

The CRR recommended that the government pay annual payments ranging between R23,023 ($2,878 in U.S. dollars) and R17,029 ($2,129 U.S. dollars), based on the size of the family for six years.[300] The amount of the grants was based on the median annual household income for a family of five in South Africa, which was R21,700 or $2,713 U.S. dollars in 1997.[301] People in rural communities or with large numbers of dependents would receive more.[302] Despite the CRR's justification for its reparations grant recommendations, the government rejected its recommendation and decided to give victims a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars, each.[303] The financial costs for the reparation grants of R30,000 amounted to .067% of the Gross Domestic Product (GDP) and .25% of the government's total annual expenditure.[304]

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The CRR's policy recommendations also included several alternative schemes for financing the reparations grants:

- Imposing a wealth tax;
- Imposing a one-off levy on corporate and private income;
- Requiring each company on the Johannesburg Stock Exchange to make a one-off donation of one percent of its market capitalization;
- Levying a retrospective surcharge on corporate profits;
- Imposing a surcharge on "golden handshakes" given to senior public servants since 1990; and
- Suspending taxes on land and other material donations to formerly disadvantaged communities.[305]

Recommendations for Broader Macroeconomic Reforms

As a broader restructuring of macroeconomic policies for the country, the CRR made the following recommendations:

- Reallocation of resources from the defense force budget;
- Donations from individuals, international aid organizations, and the business sector;
- Request that the EU divert unspent funds earmarked for development projects into the President's Fund;
- Exert pressure on Swiss and other governments and banks for contributions;
- Restructure social spending limits, the tax system, and the Government Pension Fund to release more money for social spending; and
- Cancellation of foreign debt.[306]

One organization recommended that multinational corporations, which extracted roughly R3 billion a year between 1985 and 1993 from South Africa be required to return 1.5 percent of those profits for six years, which would pay for the individual reparation grants.[307]

Recommendations for Symbolic Reparation and Community Rehabilitation

In addition to the individual reparation grants, the CRR recommended symbolic, community, and national reparation and rehabilitation policy proposals. The symbolic measures fell into three categories:

Individual interventions

- Issuing death certificates
- Exhumations, reburial, ceremonies
- Headstones and tombstones
- Declarations of death
- Expungement of criminal records,
- Acceleration of outstanding legal matters related to human rights violations

Community Interventions

- Renaming streets and facilities
- Memorials and monuments
- Culturally appropriate ceremonies
- National interventions
- Renaming of public facilities
- Monuments and memorials
- A National Day of Remembrance

The community rehabilitation recommendations focused on programs and remedies that would address the harm caused to communities by apartheid policies:[308]

- National demilitarization
- Resettlement of displaced persons and communities
- Construction of appropriate local treatment centers
- Rehabilitation of perpetrators and their families
- Support for mental health services and community -based victim support groups
- Skills training
- Specialized trauma counseling services
- Family-based therapy
- Educational reform at the national level
- Study bursaries (monetary education awards)
- Building and improvement of schools
- Provision of housing

The CRR also recommended several proposals aimed at transforming institutions and a wide range of sectors in South African society, including the judiciary, media, security forces, business, education, and correctional services, to prevent the recurrence of human rights violations that characterized apartheid.[309]

The CRR had no power to implement any of the recommendations in its final reparations policy proposal because its term ended with the submission of the Commission's final report.[310] Recognizing that implementation would need to be organized at the national and local levels, the CRR recommended that the President appoint a secretariat, with a fixed term to oversee the implementation of the reparations and rehabilitation proposals.[311] The CRR also recommended the appointment of a national body, headed by a national director, to implement the reparations scheme.[312] Among its

duties, the national body would be responsible for implementing and administering any financial reparations policy, monitoring and evaluating the implementation of the reparations policies, and establishing provincial reparations desks to implement reparations policies at the local level.[313] The provincial reparations desks would report directly to the National Director.[314]

Government Implementation

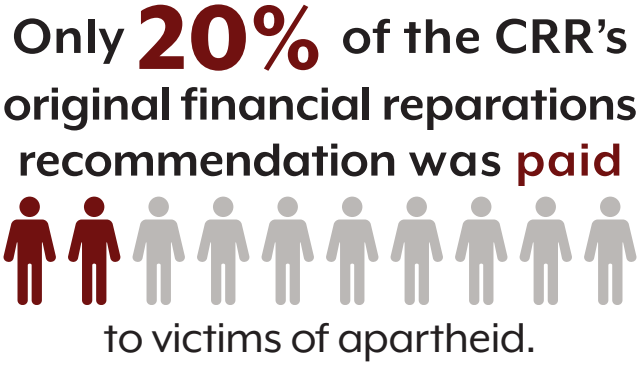
After the CRR submitted its final reparations policy recommendations, a core group of NGOs and victim advocacy groups emerged as leaders in the fight to ensure that the government implemented the final reparations policy recommendations implemented.[315] The government resisted their efforts, however, on the grounds that not all of the Commission's work was completed, and until the Commission's final report was submitted, the government was not in a position to do anything with reparations.[316] The final report was submitted in 2003.[317]

In late 2002, before the Commission's final report was submitted, several individual victims and victim advocacy groups filed lawsuits in a U.S. federal district court under the Alien Tort Statute[318] against several multinational corporations that conducted business with South Africa during apartheid and manufactured products that helped the South African government maintain apartheid.[319]

Five years after the CRR submitted its reparations policy recommendations, the government began paying victims a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars.

In the end, the government did not adopt the CRR's recommendations to appoint a secretariat to oversee reparations. Nor did it appoint a national implementing body. It also did not adopt the recommendation for the government to pay individual reparations grants to victims for six years. Instead, in November 2003, five years after the CRR submitted its reparations policy recommendations, the government began paying victims a one-time payment of R30,000, the equivalent of $4,000 U.S. dollars.[320] A year later about 10 percent of victims had not received payment because there was difficulty in locating them or confirming bank account information.[321] The total individual reparation grants paid to victims amounted to one-fifth of the CRR's original financial reparations recommendation.[322]

The government did enact some of the symbolic reforms and institutional reform recommendations. The



government provided around R800,000 in reburial expenses to 47 families of disappeared persons whose remains were found and reburied.[323] Public symbols of martyrs and those opposed to apartheid have replaced those public symbols of apartheid.[324] The country's largest airport is no longer named after the first apartheid prime minister.[325] And institutions have been integrated even if tensions remain.[326] Much has been done for community rehabilitation in terms of housing, education, and access to healthcare.[327] "[T]here is still much to do" to ensure equity for Black South Africans in these areas of basic human needs, however.[328]

As of 2013, the President's Fund stands at around 1 Billion rand.[329] The government has proposed to use part of this for medical and higher education assistance to the same registered victims who received compensation previously. It has also proposed to fund "community rehabilitation projects" in economically distressed communities.[330] Victims and survivors have criticized both policies and have argued that medical and higher education assistance should be given as well to an additional 30,000 more survivors who, for various reasons, were not able to register with the Commission during its tenure.[331] These organizations have asked that individual compensation get equal priority over community reparations and that the selection of communities for the latter program should be done in consultation with survivors' organizations.[332]

Throughout the life of the Commission and after, victims raised the objection that the Commission and the government have been much more interested in placating and protecting perpetrators than they have been in meeting the needs of victims.[333] Another key critique of the South African reparations process was that there was no institutional support for victims after the final reparations policy recommendations were submitted to the government because the Commission formally

ended with the submission of its final report.[334] "The failure to plan beyond the recommendations, however, resulted in many disappointed South Africans who assumed that meaningful reparations would begin at or before the close of the TRC process. Now that the TRC has formally shut down, the victims are left with their own meager resources and without any significant institutional support."[335] The structure of the Commission, including the limitations placed on its power to implement its reparations policy recommendations or even be involved in the process after submitting its recommendations to the President, almost guaranteed that the victims would not receive reparations based on the final reparations policy recommendations.[336]

Throughout the life of the Commission and after, victims raised the objection that the Commission and the government have been much more interested in placating and protecting perpetrators than they have been in meeting the needs of victims.

Some scholars believe the problem with the implementation of the reparations scheme began with the secret negotiations to end apartheid and carried through the Constitutional Court's decision in the AZAPO case that the amnesty provisions were legitimate even if they stripped victims of remedies for actual harm suffered.[337] From the inception of the negotiations to end apartheid, there was no guarantee that victims would receive an adequate remedy or compensation. Although reparations were discussed at points during the negotiation process, a reparations policy that entitled victims to reparations was not codified in any of the official documents of the new government.[338] Indeed, the Act allowed the President to discontinue reparations if the President deemed it necessary to do so.[339] A perpetrator's entitlement to amnesty, however, was guaranteed by the Interim Constitution, the final Constitution, the Act, and the Constitutional Court.[340]

The 1948 Universal Declaration of Human Rights asserted that an effective remedy should be provided for violations of fundamental human rights.[341] "In this context reparations have come to mean much more than a means of support or a kind of recognition of suffering. They have become the unfulfilled answer to the question of whether or not justice has been done in the transition process."[342]

Canada

The Canadian federal government entered into the Indian Residential Schools Settlement Agreement in September 2007. It acknowledged the damage Canada inflicted on its Indigenous peoples through the residential school system and established a multibillion-dollar fund to assist former students of residential schools in their recovery.[343] It has five main components: the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services.[344] The Settlement Agreement allocated $1.9 billion to the Common Experience Payment for all former students of the residential schools.[345] Every former student was given $10,000 for the first year at school and $3,000 for each additional year.[346]

Indigenous children in Canada were sent to residential schools from the 17th century until the late 1990s.[347] First established by Roman Catholic and Protestant churches, and based on racial, cultural, and spiritual superiority, residential schools were an attempt to separate Indigenous children from their traditional cultures and convert them to Christianity.[348] The passage of the Indian Act in 1876 formally gave the federal government the power to educate and assimilate Indigenous people in Canada, and the Act's further amendment in 1894 made attendance at residential schools mandatory.[349] Starting in the 1880s, the Canadian government made a concerted effort to establish and expand the residential school system to assimilate Indigenous

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Indian residential school.

peoples into settler society and to reduce Indigenous dependence on public assistance.[350]

There were 130 residential schools in Canada between 1831 and 1996.[351] During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools.[352] Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing.[353] Children were forced to leave their homes, parents, and some of their siblings, as the schools were segregated based on gender.[354] Their culture was disparaged from the moment they arrived at school; children surrendered their traditional clothes and had to wear new uniforms, the boys had their hair cut, and many were given new names.[355] At some schools, children were banned from speaking their first language, even in letters home to their parents.[356] The Christian missionary staff at these schools emphasized Christian traditions while they also simultaneously denigrated Indigenous spiritual traditions.[357] Physical and sexual abuse were common.[358] Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza.[359]

"In keeping with the promise to civilize the little pagan, they went to work and cut off my braids, which, incidentally, according to the Assiniboine traditional custom, was a token of mourning—the closer the relative, the closer the cut. After my haircut, I wondered in silence if my mother had died, as they had cut my hair close to the scalp."

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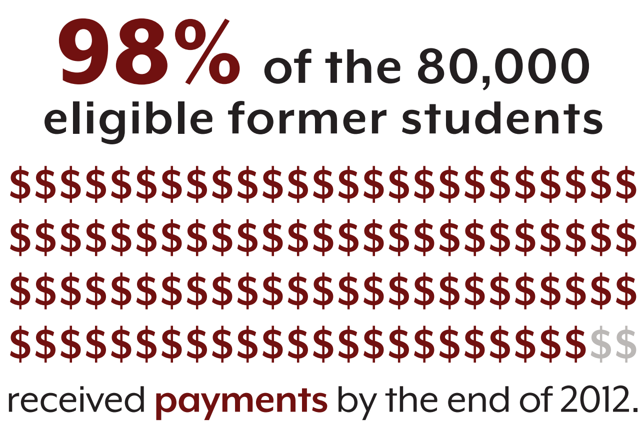
Daniel Kennedy (Ochankuga'he), a former student at Qu'Appelle, recounted his experience:

> In 1886, at the age of twelve years, I was lassoed, roped and taken to the Government School at Lebret. Six months after I enrolled, I discovered to my chagrin that I had lost my name and an English name had been tagged on me in exchange . . . "When you were brought here [the school interpreter later told me], for purposes of enrolment, you were asked to give your name and when you did, the Principal remarked that there were no letters in the alphabet to spell this little heathen's name and no civilized tongue could pronounce it.
>
> 'We are going to civilize him, so we will give him a civilized name,' and that was how you acquired this brand new whiteman's name.'" . . . In keeping with the promise to civilize the little pagan, they went to work and cut off my braids, which, incidentally, according to the Assiniboine traditional custom, was a token of mourning—the closer the relative, the closer the cut. After my haircut, I wondered in silence if my mother had died, as they had cut my hair close to the scalp. I looked in the mirror to see what I looked like. A Hallowe'en pumpkin stared back at me and that did it. If this was civilization, I didn't want any part of it. I ran away from school, but I was captured and brought back. I made two more attempts, but with no better luck.
>
> Realizing that there was no escape, I resigned myself to the task of learning the three Rs . . . visualize for yourselves the difficulties encountered by an Indian boy who had never seen the inside of a house; who had lived in buffalo skin teepees in winter and summer; who grew up with a bow and arrow.[360]

Indigenous communities struggled to heal from the harm done by these residential schools, and starting in 1980, former students campaigned for the government and churches to acknowledge the abuses of this system and provide some compensation.[361] A group of 27 former students filed a class action lawsuit, *Blackwater v. Plint*, against the Government of Canada and the United Church of Canada in 1996.[362] *Blackwater* specifically pertained to the abuses perpetrated at Alberni Residential

School on Vancouver Island in British Columbia.[363] The lawsuit spanned nine years, with the Supreme Court of Canada finally concluding that churches were not immune from damage claims and shared blame with the federal government.[364] Thousands of other former students began to sue the federal government and churches for, *inter alia*, assault, negligence, breach of fiduciary duty, and vicarious liability.[365] The sheer number of cases pending in the Canadian court system threatened to create a logjam, and the federal government in June 2001 "convened a series of dialogues on the subject of developing alternative dispute mechanisms between representatives from the church organizations, the federal government, and Aboriginal peoples, leaders, and healers."[366]

The federal government issued a Statement of Reconciliation in 1998 that recognized the abuses of the residential school system and established the Aboriginal Healing Foundation.[367] In 2001, the federal government created the Office of Indian Residential Schools Resolution Canada to manage the abuse claims filed by former students through the alternative dispute resolution ("ADR") process.[368] In 2003, the ADR process began to provide psychological support and calculate compensation. The Indian Residential Schools Settlement Agreement was signed on May 8, 2006, and it went into effect in September 2007.[369] It is the largest class action settlement agreement to date in Canadian history.[370] On June 11, 2008, former prime minister Stephen Harper offered a public apology to those harmed by the residential schools; the leaders of the Liberal Party, the New Democratic Party, and the Bloc Quebecois also made official apologies.[371]



As stated previously, under the Settlement Agreement, every former student was given $10,000 for the first year at school and $3,000 for each additional year.[372] By the end of 2012, 98 percent of the 80,000 eligible former students received payments.[373] The Independent Assessment Process provided a mechanism to resolve sexual abuse claims as well as serious physical and psychological abuse claims.[374] By the end of 2012, it provided more than $1.7 billion to former students.[375] Survivors had to detail the abuse they faced at a hearing, such as the duration, the abusers' identities, and medical and personal information.[376] This often led to the reopening of old wounds. For both the Common Experience Payment and Independent Assessment Process, rejections, inability to establish attendance at schools, failures of the process, and dismissal of claims led to re-traumatization of survivors and further harm.[377] Additionally, the Settlement Agreement allowed attorneys to charge clients up to 15 percent for difficult cases seeking compensation before the Independent Assessment Process.[378] Unfortunately, some unethical private attorneys charged 15 percent, in addition to further improper interest, fees, and penalties.[379]

The Settlement Agreement allocated $60 million to the Truth and Reconciliation Commission for five years so that individuals, families, and communities could tell their stories, and the Commission held national events to bring public attention to this issue.[380] The Commission issued a report in December 2015 entitled *Honouring the Truth, Reconciling for the Future* that documented the experiences of the 150,000 survivors.[381] In addition, the Settlement Agreement allocated $20 million for commemorative projects and $125 million for the Aboriginal Healing Foundation.[382] It also established the Indian Residential Schools Resolution Health Support Program, which offers former students mental health resources provided by elders, Indigenous community health workers, psychologists, and social workers.[383]

Residential schools continue to be in the news. In 2021, Indigenous communities reported they uncovered hundreds of unmarked graves of children who possibly died at residential schools due to disease or neglect, or who were possibly even killed.[384] The federal government responded by announcing in August 2021 an additional $320 million "for Indigenous communities facing the fallout of the residential school system," of which $83 million "will go toward burial site search efforts and commemoration for the victims."[385] The federal agency responsible for Indigenous relations will also create an advisory committee that includes experts in archaeology, forensics, and mental health as the grave searches continue.[386] Canada's minister of justice will also appoint a special investigator to make recommendations about the grave sites and changes to federal law.[387] These discoveries have led to a federal investigation of similar schools in the United States.[388]

Additionally, despite the Settlement Agreement, litigation has not stopped.[389] In October 2022, the Canadian Supreme Court dismissed an appeal from a group of

survivors from St. Anne's residential school in northern Ontario, who have alleged the federal government breached the Settlement Agreement because "it withheld documentation of abuse when deciding upon their compensation."[390] In 2014, the Ontario Superior Court ordered 12,300 pages of records (including transcripts of criminal trials, investigative reports from the Ontario Provincial Police, and civil proceedings about child abuse) be produced as a part of the compensation process.[391] The documents were heavily redacted and survivors claimed the redactions made it impossible to determine adequate compensation.[392] The minister for Crown-Indigenous Relations has stated the office will still discuss the case with St. Anne's survivors and has pointed to a 2021 report that noted 11 compensation cases that could be eligible for further payments.[393]

In January 2023, Canada stated it had agreed to pay $2.8 billion "to settle the latest in a series of lawsuits seeking reparations" for the harm to Indigenous communities through the residential schools.[394] This settlement is a resolution of a class action lawsuit initially filed by 325 First Nations in 2012 seeking compensation for the destruction of their languages and culture.[395] Under the terms of the settlement, the federal government will establish a trust fund for Indigenous communities to use for educational, cultural, and language programs.[396] A federal court judge approved the $2.8 billion settlement on March 9, 2023, noting that it is "fair, reasonable, and in the best interests" of the plaintiffs.[397] As a part of this agreement, the First Nations plaintiffs consented to "fully, finally and forever" release the federal government from claims related to the harms inflicted on the First Nations at the residential schools.[398] The First Nations communities will decide what to do with these funds "based on the 'four pillars principles outlined in the agreement: the revival and protection of Indigenous language; the revival and protection of Indigenous culture; the protection and promotion of heritage; and the wellness of Indigenous communities and their members."[399] The settlement will go to an appeal period after which the money will be managed by a board of Indigenous leaders through a not-for-profit fund.[400] The settlement does not release the federal government from future lawsuits involving children who died or disappeared at the residential schools.[401]

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III. Domestic Reparatory Efforts

History of the Movement for Reparations for African Americans

The earliest calls for reparations for African Americans precede the Civil War, with enslaved people demanding compensation for their labor and bondage.[402] In 1783, Belinda Sutton, a formerly enslaved woman in Massachusetts, petitioned the Massachusetts General Court for a pension from the estate of her enslaver, Isaac Royall, Jr.[403]

> Fifty years her faithful hands have been compelled to ignoble servitude for the benefit of an Isaac Royall . . . The face of your Petitioner, is now marked with the furrows of time, and her frame feebly bending under the oppression of years, while she, by the Laws of the Land, is denied the enjoyment of one morsel of that immense wealth, apart whereof hath been accumilated [sic] by her own industry, and the whole augmented by her servitude.[404]

Sutton's petition is one of the first narratives of African Americans demanding reparations. The court granted her petition, partially due to Royall's resistance to American independence and allegiance to the Tories.[405]

Calls for reparatory justice gained momentum at the end of the Civil War, after the federal government failed to fulfill General William T. Sherman's promise to give forty acres and a mule to those who were formerly enslaved.[406] African American abolitionist Frederick Douglass demanded land distribution for the formerly enslaved, comparing their plight to the Russian serfs who received land grants following their emancipation.[407]

In the late 1800s, African American freedmen led the call for reparations. Callie House and Isaiah Dickerson chartered the first national reparations organization, the National Ex-Slave Mutual Relief, Bounty, and Pension Association (MRBPA), in Nashville, Tennessee, in 1898.[408] The MRBPA grew to 300,000 members by 1916.[409]

Their mission included: (1) identifying the formerly enslaved and adding their names to the petition for a pension; (2) lobbying Congress to provide pensions for the nation's estimated 1.9 million formerly enslaved—21 percent of all African Americans by 1899; (3) starting local chapters and providing members with financial assistance when they became incapacitated by illness; and (4) providing a burial assistance payment when a member died.[410] MRBPA's founders were inspired by the federal pension program for disabled veterans of the Civil War.[411] MRBPA filed a lawsuit against the federal government on behalf of African American freedmen for $68 million—the value of the cotton that had been grown and harvested by enslaved persons and that had been confiscated by Confederates around the end of the Civil War.[412] The claim was denied.[413]

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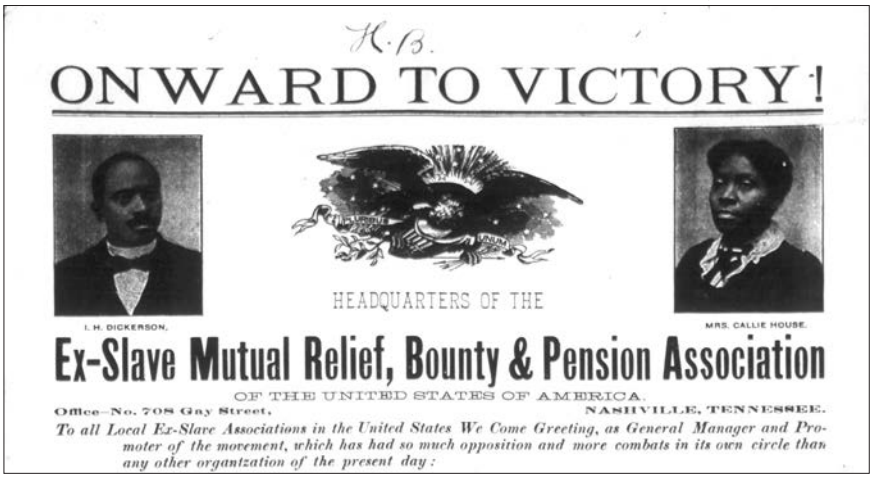

H. B.

ONWARD TO VICTORY!

I. H. DICKERSON.

HEADQUARTERS OF THE

MRS. CALLIE HOUSE.

Ex-Slave Mutual Relief, Bounty & Pension Association

OF THE UNITED STATES OF AMERICA.

Office—No. 708 Gay Street. NASHVILLE, TENNESSEE.

To all Local Ex-Slave Associations in the United States We Come Greeting, as General Manager and Promoter of the movement, which has had so much opposition and more combats in its own circle than any other organization of the present day:

An MRB&PA broadside features both Isaiah Dickerson, the general manager, and Callie House, a national promoter and assistant secretary of the association, with the emblem of the United States in the center. (c. 1898)

The MRBPA faced strong opposition from the U.S. government.[414] In 1916, the government indicted Callie House for fraud, claiming that the leaders of MRBPA obtained money from the formerly enslaved by fraudulent circulars advertising that reparations from the government were forthcoming.[415] House was convicted and served time in a penitentiary in Missouri.[416]

Another reparations trailblazer was "Queen Mother" Audley Moore, known as the "Mother" of the modern reparations movement.[417] Moore founded several organizations, including the Committee for Reparations for Descendants of U.S. Slaves, dedicated to fighting for land and other reparations for African Americans.[418] In 1957 and 1959, she formally petitioned the U.N. for reparations for African Americans.[419] In 1968, Moore helped found the Republic of New Afrika, an organization that advocated for the formation of a separate majority-Black nation in the southeastern United States.[420]

Around the same time as Moore's UN petitions and creation of the Republic of New Afrika, many civil rights and Black Nationalist groups also demanded reparatory justice in addition to legal equality. For example, in the Black Panther's Ten-Point Program, they called for the "end to the robbery by the [w]hite man of our Black community" and demanded the debt owed of forty acres and two mules.[421] In a speech to students at Michigan State University in 1963, Malcolm X called for reparations:

> The greatest contribution to this country was that which was contributed by the Black man . . . Now, when you see this, and then you stop and consider the wages that were kept back from millions of Black people, not for one year but for 310 years, you'll see how this country got so rich so fast. And what made the economy as strong as it is today. And all that, and all of that slave labor that was amassed in unpaid wages, is due someone today.[422]

In 1969, activist James Forman proclaimed a Black Manifesto that demanded $500 million from white Americans, paid by churches and synagogues, for their role in perpetuating slavery.[423] The Black Manifesto resulted in donations of $500,000, which supported the establishment of several Black political and economic organizations such as a Black-owned bank, four television networks, and the Black Economic Research Center.[424]

The reparations movement surged in the 1980s.[425] The National Coalition of Blacks for Reparations in America was founded in 1987,[426] and, with its help, U.S. Rep. John Conyers in 1989 introduced H.R. 40, a bill to establish the Commission to Study and Develop Reparation Proposals for African Americans.[427] Rep. Conyers introduced the bill 20 times without success.[428]

The publication of the 2014 essay "The Case for Reparations" by Ta-Nehisi Coates in *The Atlantic*[429] catalyzed the federal government to hold committee hearings to consider H.R. 40.[430] In the summer of 2020, the murder of George Floyd by police in Minneapolis sparked racial justice protests across the country that further pushed demands for reparations to the forefront of public conversation.[431] Reparations became a topic in the 2020 Democratic presidential primary.[432] In April 2021, with U.S. Rep. Sheila Jackson Lee as the bill's present sponsor, H.R. 40 was voted out of the House

Judiciary Committee for the first time, but failed to receive consideration by the full House of Representatives in the 117th Congress (2021-2022).[433] H.R. 40 has been reintroduced in the 118th Congress, but as of May 2023, it was awaiting consideration by the House Judiciary Committee.[434] In the absence of federal action, states, cities, and municipalities have taken calls for reparations into their own hands.

Federal Reparatory Efforts

U.S. Indian Claims Commission

The United States Indian Claims Commission ("Commission" or "ICC") was established in 1946 through federal legislation.[435] The Commission provided a forum for Native Americans to pursue legal claims against the United States based on the government's appropriation of tribal land during the 18th and 19th centuries.[436] Congress established the forum out of a recognition that the treaties underlying many land transfers were inequitable.[437] However, the Commission was not empowered to transfer land back to tribes, and instead made financial awards to successful claimants.[438] Over the course of approximately 30 years, the Commission resolved over 500 claims and awarded approximately $800 million to tribal claimants.[439]

The ICC was ostensibly established to redress the harms inflicted on Native populations during the United States' campaign of colonization and relocation that began in the late 18th century. Government transgressions during this period were as diverse as they were devastating.[440] They included not only a staggering dispossession of land, but also the widespread killing of Native Americans that many, including California Governor Gavin Newsom, have called a genocide.[441] During this period, spurred by the doctrine of Manifest Destiny, the government acquired nearly two billion acres of land from Indigenous peoples, leaving just 140 million acres under Native control.[442] This dispossession was accomplished by various means, including outright conquest, treaty, executive order, and federal statute.[443]

Although the government's misconduct during this period was far-reaching, the ICC's focus was solely on land transactions, mostly notably in the treaty process. Many government leaders and historians have claimed that these transactions were fair and equitable,[444] but others have recognized that they were a means "to dismantle Native land ownership and codify its expropriation."[445] The treaties were "[n]egotiated under duress or facilitated with bribes, [and] were often violated soon after ratification, despite the language of perpetuity."[446] Moreover, the Indian Removal Act of 1830[447] codified the federal policy of relocating Native Americans to make way for settlers, which left tribal land owners with a Hobson's choice: either sell their land via treaty, or be forcibly removed without compensation.[448] Those removals led to many atrocities, including the Trail of Tears, in which the forced migration of Cherokee and other native peoples led to the deaths of thousands of Native Americans from disease and starvation[449]

Against the backdrop of these takings, tribes began to file legal claims in the U.S. courts in the early 19th century. But a succession of legal rulings and legislation precluded Native Americans from even having their claims heard.[450] Small progress was made in 1881 when Congress passed a jurisdictional act granting the Choctaw tribe access to the United States Court of Claims.[451] This theoretically made the legal process available to Native Americans, but any tribe seeking redress first needed individual Congressional approval.[452] By 1946, almost 200 tribal claims had been filed in the Court of Claims, but only 29 received awards, and most of the remaining claims had been dismissed for jurisdictional technicalities.[453] "The Government, the Indians, and impartial researchers all deemed this process to be inadequate[,]" and the prevailing dissatisfaction led to the creation of the Indian Claims Commission.[454]

In the late 18th century, the United States government acquired nearly

2 Billion Acres

of land from Indigenous peoples

The Commission was established with the goal of efficiently and conclusively resolving tribal claims against the United States government. It had jurisdiction to hear claims from "any identifiable group of Indian claimants residing in the United States or Alaska."[455] Much of the debate leading up to the enacting legislation centered on whether the entity should be adversarial or investigatory, and also on what role, if any, Congress should play in resolving individual claims.[456] It was ultimately decided that, though labeled a "commission" with investigatory powers, the ICC would also be a quasi-judicial and adversarial forum.[457]

The ICC was limited to awarding monetary relief and thus did not have jurisdiction to restore title to land.[458] The authorizing legislation permitted various claims, including those premised on "fraud, duress, [and] unconscionable consideration" as well as those based on "fair and honorable dealings."[459] The Congressional Committee on Indian Affairs stated that the bill was

"primarily designed to right a continuing wrong to our Indian citizens for which no possible justification can be asserted."[460] Indeed, the majority of claims alleged that "the United States acquired valuable land for unconscionably low prices in bargains struck between unequals."[461] Another large swath of claims alleged that the government had failed to abide by treaty provisions and called for an historical accounting, including in instances where the government was alleged to have mismanaged tribal funds.[462]

The Commission initially comprised three members, all appointed by President Harry Truman.[463] It acted as a "quasi-judicial branch of the legislature" that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided over trials.[464] Claims could be filed only during the first five years of the Commission.[465] Neither the statute of limitations nor doctrine of laches could be raised as a defense to tribal claims, but all other defenses were available to the government.[466]

In 1946, the Commission sent notice of the claims procedures to every recognized tribe within the United States.[467] Native American tribes secured counsel of their choice and the government was represented by the Attorney General.[468] All land claims were divided into three phases: title, value-liability, and offsets.[469] In the title phase, the Commission sought to identify the territorial boundaries that the tribe exclusively occupied. This phase frequently relied on the testimony of historians and anthropologists.[470] If the tribe successfully established title, the Commission proceeded to determine whether the government bore any liability, and, if so, for what amount. During this stage, expert appraisers valued the land as of the treaty date and historical records were reviewed to determine the compensation originally paid.[471] The award was calculated based on the difference between the fair market value and the original compensation.[472] Lastly, the Commission deducted "offsets" from any award based on "all money or property given to or funds expended gratuitously for the benefit of the claimant."[473] Adverse rulings could be appealed to the Court of Claims and, in certain instances, the United States Supreme Court.[474]

If a trial led to a financial award, the amount was certified and reported to Congress after all appeals were exhausted.[475] The award was then automatically included in the next year's appropriations bill.[476] Final payment was deposited in the Treasury and Congress directed how it should be distributed.[477]

The ICC was initially set to terminate ten years after its first meeting,[478] but it was repeatedly extended until its termination in 1978.[479] Individual cases often took several years to complete,[480] and the appeal process alone typically took between eight months and three years.[481] During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60 percent of matters.[482] It awarded approximately $800 million in total compensation to tribal claimants.[483] At its termination in 1978, the Commission had not fully cleared its docket and the remaining matters were transferred to the Court of Claims.[484]

The U.S. Indian Claims Commission awarded

$800 Million

in total compensation to tribal claimants

the centuries-long displacement and oppression of Native Americans.[485] The Commission was not empowered to convey land back to tribes,[486] yet its rulings have barred all subsequent claims, including those to repossess land.[487] Nor did the Commission address issues such as the suppression of native languages, religions, and forms of government.[488] And even where a tribe was able to secure a financial award, the amounts were significantly reduced in various ways. For example, awards were whittled down by offsets for monies purportedly spent by the government on behalf of the tribes.[489] Moreover, except in the rare claim premised on a Fifth Amendment "taking," the Commission ruled that interest on amounts owed was not recoverable.[490] The unpaid interest on successful claims likely amounted to several billion dollars.[491]

Many historians have argued that a core defect in the ICC's structure and practice was the adversarial rather than investigative nature of the proceedings.[492] One scholar has observed that "the Commission, submissive to the requests of the lawyers who practice before it, has provided for a bewildering series of hearings on title, value offset, attorneys [sic] fees and all the motions that any party chooses present."[493] Moreover, the government's role as adversary against the claimants meant that government attorneys often aggressively fought *against* proper compensation for tribal claimants, and, as a matter of policy, the Attorney General did not pursue settlement.[494] Finally, the tribe's obligation to retain counsel at its own cost diminished any eventual financial award.[495] In light of these and other inefficiencies, many have argued that the Commission should have

operated as an investigative rather than quasi-judicial body.[496] Indeed, the Commission was statutorily authorized to conduct its own investigations,[497] but it rarely employed those powers and instead consistently acted as a tribunal.[498]

Despite its shortcomings, many contemporaneous political leaders and early historians pointed to the ICC as proof that the United States had acted benevolently and had atoned for past transgressions.[499] Some have called these claims mere sanctimony and have argued that the ICC was established out of the government's self-interest in cloaking itself with moral authority, especially in the context of the United States' efforts to establish the post-World War II Nuremberg Trials.[500] Others have similarly argued that the Commission was simply a means of efficiently disposing of the "Indian problem."[501] For example, Professor Harvey Rosenthal, author of a comprehensive history of the ICC,[502] has observed that "the [C]omission broke no new ground and was really a government measure to enhance its own efficiency by disposing of the old claims and terminating the Indian Tribes."[503]

Tuskegee Study of Untreated Syphilis in the Negro Male

From 1932-1972 in Macon County, Alabama a medical study observed the natural history of untreated syphilis in African American men. Following revelation of the study, a class-action lawsuit was filed against the federal government that resulted in a settlement of nearly $10 million, which was divided amongst the study participants and their families. In 1974, the federal government enacted legislation to require regulations to better protect human subjects in biomedical and behavioral research and issued a formal apology to the surviving syphilis study victims.

African American men were enticed and enrolled in the study with incentives including medical exams, rides to and from the clinics, meals on examination days, free treatment for minor ailments, and guarantees that provisions would be made after their deaths consisting of burial stipends paid to their survivors.

From 1891 to 1910, around 2000 white patients with syphilis were admitted to a Norwegian hospital under the care of Professor Caesar Boeck, the head of the hospital's skin department.[504] Professor Boeck held the belief that one should wait for the natural course of the disease and refrain from drug treatment.[505] Professor Boeck documented the diagnosis and the clinical course in detail in all his patients, and the materials gathered from this clinical trial formed the basis for current knowledge about the course and prognosis of syphilis infections.[506] The work of Professor Boeck and his successors eventually culminated in a 1955 dissertation referred to as the "Oslo study of untreated syphilis."[507] The significance of these findings served as the precursor to the Tuskegee Study of Untreated Syphilis in the Negro Male conducted in Macon County, Alabama between 1932 and 1972 on the campus of the Tuskegee Institute.[508] "In particular, it was the relative frequency of cardiovascular affections compared to neurological affections in patients with advanced syphilis that interested [the Americans.] In the eyes of the Americans, the weaknesses of the material justified a prospective study, while they were also interested in discovering whether the findings would be the same with 'the negro.'"[509]

The United States Public Health Service Syphilis Study, also called the Tuskegee Study of Untreated Syphilis in the Negro Male, was intended to observe the natural history of untreated syphilis in African American men.[510] A total of 600 African American men[511] were enrolled in the study and told by researchers that they were being treated for "bad blood," which colloquially in the region referred to a number of diagnosable ailments including but not limited to anemia, fatigue, and syphilis.[512] The African American men in the study were only told they were receiving free health care from the federal government of the United States.[513] Of the 600 enrolled men, most of whom were poor and illiterate sharecroppers, 399 of them who had syphilis became part of the experimental group and 201 became part of the control group.[514]

The men were enticed and enrolled in the study with incentives including medical exams, rides to and from the clinics, meals on examination days, free treatment for minor ailments, and guarantees that provisions would be made after their deaths in terms of burial stipends paid to their survivors.[515] Although there were no proven treatments for syphilis when the study began, penicillin became the standard treatment for the disease in 1947—however the medicine was withheld from both groups enrolled in the study, resulting in blindness, deteriorating mental health, and in some cases, sever health issues and death.[516]

COURTESY OF NATIONAL ARCHIVES

Participants in the Tuskegee Syphilis Study.

Following a leak of the study and subsequent reporting by the Associated Press in July 1972, international public outcry led to a series of actions taken by U.S. federal agencies.[517] The Assistant Secretary for Health and Scientific Affairs appointed an Ad Hoc Advisory Panel, comprised of nine members from fields including health administration, medicine, law, religion, and education, to review the study.[518] The panel ultimately concluded that there was evidence that scientific research protocol routinely applied to human subjects was either ignored or deeply flawed and thus, failed to ensure the safety and well-being of the men involved.[519] Specifically, the men were never told about or offered the research procedure called informed consent.[520] Researchers had not informed the men of the actual name of the study, its purpose, and the potential consequences of the treatment or non-treatment that they would receive during the study.[521] The men never knew of the debilitating and life threatening consequences of the lack of treatments they were to receive, the impact on their wives, girlfriends, and children they may have conceived once involved in the research; and there were no choices given to the participants to quit the study when penicillin became available as a treatment and cure for syphilis.[522] One month after the panel's October 1972 findings, the Assistant Secretary for Health and Scientific Affairs officially declared the end of the Tuskegee Study.[523]

Following the Ad Hoc Advisory Panel's findings in October 1972, attorney Fred Gray filed a class-action suit on behalf of the men in the study, their wives, children and families resulting in a nearly $10 million out-of-court settlement in 1974.[524] Under the 1974 settlement, 70 living syphilitic participants received $37,500 each. The 46 living men in the control group received $16,000 each. The 339 deceased syphilitic participants received $15,000 each. The deceased members of the control group received $5,000 each.[525] Attorney Gray also negotiated free healthcare for life for the participants who were still living, as well as healthcare for their infected wives, widows, and children.[526] Attorney Gray was not able to locate 36 syphilitic participants and 8 members of the control group.[527]

In 1974, Congress passed the National Research Act and created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research to study and write regulations governing studies involving human participants.[528] The Commission was directed to consider: (1) the boundaries between biomedical and behavioral research and the accepted and routine practice of medicine; (2) the role of assessment of risk-benefit criteria in the determination of the appropriateness of research involving human subjects; (3) appropriate guidelines for the selection of human subjects for participation in such research; and (4) the nature and definition of informed consent in various research settings.[529] In 1976, the Commission published the Belmont Report, which identified basic ethical principles and guidelines that address ethical issues arising from the conduct of research with human subjects.[530] The Belmont Report attempted to summarize the basic ethical principles identified by the Commission in the course of its deliberations.[531] In applying the general principles, the Belmont Report established new requirements for the conduct of research, including informed consent, risk/benefit assessment, and the selection of subjects of research.[532]

Researchers had not informed the men of the actual name of the study, its purpose, and the potential consequences of the treatment or non-treatment that they would receive during the study.

Following the Belmont Report, the Office for Human Research Protections (OHRP) was established in June 2000 within the United States Department of Health and Human Services to oversee clinical trials.[533] OHRP replaced the Office for Protection from Research Risks (OPRR), which was created in 1972 and was part of the National Institutes of Health.[534] OPRR had primary responsibility within the U.S. Department of Health and Human Services for developing and implementing policies, procedures, and regulations for the protection of human subjects involved in research.[535] OPRR and its successor agency was created to lead the Department of Health and Human Services' efforts to protect human subjects in biomedical and behavioral research and to

provide leadership for all federal agencies that conduct or support human subject research under the Federal Policy for the Protection of Human Subjects.[536] To further protect patient interests and to ensure that participants are fully informed, Section 474 of the National Research Act also established Institutional Review Boards.[537] Institutional Review Boards were established at the local level consisting of at least five people, including at least one scientist, one non-scientist, and one person not otherwise affiliated with the institution.[538] No human subjects research may be initiated, and no ongoing research may continue, in the absence of an Institutional Review Board's approval.[539]

The Office for Protection from Research Risks and its successor agency was created to lead the Department of Health and Human Services's efforts to protect human subjects in biomedical and behavioral research and to provide leadership for all federal agencies that conduct or support human subject research under the Federal Policy for the Protection of Human Subjects.

In February of 1994 at the Claude Moore Health Sciences Library in Charlottesville, Virginia, a symposium was held entitled "Doing Bad in the Name of Good?: The Tuskegee Syphilis Study and Its Legacy."[540] The one-day symposium featured seven humanities scholars discussing the Tuskegee Syphilis Experiments, their troubling historical reality, and their legacy.[541] Following this symposium, the Tuskegee Syphilis Study Legacy Committee was formed to develop ideas that had arisen at the symposium.[542] The Committee issued its final report in May 1996,[543] presenting two goals:

1. To persuade President Bill Clinton to apologize to the surviving Study participants, their families, and to the Tuskegee community. This apology is necessary for four reasons: the moral and physical harm to the community of Macon County; the undeserved disgrace the Study has brought to the community and Tuskegee University, which is in fact a leading advocate for the health of African Americans; its contribution to fears of abuse and exploitation by government officials and the medical profession; and the fact that no public apology has ever been made for the Study by any government official.
2. To develop a strategy to redress the damages caused by the Study and to transform its damaging legacy. This is necessary because an apology without action is only a beginning of the necessary healing. The Committee recommends the development of a professionally staffed center at Tuskegee for public education about the Study, training programs for health care providers, and a clearinghouse for scholarship on ethics in scientific research.[544]

The Committee's report set forth an outline for the context of the apology, and provided possible functions for the proposed Tuskegee research center.[545]

On May 16, 1997, President Bill Clinton formally apologized and held a ceremony at the White House for surviving Tuskegee study participants. Along with the apology, President Clinton pledged a $200,000 planning grant to allow Tuskegee University to pursue building a Center for Bioethics in Research and Health Care.[546] The President also announced the creation of bioethics fellowships for minority students and extended the life of the National Bioethics Advisory Commission until 1999. Additionally, the President directed the Health and Human Services Secretary to draft a report outlining ways to better involve all communities—especially minority communities—in research and health care.[547]

COURTESY OF PAUL J. RICHARDS/AFP VIA GETTY IMAGES

Herman Shaw speaks as US President Bill Clinton looks on during ceremonies at the White House in which Clinton apologized to the survivors and families of the victims of the Tuskegee Syphilis Study. (1997)

In June 2022, the Milbank Memorial Fund—the foundation that paid the funeral expenses of the deceased study participants as an incentive for their participation—publicly apologized to descendants of the study's

victims for its role in the study.[548] The Milbank Memorial Fund conditioned the payment of these funeral expenses on consent by the deceased's descendants to conduct autopsies.[549] These autopsies facilitated the study's ultimate purpose of observing untreated syphilis in African American men. The apology and an accompanying monetary donation to a descendants' group, the Voices for Our Fathers Legacy Foundation, were presented during a ceremony in Tuskegee at a gathering of children and other relatives of men who were part of the study.[550]

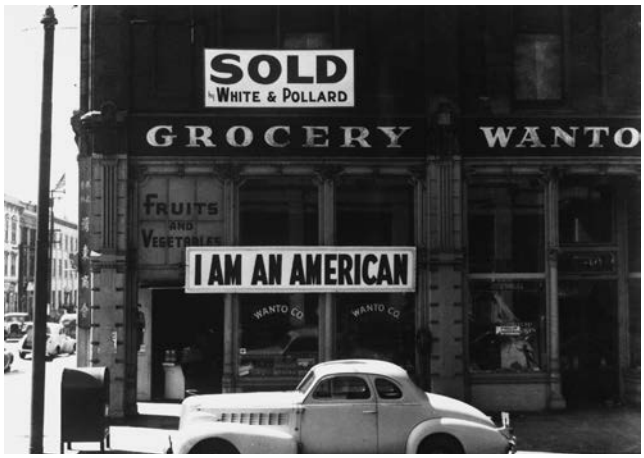
Japanese American Mass Incarceration

In 1988, the federal government enacted legislation to acknowledge and provide redress for the mass incarceration of Japanese Americans in the United States between 1942 and 1946. The federal government's plan included a cash payment of $20,000.00 for each surviving incarceree, a program to fund public education of the events, and an apology.

In early 1941, the United States House Committee on Un-American Activities (Committee) began investigating Japanese espionage in the United States.[551] The Committee, which existed since 1938, was authorized to investigate from time to time (1) the extent, character, and objects of un-American activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by the United States Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.[552] The Committee's focus on Japan reflected general European and American suspicion of Japanese espionage.[553] A year before the Japanese attack on Pearl Harbor in Hawai`i, the United States Army's Signal Intelligence Service broke Japan's highest-level diplomatic code.[554] The message appeared to reveal widespread Japanese espionage networks operating along the West Coast of the United States, which proved decisive for President Franklin D. Roosevelt's authorization of the mass incarceration of Japanese Americans.[555]

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 incarcerating Japanese Americans and creating a zone "from which any or all persons may be excluded," at the discretion of the Secretary of War or appropriate military commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona.[556] By the fall of 1942, all Japanese Americans were forcefully removed from California and sent to one of ten detention camps built to imprison them.[557] Many incarcerated Japanese Americans lost their property and assets as they were prohibited from taking more than what they could carry with them and what remained was either sold, confiscated, or destroyed in government storage.[558] The Masuda family, for example, owned the Wanto Grocery in Oakland, California, and proclaimed that they were American even as they were forced to sell their business before they were imprisoned in August 1942.[559] The Masudas and others were among the tens of thousands of Japanese Americans who were incarcerated in desolate detention camps for up to four years.[560]

COURTESY OF DOROTHEA LANGE VIA NATIONAL ARCHIVES



Oakland, California. Following evacuation orders, this store was closed. The owner, a University of California graduate of Japanese descent, placed the "I AM AN AMERICAN" sign on the store front the day after Pearl Harbor. (1943)

Nearly 70 percent of those incarcerated were American citizens by birth, and the remaining 30 percent were Japanese nationals who were legally barred from naturalization because of the de jure racist policies of the time.[561] Many resisted government imposed curfews and challenged the constitutionality of the exclusion orders on U.S. citizens based on racial ancestry; however, resisters were convicted for curfew violations and the United States Supreme Court upheld convictions arguing the Court was not in a position to question claims of military necessity.[562] In the mid-1980s, these convictions were eventually vacated by federal court orders for *writ of error coram nobis*, which helped spur the passage of the of 1988—the law that eventually provided a formal apology and redress from the United States to Japanese Americans.[563]

In 1948, President Harry S. Truman signed the Japanese American Evacuation Claims Act (1948 Act) to compensate Japanese Americans for losses incurred at the time of their official removal from the West Coast in 1942.[564] The 1948 Act was the first civil rights-associated law enacted in the 20th century.[565] However, the legislation proved largely ineffectual in compensating victims, because the claims process placed onerous burdens on them to prove their losses and included a lot

of bureaucratic red tape that slowed the claims process to a crawl.[566] "In all, the government paid $38 million to settle damage claims—a fraction of actual losses by Japanese Americans. Many families paid more in lawyer's fees than they received in compensation."[567]

In 1980, Congress and President Jimmy Carter approved the Commission on the Wartime Relocation and Internment of Civilians (Commission).[568] The Commission was established to: (1) review the facts and circumstances surrounding the relocation and incarceration of thousands of American civilians during World War II under Executive Order Numbered 9066 and the impact of that Order on American citizens and resident aliens; (2) review directives of United States military forces requiring the relocation and incarceration of American citizens, including Aleut civilians and permanent resident aliens of the Aleutian and Pribilof Islands (The Aleutian Islands stretch westward for about 995 miles beyond the Alaska Peninsula in south-western Alaska, separating the Bering Sea from the North Pacific Ocean.[569] The Aleuts occupied this island chain for at least 8,000 years.[570] The Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were removed from their land during World War II to temporary detention camps in isolated regions of southeast Alaska where they remained, under United States control and care, until long after any potential danger to their home villages had passed [571]);[572] and (3) recommend appropriate remedies.[573] In December 1982, the Commission released a unanimous 467-page report titled Personal Justice Denied detailing the history and circumstances of the wartime treatment of people of Japanese ancestry and the people of the Aleutian Islands.[574]

Two years after the Commission was approved, California enacted legislation permitting the filing of claims with the state for salary losses for up to five years at $1,000 per year for employees who were dismissed from state service because of their Japanese ancestry (Los Angeles and San Francisco later enacted similar provisions).[575]

The Civil Liberties Act of 1988 paid

$20,000

to each surviving incarceree

The Commission's findings and recommendations along with state and local efforts to provide compensation to the victims helped bring about the passage of the Civil Liberties Act of 1988 (1988 Act). The 1988 Act, which was signed by President Ronald Regan, provided "redress" from the nation in the form of $20,000.00 for each surviving incarceree.[576] Under the 1988 Act, the U.S. Attorney General was charged with identifying and locating eligible individuals within 12 months of the date the 1988 Act was signed.[577] No application was required. The onus was on the Attorney General to complete the identification and notification process.[578]

Eligible individuals had the right to refuse payment.[579] If they accepted payment, they had to waive all claims against the government.[580] The 1988 Act allowed for payments to survivors of eligible individuals who were deceased, priority payments to the oldest eligible individuals, and tax treatment that excluded payments as income under the internal revenue laws.[581] By 1999, redress payments had been distributed to approximately 82,220 claimants.[582] About thirty lawsuits were filed against the United States by those who had been found ineligible for redress.[583] A later settlement on a lawsuit filed by Japanese Latin Americans resulted in $5,000 redress payments for those claimants.[584]

To operationalize the 1988 Act, the federal government established the Office of Redress Administration (ORA) located within the Civil Rights Division of the Department of Justice. [585] The ORA had 10 years to complete its work from the date the Act was signed. [586] At its peak, the ORA had around 100 employees.[587] Because the 1988 Act only authorized redress payments and did not itself appropriate funds, separate appropriations had to be secured from Congress.[588] By 1990 only $20 million were available for redress payments, or about 1.6 percent of the amount authorized.[589] Congress later resolved this issue by amending the 1988 Act, requiring the necessary funds to be appropriated.[590]

The ORA worked to build trust within the community, working with Japanese American organizations, including the Japanese American Citizen League and the National Coalition for Redress/Reparations.[591] It organized redress check ceremonies throughout the country and held workshops to meet community members and disseminate information on the redress program.[592]

As the life of the ORA drew to an end, the remaining focus turned to paying on claims that had initially been denied, [593] or locating recipients who had not responded to outreach. The ORA prioritized the oldest living recipients.[594] Cases that were initially denied and subsequently reviewed for reconsideration included Japanese Latin Americans, children of "voluntary evacuees," minor children who had gone to Japan with

their families, and those Japanese Americans who lived in Hawai`i and were excluded from their homes, but were not necessarily incarcerated.[595] In some cases, where written documentation did not exists, the ORA was able to approve redress claims based on affidavits by contemporaneous witnesses.[596]

The 1988 Act provided a formal letter of apology for each surviving incarceree. President George H. W. Bush signed the first letters of apology in 1990.

The 1988 Act also established the Civil Liberties Public Education Fund (Public Education Fund) within the U.S. Treasury, which was to be administered by the Secretary of the Treasury and used for disbursements by the Attorney General and the newly established Civil Liberties Public Education Fund Board of Directors.[597] The Public Education Fund initially received appropriations totaling $1,650,000,000, and the Public Education Fund's purpose was "to sponsor research and public educational activities, and to publish and distribute the hearings, findings, and recommendations of the Commission, so that the events surrounding the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered . . . ."[598] The Public Education Fund would terminate once the funds appropriated to it were exhausted or 10 years after the enactment of the 1988 Act.[599] Additionally, all documents, personal testimony, and other records created or received by the Commission during its inquiry were kept and maintained by the Archivist of the United States who was directed to preserve such documents, testimony, and records in the National Archives of the United States and make them available to the public for research purposes.[600] The Act also called upon each department and agency of the U.S. Government to review with "liberality," giving full consideration to the findings of the Commission, any application by an eligible individual for the restitution of any position, status, or entitlement lost because of any discriminatory act of the U.S. Government against those of Japanese ancestry during the period of internment.[601] Finally, the Act provided a formal letter of apology for each surviving incarceree.[602] President George H. W. Bush signed the first letters of apology in 1990.[603] One such letter from President Bush read:

> A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation's resolve to rectify injustice and to uphold the rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II.
>
> In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice. You and your family have our best wishes for the future.[604]

September 11, 2001

The federal government passed legislation in 2004, 2011, and 2019 to compensate victims of the September 11, 2001, terrorist attacks. Congress's plan includes a Victim Compensation Fund where victims who have a physical injury or condition caused by the terrorist attacks can file claims for pain and suffering and past and future lost earnings.

The militant Islamist network al-Qaeda carried out four coordinated suicide terrorist attacks against the United States on September 11, 2001, commonly known as 9/11.[605] Terrorists hijacked four commercial airliners and crashed two planes into the Twin Towers of the World Trade Center in New York City, one plane into the Pentagon in Arlington, Virginia, and one plane in a field in Shanksville, Pennsylvania that was intended to hit a federal government building in Washington, D.C.[606] Nearly 3,000 people died in the attacks.[607]

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New York firefighters amid the rubble of the World Trade Center. (2001)

The incineration of the Twin Towers and the crashed aircrafts on September 11, 2001, released clouds of noxious toxins at each of the crash sites.[608] First responders, volunteers, and residents near Ground Zero inhaled harmful

dust, smoke, toxic chemicals, and particle remnants.[609] This toxics exposure subsequently caused various illnesses including more than 60 types of cancer, respiratory conditions, and digestive disorders.[610] Thousands of survivors and first responders have been diagnosed with 9/11-related illnesses and thousands more have died.[611] The compensation provided to 9/11 victims and their families or representatives addresses the damages from both the terrorist attacks and the clean-up efforts.[612]

Almost immediately after the September 11, 2001 terrorist attacks, Congress passed the Air Transportation Safety and Stabilization Act, which enacted the September 11th Victim Compensation Fund (VCF).[613] This bill was enacted to bring financial relief to any individual, or relative of a deceased individual, who was physically injured or killed as a result of the terrorist attacks.[614] The claims window for this first round of funding under the VCF, or "VCF1," closed in 2004.[615]

The VCF was reopened on January 2, 2011, when President Barack Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act).[616] While VCF1 only covered the victims (or their representatives) who were either killed or injured as a direct result of the 9/11 terrorist attacks, the Zadroga Act expanded the VCF to compensate victims for injury or death related to the debris removal process conducted in the aftermath of the terrorist attacks and to exposure to the toxic air in lower Manhattan and the other crash sites during that time.[617] Eligible individuals must have been present at the World Trade Center, the surrounding New York City exposure zone, the Pentagon crash site, or the Shanksville, Pennsylvania crash site at some point between September 11, 2001, and May 30, 2002, and diagnosed with a 9/11-related illness.[618] Compensation was available to first responders; those who worked or volunteered in construction, clean-up, and debris removal; and people who lived, worked, or went to school in the exposure zone.[619] The claim filing deadline was in 2016.[620]

The 2011 Zadroga Act also established the World Trade Center (WTC) Health Program to provide medical monitoring and treatment for responders and survivors with chronic health conditions arising from the 9/11 attacks.[621] Unlike the VCF, the WTC Health Program covers mental health conditions.[622]The WTC Health Program is administered by the director of the National Institute for Occupational Safety and Health (NIOSH) and conducts scientific research to better identify, diagnose, and treat physical and mental health conditions related to 9/11-related exposures.[623]

In 2015, the Zadroga Act was reauthorized and extended until December 2020.[624] Certain award calculations were changed.[625] The original VCF paid an average death claim award of over $2 million[626] and awarded anywhere from $500 to over $8.6 million in personal injury claims.[627] Due to budgetary concerns, the reauthorization of the Zadroga Act in 2015 restricted victim compensation.[628] It capped awards for non-economic loss from cancer conditions at $250,000, awards for non-economic loss from non-cancer conditions at $90,000, and awards for economic loss of annual income at $200,000.[629]

The Zadroga Act of 2015 paid

$250,000
for loss from cancer

$200,000
for economic loss of annual income

$90,000
for loss from non-cancer conditions

In early 2019, the VCF announced reductions to claim awards by 50 to 75 percent because of insufficient funds.[630] Outraged, the public demanded increased funding and Congress held hearings on fund and claim deadline extensions.[631] In July 2019, Congress passed the Never Forget the Heroes, James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act (VCF Permanent Authorization Act), fully funding the VCF as necessary to pay all eligible claims through the extended filing deadline of October 1, 2090.[632] It also compensated any victims who received reduced awards due to budgetary restrictions with the full value of their award.[633]

Now, to receive compensation, claimants must meet two deadlines: the registration deadline and the claim deadline.[634] For both personal injury and deceased claims, a new or subsequent government determination that a condition or injury is 9/11-related triggers a two-year registration window.[635] The two-year time frame applies when claimants know of both the physical injury and its causal connection to 9/11.[636] Registration alerts VCF of a potential claim and preserves the right to file a claim in the future.[637] Claimants can still register prior to having a diagnosis that their injury or condition is 9/11-related.[638] If registration is timely for

any condition or injury, then all eligible conditions are considered for a claim.[639]

The VCF was designed to be a compensation scheme in lieu of tort litigation for the economic and noneconomic losses incurred by victims who were physically injured and families of victims whose lives were taken as a result of the terrorist attacks.[640] Claimants who participate in this compensation scheme waive their right to sue for damages for injury or death as a result of the terrorist attacks.[641] A compensation fund was chosen as an alternative to potential class action toxic tort litigation, because it is a more efficient and effective solution for compensating victims.[642] The VCF was enacted to relieve victims and their families from navigating through the legal system and possibly having their claims rejected under government immunity or other potential bars.[643]

The VCF is administered by the U.S. Department of Justice.[644] To be eligible for compensation from the VCF, claimants must have a physical injury or condition caused by the 9/11 terrorist attacks or by the rescue, recovery, and debris removal efforts during the immediate aftermath of the terrorist attacks.[645] Claimants must have at least one of the pre-determined WTC-Related Physical Health Conditions in order to be eligible. [646] Claimants must demonstrate a diagnosis through a private physician process and/or a WTC Health Program.[647]

After a diagnosis, claimants then fill out a claim form that includes eligibility and compensation information and attach certain supporting documents to demonstrate presence at a 9/11 crash site, at a debris-removal route, or within a exposure zone.[648] Examples of acceptable documentation include sworn affidavits, medical records, lease or mortgage documents, and employer letters.[649] The VCF first reviews the claim for eligibility and if approved, the VCF then reviews the losses claimed for compensation.[650] At the claimed losses stage, the VCF reviews non-economic loss (pain and suffering) based on the severity of the physical harm and reviews economic loss based on past and future lost earnings.[651] Once the total amount of compensation is calculated, the claimant is informed of the outcome and has an opportunity to appeal within 30 days.[652] If no appeal is exercised, then the U.S. Treasury authorizes the payment and disburses it to the bank account designated in the claim application.[653]

The most significant issue with implementation has been the consistent capitalization of the fund. Over the past two decades, the Fund struggled to meet rising medical costs and cancer rates.[654] Many exposure symptoms and 9/11-related diseases took years to manifest.[655] Additionally, as described above, the fund went through various iterations of funding and scope throughout its lifetime.

Another issue has been claimants providing inadequate documentation for their claim or filing premature claims. According to the VCF's 2022 Annual Report, 54 percent of claims are deactivated for failure to provide the minimum required information, 41.9 percent of all claims are submitted with insufficient proof of presence documents, and 32.3 percent do not have a certified physical condition at the time the claim is filed.[656]

Sandy Hook Elementary School

In the years following the 2012 Sandy Hook Elementary school shooting, one of the deadliest in U.S. history, the federal Departments of Justice and Education issued several grants to establish a new Sandy Hook school at a vacant campus, to hire and train staff, including mental health professionals, and to help staff private charities that were handling donations intended for victims and victims' families.

On December 14, 2012, Adam Lanza shot and murdered twenty children and six adult staff members, including the school principal and school psychologist, at Sandy Hook Elementary School in Newton, Connecticut, after killing his mother.[657] Lanza had gathered an AR-15, two semi-automatic pistols, as well as several hundred rounds of ammunition stored in high-capacity magazines; his mother had purchased several of the guns.[658] When he arrived at the school, he shot and killed the school's principal and school psychologist.[659] Teachers, who heard the gunshots, entered lockdown procedures, but Lanza was able to enter a classroom where he killed the teacher and fourteen children.[660] He entered a second classroom and killed the teacher and six students; he also killed a special education aide and a behavioral therapist.[661] When police arrived at the school, they discovered that Lanza had killed himself.[662] It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall.[663] The school was demolished in 2014 and replaced by a new building in 2016.[664]

On January 3, 2013, Connecticut Governor Dannel P. Malloy established the Sandy Hook Advisory Commission, to investigate the facilities, recommend public policy implementation, and recommend law enforcement reforms.[665] The Commission found that Lanza acted alone, but did not identify a motive.[666] The Commission made several recommendations, including investment in mental health professionals and funding for short-term and long-term recovery plans and behavioral health and education responses to crisis events.[667]

At least $28 million was raised by more than 77 charities in the years after the shooting, with about a quarter of that amount distributed to families by the end of 2014.[668] Families settled a lawsuit with Remington, the manufacturer of the gun used by Lanza, for $73 million[669] and won judgements of $965 million and $473 million against Alex Jones, the founder of Infowars, for defamation, infliction of emotional distress, and violations of Connecticut's Unfair Trade Practices Act.[670]

The federal Departments of Justice and Education have awarded several grants to supplement these funds. A *Hartford Courant* review found that the federal government had given the town of Newton and several agencies related to Sandy Hook over $17 million in aid, used primarily to enhance mental health services and school security, in the two years following the shooting.[671] Much of the money from the grants went directly to opening the new Sandy Hook Elementary.[672]

On December 17, 2013, the U.S. Department of Justice Office for Victims of Crime granted $1.5 million to the Connecticut Judicial Branch to reimburse organizations and agencies that provided direct support to victims, first responders and the Newton community.[673] The grant provided reimbursements for costs incurred by organizations that provided crisis intervention services, trauma-informed care, victim-related law enforcement support, and costs incurred in moving students from Sandy Hook to a new school location.[674] The grant was distributed through the Antiterrorism and Emergency Assistance Program, which grants awards for crisis response, and is funded by the Crime Victims Fund for the Antiterrorism Emergency Reserve Fund.[675] The Department of Justice also provided $2.5 million in funding for Connecticut and Newtown law enforcement agencies through the Bureau of Justice Assistance.[676]

In June 2014, the Department of Justice issued another grant for $7.1 million through its Office for Victims of Crime.[677] This grant was for victim services, school safety efforts, and new mental health services.[678] Additionally, the town of Newton and the state received $2.5 million from the Department of Justice for police overtime costs.[679]

The federal funding was split between several groups. Newton Recovery & Resiliency Plan received $826,443: $618,000 went to hiring four fulltime staffers.[680] The second group, Resiliency Center of Newton, received $501,000, with $408,000 used for hiring therapists.[681] The United Way of Western Connecticut received around $131,355 from the Department of Justice, of which half was spent to hire a lobbying firm for public relations.[682] The Sandy Hook Foundation used $122,000 of the funds to hire an Executive Director.[683]

School Emergency Response to Violence (SERV) Grants from the Department of Education totaled $6.4 million; $1.3 million was earmarked for mental-health providers working with student survivors.[684] The rest was used to hire teachers, security guards, and other personnel. In total, the federal government has given $17 million in additional aid for mental health services and school security.[685]

The Federal Government has given

$17 Million

in additional aid for mental health services and school security

The grants were designed to strengthen the aid infrastructure and create programs that will aid in the recovery process for many years.[686] Immediately after the shooting, there was an increase in crisis referrals for mental health assistance, an increase in chronic absenteeism, and an increase in school nurse visits.[687]

Parents and community members criticized the fund disbursement process, since most of the grants were for support services, and none of the federal money was designated for survivors or their families.[688] Parents have said in public meetings that "trying to get help has been at best confusing, and at worst impossible, for many families" and that the advertised supports were inaccessible and difficult to identify.[689] Some have also argued that the funds have gone towards hiring public relations and lobbying firms rather than going to direct aid.[690] The Sandy Hook Foundation, for example, raised $12 million for victims' families through private donations and distributed only $7.7 million, without accounting for the rest.[691] The Department of Justice still granted the Foundation $173,830, most of which was used to pay the salary of the director.[692]

Iranian Hostages

In 2015, Congress created the United States Victims of State Sponsored Terrorism Fund to compensate American diplomats and staff who had been abducted and held hostage by Iranians at the U.S. Embassy in Tehran for 444 days between 1979 and 1981.[693] Each former hostage is entitled to receive $10,000 for each day they were held in captivity; spouses and children of the former hostages are entitled to a lump sum of $600,000

each.[694] However, due to issues with funding, the former hostages and their families have yet to receive the entire amount each are due.[695]

On November 4, 1979, a group of 3,000 Iranians stormed the U.S. embassy in Tehran and took 63 American men and women hostage.[696] The seizure took place shortly after the Iranian Revolution. Mohammed Reza Shah Pahlavi, the previous ruler of Iran who was deposed in January of 1979, had been a close ally to the U.S.; after he was deposed, the revolutionary government treated the U.S. cautiously and suspiciously.[697] The U.S. embassy had been the scene of frequent demonstrations by Iranians who opposed the American presence in Iran and, on February 14, 1979, the embassy was attacked and briefly occupied by guerillas, trapping the U.S Ambassador William H. Sullivan and 100 members of his staff inside.[698] The Ambassador called on Ayatollah Khomeini, the revolutionary leader of Iran for help; Khomeini's forces freed the hostages, but several personnel were wounded or killed.[699] No compensation program has been proposed for the February 14 hostages.

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This photo taken on the first day of occupation of the U.S. Embassy in Tehran shows American hostages being paraded by their militant Iranian captors. (1979)

In October 1979, the Shah Pahlavi travelled to New York City to obtain medical treatment. U.S. authorities informed the Iranian prime minister, Mehdi Bazargan, of the trip and Bazargan guaranteed the safety of the U.S. embassy and its staff from potential retaliation for Americans welcoming the deposed ruler.[700] The leaders of the storming of the embassy, a group of about sixty Iranian university students, who called themselves the Students Following the Imam's Line, demanded that the Shah be returned immediately to face the revolution.[701] In the following days, the Carter Administration and diplomats from other countries attempted but failed to negotiate the release of the hostages.[702] On November 12, acting foreign minister Abolhasan Bani-Sadr proposed a release of the hostages if: (1) the United States ceased interfering in Iranian affairs, (2) the Shah was returned to Iran for trial, and (3) assets in the Shah's possession were declared stolen property.[703] The U.S. responded by stating that it would support establishing an international commission to investigate human rights abuses under the Shah's regime and by refusing to purchase Iranian oil, instituting an international economic embargo against Iran, and freezing billions of dollars in Iranian assets in the United States.[704] On November 17, 13 hostages, all women or African Americans, were released on orders of Khomeini on the grounds that they were unlikely to be spies.[705]

On April 24, 1980, a small group of special operations soldiers attempted to free the hostages by force.[706] Their mission failed, however, when three of eight helicopters malfunctioned; U.S. forces withdrew, and one helicopter crashed.[707] Eight U.S. service members were killed. [708] No diplomatic progress was made until later in the year. In Mid-August, Iran implemented a permanent government; in September, Iraq invaded Iran. [709] The economic embargo and Iran-Iraq War led to Iran re-engaging in hostage negotiations. [710] Algerian diplomats eventually brokered an agreement, the Algiers Accords, and the hostages were released on January 20, minutes after the inauguration of Ronald Reagan. [711] The hostage crisis is widely believed to have contributed to Reagan's victory over Carter.[712] The Algiers Accords included, among other items, a provision preventing the freed hostages from seeking compensation from Iran in U.S. courts.[713] As a result, former hostages and their families have never successfully won judgments or collected damages from the harms of the hostage crisis.

The Hostage Relief Act of 1980, passed during the crisis, did not provide a cash payment to former hostages or their families, but did provide other benefits, including: the creation of an interest-bearing salary savings fund including retroactive interest; reimbursement of medical expenses; extension of various forms of service members' relief to hostages; tax relief, including deferred assessment of taxes for the period of captivity and refunding of tax collected prior to enactment of the Act; and educational expenses for family members and hostages.[714] A proposal to provide each hostage with $1,000 per day of captivity, to be funded by frozen Iranian assets, was rejected by the State Department on the grounds that it would complicate negotiations.[715]

On the same day that the Algiers Accords were signed, President Carter created the President's Commission on Hostage Compensation, with the goal of providing recommendations on financial compensation to former hostages. [716] The commission issued a report that the United States, as the employer of the former hostages,

should not be held liable in a "tort sense" but that the former hostages should receive a payment of tax-exempt detention benefits in the amount of $12.50 per day of captivity, similar to benefits paid to Vietnam War prisoners of war.[717] These recommendations were debated in Congress, but ultimately not adopted.[718]

In 2015, Congress passed the United States Victims of State Sponsored Terrorism Act, establishing a fund through the Consolidated Appropriations Act of 2015.[719] The Fund initially included an appropriation for $1.025 billion for Fiscal Year 2017.[720] Further funding has been provided by proceeds of federal enforcement actions.[721] At the time of passage, 37 former hostages were still alive.[722] Each hostage is entitled to receive $10,000 per day of captivity, and spouses and children are each entitled to a lump sum of $600,000.[723] Some of the appropriated money came from a $9 billion penalty assessed on Paris-based bank BNP Paribas, for violating sanctions against Iran, Sudan, and Cuba.[724]

In November 2019, Congress enacted the United States Victims of State Sponsored Terrorism Fund Clarification Act, amending the original legislation by extending the life of the Fund and expanding eligibility to receive payments from the Fund.[725] The Consolidated Appropriations Act of 2021 again amended the legislation.[726]

An eligible claimant was originally statutorily limited to:

- a U.S. person[727] with a final judgment issued by a U.S. district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism;
- a U.S. person who was taken and held hostage from the United States embassy in Tehran, Iran, from the period beginning November 4, 1979, and ending January 20, 1981, or the spouse and child of that person, and who is also identified as a member of the proposed class in case number 1:00-CV-03110 (EGS) of the U.S. District Court for the District of Columbia (*Roeder I*);[728] or
- the personal representative of a deceased individual in either of the two categories.[729]

On May 17, 2016, the Attorney General appointed Kenneth R. Feinberg as the Special Master to administer the Fund.[730] The Clarification Act removed the requirement that the former hostage be identified as a class member of *Roeder I*, but the requirement remains for the hostages' spouses and children.[731]

Former hostage applicants for the fund were required to apply by October 12, 2016.[732] Each applicant needed to establish eligibility. Former hostages were required to verify their identities and the date that they were released; spouses were required to verify that they were married to the former hostage during the hostage period, and children were required to produce birth records showing that they were born before January 20, 1981.[733]

The United States Victims of State Sponsored Terrorism Act of 2015 gave

$10,000 Per Day

of captivity to the Americans held hostage at the United States Embassy in Iran

The Special Master has ultimate authority over compensation of the fund, and their decisions are not subject to administrative or judicial review.[734] A claimant whose claim is denied may request a hearing before the Special Master within 30 days of receipt of the denial.[735] The Special Master hosted two telephonic town hall meetings to provide potential claimants, their lawyers, and the public with the opportunity to ask questions concerning the Act, and the Special Master also met personally with victims' advocates.[736]

The Special Master extended the application deadline to December 2, 2016 and received a total of 2,883 applications for both the former Iran hostages and their families and those who had received eligible judgements.[737] By August 2017, $1 billion had been disbursed.[738]

The Fund distributed another $1 billion between 2017 and 2019, and another $1.2 billion between 2019 and 2022. As of the 2023 report, $107.8 billion in compensatory and statutory damages remained unpaid for the former hostages other individuals eligible for compensation from the fund.[739] The Fund is scheduled to terminate in 2039, and the Special Master will authorize annual payments if sufficient funds are available.[740]

The Act was amended in 2019 to include 9/11 victims who had won judgements against Iran and the Fund was converted to be disbursed on a pro rata basis.[741] Following the amendment, the Fund was to be divided in half: half to be provided for 9/11-related victims of state sponsored terrorism and half to non-9/11 victims.[742] The half allocated to non-9/11 related victims is further divided on a pro

rata basis, based on the amounts outstanding and unpaid on eligible claims, until such amounts are paid in full.[743]

As a result of the inclusion of 9/11-related claimants to the fund, only a fraction of the amount designated for former hostages and their families has been distributed.[744] The former hostages have received occasional payments; Fund administrators estimate that the non-9/11 beneficiaries, including the former hostages, have received about 24% of what they are eligible for.[745] As of September 26, 2021, only 35 hostages remained alive.[746] As long as the Fund is maintained and there are outstanding payments, the Special Master will authorize payments on an annual basis. [747] The Fund sunsets on January 2, 2039.[748]

State and Local Reparatory Efforts

Rosewood, Florida

The Florida Legislature passed a claim bill in May 1994 to acknowledge and provide redress for the destruction and massacre of Rosewood, Florida, a small, predominantly African American community with approximately 120 residents that had wealth in the form of homes and businesses.[749] Florida's restitution to victims included approximately $2.1 million in compensation and a state scholarship fund for direct descendants.[750]

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Ruins of a two-story shanty near Rosewood, Florida, where twenty Black people barricaded themselves and fought off a white vigilante mob. The race riots followed an alleged brutal attack on a white woman. (1923)

The decimation of Rosewood started on January 1, 1923, when a white woman named Fannie Taylor reported an attack by an unidentified African American man in the town next to Rosewood.[751] Many African American descendants of Rosewood contend that the "attack" was a cover-up for a visit from her white lover.[752] Hearing the report from Taylor, a white vigilante mob led by Levy County Sheriff Robert Elias Walker descended upon Rosewood.[753] The mob tortured and killed an African American man named Sam Carter.[754] For the next week, hundreds of white vigilantes arrived in Rosewood.[755] They burned every home and building structure, such as churches and schools, murdered six African American residents, and wounded dozens more.[756] Two white men also died in a shootout.[757] News of the "race war" traveled quickly throughout the state and country,[758] but the Florida Governor never sent in the National Guard to protect African American residents and end the violence.[759] Many of Rosewood's African American residents fled to the nearby swamps and hid during the riots.[760] A rescue train evacuated fleeing residents to Gainesville.[761] At the end of the violence, only the house of John and Mary Jane Hall Wright, the white residents of Rosewood, remained standing.[762] On February 12, 1923, a grand jury convened in Bronson, Florida, to investigate the Rosewood massacre.[763] Four days later, the grand jury found insufficient evidence to prosecute.[764] African American residents never returned to Rosewood.[765]

In 1994, restitution to Rosewood victims passed the Florida House of Representatives as a claim bill, sponsored by Representative Miguel DeGrady.[766] A claim bill provides compensation to those injured by an act or omission of the state, its subdivisions, agencies, officers, or employees.[767] The bill "recognize[d] an equitable obligation to redress the injuries as a result of the destruction of Rosewood" and consisted of: (1) a finding of facts; (2) a direction to the Florida Department of Law Enforcement to conduct a criminal investigation in and around the Rosewood incident; (3) $500,000 to be distributed from the General Revenue Fund to African American families from Rosewood to compensate for demonstrated property loss; (4) compensation of $150,000 from the General Revenue Fund for each of the nine living survivors; (5) the establishment of a state scholarship fund for direct descendants of Rosewood families; (6) a direction to the state university system to continue researching the Rosewood incident and the history of race relations in Florida and develop educational materials about the destruction of Rosewood.[768]

After weeks of sensation in the news following the violence in January 1923, the story of the Rosewood massacre disappeared from public media, as survivors largely never spoke of the event.[769] In 1982, investigative reporter Gary Moore from the *St. Petersburg Times* unraveled the history of Rosewood in a comprehensive article that later became a story on CBS's *60 Minutes*.[770] The media attention galvanized Arnett Doctor, a descendent of Rosewood residents, who had been gathering the history of Rosewood for years.[771] Doctor was the driving force behind Rosewood becoming a public issue.[772] He secured the counsel of Holland & Knight to help descendants and victims seek compensation from the state for the violence and destruction of Rosewood.[773] With the firm's help, former Rosewood residents and their descendants were named in a claim bill, alleging physical and emotional suffering that resulted from acts or omissions of law enforcement and other county and state officials.[774] However, they missed the filing deadline for the 1993 session, so the bill was not introduced.

Coupled with public pressure, the failed bills paved the way for the commission of an academic report that substantiated the claims of Rosewood descendants.

That year, however, two other bills addressing Rosewood's history were introduced and failed to pass.[775] Nonetheless, coupled with public pressure, the failed bills paved the way for the commission of an academic report that substantiated the claims of Rosewood descendants.[776] Chaired by Dr. Maxine Jones of the Florida State University Department of History, the team issued its December 1993 report, *A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923*.[777] Opponents attacked the report as hearsay.[778] One of the authors of the report admitted that "perhaps the most damaging charge against the historical report was that it failed to include statements or interviews by accused whites or their friends or relatives."[779] But white people in the area refused to be interviewed for the report and were even hostile to the historians in some instances.[780] The historical report was enough evidence to support an equitable cause of action, even if it might not have survived scrutiny in a court proceeding.[781]

The claim bill for compensation was reintroduced in the legislative 1994 session and hearings were held to elicit testimony from Rosewood survivors.[782] At the hearings, survivors and expert witnesses testified about post-traumatic stress disorder symptoms and other suffering from the violence of the Rosewood massacre.[783] When the bill was on the state House floor, opponents attacked the bill with similar arguments—the violence was over 70 years ago, there was a lack of definite evidence of who committed the harms, and there was a fear that passing this bill would set a precedent for other groups injured in Florida's past to make claims.[784] The equitable nature of the claim bill served as a retort to these arguments since claim bills were not precedential. The bill passed on May 4, 1994; the House vote was 71-40 and the Senate vote was 26-14.[785]

The flexibility of a claim bill was critical to the descendants' success in securing compensation. If the descendants had asked for compensation in a claims proceeding in a court of law, their case would have been barred by hearsay or statutes of limitations, but since the claim bill hearing was an equitable proceeding, the legislature was not bound by those rules of law.[786] Restitution for the Rosewood massacre became a moral issue for Florida, thus securing its passage even if it could not have been adjudicated in a court of law. Additionally, advocates of the bill were careful not to use the word "reparations" during discussions seeking compensation, and the word cannot be found in the bill.[787] This was done in order to achieve passage of the bill.[788] Attorneys at Holland & Knight focused the bill on private property rights and the moral obligation Florida had to Rosewood victims and descendants.[789]

At the hearings, survivors and expert witnesses testified about post-traumatic stress disorder symptoms and other suffering from the violence of the Rosewood massacre.

The Rosewood Family Scholarship Program is codified in the state's Education Code[790] and the Florida Department of Education promulgated the criteria to receive an award.[791] The Rosewood Family Scholarship provides student financial assistance to a maximum of 50 students annually and currently provides up to $6,100 per student per academic year.[792] To be eligible, applicants must: be direct descendants who complete

a Florida financial aid application; provide documentation of ancestry such as a birth certificate, marriage license, death certificate, church record, or obituary; and enroll in a state university, Florida College System institution, or career center authorized by law.[793] Applicants are selected based on need.[794]

The General Appropriations Act provides funding for the Scholarship program.[795] The scholarship award is distributed before each semester's registration period on behalf of the student to the president of the university or Florida College System institution, his or her representative, or to the director of the career center where the recipient is attending.[796] Since the bill's enactment, there have been no notable issues with implementation. Some recent scholarship recipients have noted the pressure of Rosewood's history looming over them on campus, resulting in a sense of purpose and worry about upholding the legacy of their ancestors.[797]

In 2004, a Florida Historical Marker co-sponsored by the state and the Real Rosewood Foundation, a non-profit dedicated to preserving the history of Rosewood, was placed on State Road 24 to note where the community once was.[798] It states: "Those who survived were forever scarred."[799]

North Carolina Sterilization

In 2002, Governor Mike Easley apologized for forced sterilizations performed under the purview of the State of North Carolina's Eugenics Board.[800] In 2013, North Carolina was the first state to pass legislation to compensate victims of state-sponsored eugenic sterilizations. The law set aside a $10 million pool for compensation payments, and at least 215 victims received $20,000 in 2014, $15,000 in 2015, and a final payment of around $5,000 in 2018.[801]

In 1919, North Carolina passed its first forced-sterilization law, which was amended in 1929 to allow the head of any penal or charitable institution that received even some state funding to "have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof."[802] The North Carolina Supreme Court invalidated the law in 1933, because it failed to provide any notice or opportunity for appeal.[803] In response, the North Carolina Legislature created the North Carolina Eugenics Board to implement the new forced-sterilization law that had very limited appeal rights.[804]

The law set aside a $10 million pool for compensation payments, and at least 215 victims received $20,000 in 2014, $15,000 in 2015, and a final payment of around $5,000 in 2018.

The five members of the Board heard petitions brought by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians arguing that individuals should be sterilized due to being either epileptic, "feeble-minded," or mentally diseased.[805] There was a very limited appeal process, but the Board approved about 90 percent of the petitions.[806] The state ultimately sterilized around 7,600 persons, the third-largest number in the country.[807] The program was somewhat unique in that it also sterilized non-institutionalized individuals, not just those residing in penal or mental facilities.[808] Moreover, the vast majority of sterilizations took place after World War II.[809]

North Carolina ultimately sterilized

~7,600 Persons

the third-largest number in the country

Governor Bev Perdue established the North Carolina Justice for Sterilization Victims Foundation as part of the North Carolina Department of Administration in 2010 to function as a clearinghouse to help victims of the former North Carolina Eugenics Board.[810] During 2011 and 2012, the Foundation also supported the separate Gubernatorial Task Force on Eugenics Compensation established under Executive Order 83.[811] This effort culminated in the State Legislature creating the Eugenics Asexualization and Sterilization Compensation Program in 2013.[812]

The statute set out a program to compensate individuals who were asexualized or sterilized involuntarily under the authority of the Board under either the 1933 or 1937 version of the law.[813] This requirement that the state Board have been involved and/or have a record of the sterilization caused implementation issues, as it turned out that many individuals were sterilized at the county level without the involvement of the state Board.[814] A sterilization was "involuntary" under the statute if done in the case of: (1) a minor child with the consent of the child's parent or guardian, (2) an incompetent adult, with or without the consent of the adult's guardian or with a court order, or (3) a competent adult without the adult's informed consent but with the presumption that the adult gave informed consent.[815]

A claimant must also have been alive on June 30, 2013 in order to receive compensation.[816]

The State Legislature allocated $10 million to pay compensation claims.[817] The first payment was to be made to those claimants deemed qualified by October 31, 2014.[818] Any claimants determined to be qualified recipients after that date were to receive their initial payment within 60 days, and final payment checks splitting the remaining funds among qualified recipients were to be sent out within 90 days of the exhaustion of the last appeal.[819] Applications needed to be received by September 23, 2014 in order to be considered for the program.[820]

Now-Senator Thom Tillis was a co-sponsor of the legislation while he was North Carolina Speaker of the House. Discussing the need for financial payments, Tillis stated:

> "We decided that we were going to take the hits and do the right thing for the victims. It was not easy. We had opposition from both sides, some saying we shouldn't do it at all, others saying we weren't doing enough. But those had been the arguments that had prevented it from happening in the past, and we decided that we were going to push through and do the right thing for the victims."[821]

The bill specifically stated that financial compensation would not be subject to tax and other limitations: (1) Any payment should not be considered income or assets for purposes of determining the eligibility for, or the amount of, any benefits or assistance under any State or local program financed in whole or in part with State funds; and (2) the N.C. Department of Health and Human Services should disregard compensation money in the determination of public assistance or recovery of Medicaid-paid services.[822] Once he became a United States Senator, Tillis authored a bill to protect compensation payments from any determination for federal benefits.[823]

North Carolina only repealed its sterilization law in 2003. As part of the repeal, then-Governor Easley issued a public apology.[824] He stated, "To the victims and families of this regrettable episode in North Carolina's past, I extend my sincere apologies and want to assure them that we will not forget what they have endured."[825]

The statute creating the compensation program formed the Office of Justice for Sterilization Victims in the North Carolina Department of Administration to administer claims. Applicants were able to submit claims to the Office between until June 30, 2014.[826] Claims needed to be dropped off in person or mailed, and be received by the above date to be considered. Claims were assessed by the North Carolina Industrial Commission ("Commission").[827]

A deputy commissioner first assessed the claims to determine eligibility, and if the claim was not approved, the deputy commissioner had to set forth in writing the reasons for the denial and notify the claimant.[828] If not approved, a claimant could submit additional documentation and request a redetermination by the deputy commissioner.[829] A claimant whose claim was not approved at either previous stage had the right to request a hearing before the deputy commissioner, where the claimant could be represented by counsel, present evidence, and call witnesses.[830] The deputy commissioner who heard the claim had to issue a written decision of eligibility.[831]

A claimant could then file a notice of appeal with the Commission within 30 days; such appeal was to be heard by the full Commission, and the Commission had to notify all parties concerned in writing of its decision.[832] A claimant could appeal the decision of the full Commission to the state Court of Appeals within 30 days of the date notice of the decision is given.[833] Decisions favorable to the claimant were final and not subject to appeal by the State.[834]

"We decided that we were going to take the hits and do the right thing for the victims. It was not easy. We had opposition from both sides, some saying we shouldn't do it at all, others saying we weren't doing enough. But those had been the arguments that had prevented it from happening in the past, and we decided that we were going to push through and do the right thing for the victims."

If a claimant was determined to be a qualified recipient, the Commission gave notice to the Office of Justice for Sterilization Victims and the Office of State Controller. The Office of State Controller then made a payment of compensation to the qualified recipient.[835] Compensation was intended to be in the form of two payments, with the first by October 31, 2014 (or 60 days after a claim was approved if approval happened after

October 31, 2014), and the second payment after the exhaustion of all appeals arising from denial of eligibility.[836] Several court cases appealing denials of claims took several years to progress through the courts, so the state ultimately sent three payments to victims between 2014 and 2018.

There were two groups of court cases regarding who qualified as a claimant under the program. First, a group of plaintiffs argued they should be eligible for compensation payments as heirs to victims of sterilization. The state court ruled it was not an Equal Protection Violation for the statute to provide compensation only to those victims alive on the date the statute was passed.[837] Second, a group of plaintiffs challenged the limitation of compensation to only those whose sterilization was directly under the auspices of the State Eugenics Board, rather than a county official or state judge. The state court eventually ruled that the plaintiffs' equal protection claim lacked merit.[838]

Several court cases appealing denials of claims took several years to progress through the courts, so the State ultimately sent three payments to victims between 2014 and 2018.

Virginia (Eugenics)

On May 2, 2002, 75 years after the *Buck v. Bell* Supreme Court decision that upheld Virginia's eugenics statute, Virginia Governor Mark R. Warner issued an apology for the state's embrace of eugenics and denounced the state's practice that involuntarily sterilized persons confined to state institutions from 1927 to 1979.[839]

In 1924, Virginia passed its Eugenical Sterilization Act, which authorized the sexual sterilization of inmates at state institutions. The Act provided that the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded could impose sterilization when he had the opinion that it was for the best interest of the patients and of society that any inmate of the institution under his care should be sexually sterilized and the requirements of the Act were met.[840] The Act responded to fifty years of scholarly debate over whether certain social problems, including shiftlessness, poverty, and prostitution, were inherited and ultimately could be eliminated through selective sterilization.[841] The Act was passed alongside the Racial Integrity Act, which banned interracial marriage by requiring marriage applicants to identify their race as "white," "colored," or "mixed" with "white" being defined as a person "who has no trace whatsoever of any blood other than Caucasian."[842] The Racial Integrity Act was bolstered by the eugenics efforts like the Eugenic Sterilization Act, which saw non-White people as having inferior genes.[843] One inmate, Carrie Buck, appealed her order of sterilization, but U.S. Supreme Court upheld the Virginia state law in *Buck v. Bell* (1927) by a vote of 8 to 1. [844] The controversial ruling was never overturned, but the law was repealed in 1974.[845] Between 1927 and 1972, about 8,300 Virginians were sterilized. [846]

In 1980, the American Civil Liberties Union sued the Lynchburg Training School and Hospital (previously the Virginia State Colony for Epileptics and Feebleminded) on behalf of the men and women who had been sterilized there. In *Poe v. Lynchburg Training School and Hospital* (1981), the U.S. District Court for the Western District of Virginia ruled that while the sterilizations had been legal, there was cause to believe that correct procedure had not always been followed.[847] The plaintiffs later settled with the state out of court, with the state agreeing to inform women what had been done to them and to provide them with counseling and medical treatment.[848]

In 2013, Virginia House Member Robert G. Marshall introduced House Bill 1529, the Justice for Victims of Sterilization Act.[849] The bill as introduced would have provided compensation in the amount of $50,000 to persons involuntarily sterilized between 1924 and 1979.[850] Funds would be administered by the Department of Social Services. [851] The provisions of the bill would expire July 1, 2018. [852] The bill, however, never left the House and died in Appropriations by February 2013.[853]

Virginia ultimately sterilized

~8,300 Persons

between 1927 and 1972

In 2014, Virginia House Member Robert G. Marshall reintroduced the Justice for Victims of Sterilization Act as House Bill 74.[854] The bill included an updated sunset of July 1, 2019.[855] House Bill 74 was referred to the Committee on Appropriations but was voted on to be continued in 2015.[856]

In 2015, Virginia House Member Patrick Hope reintroduced the Justice for Victims of Sterilization Act as House Bill 1504.[857] The bill remained the same and included a sunset provision. The House assigned House Bill 1504 to the General Government and Capital Outlay Subcommittee, but by February 2015, the bill was left in Appropriations.[858] The same year, Virginia House Member Benjamin Cline introduced an identical bill, House Bill 2377.[859] However, House Bill 2377 was left in Appropriations in February 2015.[860]

Despite both bills not making it out of Appropriations, an amendment was added to the 2015 House Budget Bill, HB 1500, to allocate $400,000 from the state general fund for compensation to individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015.[861] As written in the budget, the funds were to be managed by the Department of Behavioral Health and Developmental Services and limited to $25,000 per person instead of the proposed $50,000.[862] Furthermore, should the funding provided for compensation be exhausted prior to the end of fiscal year 2016, the department was ordered to continue to collect applications.[863] The department was required provide a report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on a quarterly basis on the number of additional individuals who had applied. The Virginia House and Senate approved House Bill 1500, and the bill was signed by the Governor on March 26, 2015, establishing the Virginia Victims of Eugenics Sterilization Compensation Program (VESC). As of the enactment, there were only 11 surviving victims.

To apply for compensation through the Victims of Eugenics Sterilization Compensation Fund, authorized through the 2015 Appropriation Act, claimants must complete and mail an application form and provide supporting documentation to the Virginia Department of Behavioral Health and Developmental Services.[864]

An individual or lawfully authorized representative is eligible to request compensation under this program if the individual was:

- Involuntarily sterilized pursuant to the 1924 Virginia Eugenical Sterilization Act;
- Living as of February 1, 2015; and
- Sterilized while a patient at Eastern State Hospital; Western State Hospital; Central State Hospital; Southwestern State Hospital; or the Central Virginia Training Center (formerly known as the State Colony for Epileptics and Feeble-Minded; now closed).

On October 7, 2016, the Treatment of Certain Payments in Eugenics Compensation Act was signed by the President and became law as Public Law 114-241. This federal law provides that payments made under a state eugenics compensation program shall not be considered as income or resources for purposes of determining the eligibility of a recipient of such compensation for, or the amount of, any federal public benefit.[865]

California Sterilization Compensation Program

In 2003, the State of California formally apologized for its eugenic sterilization program that took place until 1979.[866] This included apologies from Governor Gray Davis, Attorney General Bill Lockyer, and a resolution passed by the State Senate expressing profound regret over the program.[867] In 2021, the California State Legislature passed Assembly Bill (AB) 137 creating the California Forced or Involuntary Sterilization Compensation Program, apologizing for sterilizations at state prisons, ordering the creation of memorial plaques and allocating $4.5 million for financial compensation to those sterilized by the State.[868]

In 2021, California allocated

$4.5 Million

for financial compensation to those sterilized by the State

California's eugenic sterilization program began in 1909, with the passage of Chapter 720 of the Statutes of 1909 (revised in 1913 [Chapter 363 of the Statutes of 1913] and 1917 [Chapters 489 and 776 of the Statutes of 1917]), which authorized medical superintendents in state homes and state hospitals to perform "asexualization" on patients.[869] This allowed medical personnel to perform vasectomies for men and salpingectomies for women who were identified as "afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeblemindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."[870]

The law passed unanimously in the State Assembly, and drew only one dissenting vote in the State Senate in 1909.[871] The subsequent amendments shifted the focus of the program from the castration of those imprisoned in state prisons and towards the sterilization of those held in state mental hospitals.[872]

California maintained 12 state homes and state hospitals that housed thousands of patients who were committed by the courts, family members, and medical authorities.[873] While many sterilizations included the use of consent forms, such consent was often a condition of release from commitment.[874] This, along with other conditions such as lack of full information, prevented true consent. Moreover, AB 137 notes that even though the law did not target specific racial or ethnic groups, in practice, "labels of 'mental deficiency' and 'feeblemindedness' were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women."[875] For example, between 1919 and 1952, "women and girls were 14 percent more likely to be sterilized than men and boys," "male Latino patients were 23 percent more likely to be sterilized than non-Latino male patients, and female Latina patients were 59 percent more likely to be sterilized than non-Latina female patients."[876]

California's eugenic sterilization law was repealed in 1979[877], but sterilization without proper consent continued in state institutions. In 2014, the California State Auditor released an audit of female inmate sterilizations that occurred in the state prison system's medical facilities between fiscal years 2005-06 and 2012-13.[878] The auditor discovered 144 women imprisoned by the State were sterilized through bilateral tubal ligation, which is not medically necessary and is solely used for female sterilization.[879] The auditor found that officials failed to receive informed consent in at least 39 of these cases, but more broadly, expressed serious reservations about all of the procedures as they were "unable to conclude whether inmates received educational materials, whether prison medical staff answered inmates' questions, or whether these staff provided the inmates with all of the necessary information to make such a sensitive and life-changing decision as sterilization."[880] Following this report, the Legislature prohibited the sterilization for the purpose of birth control for any individual under the control of the California Department of Corrections and Rehabilitation (CDCR).[881] There are an estimated 244 survivors of illegal prison sterilization.[882]

The California Legislature passed, and the Governor signed, AB 137 in the 2021-2022 legislative session.[883] AB 137 created the California Forced or Involuntary Sterilization Compensation Program, which financially compensates survivors of state-sponsored sterilization. The California Victim Compensation Board (CalVCB) administers the Program.[884]

AB 137 sets out specific criteria for those who can apply for compensation from the Program: "(1) Any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. (2) Any survivor of coercive sterilization performed on an individual under the custody and control of the Department of Corrections and Rehabilitation after 1979."[885]

To be eligible under the first category, a person must have been: (1) sterilized pursuant to the eugenics laws in place between 1909-1979; (2) sterilized while the individual was at a facility under the control of the State Department of State Hospitals or the State Department of Developmental Services; (3) and alive at the start date of the Program, July 1, 2021.[886]

To be eligible under the second category, the following conditions must be met: (1) sterilization procedure occurred after 1979; (2) claimant was sterilized while in the custody of CDCR; (3) sterilization was not required in an emergency life-saving medical situation or due to a chemical sterilization program for convicted sex offenders; (4) sterilization was for birth control purposes; and (5) the claimant was sterilized under one of the following conditions: without consent, with consent given less than 30 days before sterilization, with consent given without counseling or consultation, or with no record or documentation of providing consent.[887] The law also requires CalVCB to affirmatively identify and disclose coercive sterilizations that occurred in California prisons after 1979 so that individuals may then apply for compensation.[888]

AB 137 notes that even though the law did not target specific racial or ethnic groups, in practice, "labels of 'mental deficiency' and 'feeblemindedness' were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women."

AB 137 allocated $4.5 million for direct financial compensation to applicants who met the above eligibility criteria.[889] Each approved applicant receives an initial payment of $15,000 within 60 days of notice of confirmed eligibility.[890] After all applications are processed and all initial payments

are made, any remaining program funds will be disbursed evenly to the qualified recipients by March 31, 2024.[891] Applications to the program are accepted from January 1, 2022, through December 31, 2023.[892]

Each approved applicant receives an initial payment of $15,000 within 60 days of notice of confirmed eligibility.

Sponsor of the bill, California Latinas for Reproductive Justice, summarized the rationale for the apology and financial compensation:

> California will become the third state to compensate survivors of forced sterilizations under eugenics laws, following North Carolina (2013) and Virginia (2015). It will also become the first state to compensate survivors of involuntary sterilizations performed outside of formal eugenic laws. Enactment of this bill would send a powerful message around the country that forced sterilizations will not be tolerated in carceral settings, including prisons, detention centers, and institutions.[893]

The bill specifically stated that financial compensation would not be subject to tax and other limitations:

> Notwithstanding any other law, the payment made to a qualified recipient pursuant to this program shall not be considered any of the following: (1) Taxable income for state tax purposes; (2) Income or resources for purposes of determining the eligibility for, or amount of, any benefits or assistance under any state or local means-tested program; (3) Income or resources in determining the eligibility for, or the amount of, any federal public benefits as provided by the Treatment of Certain Payments in Eugenics Compensation Act (42 U.S.C. Sec. 18501); (4) Community property for the purpose of determining property rights under the Family Code and Probate Code.[894]

Moreover, the financial compensation shall not be subject to an enforcement of a money judgment under state law, a money judgment in favor of the Department of Health Care Services, the collection of owed child support, or the collection of court-ordered restitution, fees, or fines.[895]

In 2003, the State Legislature, Governor, and Attorney General all issued formal apologies for the 1909-1979 eugenic sterilization program.[896] Specifically, the State Senate passed a resolution expressing "profound regret over the state's past role in the eugenics movement and the injustice done to thousands of California men and women," addressing "past bigotry and intolerance against the persons with disabilities and others who were viewed as 'genetically unfit' by the eugenics movement," recognizing that "all individuals must honor human rights and treat others with respect regardless of race, ethnicity, religious belief, economic status, disability, or illness," and urging "every citizen of the state to become familiar with the history of the eugenics movement, in the hope that a more educated and tolerant populace will reject any similar abhorrent pseudoscientific movement should it arise in the future."[897]

In 2021, as part of the passage of AB 137, the State Legislature formally expressed regret for the sterilizations that took place after 1979.[898] Specifically, the Legislature stated, "The Legislature also hereby expresses its profound regret over the state's past role in coercive sterilizations of people in women's prisons and the injustice done to the people in those prisons and their families and communities."[899]

AB 137 also requires the State Department of State Hospitals, the State Department of Developmental Services, and CDCR, in consultation with stakeholders to establish markers or plaques at designated sites.[900] Stakeholders must include at least one member and one advocate of those who were sterilized under California's eugenics laws between 1909 to 1979, and of those who were sterilized without proper authorization while imprisoned in California state prisons after 1979.[901] These memorials should "acknowledge the wrongful sterilization of thousands of vulnerable people under eugenics policies and the subsequent sterilization of people in California's women's prisons caused, in part, by the forgotten lessons of the harms of the eugenics movement."[902]

The compensation program is administered by CalVCB.[903] The law gives CalVCB six months from passage to have applications ready for the public, and applications are accepted from January 1, 2022, through December 31, 2023.[904] Applications are available through CalVCB's website, over the phone, through the mail, or by visiting in person, and they can be returned by mail, email, or fax.

The individual submitting the application will receive a letter from CalVCB either confirming a complete application or requesting additional information. Once the application is screened and deemed complete, the application will be considered for eligibility. The statute sets out eligibility criteria (discussed above) and the specific documents and document types CalVCB may use to determine eligibility.[905] Upon completion of the eligibility review, a letter will be sent out with the determination.[906]

If eligibility is verified, the claimant will receive a confirmation letter, and they shall receive an initial payment of $15,000 within 60 days of the CalVCB's determination.[907]

If eligibility is not verified, the application will be denied. Notification will be sent with the necessary appeal information. An individual may file an appeal to CalVCB within 30 days of the receipt of the notice of decision, and after receiving the appeal, CalVCB shall again attempt to verify the claimant's identity pursuant to statutory requirements.[908] If the claimant's identity cannot be verified, the claimant can provide additional evidence including, but not limited to, documentation of the individual's sterilization, sterilization recommendation, surgical consent forms, relevant court or institutional records, or a sworn statement by the survivor or another individual with personal knowledge of the sterilization.[909] CalVCB has 30 days to rule on an appeal, and any successful appeals will receive compensation as above.

After exhaustion of all appeals arising from the denial of an individual's application, but by no later than two years and nine months after the start date of the program, CalVCB shall send a final payment to all qualified recipients. This final payment shall be calculated by dividing the remaining unencumbered balance of funds for victim compensation payments by the total number of qualified recipients.[910]

According to CalVCB, as of December 20, 2022, the program has received 309 applications. Of those, 45 have been approved, 102 have been denied, three have been closed as incomplete, and 159 are being processed.[911] Experts estimate there may be about 600 people alive today that qualify for compensation, and the CalVCB is undertaking several actions to try to spread the word about the program.[912] This includes sending posters and fact sheets to 1,000 skilled nursing homes and 500 libraries, and distributing more than 900 posters to the state's 35 correctional institutions to post in common areas and housing units, in hopes of reaching more people.[913] The State also signed a $280,000 contract in May with JP Marketing to launch a social media campaign that will run through the end of 2023. The biggest push began in December 2022, when the State will pay for TV and radio ads in Los Angeles, San Francisco, and Sacramento that will run through October 2023.[914]

Chicago Police Department

Between 1972 and 1991, Jon Burge, a high-ranking officer in the Chicago Police Department , led a group of detectives and officers in an organized operation to torture and abuse over 120 African American criminal suspects, with some cases resulting in coerced confessions.[915] Investigations revealed that Burge led operations of abuse that included physical torture and psychological abuse such as "trickery, deception, threats, intimidation, physical beatings, sexual humiliation, mock execution, and electroshock torture."[916] Evidence also suggests that judges and some city officials facilitated the abuse and its cover-up.[917] Many of Burge's African American victims ended up in prison due to coerced confessions and some were sentenced to death.[918] Efforts to hold Burge accountable for his actions were unsuccessful because the statute of limitations had expired for many of the cases of torture.[919] Community members sought alternative methods to obtain justice, and those efforts eventually led to the passage of the Ordinance for Reparations for the Chicago Police Torture Survivors (Reparations Ordinance).[920]

Between 1972 and 1991, Jon Burge, a high-ranking officer in the Chicago Police Department, led a group of detectives and officers in an organized operation to torture and abuse over 120 African American criminal suspects, with some cases resulting in coerced confessions.

Years before the Reparations Ordinance was passed, community activist organizations in Chicago, including the Chicago Torture Justice Memorial (CTJM) and attorney Joey Mogul of Peoples Law Office, fought to have the harms inflicted by Burge and his officers acknowledged and the survivors compensated.[921]

They litigated torture cases in court seeking justice for the survivors.[922] One of those survivors was Andrew Wilson who had been sentenced to death because of the false confession Burge and other officers coerced from him using torture.[923] Wilson filed suit under 42 U.S.C. §

1983 seeking damages from Burge.[924] An all-white jury found in favor of Burge, but the United States Court of Appeal for the Seventh Circuit reversed the verdict and ordered a new trial.[925]

Another survivor who sought relief through the courts was Aaron Patterson who was sentenced to death.[926] His claim against Burge was raised in a post-conviction petition, which asked the court to determine whether Patterson was a victim of torture.[927] After denials in the lower court, the Illinois Supreme Court heard the case, specifically to address whether evidence of physical injury was necessary to prove that a confession was coerced using torture.[928] The Illinois Supreme Court held that proof of physical injury was not required to establish that a confession was physically coerced.[929]

These were two examples of the many cases where survivors pursued remedies through the courts with mixed results. Some claims were raised in post-conviction proceedings, seeking damages; others were filed to address limited issues/questions, and other actions were filed seeking new trials based on the coerced confessions. The results varied, and the overall frustration of the survivors, their attorneys, and activists led them to seek support from international human rights organizations like the Inter-American Commission for Human Rights (Inter-American Commission) and the United Nations Committee Against Torture (Committee Against Torture) to hold Burge and the City of Chicago accountable. They filed petitions with the Inter-American Commission and the Committee Against Torture seeking redress.[930] The Inter-American Commission did not take official action.[931] But the Committee Against Torture issued a report affirming the survivors' position and urging the United States to provide redress "by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors."[932] In its report, the Committee Against Torture expressed concern that no police officer had been convicted for their crimes and that the majority of victims still had not receive "compensation for the extensive injuries suffered."[933] Although Burge was convicted for perjury and obstruction of justice, there was not sufficient evidence to prosecute him for violating the constitutional rights of the survivors.[934]

In May 2015, the efforts of the survivors, their attorneys, and the activists culminated in the Chicago City Council "approv[ing] a municipal ordinance giving reparations to Burge torture survivors."[935] The Reparations Ordinance approved a $5.5 million fund that would be used to award each survivor $100,000 in financial compensation along with non-financial reparations such as psychological counseling, healthcare, and an official memorial.[936] The Ordinance was drafted by attorney Joey Mogul who worked with survivors, their families, and other activists.[937] There was no temporal limit for filing claims.

The intended recipients of the Reparations Ordinance included all torture survivors that have credible claim of torture or physical abuse at the hands of Job Burge or his subordinates, their immediate family members, and in some cases, to their grandchildren. The ordinance requires the individual must have a credible claim of torture or physical abuse by Jon Burge or one of the officers under his command between May 1, 1972, and November 30, 1991.[938]

The Reparations Ordinance approved a $5.5 million fund that would be used to award each survivor $100,000 in financial compensation along with non-financial reparations such as psychological counseling, healthcare, and an official memorial.

The Reparations Ordinance intended to fully address the harm Burge and his subordinates caused by providing for a formal apology, financial compensation, services and support for survivors, funding for public education, and a memorial. First, the formal apology acknowledged the extent of the police abuse and admitted that the City of Chicago and other public officials were complicit in the abuse of over 100 African Americans.[939] Second, each survivor with a credible claim of torture or abuse by Burge or one of the officers under his command would receive financial reparations of $100,000.[940] The Ordinance created the Chicago Police Torture Reparations Commission, which was responsible for disbursing financial reparations to the survivors.[941] Third, the Ordinance provided survivors and their families free tuition at the City Colleges of Chicago and free access to job training.[942] Fourth, in addition to financial and educational reparations, the Ordinance also provided psychological services to survivors and family members at a dedicated community center .[943] Finally, the City of Chicago promised to work with the activist group CTJM to "construct a permanent memorial to the Burge victims; and beginning in the 2015-2016 school year, the Chicago Public Schools [would] incorporate into its existing U.S. history curriculum for eighth-grade and tenth-grade students a lesson about the Burge case and its legacy."[944]

The claims process for obtaining reparations under the Ordinance began with CTJM providing the City of Chicago with a list of individuals CTJM determined were eligible for reparations. Both the City and CTJM would investigate the claim, and if both parties agreed the survivor had a credible claim, the survivor would be entitled to the financial reparations from the fund.[945] If CTJM and the City disagreed about an individual's credibility, that individual would have the opportunity to present information and evidence to an independent arbitrator who would make a final and binding decision.[946]

The only remaining unfulfilled reparation is the memorial.[947] This is, in part, because the Reparations Ordinance did not specify the timeline for the memorial and specific funding was not provided. As of 2021, the memorial still had not been built, but individuals at CTJM have been meeting with the Mayor and remain hopeful the process for building the memorial will start soon.[948]

Evanston, Illinois

The City of Evanston passed a racial equity scheme, the Restorative Housing Program (37-R-27), in March 2021 to redress the city's discriminatory practices in housing, zoning, and lending that created a wealth and opportunity gap between white and African American Evanstonians.[949] Under this scheme, African American Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided up to $25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage.[950] On March 27, 2023, the City Council unanimously added direct cash payments as a fourth option.[951] The Restorative Housing Program was the first reparatory program enacted by the City, but Evanston has also studied its discriminatory past and produced a report, created a City Reparations Fund, honored local historical African American sites, and issued an apology.

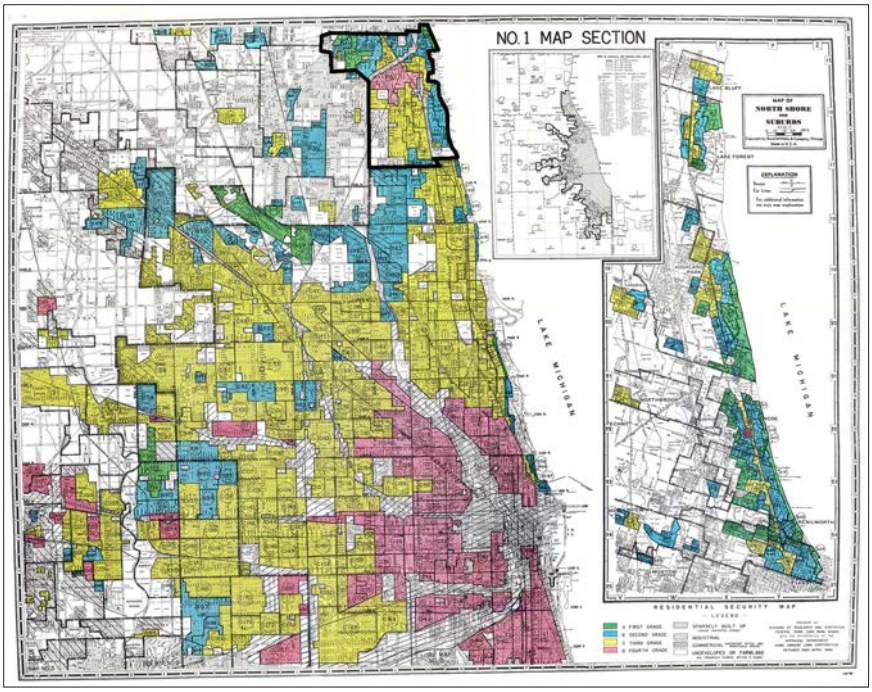
The City Council enacted the Restorative Housing Program to redress the injustices found in the report commissioned for the City Council's Reparations Subcommittee, *Evanston Policies and Practices Directly Affecting the African American Community, 1900-1960 (and Present)*.[952] According to the report, "the City of Evanston officially supported and enabled the practice of segregation"[953] by passing a zoning ordinance in 1921 that condoned implicit race-based housing segregation; demolishing homes owned by African American families for economic development on the grounds that they were "unsanitary" or "overcrowded"; providing permits to Northwestern University to develop temporary, segregated housing for veterans after World War II; segregating post-World War II temporary housing for veterans; and failing to enact a fair housing ordinance to outlaw housing discrimination until the late 1960s.[954]

The Restorative Housing Program was created in March 2021[955] with the aim of increasing African American homeownership in order to revitalize and preserve African American owner-occupied homes in Evanston.[956] To be eligible, the home must be located in Evanston and be the applicant's primary residence.[957] The program has three categories of intended recipients—Evanston residents over the age of 18 years, of Black/African American ancestry, and, in order of priority, either: (1) an Ancestor, a resident who lived in Evanston between 1919 and 1969, was at least 18 years old during that time, and experienced housing discrimination due to the City's polices/practices; (2) a Direct Descendant of an Ancestor (e.g., child, grandchild, great-grandchild, and so on); or (3) a resident that does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to City ordinance, policy, or practice after 1969.[958] The City Manager's Office is primarily responsible for administering this program.[959] The City Manager's Office takes in applications and verifies eligibility based on the guidelines established by the Reparations Committee, discussed below.[960] At the close of the first round of applications, 122 Ancestor-applicants were verified by the city and 16 were randomly selected on January 13, 2022, via the City's lottery to receive the first round of payments.[961] In March 9, 2023, Evanston planned its second round of disbursements for 35 to 80 Ancestors.[962]

Through the Restorative Housing Program, African American Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided $25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage. On March 27, 2023, the City Council unanimously added direct cash payments as a fourth option.

Upon approval by the City Council, funds are sent electronically or via check to the closing agent for disbursal when the applicant closes on a home purchase, to the contractor upon receipt of invoice, or to the lender for

COURTESY OF DIGITAL SCHOLARSHIP LAB UNIVERSITY OF RICHMOND



A Homeowner's Loan Corporation map of Chicago detailing A, B, C and D grade areas of the city. An "A" rating, shaded in green, was for the best neighborhoods that were new and all white. A "D" rating, shaded in red, was the worst category, and reserved for all-Black neighborhoods, even if it was middle class. The City of Evanston is outlined. (1940)

mortgage payment.[963] City Council selected this method of fund disbursement due to Internal Revenue Service (IRS) reporting requirements; the City lacks the requisite authority to exempt direct payments from either state or federal income taxes. Consequently, a recipient would be liable for the tax burden associated with the award.[964] A recipient could end up being required to pay between 24 to 28 percent to the IRS and Illinois.[965] By distributing payments to the financial institution or vendor, instead of the Evanston resident, the financial institution or vendor becomes responsible for the tax liability.[966] For the direct cash payment option that was added to the Restorative Housing Program in March 2023, the Law Department of the City of Evanston determined that payments made under the "General Welfare Exclusion" will not qualify as taxable income.[967] Accordingly, applicants who wish to utilize the cash payment option must be income qualified in order to avoid tax liability and must receive a grant from the general welfare fund.[968] For the other three grant options in the Restorative Housing Program, contracts are paid in installments, with half of the money arriving upfront, a quarter halfway through the job, and the final quarter upon completion.[969] Approved funds must be utilized within the year of approval.[970] Funding can be layered with other housing assistance programs by the city, state, or federal government.[971]

Evanston's recent movement for reparatory justice began in 2019.[972] Former Evanston Alderperson Robin Rue Simmons led the charge for reparatory justice with the support of the City's Equity and Empowerment Commission.[973] First, the Commission studied the discriminatory past of the City by enlisting the help of two Evanston-based historical organizations, the Shorefront Legacy Center and the Evanston History Center, to identify past harms inflicted against African American Evanstonians. These organizations produced a draft report that provided justification for the enactment of a racial equity scheme by listing historical and contemporary instances where the City of Evanston might have facilitated, participated in, enacted, or stood neutral in the wake of acts of segregated and discriminatory practices.[974] The report described Evanston's historic segregated practices in transportation, public spaces, and employment, delayed desegregation efforts, and housing and zoning policies that led to overcrowding, higher rents, and segregated inferior housing for African American residents.[975] The Commission also held community meetings to gather public input and recommend actions to the City Council.[976] Both the National Coalition of Blacks for Reparations in America (NCOBRA) and the National African American Reparations Commission (NAARC) provided advice regarding Evanston's reparatory process.[977] Additional town halls and meetings were hosted by the City to further engage residents in program specifics.[978]

In November 2019, Evanston adopted Resolution 126-R-19 to study community recommendations for "repair and reparations" and create the City Reparations Fund to collect tax revenues.[979] Resolution 126-R-19 committed the first $10 million of the City's Municipal Cannabis Retailers' Occupation Tax (three percent on gross sales of cannabis) to fund local reparations for housing and economic development programs for African American Evanston residents over the course of 10 years.[980] Individual residents, churches, and local businesses can also donate to the City Reparations Fund.[981] Following the establishment of the funding source, Evanston formed a permanent Reparations Subcommittee and hosted several town hall and Subcommittee meetings to solicit feedback on the structure of local reparations.[982] In June 2020, the Evanston Preservation Commission of City Council passed Resolution 54-R-20 to preserve and

honor historical African American sites in Evanston's Fifth Ward.[983] In November 2022, the City Council passed a resolution to delegate $1 million annually from the graduated real estate transfer tax (collected from all property purchased above $1.5 million) to the City Reparations Fund for a period of 10 years.[984] An additional funding recommendation came in late November 2022 when the City Council proposed to pass Resolution 125-R-22 to transfer $2 million from the City's General Fund to the Reparations Fund.[985]

Prior to creating a racial equity scheme, the City Council of Evanston created the Equity and Empowerment Commission in 2018 to address systemic inequalities and adopted Resolution 58-R-19, "Commitment to End Structural Racism and Achieve Racial Equity." In Resolution 58-R-19, Evanston's City Council: (1) apologized for the damage caused by its history of racially-motivated policies and practices such as zoning laws that supported neighborhood redlining, municipal disinvestment in the African American community, and a history of bias in government services; (2) declared itself an anti-racist city; and (3) denounced white supremacy.[986] The Resolution begins with findings laying out the foundation for an apology and then proceeds with a series of pronouncements against anti-Black racism:

Now, therefore, be it resolved by the city council of the City of Evanston, Cook County, Illinois, that in accordance with the fundamental principles set forth in the declaration of independence, which asserts as a fundamental basis that all people are created equal and are endowed with the unalienable rights of life, liberty and the pursuit of happiness:

Section 1: The City Council of Evanston hereby acknowledges its own history of racially-motivated policies and practices, apologizes for the damage this history has caused the City, and declares that it stands against White Supremacy...[987]

To receive funds from the Restorative Housing Program, interested applicants must provide proof of eligibility based on the sample list of documents cited in the program guidelines. [988] To prove Ancestor eligibility, applicants must provide documentation of their age, race, and residency.[989] To prove Direct Descendent eligibility, applicants must provide documentation of age, race, and relationship to an Ancestor via birth certificate, marriage record, hospital record of birth or death, yearbook, or other means. [990] To prove eligibility based on discrimination as a resident, applicants must show proof of age, residency, and the City ordinance, policy, or procedure that served to discriminate against the applicant in the area of housing.[991]

Issues of funding, restrictive eligibility and spending, distribution, and other criticisms arose during the implementation of Evanston's Restorative Housing Program. First, the cannabis tax has not generated enough revenue to provide payments to all eligible applicants.[992] When the City Council drafted the resolution, it expected three cannabis stores to open in Evanston; however, so far only one has opened.[993] In late 2022, the City secured alternative sources of funding to supplement the cannabis tax—the graduated real estate transfer tax and the general fund. Additionally, community members and business contribute private donations to the Reparations Community Fund.[994]

Only Ancestors who currently reside in Evanston are eligible, leaving out many African American homeowners who were victims of Evanston's discriminatory policies but moved away.

Funding restrictions have also been a critique of the Evanston racial equity scheme. Only Ancestors who currently reside in Evanston are eligible, leaving out many African American homeowners who were victims of Evanston's discriminatory policies but moved away.[995] Alderman Peter Braithwaite (2nd Ward), chair of the Reparations Committee, said that restricting reparations to current residents was necessary because of the city's limited staff and resources.[996] Other residents complained that funding was too narrowly constrained to housing-based projects, ignoring other potential needs for reparatory justice.[997] In response, leaders stated that the housing program was only the first of many reparatory justice programs to come and housing was identified as the most urgent need among those who attended the public subcommittee and town council meetings.[998] As an example of the funding's restraints, two of the 16 selected in the first round of applications for funding did not own property and almost lost the funds.[999] On March 2, 2023, the Reparations Committee approved a direct cash payment for those two Ancestors.[1000] Less than one month later, the City Council approved an option to provide direct payment to all reparations recipients.[1001]

Another issue in the disbursement process is that many residents believed the money should have gone directly into the hands of the eligible and not to the banks who

facilitated racial discrimination in the first place. To address this concern, the City hopes to provide a resource guide for grant recipients with a list of Black banks, banks with a history of fair lending, and a directory of Black contractors, realtors, real estate attorneys, appraisers, and surveyors that fund recipients can hire.[1002] Many residents have complained that the pace of the racial equity scheme is too slow.[1003] Seven Ancestors died before they were selected for a restorative housing grants.[1004] The Reparations Committee added a requirement for Ancestors to name a beneficiary to pass down the rights of the grant once they have been awarded.[1005]

Finally, some experts critiqued the Evanston reparatory program as being piecemeal and potentially distracting from the priority of a comprehensive national reparations program.[1006] Economic and public policy experts William A. Darity Jr. and A. Kirsten Mullen objected to the Evanston program's restrictions on funding, preferring unrestricted direct payments, and said that the program did not go far enough to address the huge racial equity gap between Black and white Evanston residents.[1007] They also said that Evanston's municipal government lacks the budget necessary to adopt an adequate reparations proposal, which would require $3.85 billion to close the $350,000 per capita racial wealth gap.[1008]

The City of Asheville, North Carolina, unanimously passed Resolution 20-128 on July 14, 2020, to consider reparations for the city's participation in and sanctioning of the enslavement of Black people, its enforcement of segregation and accompanying discriminatory practices, and carrying out an urban renewal program that destroyed multiple successful Black communities.

Asheville, North Carolina

The City of Asheville, North Carolina, unanimously passed Resolution 20-128 on July 14, 2020, to consider reparations for the city's participation in and sanctioning of the enslavement of Black people, its enforcement of segregation and accompanying discriminatory practices, and carrying out an urban renewal program that destroyed multiple successful Black communities.[1009] Asheville has formed a Reparations Commission, which anticipates presenting final policy recommendations to be voted upon by August 30, 2023 and submitting a written report by October 31, 2023.[1010] Only two recommendations have been made as of May 2023— one, to provide funding in perpetuity and two, to request a third-party audit of the City of Asheville and Buncombe County to ensure harms done to Black residents are stopped.[1011]

According to Resolution 20-128, the Reparations Commission intends to address the following harms to Black people: unjust enslavement, segregation, and incarceration; the denial of housing through racist practices in the private realty market, including redlining, steering, blockbusting, denial of mortgages, and gentrification; discriminatory wages paid in every sector of the local economy regardless of credentials and experience; the disproportionate unemployment rates and reduced opportunities to fully participate in the local job market; systematic exclusion from historic and present private economic development and community investments; segregation from mainstream education and within present day school programs; denial of education through admission, retention, and graduation rates of every level of education in Western North Carolina and through discriminatory disciplinary practices; historic and present inadequate and detrimental health care; unjust targeting by law enforcement and criminal justice procedures, incarceration at disproportionate rates, and subsequent exclusion from full participation in the benefits of citizenship that include voting, employment, housing, and health care; disproportionately forced to reside in, adjacent to, or near Brown zones and other toxic sites; disproportionately limited to confined routes of travel provided by public transportation; and disproportionately suffering from isolation of food and childcare deserts.[1012] Asheville did not provide any specific timeline of the harms the Reparations Commission is intended to address.

Resolution 20-128 states that the Reparations Commission will make short-, medium-, and long-term recommendations to "make significant progress toward repairing the damage caused by public and private systemic racism."[1013] The resolution tasks the commission to issue a report so the City of Asheville and local community groups may incorporate it into their short- and long-term priorities and plans.[1014] The resolution states the "report and the resulting budgetary and programmatic priorities may include but not be limited to increasing minority homeownership and access to other affordable housing, increasing minority business ownership and career opportunities, strategies to grow equity and generational wealth, closing the gaps in health care, education, employment and pay, neighborhood safety and fairness within criminal justice."[1015]

The city manager and city staff have recommended a three-phase process that includes: information sharing and truth-telling; formation of the reparations commission; and finalization and presentation of the report.[1016] Phase One occurred from May 2021 to June 2021, and was intended to:

- Provide a better understanding of policy impacts and where those impacts occurred;
- Identify and understand current disparities and areas that need focus;
- Identify barriers to addressing generational wealth; and
- Inspire our community to identify collaborative opportunities to create a more equitable Asheville.[1017]

During Phase One, three events were held in June 2021 — namely, three information sharing and truth-telling speaker series regarding past policies and practices, present trends and disparities, and future initiatives.[1018] Information from this speaker series was used to inform the development of the Reparations Commission and itsscope of work.[1019]

Phase Two was the formation of the Reparations Commission, which will address disparities in housing, economic development, public health, education, public safety and justice.[1020] The City announced on March 8, 2022, the approval of five members for the Reparations Commission appointed by the Asheville City Council, as well as 15 members and two alternates appointed by the historically impacted Black neighborhoods.[1021] The Commission members are serving on five Impact Focus Area ("IFA") workgroups — criminal justice, economic development, education, health and wellness, and housing – which are responsible for analyzing information on these areas and reporting key findings to the full Commission.[1022]

As of the publication of this report, the Commission is in Phase Three, but according to documents from the January 9, 2023 Commission meeting, the priorities are no longer short-, medium-, and long-term recommendations but rather feasibility and community impact.[1023] The documents also reflect an updated timeline with ten different activities, the last six of which are slated to occur in 2023 — reaffirm resolution and commission role, develop IFA recommendations (by May 31), community engagement and input (by May 31), recommendation vetting and refinement (by July 31), present recommendations for commission voting (by August 30), and submit written report and close project (by October 31).[1024] The documents reflect a few draft recommendations, but no final recommendations have yet been presented.[1025]

On June 8, 2021, the Asheville City Council voted to allocate $2.1 million of the city's proceeds from the sale of city-owned land (a portion of which includes land the city purchased in the 1970s through urban renewal, a policy that "resulted in the displacement of vibrant Black communities and the removal of Black residents and homeowners, many into substandard public housing").[1026] The city anticipates that of the $2.1 million, $200,000 will fund the Reparation Commission's planning and engagement process, leaving approximately $1.9 million in initial funding for reparations.[1027]

Asheville's reparations scheme has not gone without any criticism. Economic expert William A. Darity stated that he was "deeply skeptical about local or piecemeal actions to address various forms of racial inequality being labeled 'reparations.'"[1028] Darity has written that reparations would "have to close the pretax racial wealth disparity in the United States, which would cost about $10 to $12 trillion," in order to be effective.[1029] Darity further notes that "piecemeal reparations taken singly or collectively at [the state and municipal level] cannot meet the debt for American racial injustice."[1030] With respect to the local community, reactions have been mixed. During the virtual meeting at which the reparations resolution was passed, a resident of Montford, North Carolina, "argued that the city's Black police chief, city manager and council members are 'an indication that Blacks can succeed in Asheville. So, to dump this all on us [w]hite folk — I think is offensive."[1031] Conversely, a resident who identifies as white, stated "White people: We have to realize that we are complicit, and our souls are in jeopardy."[1032]

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A number of news articles have been written about Asheville's reparations scheme.[1033] Bloomberg noted:

> Asheville's reparations are not focused on slavery or redlining — though it was not innocent of either — but rather on its participation in what was considered one of the largest urban renewal projects in the South, if not the country. Throughout the 1960s and 1970s, Asheville's clearance of areas considered blighted ended up displacing thousands of Black Ashevillans, stripping them of their land, businesses and properties without recompense. According to local historian Wesley Grant, one Black neighborhood alone, East Riverside, lost "more than 1,100 homes, six beauty parlors, five barber shops, five filling stations, 14 grocery stores, three laundromats, eight apartment houses, seven churches, three shoe shops, two cabinet shops, two auto body shops, one hotel, five funeral homes, one hospital, and three doctor's offices." Most of the Black families and workers displaced ended up living in housing projects, mostly cut off from the rest of Asheville society and its growing economy.[1034]

Providence has issued a formal apology and enacted a 2023 city budget which includes $10 million earmarked for reparatory programs, but does not include direct cash payments solely to African Americans or Descendants.

Bloomberg further noted that Asheville's reparations scheme will be a "community reparations model," which means that instead of making direct payments to individuals, Asheville will look for areas within the city's budget to add resources to address the racial disparities that persist today.[1035] The city manager will also work with surrounding Buncombe County and other community stakeholders to define what reparations will be.[1036] Accordingly, the exact form of reparations will remain unknown until the issuance of the final report in 2023 and eventual adoption of specific reparations measures.

Providence, Rhode Island

After the murder of George Floyd in the summer of 2020, the mayor of Providence, Rhode Island signed an executive order to launch a "Truth, Reconciliation and Municipal Reparations" process to "eradicat[e] bias and racism" against its Black and Indigenous residents and other people of color.[1037] Following that three-part process, the city has issued a formal apology and enacted a 2023 city budget which includes $10 million earmarked for reparatory programs, but does not include direct cash payments solely to African Americans or Descendants.[1038]

Beginning with a truth-telling phase, the Rhode Island Black Heritage Society collaborated with city and state historical institutions to publish a 200-page report, titled, A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020).[1039] The report documents the history of harm that Providence sought to remedy, including the lasting wounds caused by slavery, the genocide of Indigenous People, and the ongoing racial discrimination from 1620 to 2020 throughout the City of Providence and the State of Rhode Island.[1040]

In the reconciliation phase, the Providence Cultural Equity Initiative and Roger Williams University published a report detailing their efforts to survey Providence community members, develop guiding principles for reparations, and develop a model and proof of concept to continue reconciliation in perpetuity, including through a multimedia initiative.[1041] For its guiding principles on reconciliation, the Reconciliation Report noted the need for ongoing, communal learning, a focus on particular people, places, and the importance of efforts to cross barriers of identity and empathy.[1042] The city's reconciliation principles also rejected depictions of participants that reduce them to racialized categories or tropes, while celebrating resilience both past and present.[1043] Finally, Providence's reconciliation principles underscored action, emphasizing a community-owned but institutionally supported process, and the principle that reconciliation cannot be accomplished without reparations.[1044]

In the third and final phase, labeled reparations, the mayor of Providence signed an executive order creating the Municipal Reparations Commission (Commission), consisting of 13 members from the local community.[1045] The Commission held over a dozen public meetings, discussing the justifications for reparations and the form they might take.[1046] Among other things, presenters at the public meetings discussed the international framework for reparations and its five elements, as well as international treaties and reports, including the Universal Declaration for Human Rights, the International Convention on the Elimination of

All Forms of Racial Discrimination (which the United States ratified in 1994), the Civil Rights Congress's petition to the United Nations for Relief from Crimes Against Humanity by the United States Government, and a UNESCO publication titled, Healing the Wounds of Slave Trade and Slavery.[1047]

Following its public hearings, the Commission published a report listing its final recommendations for an 11-point reparatory program.[1048] In its recommendations, the Commission defined "reparations" as "closing the racial wealth and equity gap between Providence residents and neighborhoods[.]"[1049] When defining the communities eligible for its reparatory programs, the Commission identified Indigenous People, African Heritage People, Providence residents facing poverty, and Providence residents living in qualifying census tracts and neighborhoods.[1050] While the latter two categories—residents facing poverty and those in qualified census tracts—include Providence residents of any race, the Commission included those categories of eligibility to comply with limitations imposed by federal funding, as the city was relying upon federal COVID-19 relief as a source of initial funding for its reparatory program.[1051]

In November 2022, the mayor of Providence signed a city budget allocating $10 million—provided to the city from the American Rescue Plan Act—to fund programs across seven of the Commission's recommendations:[1052]

While some Commission and community members expressed concern that $10 million would be insufficient to redress the harms identified in the Truth Report,[1053] others observed that the $10 million represented a start to the reparatory programs, not the end, and that once the programs were enacted, future funding could be drawn from other public and private sources.[1054]

The mayor of Providence also issued an executive order recognizing and apologizing for the city's role in discriminating against African Heritage and Indigenous People.[1055] The order apologizes for the city's role in "discriminatory practices, including lack of equal access to public education, voting rights and general civil rights that led to the subjugation, enslavement, de-tribalization, death, and control of African Heritage and Indigenous People in past and present day."[1056] The order also apologizes for Providence's actions after the King Philip's War, where city leaders transferred captured and surviving Indigenous People into slavery in the West Indies.[1057] The Order further apologizes for the systemic harm enacted upon African Heritage and Indigenous communities through school segregation, unjust incarceration, police use of force, family destabilization, employment discrimination, warning out laws, deliberate denials of public assistance, including red-lining policies and the city's failure to intervene in the destruction of African Heritage and Indigenous neighborhoods and communities, including during riots in the 1800s.[1058]

2022 PROVIDENCE, RHODE ISLAND REPARATIONS BUDGET	
RECOGNITION OF HARM	
Reimagining Building & Sites	$400,000
EQUITY BUILDING	
Homeownership & Financial Literacy	$1,000,000
Home Repair Fund	$1,000,000
Capacity Investments in Community Organizations	$500,000
Earn & Learn Workforce Training	$1,000,000
Small Business Acceleration	$1,500,000
Expansion of Guaranteed Income Program	$500,000
Expansion of Youth Internship Program	$250,000

2022 PROVIDENCE, RHODE ISLAND REPARATIONS BUDGET	
Establish a Legal Defense Fund Facing Rental Evictions	$250,000
CREATION & DEVELOPMENT OF MEDIA	
Invest in Media Firms	$250,000
Expand Operational Capacity	$1,000,000
Preserve, Safeguard & Promote Cultural Programs	$200,000
CREATION OF SURVIVORS & DESCENDANTS OF URBAN RENEWAL FUND	
Establish a Fund Dedicated to Urban Renewal Impacts	$200,000
Develop Grant Program to Assist Urban Renewal Impacted Neighborhoods	$200,000
EXPANSION OF CULTURAL ENGAGEMENT & EDUCATIONAL OPPORTUNITIES	
Creation of K-12 "A Matter of Truth" Curriculum	$50,000
Advancing Public Education Campaigns	$50,000
Funding To Establish History School	$50,000
Creation Of Artist In Residence Fund	$100,000
K-12 Curriculum Grounded In Rhode Island & New England History	$100,000
Creation Of Resident Scholarship Fund	$500,000
Creation of Fund For Home-Based Day Care Providers	$250,000
Invest In District Wide Coordinator For Educational Enrichment	$100,000
MOVEMENT TOWARDS A MORE EQUITABLE HEALTHCARE SYSTEM	
Expansion of Mental & Behavioral Support Programs	$150,000
Collaborate With Neighborhood Providers Including Barbershops	$250,000
ACCELERATE THE EVOLUTION OF AAAG INTO POLICY INSTITUTE MODEL	
Creation of Policy & Research Center	$150,000
TOTAL	$10,000,000

Endnotes

1 Gov. Code, § 8301.1, subd. (b)(3)(A).

2 See California Task Force to Study and Develop Reparation Proposals for African Americans (Jan. 27-28, 2023) Testimony of City of Richmond (as of May 22, 2023); Chang et al., *Santa Monica, Calif., aims to welcome back historically displaced Black families*, NPR (Jan. 21, 2022) (as of May 22, 2023); Schrank, *Santa Monica tries to repay historically displaced families*, KCRW (Jan. 31, 2022) (as of May 22, 2023).

3 See, e.g., Internat. Ct. of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (as of May 22, 2023); Ruvugiro, *Rwandan Reparations Fund Breaks Ground But Is Still Not Enough, Say Victims*, JusticeInfo (March 17, 2019) (as of May 22, 2023).

4 See, e.g., *Benningfield Randle et al. v. City of Tulsa et al.* (Okla. Dist. Ct. Tulsa County, 2020, No. 1179); Booker, *Oklahoma Lawsuit Seeks Reparations In Connection To 1921 Tulsa Massacre*, NPR (Sept. 3, 2020) (as of May 22, 2023).

5 See, e.g., Georgetown Univ., Georgetown Reflects on Slavery, Memory, and Reconciliation (as of May 22, 2023); Swarms, Catholic Order Struggles to Raise $100 Million to Atone for Slave Labor, The New York Times (Aug. 16, 2022) (as of May 22, 2023); Moscufo, *Harvard sets up $100 million endownment fund for slavery reparations*, Reuters (April 26, 2022) (as of May 22, 2023); The Presidential Com. on Harvard & the Legacy of Slavery, Harvard & The Legacy of Slavery (2022) (as of May 22, 2023).

6 See Chapter 14.

7 For further examples, see Chapter 33.

8 *Luxembourg Agreement [Excerpts]* (*Luxembourg Agreement*) in The Handbook of Reparations (De Greiff edit., 2006) p. 886; Colonomos and Armstrong, *German Reparations to the Jews After World War II: A Turning Point in the History of Reparations* (*German Reparations*) in The Handbook of Reparations (De Greiff edit., 2006) p. 391.

9 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, Res. No. 60/147 (March 21, 2006).

10 Colonomos and Armstrong, *German Reparations*, *supra*, at p. 397.

11 *Luxembourg Agreement*, *supra*, at pp. 887, 897. The Luxembourg Agreement sets out the FRG's financial obligations in Deutschemark or Deutsche Marks, which is abbreviated as DM. When the Agreement was executed, one dollar equaled 4.2 Deutschemark or Deutsche Marks. (Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany* (*Reparations Agreement*) (1954) 48 Am. J. Internat. L. 564, 566, 566, fn. 11.)

12 *Luxembourg Agreement, supra*, at p. 887.

13 Colonomos and Armstrong, *German Reparations*, *supra*, at p. 399; De Greiff, *Luxembourg Agreement, supra*, at pp. 889-895.

14 *Luxembourg Agreement*, *supra*, at p. 897. The Claims Conference is an umbrella organization comprised of 23 Jewish organizations. It was founded in 1951 after a meeting in New York. (Colonomos and Armstrong, *German Reparations*, *supra*, at pp. 393-394).

15 Honig, *Reparations Agreement*, *supra*, at p. 566.

16 Third Reich was the official Nazi designation for the regime in Germany from January 1933 to May 1945. (Britannica, Third Reich (as of May 16, 2023)).

17 Britannica, Nürnberg Laws (April 4, 2023) (as of May 16, 2023).

18 Wilkerson, Caste (2020) pp. 78-83, citing Whitman, Hitler's American Model (2017) pp. 113, 120-123, 128.

19 Britannica, Nürnberg Laws, *supra*.

20 *Ibid*.

21 Holocaust Encyclopedia, Antisemetic Legislation 1933-1939, U.S. Holocaust Memorial Museum (as of May 16, 2023).

22 *Ibid*.

23 Britannica, From Kristallnacht to the "final solution" (as of May 16, 2023).

24 *Ibid*.

25 Honig, *Reparations Agreement*, *supra*, at p. 565.

26 Britannica, From Kristallnacht to the "final solution", *supra*.

27 *Ibid*.

28 Authers, *Making Good Again: German Compensation for Forced and Slave Laborers* (*German Compensation*) in The Handbook of Reparations (2006) pp. 421-422.

29 Britannica, From Kristalnacht to the "final solution", *supra*.

30 Colonomos and Armstrong, *German Reparations, supra*, at p. 394.

31 Colonomos and Armstrong, *German Reparations*, supra, at p. 393.

32 *Id*. at p. 392.

33 *Ibid*.

34 *Ibid*.

35 *Id*. at p. 393.

36 *Ibid*.

37 *Id*. at p. 394.

38 *Luxembourg Agreement, supra*, at p. 886; Colonomos and Armstrong, *supra*, at p. 391.

39 *Luxembourg Agreement*, *supra*, at p. 887;

40 *Luxembourg Agreement, supra*, at p. 887; Honig, *Reparations Agreement, supra*, at p. 566.

41 Colonomos and Armstrong, *German Reparations*, *supra*, at p. 400; Heilig, *From the Luxembourg Agreement to Today: Representing a People* (2002) 20 Berkeley J. Internat. L., 176, 179-180; Honig, *Reparations Agreement, supra*, at p. 567.

42 Honig, *Reparations Agreement, supra*, at p. 569.

43 *Ibid*.

44 *Luxembourg Agreement, supra*, at pp. 887-888.

45 *Id*. at p. 888.

[46] *Ibid.*

[47] *Id.* at p. 887.

[48] *Ibid.*

[49] *Id.* at pp. 887-888.

[50] Honig, *Reparations Agreement, supra*, at p. 573.

[51] *Ibid.*

[52] *Id.* at p. 574.

[53] *Id.* at p. 575.

[54] *Ibid.*

[55] *Ibid.*

[56] *Ibid.*

[57] *Id.* at pp. 575-576.

[58] *Id.* at p. 575, fn. 40.

[59] *Ibid.*

[60] *Id.* at p. 575.

[61] Colonomos and Armstrong, *German Reparations*, *supra*, at p. 402; *Luxembourg Agreement, supra*, at p. 889.

[62] Colonomos and Armstrong, *German Reparations*, *supra*, at p. 402.

[63] *Id.* at p. 403.

[64] *Luxembourg Agreement, supra*, at p. 901. Bundestag and Bundesrat are the two legislative chambers of the Federal Republic of Germany. (Britannica, Bundestag (as of May 16, 2023); Britannica, Bundesrat (as of May 16, 2023).

[65] Colonomos and Armstrong, *German Reparations*, *supra*, at p. 403.

[66] *Ibid.*

[67] *Ibid.*

[68] *Id.* at p. 404.

[69] *Ibid.*

[70] *Ibid.*

[71] Colonomos and Armstrong, German Reparations, *supra,* at p. 403.

[72] *Id.* at p. 410.

[73] *Ibid.*

[74] *Id. at pp.* 404-405.

[75] *Id.* at p. 405.

[76] *Id.* at p. 406.

[77] *Id.* at p. 407.

[78] *Ibid.*

[79] *Ibid.*

[80] *Ibid.*

[81] *Ibid.*

[82] *Ibid.*

[83] *Ibid.*

[84] *Id.* at p. 408.

[85] *Ibid.*

[86] *Id.* at p. 399; Honig, *Reparations Agreement, supra*, at p. 567.

[87] *Luxembourg Agreement*, *supra*, at p. 897.

[88] Colonomos and Armstrong, *German Reparations, supra*, at p. 399.

[89] Authers, *German Compensation, supra*, *at* p. 429.

[90] *Id.* at pp. 429-430.

[91] *Id.* at p. 431.

[92] *Ibid.*

[93] *Ibid.*

[94] *Id.* at p. 433.

[95] *Id.* at p. 432.

[96] *Id.* at p. 434. In 1999, $1 equaled 2.08 Deutchemarks. (Marcuse, Historical Dollar-to-Marks Currency Conversion Page (updated Oct. 7, 2018) (as of May 18, 2023).) Based on the conversion rates, the DM8.1 billion fund to compensate laborers was the equivalent of approximately $3.9 billion U.S. dollars.

[97] Authers, *German Compensation, supra*, p. 434.

[98] Slave labor was work performed by force in a concentration camp or ghetto or other places of confinement under conditions of hardship. Forced labor was work performed by force other than slave labor in the Third Reich or its territories under conditions resembling imprisonment. (*Id.* at p. 435.)

[99] *Id.* at p. 434.

[100] *Ibid.*

[101] *Id.* at p. 435.

[102] *Ibid.*

[103] *Id.* at p. 437.

[104] *Ibid.*

[105] *Id.* at p. 435.

[106] *Id.* at p. 437.

[107] *Id.* at p. 436.

[108] *Ibid.*

[109] *Ibid.*

[110] *Id.* at p. 427.

[111] Colonomos and Armstrong, *German Reparations, supra*, at p. 394.

[112] *Ibid.*

[113] *Ibid.*

[114] *Id.* at pp. 394-395.

[115] *Id.* at p. 395.

[116] *Id.* at p. 394.

[117] *Id.* at pp. 396-397.

[118] *Id.* at p. 397.

[119] *Ibid.*

[120] *Ibid.*

[121] Barkan, *Between Restitution and International Morality* (2001) 25 Fordham Internat. L.J. 46, 49.

[122] *Ibid.*

[123] *Ibid.*

[124] Colonomos and Armstrong, *German Reparations, supra*, at p. 408.

[125] *Ibid.*

[126] *Id.* at p. 409.

[127] *Ibid.*

[128] The Center for Justice & Accountability, Chile (as of December 27, 2022).

[129] *Ibid*; The National Security Archive, Kissinger and Chile: The Declassified Record (as of December 27, 2022).

[130] The Center for Justice & Accountability, Chile (as of December 27, 2022).

[131] *Ibid.*

[132] *Ibid.*

[133] *Ibid.*

[134] Lira, *The Reparations Policy for Human Rights Violations in Chile* (*Reparations Policy*) in The Handbook of Reparations (De Greiff edit., 2010) p. 56.

[135] Lira, *Reparations Policy*, *supra*, at p. 57.

[136] *Ibid*; United States Institute of Peace, Truth Commission: Chile 90 (as of May 18, 2023).

[137] *Ibid*.

[138] Lira, *Reparations Policy*, *supra*, at p. 57.

[139] *Id*. at p. 58.

[140] *Ibid*.

[141] De Greiff, Law 19.123 Establishes the National Corporation for Reparation and Reconciliation and Grants Other Benefits to Persons as Indicated in The Handbook of Reparations (De Greiff edit., 2010) pp. 748-749.

[142] *Id*. at p. 749.

[143] *Ibid*.

[144] *Ibid*.

[145] *Ibid*.

[146] *Id*. at p. 750.

[147] *Ibid*.

[148] Lira, *Reparations Policy*, *supra,* at p. 59.

[149] *Ibid*.

[150] *Ibid*.

[151] *Ibid*.

[152] *Ibid*.

[153] *Ibid*.

[154] *Ibid*.

[155] *Ibid*.

[156] *Ibid*.

[157] *Ibid*.

[158] *Id*. at pp. 67-86.

[159] *Id*. at p. 58.

[160] *Id*. at p. 63.

[161] *Id*. at p. 63.

[162] *Id*. at p. 64.

[163] *Ibid*.

[164] *Ibid*.

[165] *Ibid*.

[166] *Ibid*.

[167] *Id*. at 65.

[168] *Ibid*.

[169] *Id*. at p. 66-67.

[170] *Id*. at p. 67.

[171] U.S. Institute of Peace, Commission of Inquiry: Chile 03 (as of Dec. 27, 2022).

[172] *Ibid*.

[173] *Ibid*.

[174] *Ibid*.

[175] *Ibid*.

[176] *Ibid*.

[177] *Ibid*.

[178] Internat. Com. on Missing Persons, Where are the Missing: Chile (as of Dec. 27, 2022).

[179] *Ibid*.

[180] *Ibid*.

[181] Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (*Lessons Learned from the Apartheid Litigation*) (2020) 61 Harv. Internat. L.J. 451, 454-455.

[182] Colvin, *Overview of the Reparations Program in South Africa* (*Reparations Program in South Africa*) in The Handbook of Reparations (De Greiff edit., 2006) at p. 209. The rand is the official currency of South Africa. (Britannica Money, rand (as of May 19, 2023).) The rand's value has fluctuated against the value of the American dollar over the years. (PoundSterling Live, U.S. Dollar / South African Rand Historical Reference Rates from Bank of England for 1975 to 2023 (as of May 19, 2023).)

[183] Colvin, *Reparations Program in South Africa*, *supra*, at p. 210.

[184] See Britannica, arpartheid (as of May 19, 2023).

[185] *Ibid*.

[186] *Ibid*. A fourth category for Asian, that is Indian and Pakistani, was added later.

[187] *Ibid*.

[188] *Ibid*.

[189] *Ibid*.

[190] *Ibid*.

[191] *Ibid*.

[192] The 1959 Extension of University Education Act prohibited established universities from admitting non-white students. (*Ibid*.)

[193] See *ibid*.

[194] A Ford plant in Port Saint Elizabeth manufactured vehicles that were used by the military and police. (Farbstein, *Lessons Learned from the Apartheid Litigation*, *supra*, at pp. 462-463.)

[195] Farbstein, *Lessons Learned from the Apartheid Litigation*, *supra*, at p. 455.

[196] The 1961 Indemnity Act gave police officers authority to commit acts of violence to uphold apartheid. (See Britannica, apartheid, *supra*.)

[197] Daly, *Reparations in South Africa: A Cautionary Tale* (*Reparations in South Africa*) (2003) 33 U. Mem. L. Rev. 367, 368-369.

[198] *Id*. at p. 368.

[199] *Ibid*.

[200] *Ibid*.

[201] *Id*. at p. 369.

[202] See Farbstein, *Lessons Learned from the Apartheid Litigation*, *supra*, at pp. 473-476.

[203] *Id*. at p. 474.

[204] See *id*. at pp. 473-476.

[205] Daly, *Reparations in South Africa*, *supra*, at p. 379.

[206] Farbstein, *Lessons Learned from the Apartheid Litigation*, *supra*, at p. 455.

[207] Britannica, apartheid, *supra*.

[208] *Ibid*.

[209] *Ibid*.

[210] *Ibid*.

[211] *Ibid*.

[212] Colvin, *Reparations Program in South Africa*, *supra*, at p. 177.

[213] *Ibid*.

[214] Daly, *Reparations in South Africa*, *supra*, at p. 370.

[215] *Id*. at p. 371.

[216] *Ibid*.

[217] *Ibid*.

[218] Colvin, *Reparations Program in South Africa*, *supra*, at p. 179.

[219] Daly, *Reparations in South Africa*, *supra*, at p. 372.

[220] Colvin, *Reparations Program in South Africa*, *supra*, at p. 181 [internal quotes omitted].

[221] *Ex gratia* payment means any payment given out of a sense of moral obligation instead of as a legal obligation.

[222] Colvin, *Reparations Program in South Africa*, *supra*, at p. 182.

[223] *Ibid*.

[224] *Ibid*.

[225] *Ibid*.

[226] *Ibid*.

[227] *Id*. at p. 183.

[228] *Id*. at pp. 183-184.

[229] See De Greiff, The Handbook of Reparations (2006) at p. 777 (granting the President authority to revise and, in appropriate cases, discontinue or reduce "any reparation"). The final Constitution did not guarantee the right to reparations either. But it adopted all the amnesty provisions in the Interim Constitution. (Colvin, *Reparations Program in South Africa*, *supra*, at p. 179.)

[230] Colvin, *Reparations Program in South Africa*, *supra*, at p. 181.

[231] Daly, *Reparations in South Africa*, *supra*, at p. 373.

[232] *Ibid*.

[233] *Ibid*.

[234] See Farbstein, *Lessons Learned from the Apartheid Litigation*, *supra*, at p. 456.

[235] Daly, *Reparations in South Africa*, *supra*, at p. 375.

[236] See *ibid*.

[237] *Ibid*.

[238] *Id*. at pp. 373-374 (internal quotes omitted).

[239] *Id*. at p. 374.

[240] *Ibid*.

[241] *Id*. at p. 374, fn. 15.

[242] *Ibid*.

[243] *Id*. at p. 374.

[244] Colvin, *Reparations Program in South Africa*, *supra*, at p. 184.

[245] Daly, *Reparations in South Africa*, *supra*, at p. 372.

[246] *Ibid*.

[247] *Ibid*.

[248] Colvin, *Reparations Program in South Africa*, *supra*, at p. 184.

[249] *Id*. at pp. 184-185.

[250] *Id*. at p. 185.

[251] *Ibid*.

[252] *Id*. at p. 183.

[253] *Ibid*.

[254] *Id*. at p. 182.

[255] *Id*. at pp. 187-188.

[256] *Id*. at p. 188.

[257] *Id*. at p. 188.

[258] *Ibid*.

[259] *Ibid*.

[260] *Ibid*.

[261] *Ibid*.

[262] *Ibid*.

[263] *Id*. at p. 189.

[264] *Ibid*.

[265] *Ibid*.

[266] *Id*. at p. 189.

[267] *Ibid*. This was a significant issue with other reparations programs, including the FRG-Israel Reparations scheme following World War II. (See Colonomos & Armstrong, *German Reparations*, *supra*, at p. 396.) Here, by contrast, the beneficiaries did not consider the money paid under the UIR "blood money."

[268] Colvin, *Reparations Program in South Africa*, *supra*, at p. 189.

[269] *Id*. at p. 190.

[270] *Id*. at p. 189.

[271] *Ibid*.

[272] *Id*. at p. 190.

[273] *Ibid*.

[274] *Ibid*.

[275] *Ibid*.

[276] *Ibid*.

[277] *Id*. at pp. 188-189.

[278] *Id*. at pp. 187-188.

[279] *Id*. at p. 189.

[280] *Ibid*.

[281] *Id*. at p. 183.

[282] *Ibid*.

[283] *Ibid*.

[284] *Ibid*.

[285] *Ibid*.

[286] *Ibid*.

[287] *Ibid*.

[288] *Id*. at p. 191.

[289] *Ibid*.

[290] *Id*. at p. 193.

[291] *Ibid*.

[292] *Id*. at p. 194.

[293] *Id*. at p. 193.

[294] *Ibid*.

[295] *Ibid*.

[296] Daly, *Reparations in South Africa*, *supra*, p. 374; Colvin, *South Africa Reparations*, *supra*, at p. 192.

[297] See Colvin, *South Africa Reparations*, *supra*, at p. 191.

[298] *Ibid*.

[299] *Ibid*.

[300] *Id*. at p. 194.

[301] *Ibid*.

[302] *Ibid*.

[303] *Id*. at pp. 197, 209.

[304] *Id*. at p. 198.

[305] *Id*. at p. 199.

[306] *Ibid*.

[307] *Ibid*.

[308] *Id*. at pp. 195-196.

[309] *Id*. at p. 196.

[310] *Id*. at p. 200.

[311] *Id*. at p. 196.

[312] *Ibid*.

[313] *Id*. at pp. 196-197.

[314] *Id*. at p. 197.

[315] *Id*. at p. 200.

[316] *Id.* at p. 201.

[317] *Ibid.*

[318] The Alien Tort Statute allows non-U.S. citizens to sue in U.S. courts for violations of international law done in concert with state officials. (Farbstein, *Lessons Learned From the Apartheid Litigation*, *supra*, at fn. 25, citing 25 U.S.C. § 1350.)

[319] Farbstein, *Lessons Learned From the Apartheid Litigation*, *supra*, at p. 458. The district court dismissed the lawsuit in 2014, the Second Circuit affirmed the dismissal, and the U.S. Supreme Court denied certiorari in 2016. (*Id.* at pp. 461-462.)

[320] Colvin, *South Africa Reparations*, *supra*, at p. 209.

[321] *Id.* at pp. 209-210.

[322] *Id.* at p. 210.

[323] International Center for Transitional Justice: South Africa (as of May 18, 2023) (hereafter "Transitional Justice South Africa").

[324] Daly, *Reparations in South Africa*, *supra*, at p. 383.

[325] *Ibid.*

[326] *Ibid.*

[327] *Ibid.*

[328] *Ibid.*

[329] Transitional Justice South Africa, *supra*.

[330] *Ibid.*

[331] *Ibid.*

[332] *Ibid.*

[333] Colvin, *South Africa Reparations*, *supra*, at p. 208.

[334] Daly, *Reparations in South Africa*, *supra*, at pp. 385-386.

[335] *Ibid.*

[336] See *ibid.*

[337] Colvin, *South Africa Reparations*, *supra*, at pp. 184-187.

[338] *Id.* at p. 178.

[339] See De Greiff, *Luxembourg Agreement*, *supra*, at p. 777 (Chapter 5, ¶ 27, granting the President authority to revise and, in appropriate cases, discontinue or reduce "any reparation.")

[340] Colvin, *South Africa Reparations*, *supra*, at pp. 178-179.

[341] *Id.* at p. 178

[342] *Id.* at p. 208

[343] de Bruin, *Indian Residential Schools Settlement Agreement* (Jul. 11, 2013) The Canadian Encyclopedia (as of Jan. 24, 2023) (hereinafter "de Bruin").

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[355] *Ibid.*

[356] *Ibid.*

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[359] *Ibid.*

[360] Miller, *supra*.

[361] de Bruin, *supra*.

[362] *Litigation and Courts,* Canadian Geographic Indigenous Peoples Atlas of Canada (as of Oct. 20, 2022) (hereinafter "Indigenous Peoples Atlas").

[363] *Ibid.*

[364] *Ibid.*

[365] Llewellyn, *Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice* (2002) 52 U. Toronto L.J. 253, 262.

[366] *Id.* at pp. 262–265.

[367] de Bruin, *supra*.

[368] *The Indian Residential School Settlement Agreement*, The University of British Columbia (as of Oct. 20, 2022).

[369] *Indian Residential Schools Settlement Agreement* (May 8, 2006); de Bruin, *supra*.

[370] de Bruin, *supra*.

[371] Indigenous Peoples Atlas, *supra*.

[372] de Bruin, *supra*.

[373] *Ibid.*

[374] *Ibid.*

[375] *Ibid.*

[376] Indigenous Peoples Atlas, *supra*.

[377] *Ibid.*

[378] de Bruin, *supra*.

[379] *Ibid.*

[380] *Ibid.*

[381] *Ibid.*

[382] *Ibid.*

[383] *Ibid.*

[384] Austen, *With Discovery of Unmarked Graves, Canada's Indigenous Seek Reckoning*, N.Y. Times (June 26, 2021) (as of Jan. 24, 2023).

[385] Austen, *How Thousands of Indigenous Children Vanished in Canada*, N.Y. Times (Jun. 7, 2021, updated Mar. 28, 2022) (as of Apr. 11. 2023).

[386] *Ibid.*

[387] *Ibid.*

[388] Hauser and Paz, *U.S. to Search Former Native American Schools for Children's Remains*, N.Y. Times (June 23, 2021) (as of Jan. 24, 2023).

[389] See, e.g., Deer, *Less than Half of the Over $200M Requested for Burial Searches at Residential Schools Funded*, CBC News (Sep. 29, 2022) (as of Jan. 24, 2023); Alhmidi, *Canadians reflect about residential schools on Truth and Reconciliation Day*, The Canadian Press (Sep. 30, 2022) (as of Jan.

24, 2023); Forester, *Trial Put on Hold in Residential School Reparations Class Action After Parties Agree to Negotiate*, CBC News (Sep. 28, 2022) (as of Jan. 24, 2023).

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[392] *Ibid.*

[393] *Ibid.*

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[411] *Ibid.*

[412] *Ibid.*

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[437] U.S. Congress House Committee on Indian Affairs, Hearings on H.R. No. 1198 and H.R. No. 1341 to Create an Indian Claims Commission. 79th Cong. 1st Sess. March 2, 3, 28 and June 11, 14, 1945.

[438] ICCA, *supra*, at p. 1050.

[439] Final Report, *supra*, at p. 21.

[440] *See, e.g.*, Cohen, Cohen's Handbook of Federal Indian Law (2005) at § 1.03[4][a] (hereafter "Cohen") (discussing the Trail of Tears and several other forcible relocations associated with Indian Removal).

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[453] *Id.* at p. 3.

[454] *Ibid.*

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[456] *Id.* at pp. 4-6.

[457] *Ibid.*

[458] Derocher, *supra*, at p. 523.

[459] ICCA, *supra*, at p. 1050.

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[461] Final Report, *supra*, at p. 8.

[462] *Id.* at p. 6.

[463] *Id.* at p. 5.

[464] *Id.* at p. 7.

[465] ICCA, *supra*, at p. 1052.

[466] ICCA, *supra*, at p. 1050.

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[468] *Ibid.*

[469] Final Report, *supra,* at p. 6.

[470] *Id.* at p. 9.

[471] *Ibid.*

[472] *Ibid.*

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[1045] Elorza, Mayor of Providence Exec. Order No. 2020-13, *supra.* Seven of the Commission's members were appointed by the mayor, while six were appointed by the city council.

[1046] *Providence Municipal Reparations Commission* (Feb. 28, 2022) African American Ambassador Group City of Providence (as of Oct. 7, 2022).

[1047] See *Testimony of Robin Rue Simmons* (May 31, 2022) Providence Municipal Reparations Commission (as of Oct. 7, 2022); see also *Testimony of Linda J. Mann* (May 16, 2022) Providence Municipal Reparations Commission (as of Oct. 7, 2022) (also discussing the Durban Declaration, the UN General Assembly's Resolution proclaiming an International Decade for People of African Descent, and the UN's creation of the Permanent Forum of People of African Descent).

[1048] Providence Municipal Reparations Commission, Report of the Providence Municipal Reparations Commission (August 2020) City of Providence (as of Oct. 7, 2020).

[1049] *Id.* at § 5.

[1050] *Ibid.*

[1051] See *Testimony of Diana Perdomo* (May 2, 2022) Providence Municipal Reparations Commission, (as of Oct. 7, 2022).

[1052] Providence City Council, Ordinance 38099 COVID-19 Equities Program Budget (Nov. 9, 2022) City of Providence, (as of Oct. 7, 2022); Russo, *Elorza Signs Providence's $10M Reparations Budget. Here's What's in It* (Nov. 18, 2022) The Providence Journal, (as of Mar. 13, 2023); Abdul-Hakim et al., *Providence Establishes Reparations Program to Praise and Criticism* (Jan. 31, 2023) ABC News, (as of Mar. 13, 2023).

[1053] See, e.g., Marcelo, *Mayor Proposes $10M Reparations Spending Plan* (Aug. 25, 2022) Associated Press, (as of Oct. 3, 2022) (chair of Commission noting that $10 million "is nice, but [...] definitely not enough for true reparations").

[1054] See, e.g., *Testimony of Keith Stokes* (May 31, 2022) Providence Municipal Reparations Commission, (as of Oct. 7, 2022).

[1055] Elorza, Mayor of Providence Exec. Order No. 2022-6 (Aug. 25, 2022) City of Providence, (as of Mar. 13, 2023).

[1056] *Ibid.*

[1057] *Ibid.*

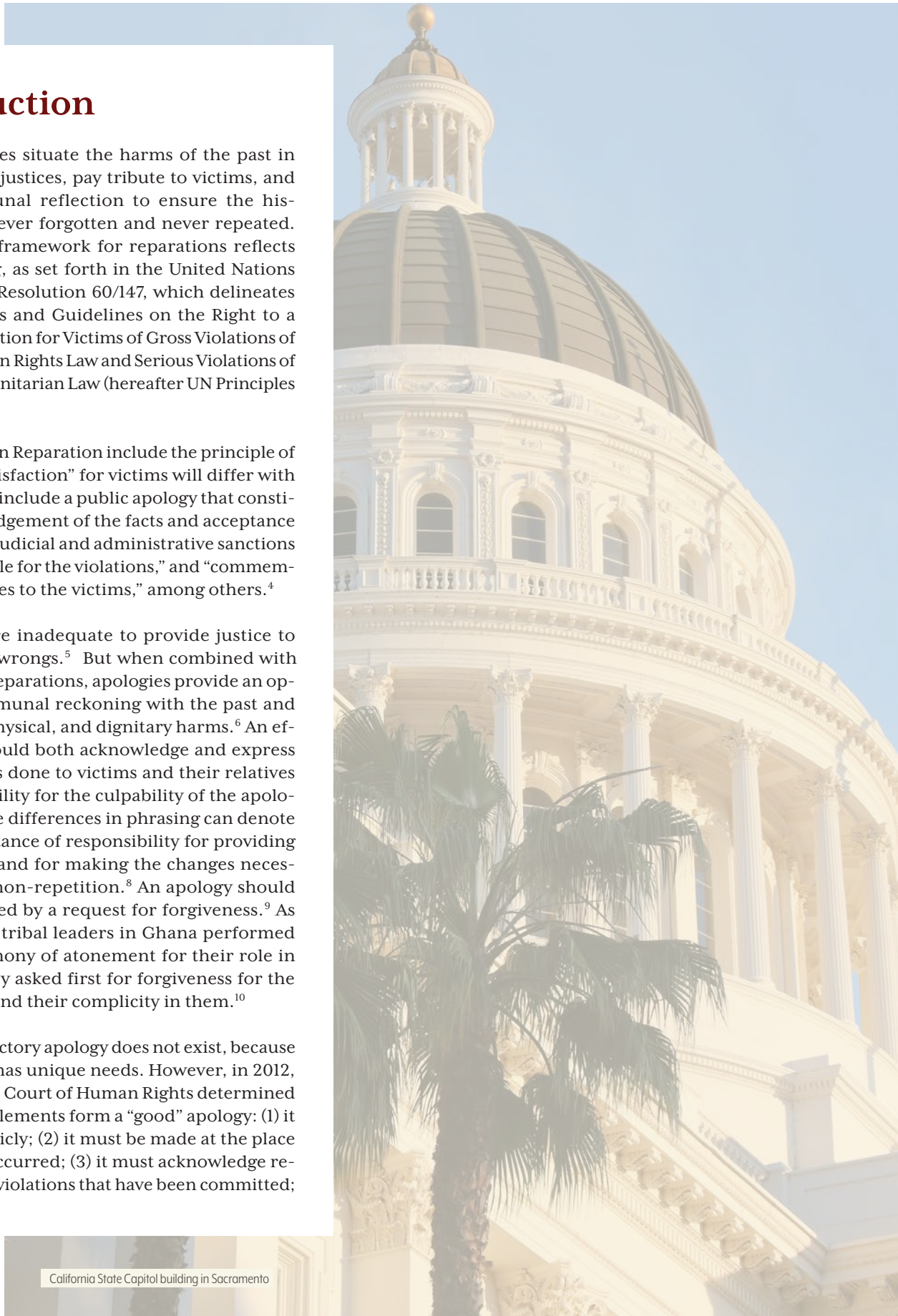
[1058] *Ibid.*

PART III

RECOMMENDATION FOR A FORMAL APOLOGY

CHAPTER 16 Recommendation for a California Apology

COURTESY OF GETTY IMAGES PLUS



California State Capitol building in Sacramento

I. Introduction

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 (hereafter UN Principles on Reparation).[1]

The UN Principles on Reparation include the principle of "satisfaction."[2] "Satisfaction" for victims will differ with the atrocity.[3] It can include a public apology that constitutes an "acknowledgement of the facts and acceptance of responsibility," "judicial and administrative sanctions against persons liable for the violations," and "commemorations and tributes to the victims," among others.[4]

Apologies alone are inadequate to provide justice to victims or redress wrongs.[5] 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.[6] 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.[7] 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.[8] An apology should also be accompanied by a request for forgiveness.[9] 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.[10]

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 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.[11]

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.[12] 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.[13] Later, in 2021, the Legislature passed Assembly Bill No. 137 (2021-2022 Reg. Sess.), 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.[14]

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 Americans for the many instances of violence, exploitation, dispossession, and the attempted destruction of tribal communities inflicted upon California Native Americans throughout the state's history.[15] 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."[16] This apology was not accompanied by compensation or remuneration or any other form of reparations intended to redress the violence, exploitation, dispossession, and the attempted destruction of tribal communities, but the Council established by Executive Order N-15-19 may recommend further measures of reparation and restoration.[17]

More recently, in February 2020, the Assembly 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.[18] 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.

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.

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 apologize on behalf of the State 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 this 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, judicial, and legislative branches—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 disbursal 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.[19] 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.[20] Later, as a justice of the California Supreme Court, Burnett enforced the 1852 California fugitive slave law and ordered the return of fugitive slave Archy Lee to his enslaver.[21]

- John LeConte, a physicist and Confederate from South Carolina, was the first acting President of the University of California (1869-70).[22]

- 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.[23] The California Constitution said the state would not tolerate enslavement, but California had not enacted any laws to enforce this provision and emancipate slaves.[24] The California Supreme Court also enforced the federal fugitive slave law until the official end of enslavement in 1865.[25]

COURTESY OF LIBRARY OF CONGRESS

Effects of the Fugitive-Slaw Law. The California Supreme Court enforced the federal fugitive slave law until the official end of enslavement in 1865. (1850)

- 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."[26] The ban on African American testimony was repealed in 1863.[27]

- The California Legislature and Governor Henry Haight (1867-1871) opposed Congress's Reconstruction civil rights laws and delayed ratifying the 14th and 15th Amendments to the federal constitution.[28]

- California disenfranchised African American citizens through racial barriers to voting such as poll taxes and literacy tests.[29]

- California prohibited interracial marriage and passed an anti-miscegenation law in its first legislative session in 1850.[30] 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.[31]

- California constructed monuments, memorials, state markers, and plaques memorializing and preserving confederate culture and glorifying slavery and white supremacy.[32]

- From the brutality of enslavement to contemporary police killings, state and local government-sanctioned violence, such as lynching, coercive sterilization, torture, and property destruction, inflicted death, physical injuries, and psychological harms on African Americans.[33] In particular, the Ku Klux Klan exerted significant political influence in local governments across California.[34]

- California endorsed minstrel shows.[35]

- California openly allowed segregation and discrimination against African Americans in the United States with respect to musicians, workers, and artists.[36]

- 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 disproportionally and adversely affected African Americans, especially descendants.[37] 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.[38]

- California censored cinematic depictions of discrimination and African Americans integrating in white society.[39]

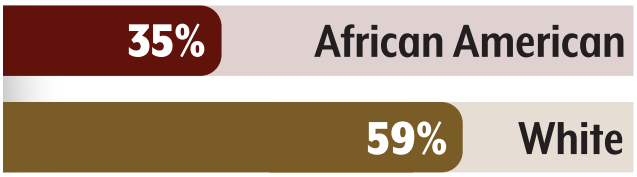
- California implemented anti-cruising/anti-gathering laws and curfews that disproportionally and adversely affected African Americans, especially descendants. In 2021, California law recognized the celebrated history and culture of cruising by encouraging local

officials and law enforcement to work with local car clubs to conduct safe cruising events, in effect condemning anti-cruising/anti-gathering laws.[40]

- California law enforcement and local governments harassed and suppressed the Black Panther Party in the 1960s and 1970s.[41]

- 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.[42] By 2019, African American Californians' homeownership rate was less than in the 1960s, when certain forms of housing discrimination were legal.[43]

2019 CALIFORNIA HOMEOWNERSHIP BY RACE



- 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.[44] As a result, the construction of public infrastructure in California disproportionately displaced and fractured African American communities.[45]

- Added by voters in 1950 through the passage of Proposition 10, Article XXXIV of the California Constitution requires local voter approval before any state agency can build low-income housing projects.[46] Proponents of Proposition 10 appealed to racist fears of integrating neighborhoods to ensure its passage.[47] 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.[48] Article XXXIV has been an impediment to efficiently building affordable housing and promoting residential racial integration.[49]

- 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.[50]

- State and local segregation laws historically excluded African Americans from outdoor recreation, public transit, and other public infrastructure.[51] "Whites Only" policies erected barriers to myriad facets of life, from where one could swim to where one could live.[52]

- 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.[53] 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.[54] 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.[55]

- From November 1964 until 1967, when it was declared unconstitutional by the U.S. Supreme Court, 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 efforts to integrate schools through the desegregation of communities.[56] State Senator Jack Schrade authored the argument in favor of Proposition 14 for the official ballot guide,[57] and the Los Angeles Times and Oakland Tribune explicitly supported passage of Proposition 14.[58] 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.[59]

- 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 approved 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.[60] Proposition 1 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."[61] From the mid- to late-1970s through the 1990s, courts removed or limited desegregation orders in many California districts.[62]

- California's then-Governor Ronald Reagan (1967-1975) was recorded making racist remarks to then-President Nixon regarding African delegates to the United Nations.[63]

- In 1996, California voters approved Proposition 209, which 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.[64] 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.[65] Ward Connerly, a member of the University of California Board of Regents, was chairperson of the campaign, along with Darrell Issa.[66] This resulted in an annual loss of more than $1 billion for minority and women-owned businesses, perpetuating the wealth gap between races.[67] Proposition 209 also significantly reduced the enrollment level of African American students at California public universities.[68] 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 when California voters failed to pass Proposition 16, which would have permitted the reintroduction of these critical programs in California.[69]

- 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.[70] Among other inequities, youth who enter foster care exhibit achievement gaps compared to children not involved in foster care.[71]

- The eugenics movement thrived in California and thousands of African Americans were forcibly sterilized or were the subjects of medical experiments without consent.[72] State psychological institutions contributed to the over-incarceration, forced sterilization, and denial of educational opportunities for African Americans in California.[73]

- California law enforcement disproportionately stops, arrests, injures, and kills people perceived to be Black or African American.[74]

- 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.[75] Consequently, the collateral effects of arrests and convictions also disproportionally 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.[76]

- California historically barred African Americans from serving on juries.[77] Today, California prosecutors' discriminatory use of peremptory challenges continues to disproportionately exclude African Americans from juries.[78]

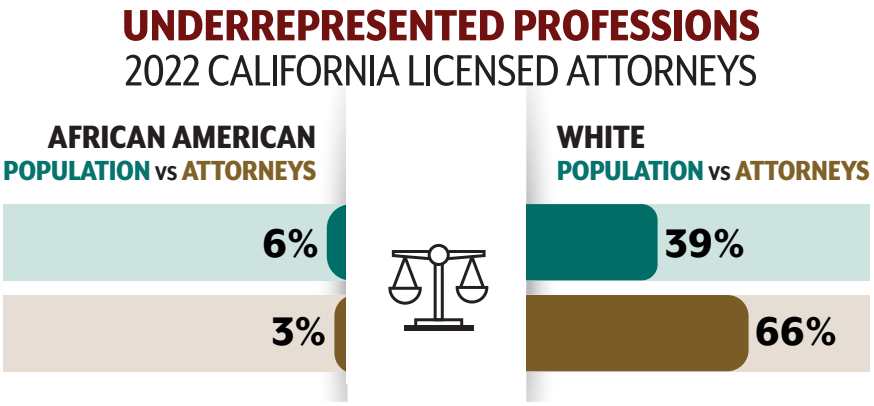
California's child welfare system has experienced some of the worst racial disparities in the country, with African American children suffering the highest rate of system involvement and the correspondingly heightened risks and harms associated with entering foster care.

- 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.[79] As a result, African Americans suffer disparate health outcomes. African American mothers experience significantly higher rates of maternal mortality and infant death than any other ethnic group.[80] 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.[81]

- State licensure systems historically worked in tandem with unions and professional societies to exclude African American workers from skilled, higher-paying jobs.[82]

- 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.[83]

- African Americans have been routinely excluded from professional careers in California. For example, African American physicians, psychologists, and psychiatrists are underrepresented in California's medical fields, further exacerbating the inequities in the healthcare system.[84] And African Americans comprise 6 percent of the adult population in California but only 3 percent of all attorneys, while in contrast, white people comprise 39 percent of California's adult population but 66 percent of the state's active licensed attorneys.[85]



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.

Additionally, 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.

For all aspects of the state's apology, the Task Force recommends that there be an intensive public education and communications strategy. The Legislature should ensure that pursuit of the Task Force's recommendations for educating the public, set forth in Chapter 33, includes this requirement and funding for its development and implementation.

Endnotes

[1] 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. 2005) Res. No. 60/147 (hereafter UN Principles on Reparation).

[2] See Chapter 14, International Reparations Framework, for a fuller discussion of satisfaction as an essential element of reparations.

[3] See Internat. Center for Transitional J., Reparative Justice: More Than Words: Apologies as a Form of Reparation (Dec. 2015) p. 18 (hereafter Reparative Justice).

[4] U.N. Gen. Assem., UN Principles on Reparation, *supra*, at p. 8; U.N. Gen. Assem., Responsibility of States for Internationally Wrongful Acts (Dec. 2001) Res. No. 56/83, Art. 37 ("Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality.").

[5] Internat. Center for Transitional J., Reparative Justice, *supra*, at p. 1.

[6] See Wijaya, Public Apology as a Form of Reparation (2019) 2 Internat. J. of Global Community 2 (as of May 25, 2023).

[7] Internat. Center for Transitional J., Reparative Justice, *supra*, at p. 12.

[8] *Id.* at p. 13.

[9] *Id.* at p. 9.

[10] *Id.* at p. 8, fn. 19.

[11] Internat. Center for Transitional J., Reparative Justice, *supra*, at p. 18, fn. 68, citing Inter-American Court of Human Rights, Case of the Massacres of El Mozote and Nearby Places v. El Salvador, Judgment of October 25, 2012 (Merits, reparations and costs), para. 357.

[12] Sen. Res. No. 20 (2003-2004 Reg. Sess.); Ingram, State Issues Apology for Policy of Sterilization, L.A. Times (Mar. 12, 2003) (as of May 22, 2023); Attorney General Bill Lockyer, letter to Sen. Dede Alpert, Mar. 11, 2003.

[13] Zitner, Davis' Apology Sheds No Light on Sterilizations in California, L.A. Times (Mar. 16, 2003) (as of May 22, 2023).

[14] 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) Center for Genetics and Society (as of May 22, 2023).

[15] Governor's Exec. Order No. N-15-19 (June 18, 2019).

[16] *Ibid.*

[17] Reparations for the California Native community may include, but not be limited to, restorative actions, statutory amendments, funding opportunities, and capacity building. (Governor's Office of Tribal Affairs, California Truth & Healing Council FAQs (as of May 30, 2023).)

[18] Assem. Res. No. 77 (2019-2020 Reg. Sess.).

[19] See Chapter 2, Enslavement.

[20] Peter Burnett, First Governor of California, 1849-1851, State of the State Address (Jan. 6, 1851).

[21] Barber, *Archy Lee's Quest for Freedom*, California State Library (as of May 24, 2023).

[22] Joseph Le Conte, The Autobiography of Joseph Le Conte (1903) pp. 204-215; University of California, *Previous UC Presidents: 1869-2020* (as of May 23, 2023).

[23] In re Perkins (1852) 2 Cal. 424, 456.

[24] *Id.* at pp. 455-457.

[25] See Chapter 2, Enslavement.

[26] Chandler, Friends in Time of Need: Republicans and Black Civil Rights in Cal. during the Civil War Era (1982) 24 Ariz. and the West 319, 326-327.

[27] See Chapter 4, Political Disenfranchisement.

[28] See Chapter 2, Enslavement.

[29] See Chapter 4, Political Disenfranchisement.

[30] Stats. 1850, ch. 140, § 3, p. 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.

[31] See Chapter 4, Political Disenfranchisement.

[32] See Chapter 2, Enslavement, and Chapter 9, Control Over Creative, Cultural & Intellectual Life.

[33] See Chapter 3, Racial Terror.

[34] *Ibid.*

[35] See Chapter 9, Control Over Creative, Cultural & Intellectual Life.

[36] *Ibid.*

[37] *Ibid.*

[38] *Ibid.*

[39] *Ibid.*

[40] Assem. Conc. Res. No. 176, Stats. 2022 (2021 – 2022 Reg. Sess.) res. Ch. 161. 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. (See Assem. Bill No. 436 (2023 – 2024 Reg. Sess.) as introduced Feb. 6, 2003.)

[41] See Chapter 4, Political Disenfranchisement.

[42] *Ibid.*

[43] Cal. Housing Finance Agency, Black Homeownership Initiative: Building Black Wealth (as of May 24, 2023).

[44] See Chapter 5, Housing Discrimination.

[45] *Ibid.*

[46] Cal. Const., art. XXXIV, § 1.

[47] Times Staff, Why it's Been So Hard to Kill Article 34, California's 'Racist' Barrier to Affordable Housing, L.A. Times (March 14, 2022) (as of May 24, 2023).

[48] Ballot Pamp., Gen. Elec. (Nov. 7, 1950), p. 13; Cohan, *San Franciscan Heads Realty*

Men: Proposition 10 Given Strong Support in Addresses at Santa Cruz Convention, L.A. Times (Oct. 6, 1950) p. 18.

[49] *Ibid.*

[50] See Chapter 7, Racism in Environment and Infrastructure.

[51] Asmelash, Outdoor Recreation Has Historically Excluded People of Color. That's Beginning to Change (Dec. 14, 2021) CNN (as of May 24, 2023); see also Chapter 4, Political Disenfranchisement.

[52] Bennett, *Who Gets to Go to the Pool?*, N.Y. Times (June 10, 2015) (as of May 23, 2023); Del Real, *How Racism Ripples Through Rural California's Pipes*, N.Y. Times (Nov. 30, 2019) (as of May 23, 2023).

[53] See Chapter 6, Separate and Unequal Education.

[54] *Ibid.*

[55] *Ibid.*

[56] Cal. Const. art., I, § 26, as adopted Nov. 3, 1964, and repealed Nov. 5, 1974. (Reft, *How Prop 14 Shaped California's Racial Covenants*, (Sept. 20, 2017) KCET (as of May 24, 2023).)

[57] Ballot Pamp., Gen. Elec. (Nov. 3, 1964) argument in favor of Prop. 14, at p. 19 (as of Mar. 20, 2023).

[58] Fleischer, *How the L.A. Times helped write segregation into California's Constitution*, L.A. Times (Oct. 21, 2020) (as of May 24, 2023); Hartgraves, A Study of Proposition 14 of the 1964 California general election, (1967) (M.A. Thesis, Univ. of the Pacific), p. 32 (as of Mar. 20, 2023).

[59] Hartgraves, A Study of Proposition 14, *supra*, at pp. 27, 31-32.

[60] Cal. Const., art. I, § 7 (Prop. 1, as approved by voters, Gen. Elec. (Nov. 6, 1979)).

[61] Ballot Pamp., Special Statewide Election (Nov. 6, 1979) argument in favor of Prop. 1, p. 8; *id.*, rebuttal to argument against Prop. 1, p. 9.

[62] Orfield and Ee, *Segregating California's Future: Inequality and Its Alternative 60 Years after Brown v. Board of Education* (May 2014) The Civil Rights Project/ Proyecto Derechos Civiles, pp. 3, 12-18.

[63] Naftali, *Ronald Reagan's Long-Hidden Racist Conversation with Richard Nixon*, The Atlantic (July 30, 2019) (as of May 23, 2023).

[64] Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 209 (as of May 23, 2023).

[65] Ballot Pamp., Gen. Elec. (Nov. 5, 1996) argument in favor of Prop. 209 (as of May 23, 2023); Pear, *In California, Foes of Affirmative Action See a New Day*, N.Y. Times (Nov. 7, 1996) (as of May 23, 2023).

[66] Pamphlet, *supra,* argument in favor of Prop. 209; Monteagudo, *From 'stand back' voice on car alarms to Congress: The career of Darrell Issa*, San Diego Union-Tribune (Jan. 13, 2018) (as of May 24, 2023).

[67] Lohrentz, *The Impact of Proposition 209 on California's MWBE's: One Billion in Contract Dollars Lost Annually by Businesses Owned by Women and People of Color Due to Proposition 209* (Jan. 2015) p. 2.

[68] Watanabe, *Prop. 209's Affirmative Action Ban Drove Down Black and Latino UC Enrollment and Wages, Study Finds*, L.A. Times (Aug. 22, 2020) (as of June 22, 2021); Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California's Proposition 209* (2021) 137 Quarterly J. Economics 115; Harper et al., *Access and Equity for African American Students in Higher Education: A Critical Race Historical Analysis of Policy Efforts,* 80 J. Higher Education 389, 401.

[69] Ballot Pamp., Gen. Elec. (Nov. 3, 2020) argument in favor of Prop. 16, p. 28.

[70] KidsData, *Children in Foster Care, by Race/Ethnicity* (as of May 24, 2023).

[71] See Chapter 8, Pathologizing Black Families.

[72] See Chapter 12, Mental and Physical Harm and Neglect.

[73] *Ibid.*

[74] See Chapter 11, An Unjust Legal System.

[75] *Ibid.*

[76] See Cal. Const. art. I, § .

[77] Stats. 1851, ch. 1, § 394, p. 113; Stats. 1850, ch. 99, § 14, p. 230.

[78] Berkeley Law Death Penalty Clinic, *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors* (June 2020) pp. 13-19.

[79] See Chapter 12, Mental and Physical Harm and Neglect.

[80] California Health Care Foundation, *California Health Care Almanac: Health Disparities by Race and Ethnicity in California: Pattern of Inequity* (Oct. 2021) pp. 42-43.

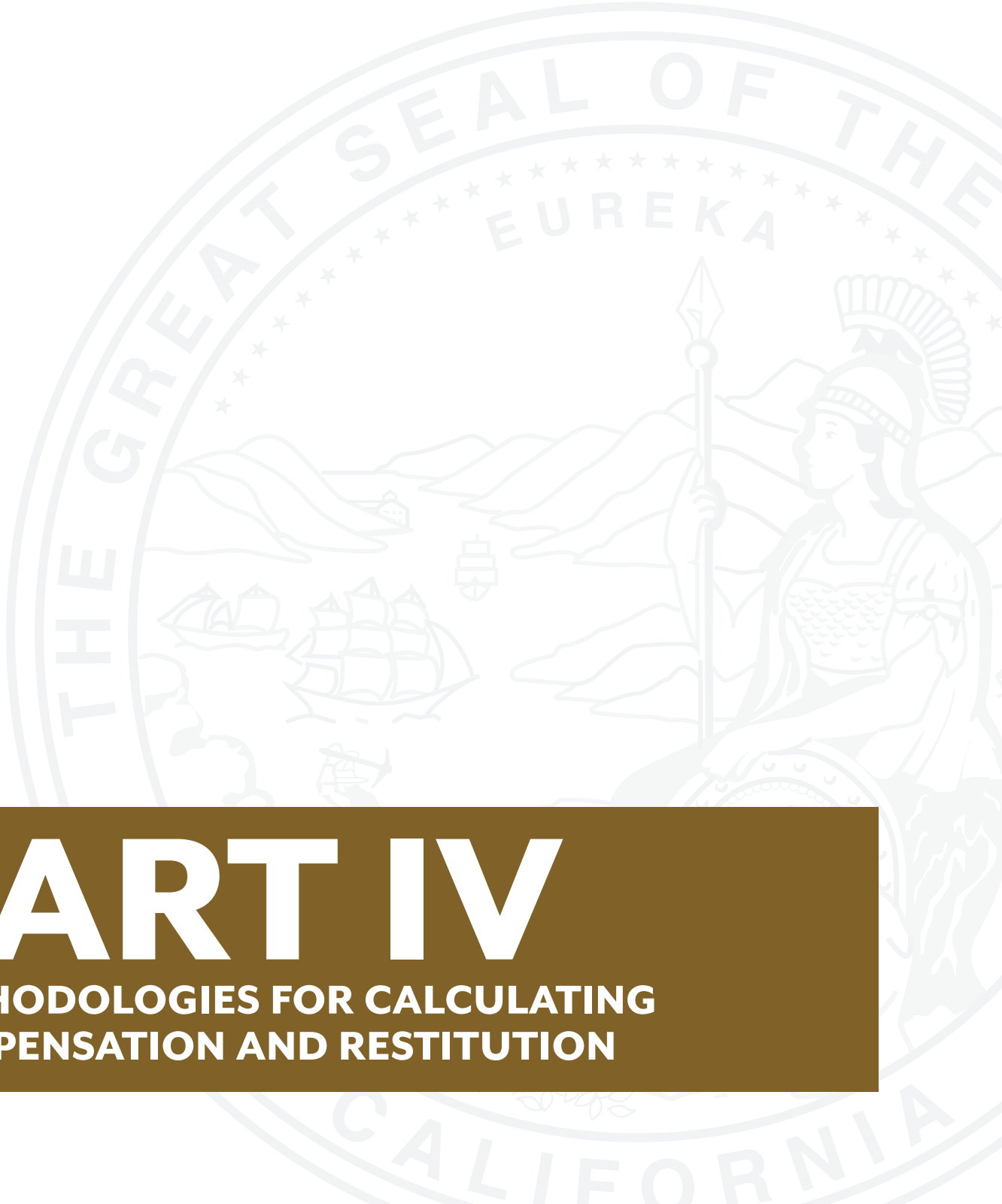
[81] *Id.* at pp. 19, 25, 28.

[82] See Chapter 10, Stolen Labor and Hindered Opportunity.

[83] *Ibid.*

[84] California Health Care Foundation, California Health Care Almanac, *supra*, at p. 12.

[85] The State Bar of California, Diversity of 2022 California Licensed Attorneys (as of May 24, 2023).

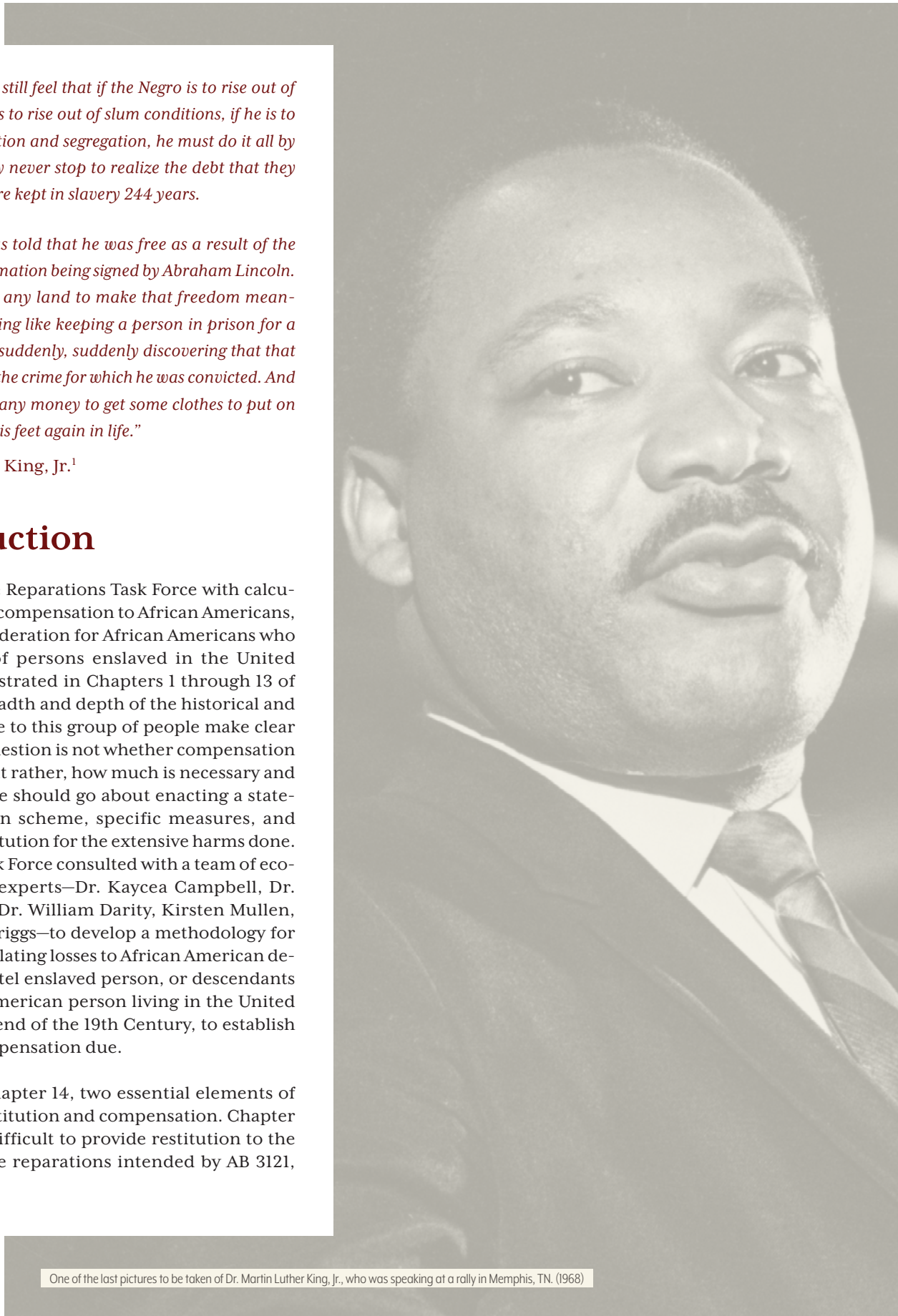


PART IV

METHODOLOGIES FOR CALCULATING COMPENSATION AND RESTITUTION

CHAPTER 17 Final Recommendations

COURTESY OF BETTMANN VIA GETTY IMAGES



One of the last pictures to be taken of Dr. Martin Luther King, Jr., who was speaking at a rally in Memphis, TN. (1968)

"There are those who still feel that if the Negro is to rise out of poverty, if the Negro is to rise out of slum conditions, if he is to rise out of discrimination and segregation, he must do it all by himself... [b]ut ... they never stop to realize the debt that they owe a people who were kept in slavery 244 years.

In 1863 the Negro was told that he was free as a result of the Emancipation Proclamation being signed by Abraham Lincoln. But he was not given any land to make that freedom meaningful. It was something like keeping a person in prison for a number of years and suddenly, suddenly discovering that that person is not guilty of the crime for which he was convicted. And ... you don't give him any money to get some clothes to put on his back or to get on his feet again in life."

– Dr. Martin Luther King, Jr.[1]

I. Introduction

AB 3121 charges the Reparations Task Force with calculating "any form of compensation to African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States."[2] As demonstrated in Chapters 1 through 13 of this report, the breadth and depth of the historical and ongoing harm done to this group of people make clear that the relevant question is not whether compensation should be given, but rather, how much is necessary and how the Legislature should go about enacting a statewide compensation scheme, specific measures, and individualized restitution for the extensive harms done. To this end, the Task Force consulted with a team of economic and policy experts—Dr. Kaycea Campbell, Dr. Thomas Craemer, Dr. William Darity, Kirsten Mullen, and Dr. William Spriggs—to develop a methodology for analyzing and calculating losses to African American descendants of a chattel enslaved person, or descendants of a free African American person living in the United States prior to the end of the 19th Century, to establish the amount of compensation due.

As explained in Chapter 14, two essential elements of reparations are restitution and compensation. Chapter 14 notes that it is difficult to provide restitution to the beneficiaries of the reparations intended by AB 3121,

particularly given the moral damage caused to victims and their descendants,[3] and full compensation is similarly difficult to provide, but these challenges should not prevent California from making reparations. The Task Force has thus formulated the following recommendations to address the requirement that reparations include both restitution and compensation. In rendering its recommendations to the Legislature in this chapter, the Task Force defines compensation to include two different forms, as directed by AB 3121:[4] cumulative compensation for the eligible class and particular compensation for individual, provable harms.

II. Eligibility

Through AB 3121, the Legislature directed that the Task Force formulate recommendations as to the forms and methods of calculating restitution and compensation and "who should be eligible for such compensation."[5] Prior to formulating this aspect of its recommendations, the Task Force heard testimony from experts and the author of AB 3121. After careful consideration, the Task Force voted to recommend that the "community of eligibility" for reparations be "based on lineage, determined by an individual being a Black descendant of a chattel enslaved person or a descendant of a free Black person living in the United States prior to the end of the 19th Century."[6]

III. Particular Reparations Compensation and Restitution

This report details the array of harms visited upon African Americans broadly, and more specifically, African Americans living in California since the state's founding. While below, the Task Force delineates methods for awarding cumulative compensation to the whole of the class of eligibility, many African Americans in California have suffered particular injuries that can and must be addressed through restitution or particular compensation.

As discussed in Chapter 14, under international law, restitution refers to a remedy given to a person to undo a particular loss or injury.[7] An example of partial restitution is the State of California's return of Bruce's Beach to descendants of the African American family who owned the property when the state seized the beach, in 1924, due to their race.[8] No effort was made to compensate for the years in which the family was deprived of access to the property. Not all specific harms perpetrated against the state's African American residents involve land—or other property that can be easily returned. In those cases, those individual harms must be remedied with monetary compensation.[9]

Therefore, the Task Force recommends that the Legislature create a method for eligible individuals to submit claims and receive compensation or restitution for those particular harms California inflicted upon the claimant or their family. The Task Force recommends a specific entity (potentially the recommended California American Freedman Affairs Agency) be charged with processing these claims and rendering payment in an efficient and timely manner. Once the Legislature defines the scope of eligibility for the payment of claims, the entity's responsibilities should include: (1) supporting claimants in obtaining evidence to substantiate qualifying claims; (2) providing advocates to assist applicants with claims; (3) reviewing and determining the sufficiency of the claims and amount of restitution required to make the individual whole; and (4) ensuring that direct payments are timely remitted to eligible applicants. Such a process could follow existing models, such as the California Victim Compensation Board, which provides monetary compensation to the victims of certain crimes.[10]

In the manner described above, the recommended program would ensure that monetary compensation and restitution are made to individuals or their survivors for the wrongs committed against them that the Legislature and the designated entity determines to merit an award. Compensation and restitution for particular injuries is a necessary step toward comporting with international standards for reparations, but it is not enough. Compensation or restitution for particular injuries, alone, would not provide a sufficient remedy for the many other longstanding laws and policies, and the scope of harm caused by them, detailed in Chapters 2 through 13 of this report against the whole class of people impacted by those atrocities. For these harms established by the detailed factual record recounted in Chapters 2 through 13, cumulative monetary payments must be made.

IV. Cumulative Compensation

The Task Force defines cumulative compensation as the monetary payment owed to African American descendants of a chattel enslaved person, or descendants of a free African American person living in the United States prior to the end of the 19th Century—members of the eligible class, as defined by the Task Force[11]—to remedy the full history of harm documented in Chapters 2 through 13 of this report. Unlike particular compensation or restitution, cumulative compensation would not require any member of the eligible class to provide evidence documenting their harm. Rather, as detailed in Chapters 2 through 13 of this report, the historical record demonstrates that all members of the eligible class have been affected and must receive indemnification to undo the harm done. The rest of this chapter addresses potential methods for calculating cumulative compensation.

The Task Force recommends that the Legislature apply a different timeframe for calculating damages depending upon the category of harm, since different laws and policies inflicted measurable injury across different periods of time.

Key Questions for the Calculation of Cumulative Compensation

To develop a model for calculating collective compensation, the Task Force's economic experts posed four main questions before calculating the amount of the losses to African Americans caused by California state policies for which relevant data is held by the state.[12]

First, what is the time frame for measurement of the harm? After consulting with the Task Force's economic experts, the Task Force recommends that the Legislature apply a different timeframe for calculating damages depending upon the category of harm, since different laws and policies inflicted measurable injury across different periods of time. For example, the state's participation in the discriminatory denial of equal healthcare, unjust property takings, and devaluation of African American businesses began with the founding of the state in 1850 and has continued to this day. After consultations with its economic experts, the Task Force recommends that the Legislature measure the period of harm for the specific harms considered in this Chapter as follows:

- Health Harms: 1850-present[13]
- Housing Discrimination: 1933-1977 or 1850-present
- Mass Incarceration & Over-policing: 1971-present
- Unjust Property Takings: 1850-present
- Devaluation of African American Businesses: 1850-present

Second, will there be a California residency requirement? If yes, how will it be determined? The Task Force recommends that, for cumulative reparations compensation, the Legislature require eligible recipients to establish, using a low threshold of proof, their residence in California during the relevant periods of harm listed above for a minimum of six months (or any shorter minimum length of residency defined in existing California code or regulation) for each year in which the eligible recipient might be entitled to cumulative reparations compensation. The six-month length of this requirement is consistent with existing California law that recognizes a presumption of residency after presence in the state for six months.[14] To illustrate this requirement in effect: if an eligible Californian has lived in the state for five years of a relevant period of harm—but had to travel out of state for work for three months in each of those years—that Californian would be entitled to cumulative reparations worth five years of residency in the state. For particular reparations compensation or restitution, the Task Force recommends that there be no separate residency requirement, as the individual would already need to separately prove that the individual was harmed by California's actions.[15]

Third, will only direct victims or all members of the eligible class receive remuneration? The Task Force recommends that all members of the eligible class be compensated for all five calculable areas of harm discussed in this chapter. The State of California created laws and policies discriminating against and subjugating free and enslaved African Americans and their descendants. In doing so, these discriminatory policies made no distinctions between these individuals; the compensatory remedy must do the same.

Fourth, how will cumulative reparations compensation be paid and measured to ensure the form of payment aligns with the estimate of damages? The bulk of this chapter addresses this last question: how to quantify the wounds caused by the long and ongoing damage of slavery and discrimination. Ultimately, the Task Force recommends that any reparations program include the payment of cash or its equivalent to members of the eligible class. Given that the process of calculating the amount of some of the losses and determining the methods and structure for issuing payments could involve a lengthy process, the Task Force further recommends that the Legislature make a "down payment" with an immediate disbursement of a meaningful amount of funds to each member of the eligible class, as discussed below.

No amount can encompass the full scope of damage done by the institution of slavery and ongoing discrimination.

Model for Calculating the Costs of Harms and Atrocities

As documented throughout Chapters 2 through 13 of this report, the State of California holds at least partial responsibility for a wide-ranging set of harms and atrocities inflicted upon African Americans, especially descendants of persons enslaved in the United States.

The task of calculating the cost of tears and blood and human rights violations is a challenge. While no amount can encompass the full scope of damage done by the institution of slavery and ongoing discrimination, the Task Force has consulted with a group of experts who have identified five key categories of ongoing harm for which there may be sufficient data and methods to estimate monetary losses experienced by African Americans in California:

1. Health Harms
2. Mass Incarceration and Over-Policing of African Americans
3. Housing Discrimination
4. Unjust Property Takings by Eminent Domain
5. Devaluation of African American Businesses

Based on available data, the Task Force and its economic experts have calculated preliminary estimates of monetary losses to African Americans across the first three categories: Health Disparities, African American Mass Incarceration and Over-Policing, and Housing Discrimination. Further, the Task Force and its experts have identified a method for calculating losses for Unjust Property Takings by Eminent Domain and Devaluation of African American Businesses, though the data necessary to allow the Task Force's experts to conduct that calculation in time for the publication of this report was not readily available from the respective state agencies. The Task Force recommends that when the Legislature engages in its eventual determination, it releases to the public the data underpinning this calculation to allow scholars and experts to have access to this information and to better understand the process by which the costs were calculated.

The list of harms and atrocities included in this chapter's calculations is not exhaustive. The Task Force and its economic experts focused on these five categories for two main reasons: they reflect areas where there is sufficient historical data to quantify the harm done, and they represent discriminatory policies directly attributable to the State of California, rather than to federal, local, or private actors. These five categories may not reflect all important harms and atrocities inflicted upon African Americans in California, nor their full quantitative impact. In many instances, there may be harms or atrocities that cannot be quantified because California has not collected the required data (e.g., due to Proposition 209) or the data is not readily available (e.g., on occupational, pay, and employment discrimination) to make that calculation. The Task Force anticipates that the Legislature will be able to add additional harms and atrocities to this list, using calculation methods similar to the ones outlined below, with access to more data than was available to the Task Force.

Since this list of harms and atrocities is not exhaustive, the total of the estimated losses to African Americans is not a final estimate of all losses. Rather, it is a very cautious initial assessment for what cost, at a minimum, the State of California is responsible. Further data collection and research would be required to augment these initial estimates.

Additionally, since the Task Force and its economic experts' estimates for losses are based on readily-available data – which is limited – and the Legislature may need to provide compensation in sums greater than the amount calculated. Further, since the estimates are not

exhaustive, the Legislature may want to consider how to provide compensation for difficult-to-estimate losses. For example, pain and suffering from generations of discrimination represent real losses for which the Task Force's experts cannot provide an estimate, because they depend on the subjective experience of those harmed and on their current needs. Finally, since the estimates are preliminary and more research is required, the Legislature may want to consider enacting a substantial initial down-payment, to be followed with additional payments as new evidence becomes available.

If the Legislature enacts such a payment process, the Task Force recommends that the Legislature communicate to the public that the initial down-payment is the beginning of a process of addressing historical injustices, not the end of it. The Task Force recommends the down payment as an essential first step to avoid paralysis due to the need for further research and analysis. To delay is an injustice that causes more suffering and may ultimately deny justice, especially to the elderly among the harmed. The Task Force also recommends the Legislature consider *prioritizing elderly recipients* in the roll-out of a compensation program.

Informed by the economic experts, the Task Force recommends that the Legislature establish an agency (potentially the California American Freedman Affairs Agency discussed in Chapter 18) to make direct payments to eligible recipients and aid recipients with establishing eligibility. This is preferable to an indirect approach where the agency oversees the distribution of resources through non-profit community organizations. These recommendations are reflected in Chapters 18 through 30 of this report, where the Task Force offers policy recommendations for the Legislature to remedy injuries to California's African American population.

Further, the Task Force recommends that compensation for community harms be provided as *uniform payments* based on an eligible recipient's duration of residence in California during the defined period of harm (e.g., residence in an over-policed community during the "War on Drugs" from 1971 to 2020). In addition, as discussed above, the Task Force recommends that the Legislature enact an individual claims process to compensate individuals who can prove particular injuries, for example, an individual who was arrested or incarcerated for a drug charge during the war on drugs, especially if the drug is now considered legal.

Finally, the Task Force recommends that there should be no time limit on when a harmed individual or their heirs can submit claims for compensation.

V. Collective Compensation: Calculations for Specific Atrocities

Atrocity 1: Health Harms

As documented in Chapter 12, Mental and Physical Harm and Neglect, discriminatory policies have led to devastating health consequences for African Americans in California.[16] One clear way to measure the impact of these discriminatory health harms is through the difference in life expectancy between Black non-Hispanics[17] and white non-Hispanics in California.[18] This reduction in life expectancy is the cumulative result of discrimination, including state-sanctioned medical experimentation and sterilization, segregation of healthcare facilities and the denial of funds to facilities or doctors that treated African Americans in California, unequal access to health insurance and health care based on occupational discrimination, discriminatory local zoning that exposes African American neighborhoods to greater environmental harm (e.g., placement of toxic industries in residential neighborhoods, creation of food deserts, etc.), and explicit and implicitly discriminatory behavior of medical personnel from which the state should shield its residents.[19] These discriminatory practices were compounded by the State of California's willing complicity in federal redlining policies that created de jure racially segregated living arrangements in California,[20] and its unwillingness to address occupational discrimination, as documented by its ban on affirmative action in public education and employment.[21] The Task Force's experts estimated the cost of health differences between Black non-Hispanic and white non-Hispanic Californians as follows:

1. Take an individual's value of statistical life (roughly $10,000,000) and divide it by the white non-Hispanic life expectancy in California (78.6 years in 2021) to obtain the value for each year of life absent racial discrimination ($127,226).[22]

2. The experts then calculated the difference in average life expectancy in years between Black non-Hispanic and white non-Hispanic Californians (7.6 years in 2021).

3. The experts then multiplied the two to arrive at an average total loss in value of life due to racial

discrimination experienced by a Black non-Hispanic Californian who spends their entire life in California and lives until the average life expectancy (71 years of age) of a Black non-Hispanic Californian ($966,918).

4. The annual value for the time an eligible individual resides in California is thus: $966,918 / 71 = $13,619.

Some economists estimate the value of a statistical life in the United States to fall between $9,000,000 and $11,000,000 in 2020 dollars.[23] Taking the midpoint between these amounts, this report divides $10,000,000 by the white non-Hispanic life expectancy in California (78.6 years in 2021)[24] to obtain the value for each year of life absent racial discrimination ($127,226). The experts then multiplied the value of each year of life absent discrimination with the average difference in life expectancy between Black non-Hispanic Californians and white non-Hispanic Californians.

Based on 2021 figures, white non-Hispanic Californians live on average 7.6 years longer than Black non-Hispanic Californians (78.6 years, compared to 71 years).[25] The total value of 7.6 years difference in life expectancy would be (7.6 years) x ($127,226) = $966,918, providing the average total loss in value of life, over a lifetime, due to racial discrimination in California. But since not every member of the eligible class will have spent the entirety of their life in California, this report calculates each African American's individual health harm by taking the average total loss in value in life due to racial discrimination in California and dividing it by the average Black non-Hispanic Californian life expectancy: $966,918 / 71 years = $13,619. This would be the estimated value of health harm to each year of life an African American individual has spent in California, to which an eligible descendant would be entitled.

Atrocity 2: Mass Incarceration and Over-Policing of African Americans

Though federal and state governments have long targeted African Americans for discriminatory arrest and incarceration, the scope of such unjust policing leapt exponentially when the "War on Drugs" began in 1971. Survey research reveals that "[p]eople of all races use and sell illegal drugs at remarkably similar rates."[26] To measure racial mass incarceration disparities in the 49 years of the War on Drugs from 1971 to 2020, the Task Force's experts estimate the disproportionate number of years spent behind bars for Black non-Hispanic drug offenders, compared to white non-Hispanic drug offenders, and multiplies those years with what a California state employee would have earned in an average year. In doing so, the experts used the average salary for a California state employee because, as described in Chapter 11, Stolen Labor, incarcerated individuals were also forced to provide unpaid labor for the state. The experts also added compensation for loss of freedom, comparable to the reparation payments provided to Japanese Americans incarcerated in World War II. Through these methods, the Task Force's experts calculated $159,792 per year (in 2020 dollars) lost due to the disproportionate mass incarceration and over-policing of African Americans during the War on Drugs.

To estimate the number of disproportionately incarcerated Black non-Hispanic individuals,

1. The Task Force's expert team used total California arrest figures for felony drug offenses and African American non-Hispanic drug felony arrests for each year from 1971 to 2020, to compute the annual percentage of overall felony drug arrests involving Black non-Hispanic Californians.

2. The experts then computed the difference between the percentage of Black non-Hispanic Californians arrested for drug felonies and the estimated percentage of Black non-Hispanic Californians in the population for each year. The difference between the two provides an estimate of the percentage of disproportionate Black non-Hispanic drug felony arrests.

3. The experts obtained the estimated number of Black non-Hispanic Californians disproportionately arrested for drug felonies by multiplying the percentage of excess Black non-Hispanic drug felony arrests times the total number of drug felony arrests.

4. The experts then multiplied the number of Black non-Hispanic Californians disproportionately arrested for drug felonies by the average drug-possession related prison term of 1.48 years[27] and the annual compensation amount ($159,792, see above) and add the annual amounts up over the entire time period from 1971 to 2020 to arrive at a total sum of $227,858,891,023 in 2020 dollars.

The disproportionate police presence in Black communities had dramatically negative impacts on the quality of life for *all* African Americans who lived in the state during the War on Drugs.[28] In rendering their calculations, the experts therefore divided the total sum of harm among the estimated 1,976,911 Black non-Hispanic California residents who lived in the state in 2020, for an amount per person of $115,260 in 2020 dollars, or $2,352 for each year of residency in California during

the 49-year period between 1971 and 2020. African American residents in California who were incarcerated for the possession or distribution of substances now legal, such as cannabis, should additionally be able to seek particular compensation for their period of incarceration, as discussed above.

While discriminatory arrest and sentencing may go back to the beginning of the State of California, the phenomenon of mass incarceration in the United States has its starting point with the beginning of the War on Drugs. The term was popularized in 1971 after President Nixon declared drug abuse "public enemy number one" in a press conference that year.[29]

An explosion of the prison population in the United States was driven by convictions for drug offenses in the War on Drugs. Yet scholars have observed that, "patterns of drug crime do not explain the glaring racial disparities in our criminal justice system. People of all races use and sell illegal drugs at remarkably similar rates."[30] For example, the 2000 National Household Survey on Drug Abuse, revealed that 6.4 percent of white Americans, and 6.4 percent of African Americans, were current illegal drug users in 2000.[31] Results from the 2002 National Survey on Drug Use and Health by the U.S. Department of Health and Human Services, revealed nearly identical rates of illegal drug use among white Americans and African Americans, with only a single percentage point between them.[32] And the 2007 version of the survey showed essentially the same results.[33] Scholar Michelle Alexander observes,

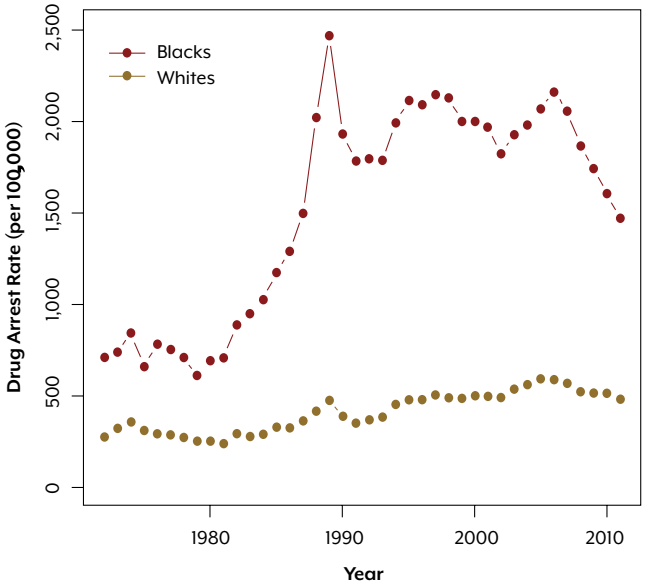
> If there are significant differences in the surveys to be found, they frequently suggest that whites, particularly white youth, are more likely to engage in illegal drug dealing than people of color. One study, for example, published in 2000 by the National Institute on Drug Abuse reported that white students use cocaine at seven times the rate of [B]lack students, use crack cocaine at eight times the rate of [B]lack students, and use heroin at seven times the rate of [B]lack students. That same survey revealed that nearly identical percentages of white and [B]lack high school seniors use marijuana. The National Household Survey on Drug Abuse reported in 2000 that white youth aged 12-17 are more than a third more likely to have sold illegal drugs than African American youth. . . . [W]hite youth have about three times the number of drug-related emergency room visits as their African American counterparts.[34]

More recent numbers from the 2019 version of the survey suggest that 13.6 percent of white non-Hispanic Americans and only a single percentage point more, 14.6 percent, of Black non-Hispanics admitted to illicit drug use.[35]

This evidence is important, as it speaks directly to the fairness or lack thereof of racial arrest and imprisonment disparities. According to the National Research Council, "[i]f racial disparities in imprisonment perfectly mirrored racial patterns of criminality, then an argument could be made that the disparities in imprisonment were appropriate."[36] They continue that, "Black people are, however, arrested for drug offenses at much higher rates than whites because of police decisions to emphasize arrests of street-level dealers" in disproportionately Black neighborhoods, despite abundant data that white individuals use or sell equivalent or even higher amounts of illicit substances.[37] As discussed in Chapter 11, An Unjust Legal System, federal laws also imposed the longest sentences for crack cocaine offenses, for which African Americans are arrested much more often than white Americans (including a 100 to 1 disparity in the punishment for crack cocaine, versus powdered cocaine, disproportionately consumed by white users).[38]

Given the similarity between African Americans and white Americans in the number of drug offenses they may have been party to (drug possession or selling), racial disparities in drug enforcement should be non-existent. However, Figure 3 paints a shockingly different picture. It suggests that the massive increase in incarceration for drug offenses may be due to disproportionate arrests of African Americans.

Figure 1: Drug arrest rates for African Americans and white Americans per 100,000 population, 1972 to 2011.[39]



As a result of these discriminatory practices, it is not surprising that Black non-Hispanics were by far the most over-represented group in the U.S. prison population. While they represented 13 percent of the U.S. population in 2010, they represented 40 percent of the prison population, an over-representation of 27 percentage points.[40] In contrast, Hispanics (of any race) were overrepresented by only 3 percentage points (16 percent of the U.S. population and 19 percent of the prison population).[41] Asian Americans were *under*represented by 4.1 percentage points (5.6 percent of the U.S. population and 1.5 percent of the prison population), and white non-Hispanics underrepresented by 25 percentage points (64 percent of the U.S. population and 39 percent of the prison population).[42]

To measure racial mass incarceration disparities in the 49 years of the War on Drugs from 1971 to 2020, the Task Force's experts estimated the disproportionate years spent behind bars for Black non-Hispanic Californian drug offenders compared to white non-Hispanic drug offenders. Since these disparities are measurable in years, the experts attached a monetary value to these disproportionate years spent in prison by calculating what an average California state employee would have earned in a year. The experts used California state employees as a baseline of comparison since, as described in Chapter 11, imprisoned individuals are frequently forced to provide unpaid labor for the state. While many incarcerated people may have otherwise worked in lower-paid positions with fewer benefits, this trend would also be due to past occupational, pay, and employment discrimination and would therefore taint this report's calculations.

In 2019, full time state workers earned on average $143,000 annually, with benefits.[43] Adjusting for inflation, this would be $145,002 in 2020.[44] In addition to lost wages, the experts include compensation for loss of freedom, comparable to the amount paid to Japanese Americans incarcerated in World War II, who received $20,000 in 1988 dollars for three years of incarceration from 1942 to 1945.[45] This would amount to $6,667 per year in 1988 dollars, or $14,790 in 2020 dollars.[46] The total average compensation would therefore be $145,002 + $14,790 = $159,792 per year of disproportionate incarceration in 2020 dollars.

To estimate the number of disproportionately incarcerated Black non-Hispanic Californians, Table 1, below, provides observed incarcerations, estimated incarcerations, and derived incarcerations. The first column gives the year (1971-2020), and the second column provides the California population total for each year the decennial U.S. Census was taken (the numbers in bold) and the population in each year in between decennial censuses estimated by linear interpolation (the numbers in italics). The third column gives the number of Black non-Hispanics based on the population figures from the U.S. Census Bureau[47] and the percentages of the Black non-Hispanic population[48] for each decennial census (numbers in bold). Again, the figures between decennial censuses are estimated using linear interpolation (numbers in italics).

The next columns estimate the number of Black non-Hispanic Californians arrested for drug offenses. The fourth column in Table 1 provides the total number of arrests in California as recorded by the California Department of Justice. The fifth column provides the total number of felony drug arrests—because the California Department of Justice recorded drug felony arrests in California only for the years 1980-2020 (2022), the numbers for 1971-1979 were estimated using the 1980 drug felony arrests to calculate what percentage of all arrests in that year were drug felony arrests (4.2195 percent), and applying that same ratio of drug arrests to total arrests between 1971-1979. Drug felony arrests of Black non-Hispanic Californians are listed in the sixth column, again estimated figures for 1971-1979 based upon the percentage of Black non-Hispanic drug felony arrests out of all drug felony arrests conducted in 1980 (28.8767 percent).

Columns 7 through 10 then compare the percentage of felony drug arrests of Black non-Hispanic Californians with the percentage of Black non-Hispanic Californians in the overall population to reflect the disproportionate rates of arrest. Column 7 presents the Black non-Hispanic population percentage. Column 8 provides the Black non-Hispanic percentage of all drug felony arrests (numbers in regular print) and is estimated for the years 1971-1979 based on the 1980 percentage (numbers in italics). Column 9 provides the percentage of excess Black non-Hispanic drug felony arrests and represents the difference between column 8 (Black non-Hispanic drug felony arrests as a percentage of all drug felony arrests) and column 7 (Black non-Hispanic percentage of the overall California population). The calculations reflect a significant disproportionate arrest rate for Black non-Hispanic Californians for the entire observed time period, and ranges from a minimum of 8.25 percentage points in 2013 to a maximum of 29.58 percentage points in 1988. Column 10 translates this percentage into the total number of Black non-Hispanic Californians disproportionately arrested for drug felonies by multiplying the excess percentage in column 9 with the number of all drug felony arrests in column 5.

Finally, the last column (11) multiplies Black non-Hispanic excess drug felony arrests by the average drug-related prison term of 1.48 years[49] and the annual reparations amount of $159,792 calculated above. The annual amounts are added up and yield the sum of $227,858,891,023 or $228 billion in 2020 dollars.

Table 1: Reparations for Disproportionate Black non-Hispanic Drug Felony Arrests (DFA) During the 'War on Drugs' in California (1970-2020)

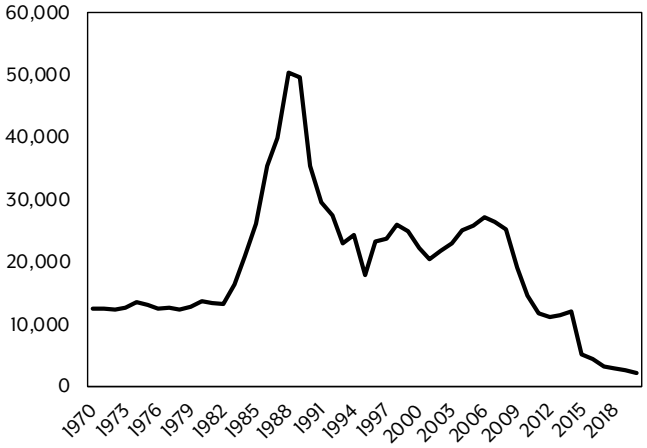
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
YEAR	CA POPULATION[1]	BLACK NON-HISPANICS[2]	TOTAL ARRESTS[3]	DRUG FELONY ARRESTS[4]	BLACK DFA[5]	BLACK POP%[6]	BLACK DFA%	EXCESS BLACK DFA%	EXCESS BLACK DFA ARRESTS	REPARATIONS AMOUNT[7]
	19,953,134	**1,396,719**	**1,340,072**	-	-	**7.00**	-	-	-	
1971	*20,324,611*	*1,446,391*	**1,347,479**	*56,857*	*16,418*	*7.12*	*28.88*	21.76	12,372	$2,925,943,745
1972	*20,696,088*	*1,496,062*	**1,340,438**	*56,560*	*16,333*	*7.23*	*28.88*	21.65	12,244	$2,895,637,612
1973	*21,067,564*	*1,545,733*	**1,383,234**	*58,366*	*16,854*	*7.34*	*28.88*	21.54	12,572	$2,973,136,160
1974	*21,439,041*	*1,595,404*	**1,488,102**	*62,791*	*18,132*	*7.44*	*28.88*	21.44	13,459	$3,183,014,246
1975	*21,810,518*	*1,645,076*	**1,439,857**	*60,755*	*17,544*	*7.54*	*28.88*	21.33	12,962	$3,065,308,280
1976	*22,181,995*	*1,694,747*	**1,395,447**	*58,881*	*17,003*	*7.64*	*28.88*	21.24	12,504	$2,957,171,463
1977	*22,553,472*	*1,744,418*	**1,402,930**	*59,197*	*17,094*	*7.73*	*28.88*	21.14	12,515	$2,959,813,921
1978	*22,924,948*	*1,794,090*	**1,382,805**	*58,348*	*16,849*	*7.83*	*28.88*	21.05	12,283	$2,904,751,967
1979	*23,296,425*	*1,843,761*	**1,442,037**	*60,847*	*17,571*	*7.91*	*28.88*	20.96	12,755	$3,016,451,872
	23,667,902	**1,893,432**	**1,542,850**	**65,101**	**18,799**	**8.00**	28.88	20.88	13,591	$3,214,146,027
1981	*24,277,114*	*1,912,409*	**1,632,351**	**67,384**	**18,591**	*7.88*	27.59	19.71	13,283	$3,141,297,563
1982	*24,886,326*	*1,931,386*	**1,621,944**	**68,616**	**18,453**	*7.76*	26.89	19.13	13,128	$3,104,628,229
1983	*25,495,538*	*1,950,363*	**1,653,914**	**79,422**	**22,477**	*7.65*	28.30	20.65	16,401	$3,878,792,888
1984	*26,104,750*	*1,969,340*	**1,680,721**	**93,124**	**27,801**	*7.54*	29.85	22.31	20,776	$4,913,298,231
1985	*26,713,962*	*1,988,317*	**1,716,040**	**108,729**	**34,147**	*7.44*	31.41	23.96	26,054	$6,161,641,024
1986	*27,323,173*	*2,007,294*	**1,794,481**	**131,672**	**45,037**	*7.35*	34.20	26.86	35,364	$8,363,245,339
1987	*27,932,385*	*2,026,271*	**1,859,342**	**146,588**	**50,558**	*7.25*	34.49	27.24	39,924	$9,441,763,959
1988	*28,541,597*	*2,045,248*	**1,903,067**	**170,156**	**62,529**	*7.17*	36.75	29.58	50,336	$11,904,040,719
1989	*29,150,809*	*2,064,225*	**1,969,168**	**174,779**	**61,933**	*7.08*	35.44	28.35	49,557	$11,719,739,045
	29,760,021	**2,083,201**	**1,979,355**	**145,551**	**45,570**	**7.00**	31.31	24.31	35,381	$8,367,430,805
1991	*30,171,184*	*2,078,111*	**1,791,312**	**125,241**	**38,095**	*6.89*	30.42	23.53	29,469	$6,969,124,007
1992	*30,582,346*	*2,073,021*	**1,718,254**	**135,448**	**36,645**	*6.78*	27.05	20.28	27,464	$6,494,943,201
1993	*30,993,509*	*2,067,931*	**1,667,522**	**136,943**	**32,024**	*6.67*	23.38	16.71	22,887	$5,412,588,891
1994	*31,404,672*	*2,062,840*	**1,652,723**	**155,175**	**34,408**	*6.57*	22.17	15.61	24,215	$5,726,707,019
1995	*31,815,835*	*2,057,750*	**1,608,147**	**141,394**	**26,986**	*6.47*	19.09	12.62	17,841	$4,219,273,561
1996	*32,226,997*	*2,052,660*	**1,622,535**	**139,772**	**32,103**	*6.37*	22.97	16.60	23,200	$5,486,710,386
1997	*32,638,160*	*2,047,570*	**1,620,381**	**153,099**	**33,299**	*6.27*	21.75	15.48	23,694	$5,603,507,981
1998	*33,049,323*	*2,042,479*	**1,571,724**	**141,766**	**34,640**	*6.18*	24.43	18.25	25,879	$6,120,116,071
1999	*33,460,485*	*2,037,389*	**1,496,459**	**133,437**	**32,983**	*6.09*	24.72	18.63	24,858	$5,878,745,780
	33,871,648	**2,032,299**	**1,424,893**	**128,142**	**29,803**	**6.00**	23.26	17.26	22,114	$5,229,901,142
2001	*34,209,879*	*2,052,593*	**1,420,680**	**124,726**	**27,895**	*6.00*	22.37	16.37	20,411	$4,827,145,534
2002	*34,548,110*	*2,072,887*	**1,426,233**	**131,306**	**29,669**	*6.00*	22.60	16.60	21,791	$5,153,315,521
2003	*34,886,340*	*2,093,180*	**1,471,083**	**140,744**	**31,321**	*6.00*	22.25	16.25	22,876	$5,410,079,789
2004	*35,224,571*	*2,113,474*	**1,499,083**	**150,305**	**34,097**	*6.00*	22.69	16.69	25,079	$5,930,915,933
2005	*35,562,802*	*2,133,768*	**1,508,210**	**159,944**	**35,389**	*6.00*	22.13	16.13	25,792	$6,099,690,928

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
YEAR	CA POPULATION[1]	BLACK NON-HISPANICS[2]	TOTAL ARRESTS[3]	DRUG FELONY ARRESTS[4]	BLACK DFA[5]	BLACK POP%[6]	BLACK DFA%	EXCESS BLACK DFA%	EXCESS BLACK DFA ARRESTS	REPARATIONS AMOUNT[7]
2006	*35,901,033*	*2,154,062*	**1,539,364**	**154,468**	**36,338**	*6.00*	23.52	17.52	27,070	$6,401,823,852
2007	*36,239,264*	*2,174,356*	**1,551,900**	**143,692**	**34,987**	*6.00*	24.35	18.35	26,365	$6,235,229,315
2008	*36,577,494*	*2,194,650*	**1,543,665**	**129,080**	**32,885**	*6.00*	25.48	19.48	25,140	$5,945,460,201
2009	*36,915,725*	*2,214,944*	**1,466,852**	**118,684**	**26,156**	*6.00*	22.04	16.04	19,035	$4,501,618,806
2010	**37,253,956**	**2,235,237**	**1,394,425**	**121,286**	**21,813**	**6.00**	17.98	11.98	14,536	$3,437,612,199
2011	*37,482,383*	*2,209,405*	**1,267,196**	**115,332**	**18,519**	*5.89*	16.06	10.16	11,721	$2,771,862,587
2012	*37,710,809*	*2,183,572*	**1,238,496**	**120,995**	**18,083**	*5.79*	14.95	9.15	11,077	$2,619,627,559
2013	*37,939,236*	*2,157,739*	**1,205,536**	**137,125**	**19,116**	*5.69*	13.94	8.25	11,317	$2,676,432,102
2014	*38,167,663*	*2,131,907*	**1,212,845**	**137,054**	**19,708**	*5.59*	14.38	8.79	12,053	$2,850,360,036
2015	*38,396,090*	*2,106,074*	**1,158,812**	**44,629**	**7,564**	*5.49*	16.95	11.46	5,116	$1,209,903,987
2016	*38,624,516*	*2,080,242*	**1,120,759**	**38,988**	**6,442**	*5.39*	16.52	11.14	4,342	$1,026,891,961
2017	*38,852,943*	*2,054,409*	**1,097,083**	**29,955**	**4,739**	*5.29*	15.82	10.53	3,155	$746,152,484
2018	*39,081,370*	*2,028,576*	**1,091,694**	**28,376**	**4,355**	*5.19*	15.35	10.16	2,882	$681,594,451
2019	*39,309,796*	*2,002,744*	**1,055,622**	**27,280**	**3,906**	*5.09*	14.32	9.22	2,516	$595,048,968
2020	**39,538,223**	**1,976,911**	**853,576**	**25,771**	**3,425**	**5.00**	13.29	8.29	2,136	$505,253,675
									Total:	$227,858,891,023

Numbers in bold print are observed, numbers in italics are estimated; numbers in the table were computed without rounding, but are presented rounded to the nearest whole number.

[1] Bold: U.S. Census Bureau, Quick Facts: California (2021) (as of May 15, 2023). Italics: Linear Interpolation.
[2] Bold: *ibid.*; and Johnson et al., California's Population (Jan. 2023) Public Policy Institute of Cal. (as of May 15, 2023) for Black population percentages. Italics: Linear Interpolation.
[3] For 1970-1979: Lockyer, *Crime & Delinquency in California* (2000) Cal. Dept. of Justice, at p. 112 (as of May 15, 2023); for 1980-2020: Cal. Dept. of Justice, Open Justice Data (as of May 15, 2023).
[4] Bold: 1980-2020: Open Justice Data, *supra*. Italics: 1970-1979 estimated based on 1980 percentage 4.2195 percent drug felony arrests.
[5] Bold: 1980-2020: *ibid*. Italics: 1970-1979 estimated based on 1980 percentage of 28.8767 percent.
[6] Bold: California's Population, *supra*. Italics: linear interpolation.
[7] Black non-Hispanic excess drug felony arrests times 1.48 year average prison term for drug related offenses, *Proposition 36: Five Years Later*, *supra*, at p. 24, times $159,792 average annual losses (which includes both lost wages and an estimated value of lost freedom, based on the reparations for Japanese internment).

Figure 2: Estimated number of Black non-Hispanic Californians Disproportionately Arrested for Drug Felonies (1971-2020).



Though the figures above measure the harm perpetuated by over-incarceration through the number of African American Californians disproportionately arrested for drug felonies, this system of discriminatory arrests was ultimately directed at the entire African American community, and affects all descendants who lived in the state during the War on Drugs from 1971 to 2020. For example, people in neighborhoods targeted for the War on Drugs may avoid encounters with the police lest they be treated as suspects and potentially be subject to police violence.[50] This may interfere with legitimate law enforcement investigations and may lead to elevated levels of unresolved crime.[51] This in turn would reduce the quality of life, and depress property values, which in turn would lead to underfunded schools in the neighborhood, and so on. The whole neighborhood and community may suffer from disproportionate policing as a consequence of the War on Drugs.[52] Thus, all those who are eligible should be compensated for lost quality of life due to racial profiling and biased law enforcement. To apportion the overall monetary losses resulting from the War on Drugs in California, the Task Force's experts divided the sum of $227,858,891,023 among the estimated 1,976,911 non-Hispanic African American residents who lived in the state in 2020,[53] for an estimated loss per recipient totaling $115,260 in 2020 dollars—or $2,352 for each year of residency in California during the 49-year-period (1971-2020).

Atrocity 3: Housing Discrimination

As detailed in Chapter 5, Housing Segregation, federal, state, and local government officials discriminated against and segregated African American residents throughout California, from the beginnings of the state's founding.[54] Individual participants in the housing market discriminated against African American buyers or renters, local zoning rules enforced segregation, and the state allowed this discrimination to occur even though the Supreme Court ruled it unconstitutional.[55] As a result, in 2019, a year before the Reparations Task Force was established, African American Californians controlled far less of the state's average per-capita housing wealth than did white Californians.[56]

The Task Force presents two potential methods to calculate the losses due to housing discrimination. The first calculates all monetary losses due to racial housing discrimination by calculating the average per capita white to African American homeownership wealth gap in 2019, and compounding interest on that gap until 2022. However, critics may object that by sweeping in all forms of housing discrimination, this method does not focus on discrete forms of housing discrimination by state actors.

The second method offered here calculates monetary losses specifically due to redlining. As discussed in Chapter 5, Housing Segregation, redlining is a clear case of state-sanctioned housing discrimination beginning with the New Deal in 1933, and lasting for 44 years until the Community Reinvestment Act of 1977 formally (although not effectively) sought to combat the persisting effects of redlining.[57] While redlining denied federally insured, affordable mortgages to those in African American neighborhoods based on federal law, California could have insured redlined homes in place of the federal government to address this injustice in a timely fashion. But not only did California not engage in any policies to ameliorate the effect of federal redlining, it embraced redlining policies and other policies discriminating against African American Californians.[58]

Local zoning laws discriminated against African Americans in every corner of the United States, including California, with "zoning rules decreeing separate living areas for [B]lack and white families . . . prohibiting African Americans from buying homes on blocks where whites were a majority and vice versa."[59] The U.S. Supreme Court eventually ruled these expressly discriminatory zoning laws unconstitutional in 1917,[60] but this ruling was often ignored by government entities as well as individuals.[61]

In addition, as discussed in Chapter 5, Housing Segregation, the discriminatory government policy of redlining has created devastating and persisting consequences for African American communities.[62] Though redlining was instituted through federal law, that policy shaped home ownership through bank financing—and banks in this country have long been subject to a "dual banking system," subject to parallel state and

federal regulation.[63] Thus, California's parallel duty to regulate banks gave it the authority to treat African Americans equitably, encourage residential integration, and to provide state-level insurance for mortgages purchased by residents in redlined areas ineligible for federally insured mortgages. Instead, California failed to act until decades later,[64] sanctioning or maintaining redlining discrimination against its African American residents, giving the state a responsibility to redress intergenerational wealth harms resulting from housing discrimination in California.

Before the federal government began insuring mortgages in 1933, "[h]omeownership remained prohibitively expensive for working- and middle-class families: bank mortgages typically required 50 percent down, interest-only payments, and repayment in full after five to seven years, at which point the borrower would have to refinance or find another bank to issue a new mortgage with similar terms."[65] These remained the conditions for African American borrowers even after 1933, while for white borrowers, the Home Owners' Loan Corporation (HOLC) not only subsidized the mortgages with much lower interest rates, the HOLC also rescued and refinanced white families' existing mortgages subject to imminent foreclosures, issuing them new mortgages with repayment schedules of up to 15 years (later extended to 25 years).[66] In addition, HOLC mortgages were amortized, meaning that when the loan was paid off, white borrowers would own the home.[67] Since African American home buyers were excluded from government insured mortgages, they depended on traditional financing models with much more expensive or risky conditions[68]—to the extent that they could even attempt to afford a home that would otherwise have been heavily subsidized for a white home buyer. The result was a growing racial homeownership gap.[69]

Given the financial consequences of redlining, two scholars have proposed the following loss-estimation procedure: "the differences in mean household wealth attributable to home ownership, multiplied by the number of African American" households in California.[70] The Task Force's experts agree that this formula "provides a reasonable estimate of the aggregate debt resulting from housing and lending discrimination."[71]

This report offers two potential ways to perform that calculation here: (1) using 2019 data, to estimate losses due primarily to all forms of housing discrimination until the present; or (2) using 1930 and 1980 data, to estimate losses due primarily to redlining.

Method 1: Estimating Financial Losses Due to All Forms of Housing Discrimination Until the Present

In 2019, one year before the Legislature enacted AB 3121, and one year before the COVID-19 pandemic, the average African American non-Hispanic home in California had a value of $593,200, and the average white non-Hispanic home had a value of $773,400.[72] At the time, about 36.8 percent of African American Californian households owned their own home, while 63.2 percent of white Californian households did, reflecting a homeownership gap of 26.4 percentage points.[73] Using 2019 census figures for the average number of people living in African American and white California households, the experts estimated the total wealth in home values controlled collectively by African American and white Californians.

2,213,986 / 2.44 = 907,371

[2,213,986 African Americans living in California in 2019[74] / 2.44 average number of African Americans per household in California in 2019[75] = 907,371 African American households in California]

14,364,928 / 2.36 = 6,086,834

[14,364,928 white Americans living in California in 2019[76] / 2.36 average number of white Americans per household in California in 2019[77] = 6,086,834 white households in California]

The experts then estimated the total wealth in homes controlled in 2019 collectively by all African American non-Hispanic Californian households, and the total wealth in homes controlled in 2019 collectively by all white Californian households.

($593,200 · 907,371).368 = $198,076,911,610

[($593,200 average value of African American home in California)[78] (907,371 African American households in California) (0.368)[79]= $198,076,911,610 in homeownership wealth owned by African American Californians in 2019]

($773,400 · 6,086,834).632 = $2,975,176,286,659

[($773,400 average value of white home in California)[80] (6,086,834 white households in California) (0.632)[81] = $2,975,176,286,659 in homeownership wealth owned by white Californians in 2019]

After calculating the total housing wealth controlled by each of the two racial groups, the experts computed the estimated per-capita amount held by each

group—including those who do not own houses, due to housing discrimination.

$198,076,911,610 / 2,213,986 = $89,466
[$198,076,911,610 / 2,213,986 African Americans in California = $89,466 per capita African American Californian homeownership wealth]

$2,975,176,286,659 / 14,364,928 = $207,114
[$2,975,176,286,659 / 14,364,928 white Californians = $207,114 per capita white Californian homeownership wealth]

Comparing the two shows an estimated per capita home ownership wealth gap of $117,648 in 2019. Adding a compounded, annual 30-year mortgage interest rate (3.10 percent in 2020; see Table 2 below),[82] the African American and white homeownership gap in California, in 2020, is approximately $121,295 in 2020 dollars.

[$117,648 (1 + 0.031) = $121,295 in 2020 dollars]

While this figure represents the cumulative effect of all sources of discrimination, individual level (home owners, real estate agents), corporate (banks and local zoning boards) as well as state and federal level (redlining), it represents a cautious estimate because it assumes that reparations for de jure discrimination (i.e., redlining) should not have been paid earlier (i.e., after 1977 when the federal government passed a law attempting to counteract the persisting effects of redlining).

Method 2: Estimating Financial Losses Due Primarily to Redlining

Alternatively, the Legislature could estimate the financial losses due to housing discrimination by calculating losses due primarily to redlining. This process follows a similar method to the one used above but uses data instead from 1930 (three years before the start of federal redlining in 1933) and 1980 (three years after the Community Reinvestment Act of 1977 formally sought to end private lending practices that reproduced redlining). While the Task Force would ideally use data from 1933 and 1977 to perform this calculation, at the time of this report, relevant data from those years is unavailable, and the Task Force relies instead on data from the nearest decennial censuses (1930 and 1980).

In 1930, African American homes in California had a mean value of $4,535, and white homes in California had a mean value of $6,067,[83] reflecting a $1,532 difference. That year, there were 22,595 African American households and 1,482,203 white households in California.[84] At the time, in California, about 37.6 percent of African Americans owned their own home, versus 48.2 percent of white Americans, revealing a homeownership gap of 10.6 percent.[85] From this data, the Task Force's experts estimated the total wealth held in home values collectively by African Americans and white Californians.

The Task Force's expert team estimated the total wealth in homes held in each year. For 1930:

($4,535 • 22,595).376 = $38,528,090
[($4,535 mean value of an African American home in California in 1930) (22,595 African American households in California in 1930[86]) (0.376) = $38,528,090 total African American wealth in California homes in 1930]

($6,067 • 1,482,203).482 = $4,334,397,340
[($6,067 mean value of a white home in California in 1930) (1,482,203 white households in California in 1930[87]) (0.482) = $4,334,397,340 total white wealth in California homes in 1930]

Calculating the total wealth held by each of the two racial groups, they then computed the estimated wealth per-capita (i.e. per person) in each group (whether homeowner or not).

$38,528,090 / 81,048 = $475
[$38,528,090 total African American wealth in California homes in 1930 / 81,048 African Americans in California in 1930[88] = $475 African American per capita wealth in California homes in 1930]

$4,334,397,340 / 5,408,260 = $801
[$4,334,397,340 total white wealth in California homes in 1930 / 5,408,260 white Americans in California in 1930[89] = $801 white per capita wealth in California homes in 1930]

Taking the difference between the two ($801 - $ 475) results in an estimated per capita African American-white home value wealth gap of $326 (in 1930 dollars), favoring white Californians. This gap represents the unequal starting positions for African American and white Californians even before the federal government massively subsidized white homeownership (while excluding African American applicants) through the New Deal and GI Bill.[90]

The experts then repeated the calculation with data from 1980, three years after the federal government attempted to end the effects of redlining through the Community Reinvestment Act of 1977.[91] Because the 1980 census did not provide a breakdown of white or African Americans per household in California, the experts

calculated this figure by dividing the total number of white and African American Californians by the mean or average number of white Americans and African Americans per household that year:

1,819,281 / 3.67 = 495,717

[1,819,281 African Americans in California in 1980[92] / 3.67 average number of African Americans per household in 1980[93] = 495,717 African American California households]

18,030,893 / 3.22 = 5,599,656

[18,030,893 white Americans in California in 1980[94] / 3.22 average number of white Americans per household[95] = 5,599,656 white American California households]

In 1980, the average African American non-Hispanic California home was worth $66,670, and the average white non-Hispanic California home worth an estimated $100,516 in 1980 dollars.[96]

The California homeownership gap in 1980 amounted to 20.1 percentage points, with 40.6 percent of Black homes being owner-occupied, and 60.7 percent of white homes being owner occupied.[97]

($66,670 • 495,717).406 = $13,418,077,670

[($66,670 average value of an African American home in California in 1980) (495,717 African American households in California in 1980) (0.406) = $13,418,077,670 total homeownership wealth of African Americans in California in 1980]

($100,516 • 5,599,656).607 = $341,652,998,655

[($100,516 average value of a white home in California in 1980) (5,599,656 white American households in California in 1980) (0.607) = $341,652,998,655 total homeownership wealth of white Americans in California in 1980]

Divided by the entire African American population in California in 1980, and the entire white population in California in 1980, respectively, each of these estimates yields the per-capita wealth in homes held by each group. The estimated average per capita African American wealth in California homes in 1980 amounted to $7,375, and the estimated per capita white homeownership wealth in California homes amounted to $18,948. In short, white Californians' per capita home wealth was $11,573 (in 1980 dollars) greater than that of African American Californians.

To identify how much of the 1980 per-capita homeownership wealth gap was due to California's complicity in federal redlining discrimination, the 1930 per-capita homeownership wealth gap can be subtracted from the 1980 value. After adjusting the 1930 per-capita homeownership wealth gap into its equivalent purchasing power in 1980 dollars,[98] subtracting the 1930 per-capita homeownership wealth gap from the 1980 per-capita homeownership wealth gap ($11,573 - $1,483) results in a redlining per-capita wealth gap of $10,090, quantifying how much African American Californians lost in homeownership wealth due to federal redlining discrimination and California's complicity in this policy. Compounding $10,090 up to 2020 using the annual 30-year mortgage interest rates[99] yields a per-capita value of $161,508 in 2020 dollars. In other words, the Task Force's expert team calculates that discriminatory redlining facilitated by the State of California caused the average African American in California to lose $161,508 in homeownership wealth.

To estimate a hypothetical amount California might have to pay to make up only for redlining, the expert team multiplied the average loss to African American Californians due to redlining with the number of African Americans living in the State in 1980. While the Task Force recommends reparations payments to a defined eligible class, specifically, because the U.S. Census does not currently identify individuals in a manner that would allow them to be categorized in this way, this report uses the number of census respondents who identified as Black or African American alone as a rough estimate. Multiplying the average-per capita housing wealth gap in 2020 dollars ($180,932.50) with the number of African American residents in California in 1980 (1,819,281)[100] yields $329,167,059,533—or approximately $329 billion (in 2020 dollars). If all 1,976,911 African American non-Hispanic California residents who lived in the state in 2020[101] were eligible, each would receive housing reparations up to $166,506—or $3,784 for each year between 1933 and 1977 spent as a resident of the State of California.

A Note on Unhoused Persons

Originally, the Task Force asked its economic experts to include housing discrimination calculations for the losses to African Americans in California experiencing homelessness. This, however, proved difficult for both conceptual reasons and lack of data. While housing discrimination is one major factor causing disproportionate African Americans experiencing homelessness in California, there are other factors. For example, from the late 1950s to early 1980s, a movement for the deinstitutionalization and local care of the mentally ill coincided with the Reagan Administration's cuts to social services.[102]

As a result, de-institutionalized individuals suffering from mental illness and other conditions swelled the rank of the unhoused population, not only in California but nationwide.[103] Owning a larger share of the real estate, it was easier for white households to absorb the effects of de-institutionalization than it was for African American households.[104] Another factor is the War on Drugs that caused not only a massively disproportionate incarceration of African Americans, but also unemployment and housing displacement in many economically depressed African American communities once incarcerated African Americans were eventually released (see the discussion on Atrocity 2: Mass Incarceration and Over-Policing of African Americans above).[105]

One approach to estimating reparations for African Americans experiencing homelessness caused by discrimination might be to establish the percentage of unhoused African Americans in California disproportionate to the percentage of African Americans in the California population, and to multiply this number with the state average price of a one-bedroom apartment. This calculation would assume that the percent of African Americans in California who are unhoused would have been equal to the percent of white people who are unhoused if not for the various forms of discrimination documented in Chapters 2 through 18 of this report.

Table 1: Freddie Mac 30-Year Mortgage Rates for Compounding of Uncompensated per-Capita Wealth Gap due to Redlining

YEAR	MORTGAGE INTEREST RATE[106]	UNCOMPENSATED PER-CAPITA WEALTH GAP DUE TO REDLINING[107]
1980	13.74%	$10,090.00
1981	16.63%	$11,767.97
1982	16.04%	$13,655.55
1983	13.24%	$15,463.54
1984	13.88%	$17,609.88
1985	12.43%	$19,798.79
1986	10.19%	$21,816.29
1987	10.21%	$24,043.73
1988	10.34%	$26,529.85
1989	10.32%	$29,267.73
1990	10.13%	$32,232.56
1991	9.25%	$35,214.07
1992	8.39%	$38,168.53
1993	7.31%	$40,958.65
1994	8.38%	$44,390.98
1995	7.93%	$47,911.19
1996	7.81%	$51,653.05
1997	7.60%	$55,578.68
1998	6.94%	$59,435.84
1999	7.44%	$63,857.87
2000	8.05%	$68,998.43
2001	6.97%	$73,807.62
2002	6.54%	$78,634.64
2003	5.83%	$83,219.04

YEAR	MORTGAGE INTEREST RATE[106]	UNCOMPENSATED PER-CAPITA WEALTH GAP DUE TO REDLINING[107]
2004	5.84%	$88,079.03
2005	5.87%	$93,249.27
2006	6.41%	$99,226.54
2007	6.34%	$105,517.51
2008	6.03%	$111,880.21
2009	5.04%	$117,518.98
2010	4.69%	$123,030.62
2011	4.45%	$128,505.48
2012	3.66%	$133,208.78
2013	3.98%	$138,510.49
2014	4.17%	$144,286.38
2015	3.85%	$149,841.40
2016	3.65%	$155,310.61
2017	3.99%	$161,507.51
2018	4.54%	$168,839.95
2019	3.94%	$175,492.24
2020	3.10%	$180,932.50

Atrocity 4: Unjust Property Takings

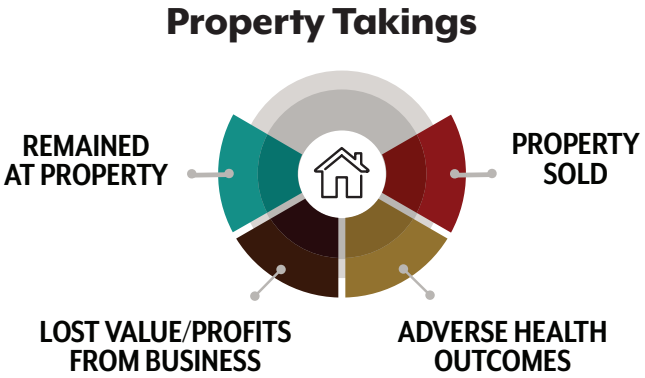
As documented in Chapter 5, Housing Segregation, California built its cities over the bones of the African American neighborhoods that it tore apart through eminent domain,[108] building the highways, cities, and parks that have enabled the State of California to become the fourth or fifth largest economy in the world.[109] The unjust taking of land did more than just seize property—it destroyed communities and forced African Americans out of their historical neighborhoods. At its peak in 1980, 7.7 percent of the population in California was African American.[110] By 2020, that number dropped to about 5 percent.[111] In 2018 alone, 75,000 Black Americans left the state.[112] The state's more expensive coastal cities alone have shed 275,000 Black residents.[113]

Due to the voluminous records associated with the state's many eminent domain actions throughout history, the Task Force and its experts did not have sufficient capacity, within the lifespan of the Task Force, to provide a calculation of the harm caused by unjust property takings throughout California. Nevertheless, the Task Force's economic expert team explored two potential methods to quantify the damage caused by these actions, examining the displacement of African American Californians by the state and its local governments through eminent domain.

The Legislature could calculate the loss in property value experienced by displaced African Americans. This could be accomplished by examining the market value of the seized property at the time it was taken, subtracting the amount paid to the owner after eminent domain, and adding the increase in the property's net value by adding in a fair measure of the estimated appreciation to the present day. A second method of estimating loss could measure the compensation due by using the current value of the property seized from African Americans. These methods for calculating harm are complicated if the property value has declined in value since it was seized, or if the seized property is now being used for infrastructure whose value is difficult to quantify. But, based on its experts' recommendations, the Task Force suggests some strategies to assist the Legislature in overcoming that hurdle.

The Task Force also recommends that the Legislature consider the factors below when calculating the harm caused by these unjust takings:

Figure 3: Factors to Consider when Estimating Loss from Unjust Property Takings



While the records of harm under this atrocity proved too voluminous to provide a calculation in this report, this report highlights several instances of eminent domain and unjust takings that the Legislature should examine, at minimum, when calculating the harm caused. As discussed in Chapter 5, Housing Segregation, in the 1940s and 1950s, African Americans lived in San Francisco's Fillmore District, forming a vibrant community known as the Harlem of the West.[114] But the African American community there was destroyed by unjust takings and urban renewal projects during the 1960s and 1970s.[115] Between 1970 and 2010, San Francisco's African American population declined about seven percent, or about 96,000 people, despite the overall population growth of the city.[116] Similarly, in Palm Springs, the city's "redevelopment plan" in the 1960s destroyed an integrated neighborhood known as Section 14, once on part of the Agua Caliente Band of Cahuilla Indians' Tribal Reservation, forcing out many of the African American residents that had resided in that neighborhood.[117] And in Hayward, "redevelopment projects" in the 1960s likewise destroyed African American homes and businesses.[118]

These instances reflect just a few examples of state and local agencies' active role in the destruction of African American homes to advance political ends. To investigate the degree to which the state has displaced African American families to pursue its projects, the Task Force recommends that the Legislature study—or elicit a further report from one or more state agencies with specific responsibility for this area, such as the California Department of Transportation, California Department of General Services, or the California Natural Resources Agency—the history of the state's construction of its roads, railways, highways, bridges, water systems, dams, airports, and other major infrastructure, as these all reflect public projects that may have been built by displacing African American families from their land. For instance, when President Eisenhower created the Federal Interstate Highway System in 1956, developers tore through the nation's cities and towns with freeways that carved up African American communities, including freeways in California.[119] The construction of Interstate 10 required the demolition of the African American neighborhood of Sugar Hill as well as the Pico neighborhood, forcing out many more African American families.[120] The creation of Interstate 105—the Century Freeway—also threatened numerous African American communities, prompting legal challenges from the NAACP.[121] These events, and the many more unjust takings throughout California history,[122] must be catalogued and studied by the Legislature to provide a full calculation of the harm caused by the state's seizure or destruction of African American property.

Atrocity 5: Devaluation of African American Businesses

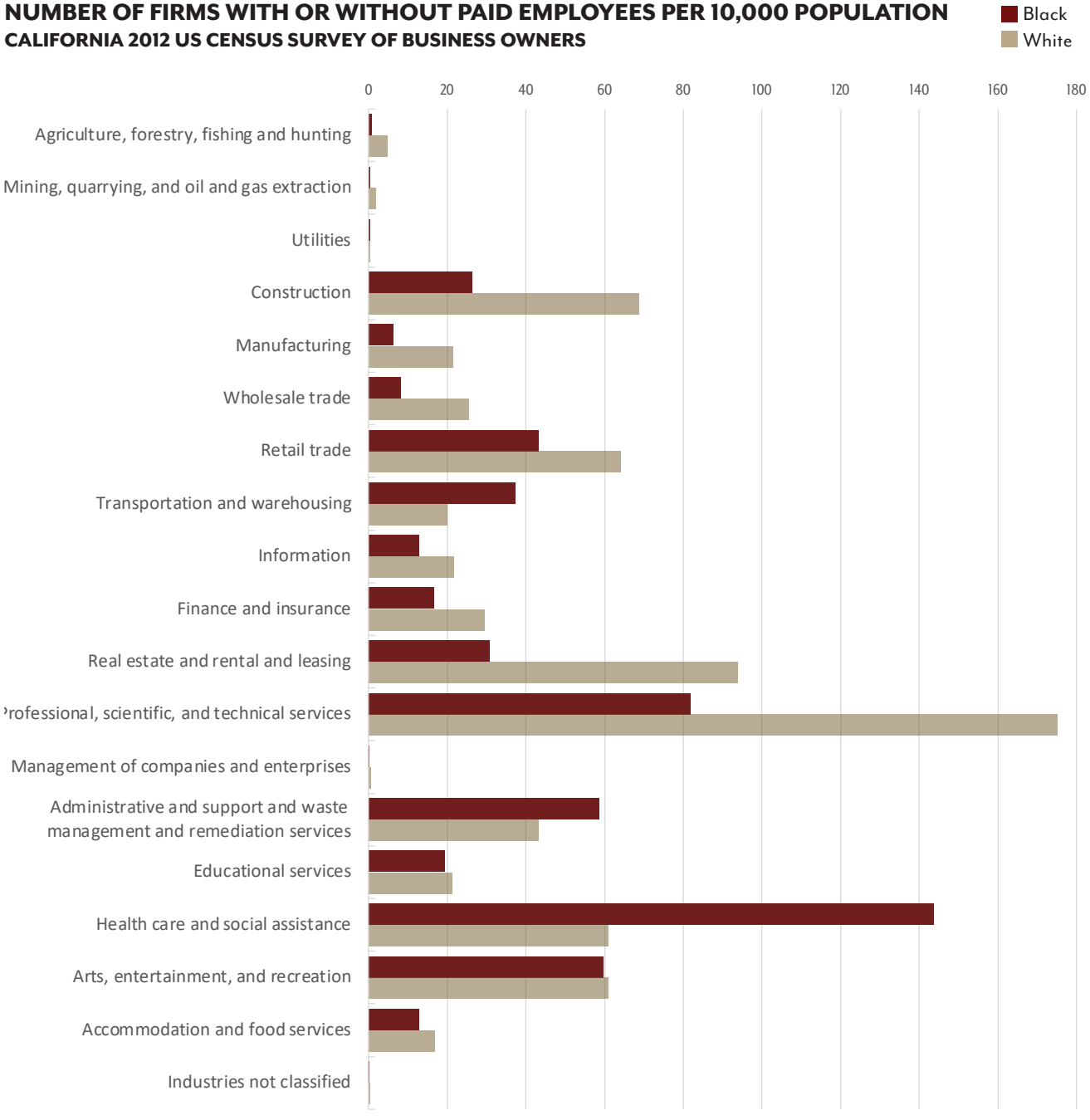
As detailed in Chapters 10 and 13, discriminatory policies resulted in the decimation and devaluation of African American businesses.[123] Business formation results from a combination of factors creating demand for businesses—including the public sector, households, business-to-business transactions, and the entrepreneurial environment—as well as existing rules, regulations, and taxes. But, as documented in Chapters 10 and 13, the doors to entrepreneurial opportunity have been much less available to the state's African American residents than its white ones due to discrimination and its effects, including sharp differences in access to capital and equity.[124] While the lack of business data collected by the State of California limited the Task Force's experts' ability to quantify the harms caused by discrimination against African American businesses, other available data from the United States Census can be used to approximate some of those harms. Based on its experts' analysis, the Task Force recommends a method for the Legislature to calculate the harms caused by discrimination against African American businesses based on the expected number of African American businesses that should exist in California, given the state's policies, aggregate household incomes, and demand for public investments, goods, and services.

The State of California does not collect information on business establishments by race, and does not maintain a database of contractors at the state or local level by race. Instead, the Task Force's experts reviewed the U.S. Census Bureau's Survey of Business Owners, which

provides information about businesses, including information distinguished by race.[125] The most recent data from the Census's survey of business owners is from 2012.[126] Though the Census only gives a snapshot of differences in business ownership in 2012, it displays the total wealth acquired by African American versus white businesses in California, reflecting the cumulative effects of racial inequalities resulting from actions by the State of California. As a result, it provides a guide for measuring the losses to business wealth caused by discrimination.

In 2012, the U.S. Census Bureau reported that there were 1,875,847 white non-Hispanic owned firms in California, compared to 166,553 African American non-Hispanic owned firms.[127] Given California's population in 2012,[128] the state had a business ownership rate of roughly 806.7 firms per 10,000 white residents and 738.9 per 10,000 African American residents.[129] The white non-Hispanic owned firms had total sales, receipts or value of shipments totaling around $1.14 trillion, while African American non-Hispanic owned firms had about $14 billion.[130] In other words, white-owned firms had total

NUMBER OF FIRMS WITH OR WITHOUT PAID EMPLOYEES PER 10,000 POPULATION
CALIFORNIA 2012 US CENSUS SURVEY OF BUSINESS OWNERS



sales, receipts, or value of shipments 80-times larger than that of African American-owned firms.

Census data show that African American-owned businesses are not overrepresented in the type of ethnic enclave industries of accommodations and food services, or retail sales catering towards an African American market.[131] So, if there were no discriminatory restrictions on access to capital or business equity—that is, if African American and white entrepreneurs competed on an equal playing field—the industry of African American and white businesses would be far more similar, reflecting the business opportunities that exist in California. For instance, the discrimination documented in this report explains why African American businesses lag behind white ones in the construction industry, a capital-intensive industry where access to government contracts matters greatly.[132] The history and ongoing effects of residential segregation and redlining further limited opportunities for African American construction firms in the private sector,[133] highlighting again how discrimination has produced the African American and white business wealth gap in construction, a trend that reoccurs across nearly every other industry.[134]

The Task Force recommends estimating the effect of discrimination against African American businesses by implementing an equation that calculates a figure for each state separately, based on the general demand environment of state and local government contracting and household income. Controlling for each state allows us to then control for differences in each state's business environment. Then estimates can incorporate the number of businesses formed, and sales and receipts generated on those factors. This is an approach used by many sociologists researching differences in business formation using the business environment.[135]

This method of calculation, however, relies only on the raw number of businesses and the gap in ownership numbers between African American and white residents. It does not estimate the loss in business wealth due to discrimination based on the volume of businesses that *would be expected* for a state with California's public expenditures and household income.

To also account for the *expected* number of businesses absent discrimination when estimating business losses due to discrimination, the Task Force, based on its experts' analysis, proposes the Legislature employ the following formula:

$$F_r = f(G_s, E_s) + \beta R + \gamma R_C + \Gamma_s \begin{pmatrix} 1 & & \\ & 1 & \\ & & 1_{51} \end{pmatrix} + \phi_r(P_{T,} P_B)$$

F is the number of businesses in in each state in 2012, for a given race (non-Hispanic African Americans and Total), and f(G, E) is a function of G, which represents the level of state and local government expenditures in each state (and the District of Columbia). E represents the level of personal income in in each state. β is a parameter estimating the effects of race (R=1 for African Americans) on the number on businesses in each state. And γ is a parameter to be estimated, where (R=1 for African Americans in California) on the effect of being African American in California compared to the average effect of being African American in the other states. And the parameter Γ is a vector of fixed effects estimated for each state (using a matrix of design variables for each state). And ϕ estimates the mean number of firms per person in Total and for the African American population, where P_T is the total population and P_B the African American population.

For G and E—the level of state and local government expenditures and personal income in each state—the Task Force's experts used 2007 data from the US Bureau of Economic Analysis.[136] The Task Force's experts recommend use of 2007 data to ensure that the effects of government expenditures and personal income in each are exogenous—that is, to isolate the effect of government expenditures and personal income, separate from the effect of the size of firms in 2012—and because 2007 represents the previous peak in economy.[137]

The coefficient γ, enables this report to estimate how many fewer businesses African American Californians were able to create, considering the average number of firms that would ordinarily be created by African Americans, given California's demand as estimated by the levels of state and local government expenditures and personal income. And, as stated above, because the average value of a business (outside of the financial industry) is generally 2.3 times the value of its total sales, the formula can calculate the financial losses in business value by multiplying 2.3 times the average values of sales by businesses in California with the number of African American-owned firms that discrimination had prevented African American residents from creating. Once that amount of loss is determined, the Task Force recommends that the Legislature calculate the total value of that loss if compounded interest were added to that figure until the present. Finally, the resulting sum can be divided by the number of African American residents in California to reflect the business losses due to each resident because of the discrimination that produced these losses in African American business wealth.

The result of the estimation is γ = -59950.91. That is, though given fewer African American firms are created in each state than would be expected, given a state's leading demand, or pull, factors for business formation (0.09 per person, compared to 0.05—the models estimate of φ), African Americans in California were able to create 59,951 firms fewer than African Americans in other states, on average, under the same circumstances. This gap reflects something that is unique to California that speaks to disadvantages peculiar to this state.

The average sales of firms in California, according to the 2012 U.S. Census Survey, was $1,103,966.[138] Because the average value of a non-financial business is generally 2.3 times its sales value139 that would give these firms an average value of approximately $2,539,122. Multiplying that value times the missing number of businesses yields $152,222,903,022 in missing African American business wealth in California. On a per capita basis, using the African American population as of 2020,[140] that would amount to roughly $77,000 per African American in California.

Other Harms and Atrocities

Although the Task Force and its experts attempted to quantify five major categories of atrocities and harms, its focus on those five categories was due, in part, to the availability of data or the feasibility of creating a method for financially quantifying the harm caused. Other harms that should or may include compensation, reparations, and or redress by California include labor discrimination, segregated education, lack of representation in government, environmental harm, transgenerational harm, and other harms. Of these, only labor discrimination includes sufficient data for the Task Force to offer a recommendation as to calculation.

For New-Deal-based labor discrimination, the Task Force suggests that the Legislature quantify harm using historical data beginning in 1933, when farm laborers and domestic service laborers (industries in which African Americans were over-represented) were excluded from progressive labor legislation. This calculation could further use data up until when Congress enacted Title VII of the Civil Rights Act of 1964, prohibiting racial discrimination in businesses with over 25 employees. Of course, *de jure* labor discrimination in California likely goes back to the founding of the state, and *de facto* labor discrimination continues unabated to this day, meaning this formula would capture only a piece of the financial losses suffered due to racial discrimination.

Based on its experts' analysis, the Task Force recommends the Legislature calculate the loss to African Americans from discrimination in employment, rather than the gains to whites. This measurement consists of two major components: (1) a reduction in wages and (2) a greater likelihood of being unemployed. A suitable annual "loss function" could take the following form:

L = (D * W * H) + ((A * C) + (D * W * C))

Where:
L = the lost wages;
D = the average percentage reduction in wages due to discrimination or the discrimination coefficient;
W = the average white wage;
A = the average African American wage;
H = total hours African Americans worked for pay in a given year; and
C = the total hours of work African Americans were denied by discrimination.

For example, using national data from 2019, the method the Task Force recommends for estimating loss in earnings due to discrimination in employment might work as follows. First, the average wage gap can reflect the amount of wages lost due to pay discrimination. In 2019, the average wage for white workers was $29.33 per hour and the average wage for African American workers was $24.83 per hour.[141] Assuming, conservatively, that African Americans lost five percent of what white workers earn, on average, due to employment discrimination (as opposed to taking the full difference between average white and African American wages as wages lost due to employment discrimination) the hourly wage loss for each African American worker due to discrimination would be $1.47.[142] If the typical full-time worker was paid for 48 weeks, five days a week, for an eight hour workday, the typical full-time worker would have worked 1,920 total hours in a year. If there were about 20 million African American labor force participants and a 6.1 percent annual unemployment rate,[143] 18.6 million black Americans worked for pay for over 35.7 billion hours in the year—the value of H in the formula above. Multiplying H by $1.47 leads to an estimated loss of approximately $52.48 billion due to unequal pay from discrimination.[144]

Second, the difference in the African American and white unemployment rates in 2019 can be used to calculate the amount of wages lost due to unemployment caused by discrimination. In 2019, the white rate of unemployment was 3.3 percent, compared to the African American rate of unemployment at 6.1 percent. Subtracting 3.3 percent from 6.1 percent results in an African American and white unemployment gap of 2.8 percent. Multiplying 20 million African American labor force participants by the 2.8 percent unemployment

gap yields 360,000 African Americans subjected to *excess unemployment*. Then, multiplying 360,000 African Americans by 1920 annual hours leads to a total of 691.2 million hours of work lost due to discrimination, the value of C. Multiplying C by the average African American wage increased by the amount assumed to have been lost due to discrimination ($24.83 + $1.47) leads to an estimated loss of approximately $18.18 billion due to the fully denied wages due to discrimination.[145]

Adding together the estimated losses due to unequal pay ($52.48 billion) and the estimated losses due to unequal unemployment ($18.18 billion) amounts to an aggregate loss of approximately $70.66 billion in 2019 for African American workers due to discrimination. Dividing that total amount by the number of African American labor force participants, this amounts to an average loss of about $35,742 per African American labor force participant, nationwide, in 2019.

While the Task Force's experts provided a potential methodology to calculate labor harms, for the remaining harms and atrocities not addressed in this chapter, the Task Force had insufficient data to recommend further methodologies for calculating reparations. Accordingly, the Task Force recommends that the Legislature conduct a further analysis regarding the development of data and quantification of cumulative reparations. And, in the period following an appropriate "down payment" of an initial meaningful amount of reparations and the creation of appropriate claims and compensation programs, the Legislature should complete the California reparations program by quantifying and paying cumulative reparations for all of the atrocities and harms raised herein.

VI. Conclusion and Recommendation Regarding Monetary Compensation for the Eligible Class

As set forth in this chapter, even limited to the relatively few categories of harms that the Task Force found to be calculable, the immense nature of the loss is significant.[146] This loss must be compensated with monetary payments to those who suffered the loss. The Task force reiterates its recommendation that, however the Legislature ultimately determine to make monetary payment for these losses, that monetary payment should be restricted to African American descendants of a chattel enslaved person, or descendants of a free Black person living in the United States prior to the end of the 19th Century—members of the eligible class, as defined by the Task Force.[147]

In Memoriam

William E. Spriggs, Ph.D.

1955 – 2023

With respect and gratitude for his contributions to the Task Force and, in particular, the recommendations set forth in Chapter 17, the Task Force honors the memory of our friend, Bill Spriggs, who lent his expertise in economics, labor, discrimination, and policy to the work of the Task Force. His legacy lives on in this historic report and the indelible impact of his life's work.

Endnotes

[1] Mieder, "Making a Way Out of No Way": Martin Luther King's Sermonic Proverbial Rhetoric (2010) p. 92 (quoting Dr. King's speech, *Remaining Awake Through a Great Revolution*).

[2] Gov. Code, § 8301.1, subd. (b)(3)(E).

[3] See *id.* § 8301.1, subd. (b)(3).

[4] *Id.*, subds. (b)(3)(E), (F), (G) (directing the Task Force to identify the "form" of compensation, how compensation should be awarded, and the methodology for awarding restitution).

[5] *Id.*, subd. (b)(3)(F).

[6] Throughout this report, "descendants" means "descendants of a chattel enslaved person, or descendants of a free Black person living in the United States prior to the end of the 19th Century," pursuant to the Task Force's motion passed on March 29, 2022. See California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2022) *Meeting Minutes* (as of May 31, 2023). The Task Force's motion was especially informed by the testimony of the author of AB 3121, Dr. Shirley Weber, during the meeting of the Task Force on January 27, 2022. California Task Force to Study and Develop Reparation Proposals for African Americans (Jan. 27, 2022) *Testimony of Dr. Shirley Weber* (as of May 31, 2023).

[7] See *Restitution*, Cornell Law School: Legal Information Institute (as of May 12, 2023).

[8] Chappell, *The Black Family Who Won the Return of Bruce's Beach Will Sell it Back to LA County*, NPR (Jan. 4, 2023) (as of May 12, 2023).

[9] International law appears to treat restitution as distinct from monetary payments, which it categorizes solely as compensation. See International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (Revised Edition, 2018), at pp. 55, 173 (as of May 16, 2023) (noting that restitution, "in practice," is "the least frequent, because it is mostly impossible to completely return" a victim to their situation before the harm—in those cases, the responsible state must "provide compensation covering the damage"); see also Gov. Code, § 8301.1, subds. (b)(3)(E), (F), (G) (directing the Task Force to provide recommendations for both compensation and restitution). This meaning of restitution appears to differ slightly from American law—in both American criminal and civil law, restitution can at times include monetary payment. See *Restitution*, *supra*. Regardless, under either framework, the Task Force recommends the Legislature create a claims-processing entity to provide both compensation and restitution, where appropriate, to remedy particular, individual harms.

[10] See Cal. Victim Compensation Board (as of May 12, 2023).

[11] California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2022) *Meeting Minutes* (as of May 12, 2023).

[12] The Task Force's economic experts originally posed five questions, which the Task Force consolidates into four in this report.

[13] For the purposes of this component, the "present" is defined as September 30, 2020, due to data availability. When it ultimately calculates reparations amounts, the Legislature should extend the "present" to capture additional data available at that time.

[14] See Veh. Code, § 516 ("Presence in the state for six months or more in any 12-month period gives rise to a rebuttable presumption of residency."); California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2023), *Meeting Minutes*, *supra* (voting on recommendation to the Legislature to provide for the "most liberal," i.e. shortest residency requirement in existing California code or regulation).

[15] *Ibid.*

[16] Chapter 12, Mental and Physical Harm and Neglect.

[17] Among African American non-Hispanic Californians, there may be some who do not trace their ancestry to any enslaved person in the United States, and among Black Hispanics, there may be some that do. Since neither the U.S. Census nor the State of California provide separate counts of African American descendants of those enslaved in the United States, the Task Force's experts had to rely on this estimate.

[18] While in this report, the Task Force uses the term "African American" as discussed in the Executive Summary, here, where methodologies of calculations are based on data that has been collected using "Black non-Hispanic" and "white non-Hispanic" categories, this section will utilize that terminology when referencing the data or the calculations.

[19] Chapter 12, Mental and Physical Harm and Neglect.

[20] See generally Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017).

[21] 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 May 12, 2023).

[22] All calculations performed in this report are rounded to the nearest dollar or singles digit, unless otherwise noted.

[23] Rogers, *How Much is a Human Life Actually Worth?*, Wired (May 11, 2020) (as of May 12, 2023).

[24] Kuang, *COVID Pulls Down Latino, Black, Asian Life Expectancy More than Whites, Study Says*, Cal Matters (July 7, 2022) (as of May 12, 2023). Dividing the value of a statistical life by the Black non-Hispanic life expectancy would yield a greater estimated life value per year because Black non-Hispanic life expectancy is shorter; but this report offers a conservative calculation of the average

value of a year of life by using the white non-Hispanic life expectancy.

[25] *Ibid.*

[26] Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010) p. 99.

[27] Ehlers and Ziedenberg, *Proposition 36: Five Years Later* (Apr. 2006), at p. 24 (as of May 12, 2023).

[28] See, e.g., Cooper, *War on Drugs Policing and Police Brutality* (2015) 50 Substance Use Misuse 1188 (as of May 31. 2023).

[29] Encyclopaedia Britannica, *War on Drugs* (2023) (as of May 12, 2023).

[30] Alexander, The New Jim Crow, *supra,* at p. 99.

[31] *Id.* at pp. 276-275; U.S. Department of Health and Human Services, Summary of Findings from the 2000 National Household Survey on Drug Abuse (2001), Substance Abuse and Mental Health Services Administration NHSDA series H-13, DHHS pub. No. SMA 01-3549 (as of May 15, 2023).

[32] Alexander, The New Jim Crow, *supra,* at pp. 276-276; U.S. Department of Health and Human Services, Results from the 2002 National Survey on Drug Use and Health: National Findings (2003) Substance Abuse and Mental Health Services Administration NSDUH series H-22, DHHS pub. No. SMA 03-3836 (as of May 15, 2023).

[33] U.S. Department of Health and Human Services, Results from the 2007 National Survey on Drug Use and Health: National Findings (2007) Substance Abuse and Mental Health Services Administration NSDUH series H-34, DHHS pub. No. SMA 08-4343 (as of May 15, 2023).

[34] Alexander, The New Jim Crow, *supra,* at p. 98.

[35] Centers for Disease Control and Prevention, *National Survey on Drug Use and Health* (2021) (as of May 15, 2023).

[36] Travis et al., The Growth of Incarceration in the United States: Exploring Causes and Consequences (2014) p. 94.

[37] *Id.* at p. 97.

[38] *Ibid.*; Chapter 11, Unjust Legal System.

[39] Travis, The Growth of Incarceration in the United States, *supra*, at p. 61.

[40] Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity* (May 28, 2014) Prison Policy Initiative (as of May 15, 2023).

[41] *Ibid.*

[42] *Ibid.*

[43] Ring, *How Much Do California's State Workers Make?* (Nov. 5, 2020) Cal. Policy Center (as of May 15, 2023).

[44] See Friedman, *The Inflation Calculator* (as of May 15, 2023).

[45] Craemer et al., *Wealth Implications of Slavery and Racial Discrimination for African American Descendants of the Enslaved* (2020) 47 Rev. of Black Political Economy 218, 236.

[46] See Friedman, *The Inflation Calculator*, *supra*.

[47] U.S. Census Bureau, Quick Facts: California (2021) (as of May 15, 2023).

[48] Johnson et al., California's Population (Jan. 2023) Public Policy Institute of Cal. (as of May 15, 2023).

[49] Ehlers and Ziedenberg, *Proposition 36: Five Years Later*, *supra*, at p. 24 ("[T]he average prison sentence for drug possession . . . was 1.48 years in 2004.").

[50] See, e.g., Brunson and Wade, *"Oh Hell No, We Don't Talk to Police": Insights on the Lack of Cooperation in Police Investigations of Urban Gun Violence* (2019) 18 Criminology & Public Policy 623, 623-648 (as of May 15, 2023).

[51] See Brunson, *Protests Focus on Over-Policing. But Under-Policing is also Deadly*, Wash. Post (June 12, 2020) (as of May 15, 2023).

[52] See generally Cohen et al., *How the War on Drugs Impacts Social Determinants of Health Beyond the Criminal Legal System* (2022) 54 Ann. Med. 2024 (as of May 16, 2023).

[53] U.S. Census Bureau, Quick Facts: California (2021), *supra*.

[54] Chapter 5, Housing Segregation.

[55] *Buchanan v. Warley* (1917) 245 U.S. 60; Rothstein, The Color of Law, *supra*, at p. 45.

[56] See *infra*.

[57] See Chapter 5, Housing Segregation; 12 U.S.C. § 2901 et seq.

[58] See Chapter 5, Housing Segregation.

[59] Rothstein, The Color of Law, *supra*, at p. 44.

[60] *Buchanan v. Warley, supra,* 245 U.S. 60.

[61] Rothstein, The Color of Law, *supra*, at p. 45.

[62] Chapter 5, Housing Segregation.

[63] Comptroller of the Currency, *National Banks and the Dual Banking System* (2003), at p. 1 (as of May 16, 2023); Jennings, *Preemption and State Anti-Redlining Regulations* (1983) 11 Fordham Urban Law J. 225, 229 fn. 12.

[64] See Health & Saf. Code § 35830; Cal. Code Regs. tit. 21, § 7114.

[65] Rothstein, The Color of Law, *supra*, at p. 63.

[66] *Ibid.*

[67] *Id.* at pp. 63-64.

[68] See Institute for Housing Studies at DePaul University, *Old Mortgage Alternative Makes a Controversial Resurgence* (Jan. 17, 2017) (as of May 16, 2023).

[69] Chapter 5, Housing Segregation.

[70] Kaplan and Valls, *Housing Discrimination as a Basis for Black Reparations* (2007) 21 Public Affairs Quarterly No. 3, 255, 268.

[71] *Ibid.* Ideally, the Task Force experts would have performed that calculation using each household's estimated wealth due to homeownership—that is, the value of the house minus the outstanding mortgage. However, due to data limitations, the experts instead used the estimated value of a house that the homeowner's household controls.

[72] U.S. Census Bureau, *2019 California — Value, Purchase Price, and Source of Down Payment — Owner-occupied Units*, American Housing Survey (as of May 16, 2023) (Variable 1:

Race of Householder, Variable 2: Hispanic Origin of Householder).

[73] Cal. Assn. of Realtors, *Housing Affordability for Black California Households is Half that of Whites, Illustrating Persistent Wide Homeownership Gap and Wealth Disparities*, *C.A.R. Reports*, P.R. Newswire (Feb. 17, 2021) (as of May 16, 2023).

[74] USA Facts, *Our Changing Population: California* (as of May 16, 2023) (measuring data between 2019 and 2021).

[75] U.S. Census Bureau, *America's Families and Living Arrangements: 2019* (as of May 16, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]). This 2019 Census survey defined households as "a house hold maintained" by "a group of two persons or more residing together and related by birth, marriage, or adoption," and "may include among the household members any unrelated persons . . . who may be residing there." U.S. Census Bureau, *Current Population Survey: 2019 Annual Social and Economic (ASEC) Supplement* (as of May 16, 2023) at pp. 7-1, 7-2.

[76] USA Facts, *Our Changing Population: California*, *supra* (measuring data between 2019 and 2021).

[77] U.S. Census Bureau, *America's Families and Living Arrangements: 2019*, *supra* (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

[78] U.S. Census Bureau, *2019 California — Value, Purchase Price, and Source of Down Payment — Owner-occupied Units*, *supra* (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

[79] Reflecting the 36.8 percent of Black Californian households who owned their own home. *Housing Affordability for Black California Households is Half that of Whites, Illustrating Persistent Wide Homeownership Gap and Wealth Disparities*, *supra*.

[80] U.S. Census Bureau, *2019 California — Value, Purchase Price, and Source of Down Payment — Owner-occupied Units*, *supra* (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

[81] Reflecting the 63.2 percent of white Californian households who owned their own home. *Housing Affordability for Black California Households is Half that of Whites, Illustrating Persistent Wide Homeownership Gap and Wealth Disparities*, *supra*.

[82] Miller, *Mortgage Rates Chart: Historical and Current Rate Trends* (Apr. 3, 2023, updated May 16, 2023) The Mortgage Reports (as of May 16, 2023).

[83] The mean home values of white and African American homes in California in 1930 was provided by the California Department of Housing and Community Development, through its analysis of 1930 decennial census microdata.

[84] U.S. Census, *United States Summary: Families* (1930) p. 33, table 40 (as of May 16, 2023). The 1930 Census defines families as "a group of persons, related . . . who live together as one household." *Id.* at p. 5. The Task Force thereby treats the Census's figures for families as synonymous with the figures for households. The figure for white households includes both white native born and white foreign born households, combined. See *id.* at p. 33, table 40.

[85] Collins and Margo, *Race and Home Ownership from the End of the Civil War to the Present* (2011) 101 American Economic Review 355 (Web Appendix Table 1) (as of May 16, 2023).

[86] U.S. Census, United States Summary: Families, *supra*, at table 40 p. 33. This figure are based off the 1930 census's count of families—which the 1930 census defined as "a group of persons, related either by blood or by marriage or adoption, who live together as one household[.]" *Id.* at p. 5. These figures therefore only include "private families, excluding the institutions and hotel or boarding-house groups[.]" *Id.* at p. 5, p. 33.

[87] *Id.* at table 40 p. 33 (including both total native born white Americans and foreign-born white Americans). This figure are based off the 1930 census's count of families—which the 1930 census defined as "a group of persons, related either by blood or by marriage or adoption, who live together as one household[.]" *Id.* at p. 5. These figures therefore only include "private families, excluding the institutions and hotel or boarding-house groups[.]" *Id.* at p. 5, p. 33.

[88] Gibson and Jung, Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19 (as of May 16, 2023).

[89] Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, *supra*, Table 19.

[90] See generally Katznelson, When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth-Century America (2005); California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021) *Testimony of Jacqueline Jones* (as of May 16, 2023).

[91] See 12 U.S.C. § 2901 et seq.

[92] Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, *supra*, Table 19.

[93] U.S. Census Bureau, *Household and Family Characteristics: March 1980* table 8, p. 108 (as of May 16, 2023). Because the 1980 census did not provide the mean or average number of African Americans or white Americans per household in California, this calculation had to rely on the average number of African Americans and white Americans per household, nationwide. The 1980 Census defined its size of household

figures as "includ[ing] all persons occupying a housing unit." *Id.* at p. 224.

[94] Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, *supra*, Table 19.

[95] U.S. Census Bureau, Household and Family Characteristics: March 1980, *supra*, at table 8, p. 106. The 1980 Census defined its size of household data as "includ[ing] all persons occupying a housing unit." *Id.* at p. 224.

[96] The mean home values of white and African American homes in California in 1980 was provided by the California Department of Housing and Community Development through its analysis of 1980 decennial census microdata.

[97] Collins and Margo, *Race and Home Ownership from the End of the Civil War to the Present*, *supra* (Web Appendix Table 1).

[98] U.S. Bureau of Labor Statistics, *CPI Inflation Calculator* (as of May 16, 2023) (inputting the dates of January 1930 and January 1980 and rounding to the nearest dollar). If not kept in nominal dollars, not adjusted for inflation, the difference between the 1980 mean, per capita homeownership gap between African Americans and white Americans ($11,573 in 1980 dollars) and the 1930 mean, per capita homeownership gap between African Americans and white Americans ($326 in 1930 dollars) is $11,247. Compounding $11,247 up to 2020 using the annual 30-year mortgage interest rate yields a per-capita white to African American homeownership gap of $180,027—or $4,092 for each year between 1933 and 1977 spent as a resident of the State of California.

[99] See Table 2, citing *Mortgage Rates Chart: Historical and Current Rate Trends*, *supra*.

[100] Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States, *supra*, Table 19.

[101] U.S. Census Bureau, Quick Facts: California (2021), *supra*.

[102] See Koyanagi, *Learning from History: Deinstitutionalization of People with Mental Illness as a Precursor to Long-Term Care Reform*, Kaiser Com. on Medicaid and the Uninsured (2007), at p. 1 (as of May 16, 2023); Torrey, Out of the Shadows: Confronting America's Mental Illness Crisis (1997), ch. 1 (as excerpted by *PBS Frontline*).

[103] Streeter, *Homelessness in California: Causes and Policy Considerations*, Stanford Institute for Econ. Policy Research (May 2022) (as of Apr. 20, 2023); Torrey, Out of the Shadows, *supra*, at ch. 3.

[104] See Deas-Nesmith and McLeod-Bryant, *Pyschiatric Deinstitutionalization and its Cultural Insensitivity: Consequences and Recommendations for the Future* (1992) 84 J. Nat. Med. Assn. 1036, 1037.

[105] Cohen et al., *How the War on Drugs Impacts Social Determinants of Health Beyond the Criminal Legal System* (2022) 54 Ann. Med. 2024, 2025-2028.

[106] Miller, *Mortgage Rates Chart: Historical and Current Rate Trends*, *supra*.

[107] Rounded to the nearest penny.

[108] Chapter 5, Housing Segregation.

[109] *ICYMI: California Poised to Become World's 4th Biggest Economy*, Office of Governor Newsom (Oct. 24, 2022) (as of May 16, 2023) *citing* Winkler, *California Poised to Overtake Germany as World's No. 4 Economy*, Bloomberg News (Oct. 24, 2022) (as of May 16, 2023).

[110] McGhee, *California's African American Community* (Feb. 22, 2023) Pub. Policy Institute of Cal. (as of May 23, 2023).

[111] U.S. Census Bureau, California's Population, *supra*.

[112] Helper, *The Hidden Toll of California's Black Exodus*, Cal Matters (July 15, 2020) (as of May 16, 2023).

[113] *Ibid.*

[114] Chapter 5, Housing Segregation.

[115] *Id.*

[116] *Id.*

[117] Beason, *'We're Here to Stay.' Despite Isolation and Racism, Black Americans Feel at Home in California's Desert*, L.A. Times (Aug. 15, 2021) (as of May 16, 2023); Brown, *Section 14 Held Bittersweet Palm Springs History*, Desert Sun (Dec. 12, 2015) (as of May 16, 2023).

[118] City of Hayward, *Russell City Reparative Justice Project* (as of May 15, 2023).

[119] Dillon and Poston, *The Racist History of America's Interstate Highway Boom*, L.A. Times (Nov. 11, 2021) (as of May 16, 2023).

[120] *Ibid.*

[121] See Richardson, *The Finding Aid of the Century Freeway Records*, Online Archive of California (as of May 16, 2023).

[122] See, e.g., Dillon and Poston, *Freeways Force Out Residents in Communities of Color—Again*, L.A. Times (Nov. 11, 2021) (as of May 16, 2023).

[123] See Chapter 10, Stolen Labor and Hindered Opportunity; Chapter 13, The Wealth Gap.

[124] See Chapter 10, Stolen Labor and Hindered Opportunity; Chapter 13, The Wealth Gap.

[125] U.S. Census Bureau, *Survey of Business Owners (SBO) - Survey Results: 2012* (Feb. 23, 2016) (as of May 16, 2023).

[126] See *ibid.*

[127] See *ibid.*

[128] US Census Bureau, *American Community Survey, Selected Population Profile in the United States, 2012* (as of May 16, 2023).

[129] Rounding to the nearest tenth.

[130] U.S. Census Bureau, *Survey of Business Owners (SBO) - Survey Results: 2012*, *supra*.

[131] See *ibid.*; cf. Aldrich et al., *Ethnic Residential Concentration and the Protected Market Hypothesis* (1985) 63 Social Forces 996, 996-997, 1007-1008.

[132] See U.S. Census Bureau, *Survey of Business Owners (SBO) - Survey Results: 2012*, *supra*.

[133] See, e.g., Lippard, *Building Inequality: A Case Study of White, Black, and Latino Contractors in the Atlanta Construction Industry* (2006) Dissertation, Georgia State University, pp. 179-181 (as of May 16, 2023).

[134] See U.S. Census Bureau, *Survey of Business Owners (SBO) - Survey Results: 2012*, *supra*.

[135] See, e.g., Motoyama and Malizia, *Demand Pull or Supply Push? Metro-level Analysis of Start-ups in the United States* (2017) 4 Regional Studies, Regional Science 232, 232-246 (as of May 16, 2023). Is an example that highlights the importance of demand or pull factors in business formation compared to push factors (like unemployment that drives professionals to go into self-employment, or discrimination that create ethnic businesses as a source of self-employment to address discrimination in hiring.)

[136] US Bureau of Economic Analysis, *Regional Data, GDP and Personal Income* (as of May 16, 2023).

[137] Because the lag in years is meant only to ensure that the data is exogenous, the particular year of data will not greatly affect the parameter γ.

[138] U.S. Census Bureau, *Survey of Business Owners (SBO) - Survey Results: 2012*, *supra*.

[139] New York University, Stern School of Business, *Revenue Multiples by Sector (US)* (January 2023) (as of May 16, 2023).

[140] U.S. Census Bureau, Quick Facts: California (2021), *supra*.

[141] White House, *Pandemic Shifts in Black Employment and Wages* (Aug. 24, 2022) (as of May 31, 2023).

[142] Rounded to the nearest cent. See, e.g., Darity et al., *The Cumulative Costs of Racism and the Bill for Black Reparations* (2022) 36 J. of Econ. Perspectives 99, 114 (performing a version of this formula using median wages).

[143] *Ibid.*

[144] Rounded to the nearest tenth million.

[145] Rounded to the nearest tenth million.

[146] The Task Force acknowledges that the data contained in this chapter is limited to categories such as "African American," "Black," and "Black non-Hispanic" due to the constraints of federal and state statistical data collection.

[147] California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2022) *Meeting Minutes*, *supra*.

PART V

POLICY RECOMMENDATIONS

CHAPTER 18 — Introduction to the Task Force's Policy Recommendations

COURTESY OF BOB PARENT/HULTON ARCHIVE VIA GETTY IMAGES

American civil rights leader Malcolm X (1925 - 1965) speaking. (1964)

"If you stick a knife in my back nine inches and pull it out six inches, there's no progress. If you pull it all the way out, that's not progress. The progress is healing the wound that the blow made."

–Malcolm X[1]

I. Introduction

The chapters comprising this part of the report set forth policy recommendations that are tailored to the harms discussed in Chapters 1 through 13. The Task Force's intent in formulating these recommendations has been to ensure "[s]pecial [c]onsideration for African Americans [w]ho are [d]escendants of [p]ersons [e]nslaved in the United States . . . ."[2] In the Task Force's view, adoption and implementation of these recommendations are crucial to effectuating AB 3121's purpose and beginning the long-overdue process of providing true reparations for African Americans.

As the Legislature recognized in AB 3121,[3] and as Chapters 1 through 13 of this report document, while the enslavement of Africans was our nation's "original sin," emancipation did not bring an end to the atrocities and deprivations visited upon African Americans. Through lynching and other terror, including the Black Codes, Jim Crow laws, disenfranchisement, segregation, discrimination, exclusion, and neglect in every facet of life, government at all levels has perpetuated the legacy of slavery. African Americans as a group, and especially descendants of those enslaved, live with the persistent consequences of this legacy. These consequences include, among numerous other devastating impacts: a shorter life expectancy due to inadequate and biased health care, environmental harms, and a whole range of other factors addressed in this report, as well as a vast wealth gap, borne of stolen labor, political disenfranchisement, limited education and employment opportunities, property deprivation, the decimation of cultural institutions, mass incarceration, and a host of policies that pathologized and undermined African American families.[4] Mass enslavement may have ended, but the badges and incidents of slavery have not. Descendants of those who were enslaved have carried the weight of the harms and atrocities visited upon their ancestors, as trauma and loss have passed from generation to generation.

The harms African Americans have experienced have not been incidental or accidental—they have been by design. They are the result of discriminatory laws, regulations, and policies enacted and implemented by government. These laws and policies have enabled government officials and private individuals and entities to perpetuate the legacy of slavery by subjecting African Americans to discrimination, exclusion, neglect, and violence in every facet of American life. And there has been no countervailing comprehensive effort to disrupt and dismantle institutionalized racism, stop the harm, and address the specific injuries caused to descendants[5] and the larger African American community. AB 3121 calls for this to change.

AB 3121 invokes the international standards of remedy for wrongs and injuries caused by the state. The UN Principles on Reparation recognize that true reparations cannot be made without fulfillment of all five of the international standard's required pillars: (1) restitution; (2) compensation; (3) rehabilitation; (4) satisfaction; and (5) guarantees of non-repetition.[6] In developing its policy recommendations, presented in this chapter and the chapters that follow, the Task Force follows the UN Principles on Reparation. Specifically, the Task Force recommends to the Legislature a slate of policies that are needed both to cease and to redress the harms delineated in Chapters 1 through 13. These recommended changes or substantially similar measures must be implemented in some form in order for any California reparatory effort to be able to satisfy the international reparations framework's requirements that there be both "rehabilitation" and "guarantees of non-repetition." Further, a number of the policies recommended in the following chapters are also intended to provide restitution, to augment the Task Force's recommendations for restitution and compensation set forth in Chapter 17 of this report.

In making its recommendations, consonant with the statute and in recognition that the legacy of slavery weighs most heavily on those directly harmed, the Task Force has given special consideration to African Americans who are descendants of persons enslaved in the United States.[7] However, also in line with the language of AB 3121, and the extensive testimony and other evidence submitted, the Task Force considered the impact of historic and ongoing discrimination on the larger community of African Americans living in California.[8] The UN Principles on Reparation similarly take an expansive view of what it means to be a "victim." The term includes "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law."[9] The term has been interpreted to include "not only the person who was the direct target of the violation, but any person affected by it directly or indirectly . . . ."[10]

As this report has documented, little of slavery's legacy has receded. To be African American in America today is to be part of a collective that bears the badges and incidents of slavery and suffers the "lingering material and psychosocial effects of slavery" and the injuries that their perpetuation cause.[11] While recommending that *monetary* reparations be limited to the eligible class as discussed in Chapter 17, the Task Force recognizes that the five pillars of reparations and AB 3121 require that it also endeavor to ensure cumulative harms of the past four centuries do not continue to be visited upon "living African Americans and on society in California and the United States."[12]

The Task Force therefore grappled with the appropriate scope of its policy recommendations, considering AB 3121's mandate, the international standards for reparations, practical aspects of implementation, and the anticipated impact of recommended policies. Following testimony and public comment in hearings held over the span of two years, extensive original research, analysis, and deliberation, the Task Force believes it has struck the appropriate balance. Every one of the Task Force's recommendations is intended to benefit descendants and a substantial number are intended to benefit descendants *exclusively*. The Task Force has determined, in its judgment, that the scope of each recommendation matches what is needed to bring repair to all those who have endured the harms outlined in this report and to ensure that guarantees of non-repetition for those harms are fully realized.

COURTESY OF CAROLYN COLE/LOS ANGELES TIMES VIA GETTY IMAGES

The California Reparations Task Force meets to hear public input on reparations at the California Science Center in Los Angeles. (2022)

The enormity of the task before California and the nation cannot be overstated. The policies recommended here, while wide-ranging, are not exhaustive—they are only a

start. The harms to be repaired have been more than 400 years in the making. Their undoing will require ceaseless vigilance and a commitment to continually learn and meet the challenges ahead. Their undoing will also require what the Legislature courageously did not mask in enacting AB 3121—the explicit consideration of race in redressing the harms perpetrated against generations of African Americans in California and the nation.

As one expert testified before the Task Force, California has become a "Don't Say Black"[13] state because of Proposition 209, which the Task Force recommends be repealed. The system of oppression that centers on race, and which has dehumanized and brutalized on the basis of race, thrives when the basic fact underlying the system is denied. Similarly, as Pulitzer Prize winning journalist and Task Force expert witness Isabel Wilkerson has written, "[i]n America, race is the primary tool and the visible decoy for caste."[14] The perpetuation of "color blind" thinking, rather than advancing social justice, has allowed injustice to fester and entrench.

The perpetuation of "color blind" thinking, rather than advancing social justice, has allowed injustice to fester and entrench. The system of oppression that centers on race, and which has dehumanized and brutalized on the basis of race, thrives when the basic fact underlying the system is denied.

Time and again, the Task Force was confronted with the stark reality that policies and programs that have not been specifically directed to stop and repair the harm that continues to be done to African Americans have actually benefited non-African Americans while exacerbating the harm to African Americans.[15] Channeling the voices of the hundreds of individuals who testified or offered public comment in Task Force meetings, who wrote letters and e-mails, and who participated in community listening sessions, the Task Force urges California's Legislature to bring an end to the ongoing harms and atrocities endured by *African Americans*. This time must be different.

II. General Structural Policy Recommendations

The policy recommendations set forth in this chapter are not limited to one set of harms or another. The Task Force has formulated these policies to address reparatory needs that cut across the areas of harm documented in Chapters 1-13 of this report. A first order need, and thus the Task Force's first recommendation, is a fully funded independent agency dedicated to advancing all of the recommendations contained in this report. Additional recommendations set forth in this Chapter are intended to advance reparations more broadly by removing critical structural barriers to change and ensuring that future legislative and agency action does not repeat the mistakes of the past. These general structural recommendations would, if implemented, create an environment in which the collective recommendations of this report could set California on the path to acknowledging and repairing the causes and consequences of human rights violations and inequality resulting from the incidents of slavery and human rights violations perpetuated by the legacy of slavery. These proposals, detailed below, are to:

- Create and Fund the California American Freedman Affairs Agency
- Repeal Proposition 209
- Mandate Effective Racial Impact Analyses
- Require Agency Transparency
- Make Legislative Findings that Build Legislative Records that Reflect the Historic and Present State of Pervasive Structural Barriers and Discrimination Against African Americans and Support Reparative Enactments
- Transmit the AB 3121 Task Force Report to the President of the United States and the United States Congress

Create and Fund the California American Freedman Affairs Agency

As documented in Chapters 1 through 13, government agencies at all levels, including California's state agencies, have been complicit in the atrocities committed against African Americans in California and across the country. And, throughout the history of the state and the nation, government programs designed to benefit the general public either intentionally or incidentally excluded or minimized the benefits to African Americans. When African Americans are not an exclusive focus of reparative policies and programs, they invariably end

up at the back of the line and receive disproportionately fewer benefits than others.

To ensure that this time is different, and that there will be focus on efforts flowing from this report, the Task Force recommends that the Legislature create an agency that is dedicated to the implementation and success of the recommendations of this report. Complex new functions will be needed to implement the Task Force's recommended reparations proposals and administer the monetary components of the Task Force's recommendations, including determinations of eligibility and disbursement of payments.

In addition, as discussed below, the Task Force recommends that the Legislature provide the agency with an oversight role to ensure that existing state agencies properly implement the legislative enactments resulting from the Task Force's recommendations where those recommendations fall within the scope of those existing agencies' authority. Finally, there will be some instances where the new agency will have to provide direct services to fill in gaps or augment existing services, to ensure that the needs of those eligible for its services are fully met, without bias or delay.

The Task Force recommends the creation of the California American Freedmen Affairs Agency (Agency), the mission of which will be to support the implementation of the statutes approved by the Legislature and the Governor in response to this report.

For these reasons, the Task Force recommends the creation of the California American Freedmen Affairs Agency (Agency), the mission of which will be to support the implementation of the statutes approved by the Legislature and the Governor in response to this report.

The Task Force also believes that it is essential for the Agency to be fully funded and staffed to carry out its mission and obligations, and these resources should be allocated and authorized in perpetuity. The Task Force recommends that the Agency be headquartered in Sacramento, and have satellite offices around the state to ensure that descendants and other applicants are able to obtain services and support close to where they reside.

The California American Freedman Affairs Agency shall include the following to ensure the performance of critical functions and services:

1. A Genealogy Office to support potential reparations claimants by providing access to expert genealogical research to confirm reparations eligibility and expedited assistance with the reparations claims process.

2. An Office of Strategic Communications/Media Affairs to provide streamlined access to information and services to assist the descendant community, the media, and the general public in understanding the work performed by the Agency.

3. A Community Support Office to improve accessibility, transparency, and public trust in California's reparations program and its claims process.

4. A Business Affairs Office to: (a) provide support in the establishment of a Freedmen's Savings & Trust Bank; (b) support for entrepreneurialism and a foundation for financial literacy; (c) provide business grants and assistance in obtaining business licenses; (d) employment training and apprenticeship programs to train unhoused descendants for employment in housing construction and related trades; and (e) establish public-private reparative justice-oriented partnerships. (See Chapter 27, Policies Addressing Stolen Labor and Hindered Opportunity, for the text of the Task Force's recommendation to fund African American banks.)

5. An Office of the Chief Financial Officer to provide policy leadership in strategic planning, budgeting, and financial management. The Officer's duties shall include: (a) processing claims for direct compensation in the five atrocity areas; (b) conducting internal audits for management purposes, to evaluate the efficiency, economy, effectiveness, financial aspects, or other features of the Agency, its branches, and programs; (c) administration (including auditing) of contracts and grants; (d) assisting in the establishment of a state-sponsored or state-chartered Freedmen's Savings & Trust Bank to service the descendant community; and (e) potentially collaborating with 501(c)(4) organizations where beneficial to the goals and purpose of the Agency. This Office would also administer the compensation fund(s) that the Task Force recommends be created by the Legislature, for all those eligible to receive compensation.

6. A Creative, Cultural, and Intellectual Affairs Office to address the disruption of cultural centers in the name of redevelopment, and to address the history of censorship of descendant-produced media and arts. The duties of this branch should include: (a) building, restoring, and maintaining American Freedmen/African American/descendant cultural/historical sites, creative centers, public displays, and monuments; (b) advocating for and monitoring removal of harmful relics; (c) supporting knowledge production and archival research with community archives and repositories; (d) supporting legacy families; (e) providing support for descendants in the arts, entertainment, and sports industries, including identifying and removing barriers to advancement into leadership and decision-making positions in these industries; (f) supporting descendants in news publications, arts (including film, radio, television, podcasting, and new media), and lifestyle activities; and (g) supporting parity in sports participation, coaching, management, and ownership.

7. A Data Research and Collection Office to identify and analyze trends in past, current, and potential future badges and incidents of chattel slavery, and to advise the Governor, Legislature, and other state and local governmental entities as to policy changes designed to heal and repair the descendant community from these badges and incidents.

8. A Civic Engagement/Self-determination Office to support ongoing education on African American history and political engagement, and to support civic engagement, political participation, and self-determination among the descendant community.

9. An Office of General Counsel to provide legal advice, counsel, and services to the Agency and its officials, and to ensure that the Agency's programs are administered in accordance with applicable legislative authority. The office would also advise the head of the Agency on legislative, legal, and regulatory initiatives and serve as an external liaison on legal matters with other state agencies and other entities.

The Agency would be authorized to engage in oversight and monitoring of the state agencies tasked with engaging in direct implementation of recommendations already falling within the scope of their existing authority. The oversight and monitoring should include at least the following:

1. An Education Office, to provide oversight and monitoring of the payment of tuition to the state's community colleges, California State University schools, and University of California schools for California residents who are descendants, and to ensure that existing state educational agencies eliminate barriers to higher education for descendants. The Education Office shall also encourage, oversee, and monitor the building of infrastructure for the operation of new Freedmen schools, colleges, and universities. The Education Office would also provide oversight and monitoring of educational grants and support education initiatives focused on descendants.

2. A Social Services and Family Affairs Office, to provide oversight of state agencies' efforts to identify and mitigate the ways that current and previous policies implemented by existing agencies have damaged and destabilized descendant families. The Office's oversight would include: (a) monitoring of existing state agencies' recruitment and training of descendants in industries that assist descendant seniors, such as healthcare systems; (b) providing housing advocates and housing attorneys to assist with housing and houselessness; (c) providing financial and social support services for housing unhoused relatives; (d) developing a hotline to report harms related to housing; (e) providing financial support services to support descendant homeownership; (f) ensuring treatment

COURTESY OF BRITTANY MURRAY/MEDIANEWS GROUP/LONG BEACH PRESS-TELEGRAM VIA GETTY IMAGES

Students enter the California State University, Long Beach 32nd annual Black Graduation Celebration. (2019)

for trauma and family healing services to strengthen the family unity; and (g) providing descendant-informed mental health and stress resiliency services, financial planning services, career planning, and civil and family court services.

3. A Medical Services Office to provide oversight to monitor the state's effort to provide technical assistance for community wellness centers[16] in local descendant communities across the state to: (a) decrease state-sanctioned health harms, including, but not limited to mental, physical and public health harms and neglect; (b) mental health stigma; (c) teach stress reduction and resilience tools; (d) create communal spaces; (e) support cultural and racial socialization to support mental health; (f) provide community-defined evidence and promising practices prevention and early intervention mental health programs; and (g) offer mental and physical health screening and referrals.

4. A Labor and Employment Office, to oversee and monitor labor and employment discrimination and benefits claims involving the descendant community handled by other state-level complaint investigation and adjudication agencies.

5. A Development Office, to provide oversight and monitoring of state-sponsored and state-funded infrastructure development, to ensure that descendants receive a proportionate share of the development of housing (e.g., subdivisions, multi-family, mixed use), business/commercial districts, and towns/cities. In addition to Allensworth, African American towns such as Teviston, Fairmead, Cookseyville, Bowles Colored Colony, South Dos Palos, and Sunny Acres all existed in California's Central Valley, and should receive the same investment from the state.

6. A Legal Affairs Office, to: (a) provide oversight and monitoring of state agencies that provide legal services to descendants, including in criminal cases, and oversight and monitoring of state entities that receive, document, and investigate civil rights violations and hate crimes, and ensure that such entities provide a hotline and database for the descendant community; (b) advocate for civil and criminal justice reforms, including, but not limited to, youth and adult decarceration programs, abolition, and housing and houselessness legal services; and (c) monitor provision of civil legal services, including free arbitration and mediation services and other forms of conciliation courts, to the extent needed to close the justice gap.

7. A Strategic Partnerships Office, to oversee and monitor the state's collaboration with community-based organizations (CBOs) and other relevant organizations, and to oversee and audit state funds disbursed to identified CBOs and other relevant stakeholders to ensure that said funding is directed toward eligible individuals or entities.

Repeal Proposition 209

California voters passed Proposition 209, now enshrined in California's Constitution, in 1996. The measure bars the state from "discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting."[17]

Since its passage, Proposition 209 has had far-reaching impact on efforts to remediate entrenched, systemic anti-Black bias and discrimination. The area of public contracting provides one example. The Equal Justice Society commissioned a study to determine the impact of Proposition 209 in the sphere of public contracting. The study concluded that between $1 billion and $1.1 billion in contract dollars were lost annually by businesses owned by women and people of color due to Proposition 209.[18] With respect to education and the end of race-conscious admissions at the University of California, admissions declined for applicants from underrepresented groups, including African Americans, at every campus.[19] Also, civil service employment of African Americans dropped sharply.[20] More broadly, Proposition 209 is widely viewed as an impediment to the adoption of remedial measures.[21] The chilling effect has been far-reaching.

COURTESY OF JUSTIN SULLIVAN VIA GETTY IMAGES

Students hoping for a repeal of California's Proposition 209 hold signs as they protest outside of the Ninth U.S. Circuit Court of Appeals. (2012)

In November 2020, Proposition 16 appeared on the general election ballot, asking California voters to amend the California Constitution to repeal Proposition 209. However, Proposition 16 failed to achieve enough support to pass, and Proposition 209 remains in effect.[22]

In recognition of the systemic discrimination faced by the African American community and the barriers to justice and repair imposed by Proposition 209, the Task Force recommends that the Legislature take steps within its authority to seek the repeal of Proposition 209. This effort must continue until California's Constitution has been cleansed of this or any other measure rooted in racism.

Mandate Effective Racial Impact Analyses

For too long, the country and state have taken a "head in the sand" approach to the pernicious impact of racism on all types of decision-making. Outside of limited contexts, courts in particular have prevented a more nuanced look at the impact of racism, instead requiring proof of intent to discriminate when presented with evidence of discriminatory impact.[23] The result, as documented throughout this report, is persistent, ever more entrenched racial disparities that result in African Americans experiencing the worst outcomes while paradoxically being denied justice by the courts.

To address this, the Task Force recommends that the Legislature require that the racial impact of laws, policies, and ordinances from the local to the state level be identified and addressed prior to enactment, and that implementation be carefully monitored and measured in order to assess real-world results. Where those results demonstrate negative racial impact has resulted, the law, policy, or ordinance should be required to be repealed and, where possible, re-promulgated in a manner that avoids the adverse racial impact.

The Task Force's recommendation builds on the recognition that racism is a public health emergency, with major harm to African Americans in California.[24] Recognizing the pernicious impact of racism in this manner is intended to "spur changes across all sectors of government—including criminal justice, education, health care, housing, transportation, budgets and taxes, economic development and social services . . . ."[25] Numerous municipalities and states have taken the step of formally recognizing racism as a public health emergency.[26]

At the state level in California, Senate Concurrent Resolution No. 17 (2021) declared California's observance of March 21, 2021, as the International Day for the Elimination of Racial Discrimination. In the resolution, "the Legislature declare[d] racism a public health crisis and [committed to] actively participate in the dismantling of racism[.]"[27] In 2020, Senator Dr. Richard Pan introduced Senate Bill No. 17, which would have created a Racial Equity Commission, but the bill did not pass.[28]

On September 13, 2022, Governor Newsom issued Executive Order N-16-22 which:

1. established the state's first Racial Equity Commission; and

2. directed state agencies and departments to take additional actions to address disparities for historically underserved and marginalized communities by implementing equity analyses and considerations in their mission, policies, and practices.[29] The Racial Equity Commission, which is staffed by the Governor's Office of Planning and Research, is required to develop resources, best practices, tools for furthering racial equity, and a statewide Racial Equity Framework; provide technical assistance, upon request by a state agency, on implementing strategies for racial equity consistent with the framework; engage and collaborate with policy experts and community members to conduct analyses and develop tools; and prepare an annual report, with the first to be completed between December 1, 2025, and April 1, 2026, and annually thereafter.[30]

To ensure that future laws and policies do not perpetuate the state's history of discrimination against African Americans, and to ensure that there is a long-term and ongoing commitment to remedying and avoiding the harms caused by the history and trauma of state-sponsored discrimination against African Americans across all sectors, the Task Force recommends that the Legislature require comprehensive racial impact analyses of legislative and executive actions at the state and local levels.

Racial impact analyses are tools for lawmakers to evaluate potential disparate impacts of proposed legislation prior to adoption and implementation.[31] Similar to fiscal or environmental impact statements, a racial impact analysis enables policy decision-makers to anticipate and address racial or ethnic disparities arising from implicit bias and systemic racism and discrimination.[32] Requiring such an analysis also assists in the consideration of alternative policies to accomplish the goals of

proposed legislation without causing or contributing to avoidable racial and ethnic disparities.[33]

This recommendation for a requirement of racial impact analyses encompasses all proposed legislation, budget proposals, proposed regulations, and contracts subject to bidding, and is intended to include, but not be limited to, governmental agencies at all levels, including cities, counties, school districts and boards (including charter schools), special districts, and each state or local agency, board, or commission.

The Task Force urges that, in furtherance of this effort, the Legislature take steps within its authority to require a racial impact analysis for all future legislation, including potential amendments to the California Constitution. The Task Force recommends the Legislature create a process and provide funding for the appropriate agency or office[34] to conduct racial impact analyses of all bills while they are in committee. The Task Force also recommends that the Legislature require the analyses to be submitted in writing and include specific findings of the impact proposed legislation will likely have on African Americans. Similar assessments should also be made by any state agency involved in the rulemaking process. Also, the Task Force recommends that the racial impact analyses continue after enactment of legislation, with the requirement that data be gathered to empirically establish the racial impact of implemented policies.

The Task Force further recommends that the Legislature establish a process for amending a policy, law, or regulation if data verifies a disparate impact on African Americans.

The Task Force urges that, in furtherance of this effort, the Legislature take steps within its authority to require a racial impact analysis for all future legislation, including potential amendments to the California Constitution.

California has a history of enacting laws that even if not affirmatively discriminatory on their face have had the impact of fostering, permitting, or exacerbating discrimination against African Americans.[35] Many have been used in a discriminatory manner. For example, zoning ordinances, licensing laws, fire and safety codes, and anti-nuisance provisions have been used to discriminate against African American business owners and their African American customers.[36] With this proposal, the Task Force seeks to ensure that disproportionate negative impact on African Americans is addressed during the legislative process rather than hoping for repair through the judicial process, which, as discussed throughout this report, has historically been skewed against African Americans.

The Task Force further recommends that the Legislature enact legislation requiring the Governor to conduct racial impact analyses for California's annual budget and any proposed agency regulations. The legislation should require the Governor to submit a written report of the analyses to the Legislature along with the budget proposal and proposed regulations.

The Task Force also recommends that the Legislature enact legislation requiring general contractors who participate in the state government requests for proposal (RFP) process to include disparate impact analyses in their bids, especially those related to public safety and housing.

Require Agency Transparency

Members of the public in their public comments and other communications with the Task Force have repeatedly raised concerns about responsiveness and transparency related to the treatment and disposition of complaints from African Americans raising civil rights concerns.

Responding to the concerns raised, the Task Force recommends that the Legislature direct the Civil Rights Department and the Department of Education to collect anonymized data for all complaints transmitted to each respective agency, including the following: (1) the race, gender, age, and other critical demographic information of complainants; (2) a description of each complaint received; (3) any action taken by the agency in response to the complaints received and the timeline for such action; and (4) the disposition of the complaints. The Task Force further recommends that this data be published on the agencies' websites and transmitted to the California American Freedman Affairs Agency for the Agency to create and publish dashboards that allow the public to view the collected data.

The Task Force urges the Civil Rights Department and the Department of Education, as well as any other state agency similarly situated, to recommit their focus to reviewing and efficiently and effectively redressing the concerns of African Americans filing complaints with them as required by law.

Make Legislative Findings that Build Legislative Records that Reflect the Historic and Present State of Pervasive Structural Barriers and Discrimination Against African Americans and Support Reparative Enactments

When enacting the Task Force's recommendations, the Legislature should (1) declare the state's compelling and statewide interest in remedying the longstanding and ongoing harm caused by chattel slavery and the badges and incidents of slavery, as documented by the Task Force's report and any other supplemental findings the Legislature finds necessary; (2) where applicable, identify the specific harms caused by chattel slavery and its legacy that the statute seeks to remedy, and explain how the government was involved in such discrimination; and (3) for those provisions that may be subject to strict scrutiny, demonstrate that the policies enacted have been narrowly tailored to remedy that harm.

Transmit the AB 3121 Task Force Report to the President of the United States and the United States Congress

The Task Force recommends that the Legislature transmit the Task Force's final report and its findings to the President and Congress, with a recommendation that the federal government create a Reparations Commission for African Americans through statute or executive action. Further, the Task Force recommends that the Legislature urge the federal government to match the breadth and comprehensiveness of the Task Force's final report and its findings—or accept the Task Force's findings without the need for further study—and commit to full and effective reparations under international law, in line with the Task Force's recommendations.

Endnotes

[1] Askaripour, *Falling in Love with Malcolm X—and His Mastery of Metaphor* (Apr. 10, 2019) Literary Hub (as of May 18, 2023).

[2] Gov. Code, § 8301.1, subd. (a).

[3] Among the findings of the Legislature, AB 3121 recognizes that: Following the abolition of slavery, the United States government at the federal, state, and local levels continued to perpetuate, condone, and often profit from practices that continued to brutalize and disadvantage African Americans, including sharecropping, convict leasing, Jim Crow laws, redlining, unequal education, and disproportionate treatment at the hands of the criminal justice system. [¶] As a result of the historic and continued discrimination, African Americans continue to suffer debilitating economic, educational, and health hardships.... Gov. Code, § 8301, subd. (a)(5)-(6).

[4] See Chapters 1 through 13.

[5] Throughout this report, "descendants" means "African American descendants of a chattel enslaved person, or descendants of a free Black person living in the United States prior to the end of the 19th Century, pursuant to the Task Force's motion passed on March 29, 2022. (See Meeting Minutes, March 29, 2022 Meeting of the AB 3121 Task Force Study to Study and Develop Reparations Proposals for African Americans [as of May 29, 2023].) The Task Force's motion was especially informed by the testimony of the author of AB 3121, Dr. Shirley Weber, during the Task Force Meeting on January 27, 2022 (as of May 29, 2023).

[6] See Chapter 14, International Reparations Framework.

[7] Gov. Code, § 8301.1, subd. (a).

[8] Among its dictates, AB 3121 has directed the Task Force to consider to "[h]ow California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated," as well as how the resulting "injuries . . . can be reversed and how to provide appropriate policies, programs, projects, and recommendations for the purpose of reversing the injuries." (Gov. Code, § 8301.1, subd. (b)(3)(C)-(D).)

[9] United Nations General Assembly, Adopted Resolution 60/147: 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 (Mar. 21, 2006) p. 5.

[10] International Commission of Jurists, The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide (Revised Ed., 2018) p. 3

[11] Gov. Code, § 8301.1, subd. (b)(3)(C).

[12] Gov. Code, § 8301, subd. (b)(1)(C).

[13] California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 3, 2023) Testimony of Dr. Margaret Fortune at the Reparations Task Force Meeting March 3, 2023 (as of Mar. 21, 2023).

[14] Wilkerson, *America's Enduring Caste System*, N.Y. Times Magazine (July 1, 2020, updated Jan. 21, 2021) (as of May 17, 2023).

[15] See, e.g., Chapter 6, Separate and Unequal Education.

[16] See Chapter 20, Policies Addressing Racial Terror, for the Task Force's recommendation to establish and fund community wellness centers in African American communities.

[17] Cal. Const., art. I, § 31, subd. (a).

[18] Lohrentz, The Impact of Proposition 209 on California's MWBEs (Jan. 2015) Equal Justice Society (as of Dec. 1, 2022).

[19] University of California Academic Affairs, The Impact of Proposition 209 in California (Sept. 4, 2020), p. 1 (as of Dec. 1, 2022).

[20] *Id.* at p. 2.

[21] For additional discussion of harms associated with Proposition 209, see Chapter 10, Stolen Labor and Hindered Opportunity, and Chapter 13, The Wealth Gap.

[22] Wolf & Abraham, Prop. 16 Failed in California. Why? And What's Next? UCLA Newsroom (Nov. 18, 2020) (as of May 18, 2023).

[23] See, e.g., *Washington v. Davis* (1976) 426 U.S. 229.

[24] Chapters 1 through 13 document many of these impacts.

[25] Vestal, *Racism Is a Public Health Crisis, Say Cities and Counties* (June 15, 2020) Stateline (as of Apr. 12, 2023).

[26] See, e.g., Harvard T.H. Chan School of Public Health News, *Why Declaring Racism a Public Health Crisis Matters* (as of Apr. 12, 2023) (noting growing number of municipalities and states that had "highlighted racism as a public health crisis" and explaining value of such declarations); American Public Health Association, Topics & Issues, *Racism Is a Public Health Crisis* (as of Apr. 12, 2023).

[27] Sen. Conc. Res. No. 17 (2021-2022 Reg. Sess.).

[28] Sen. Bill No. 17 (2021-2022 Reg. Sess.).

[29] Governor's Exec. Order No. N-16-22 (Sep. 13, 2022) pp. 3, 5, 6.

[30] *Id.* at pp. 5-6.

[31] Porter, *Racial Impact Statements* (June 16, 2021) The Sentencing Project (as of Dec. 1, 2022).

[32] Roosevelt, et al., *How to Use the RIS Tool to Eliminate Disparities and Disproportionality* (Dec. 2, 2013) State Interagency Team Workgroup to Eliminate Disparities & Disproportionality, Beyond the Bench Conference (as of Dec. 1, 2022).

[33] Ibid.

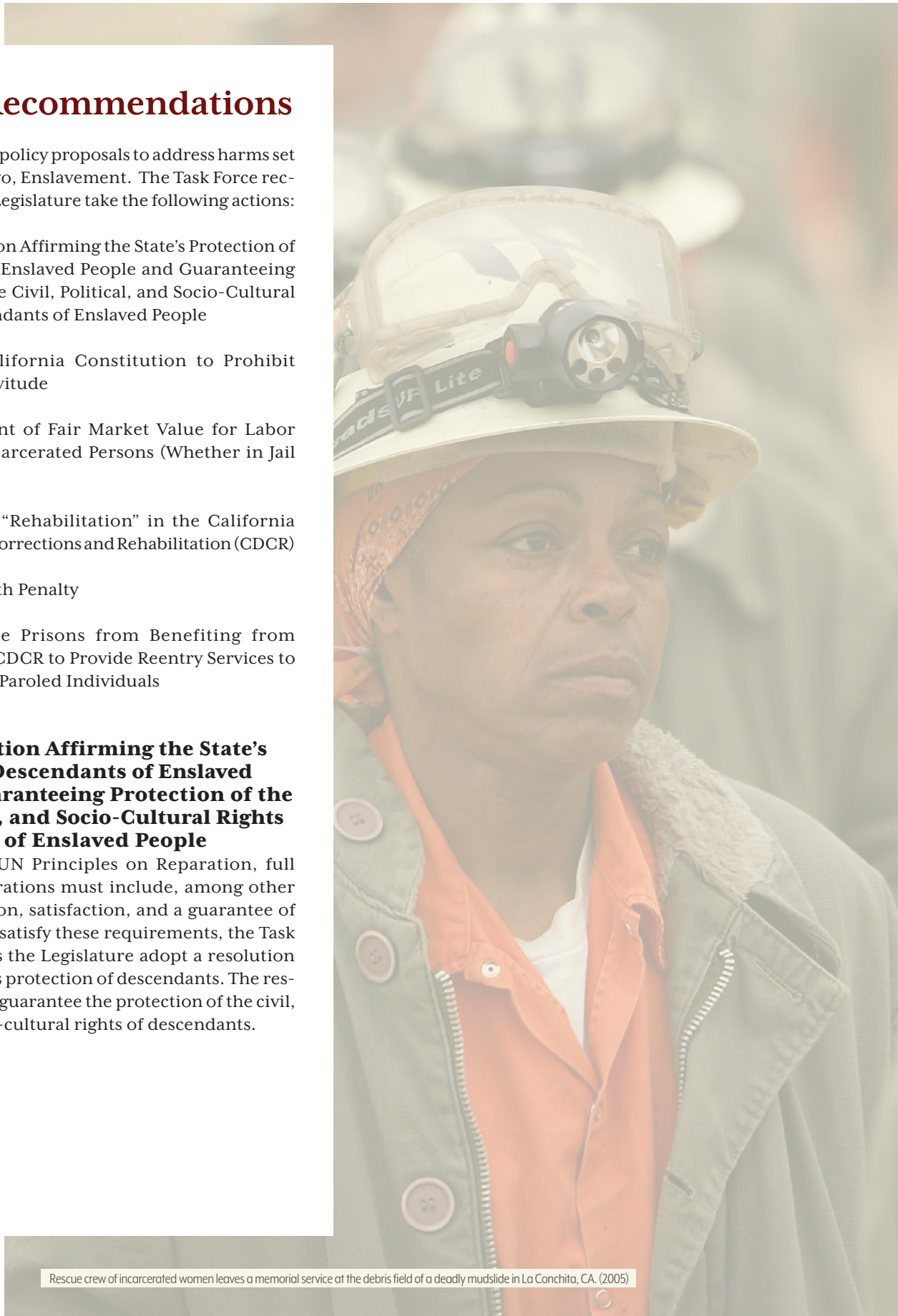
[34] "The Legislative Analyst's Office (LAO) has provided fiscal and policy advice to the Legislature for 75 years. It is known for its fiscal and programmatic expertise and nonpartisan analyses of the state budget." (Legis. Analyst, About Our Office, About the LAO (ca.gov) [as of May 18, 2023].) The LAO has also provided

an assessment of the racial disparities in California's Child Welfare System to a legislative committee. (Legis. Analyst, Initial Analysis and Key Questions: Racial Disproportionalities and Disparities in California's Child Welfare System (Mar. 9, 2022).) Because of its expertise in conducting impact analyses of legislation, the LAO may the appropriate agency or office to conduct racial impact analyses of legislation. Another agency or body that may be appropriate for conducting racial equity analyses of proposed legislation, regulations, or policies is the Racial Equity Commission, discussed earlier in this chapter.

[35] See, e.g., Chapter 6, Separate and Unequal Education.

[36] See, e.g., Chapter 7, Racism in Environment and Infrastructure, and Chapter 9, Control, Over Creative, Cultural & Intellectual Life.

COURTESY OF DAVID MCNEW VIA GETTY IMAGES



I. Policy Recommendations

This chapter details policy proposals to address harms set forth in Chapter Two, Enslavement. The Task Force recommends that the Legislature take the following actions:

- Enact a Resolution Affirming the State's Protection of Descendants of Enslaved People and Guaranteeing Protection of the Civil, Political, and Socio-Cultural Rights of Descendants of Enslaved People
- Amend the California Constitution to Prohibit Involuntary Servitude
- Require Payment of Fair Market Value for Labor Provided by Incarcerated Persons (Whether in Jail or Prison)
- Emphasize the "Rehabilitation" in the California Department of Corrections and Rehabilitation (CDCR)
- Abolish the Death Penalty
- Prohibit Private Prisons from Benefiting from Contracts with CDCR to Provide Reentry Services to Incarcerated or Paroled Individuals

Enact a Resolution Affirming the State's Protection of Descendants of Enslaved People and Guaranteeing Protection of the Civil, Political, and Socio-Cultural Rights of Descendants of Enslaved People

According to the UN Principles on Reparation, full and effective reparations must include, among other elements, restitution, satisfaction, and a guarantee of non-repetition. To satisfy these requirements, the Task Force recommends the Legislature adopt a resolution affirming the state's protection of descendants. The resolution should also guarantee the protection of the civil, political, and socio-cultural rights of descendants.

Rescue crew of incarcerated women leaves a memorial service at the debris field of a deadly mudslide in La Conchita, CA. (2005)

Amend the California Constitution to Prohibit Involuntary Servitude

As discussed in Chapter 2, Enslavement, and elsewhere throughout this report, the legacy of slavery persists and continues to have devastating impacts on the descendant community in particular. One persistent vestige

COURTESY OF SANDY HUFFAKER VIA GETTY IMAGES

Inmate work crews from the California Correctional Facility battle a blaze in Diamond Bar, CA. (2008)

of slavery and ensuing efforts to subjugate and steal the labor of African Americans is a form of involuntary servitude that continues to exist in California and is in fact mandated under current law. Although the California Constitution prohibits slavery, it still permits involuntary servitude as a form of criminal punishment.[1] Article I, section 6 of the California Constitution states: "Slavery is prohibited. Involuntary servitude is prohibited except to punish crime."[2] This "exception" is particularly disturbing given that this constitutional allowance for involuntary servitude is applied excessively to African Americans because they have been disproportionately targeted for enforcement and subjected to a criminal justice system that has historically been used for the very purpose of involuntary servitude.[3]

The persistence of state-sanctioned involuntary servitude is a reality for tens of thousands of incarcerated individuals throughout California. Overall, approximately 58,000 incarcerated persons are assigned jobs in the state's prisons, working an average of 6.5 hours per day for a total of approximately 32 hours per week.[4] Approximately 7,000 incarcerated individuals work for the California Prison Industry Authority, which creates products and provides services to the state, other public entities, and the public.[5] Individuals who are incarcerated in California perform a wide variety of jobs, including food service, clerical work, custodial work, and construction.[6] With the exception of firefighters, these incarcerated individuals are typically paid less than $1.00 per hour.[7]

The Task Force recommends the Legislature amend the California Constitution to end involuntary servitude and thereby dissolve a remnant of slavery and a continued cause of racial inequality. Former State Senator Sydney Kamlager-Dove introduced Assembly Constitutional Amendment (ACA) 3, which would have defined slavery to include involuntary servitude and forced labor compelled by the use or threat of physical or legal coercion.[8] ACA 3 did not pass,[9] however, leaving California as a state that continues to sanction, impose, and profit from involuntary servitude. This must end.

Require Payment of Fair Market Value for Labor Provided by Incarcerated Persons (Whether in Jail or Prison)

According to a recent report, 1.2 million people are incarcerated in the U.S., and nearly 800,000 people are forced to work against their will while being paid pennies on the dollar.10 Incarcerated workers generate $2 billion in goods and $9 billion worth of prison maintenance services, yet are only paid, on average, between 13 and 52 cents per hour.11 The Task Force recommends the Legislature provide payment of the fair market value of the labor provided by incarcerated persons, whether they are in jail or prison. Toward a similar end, State Senator Steven Bradford introduced Senate Bill No. 1371, which would have required the Secretary of the CDCR to adopt a 5-year implementation schedule to increase the compensation for incarcerated individuals working under CDCR's jurisdiction.[12]

Nationwide, incarcerated workers generate

$2 Billion in goods

but are paid on average between 8¢ and $20.44 per hour in California

Emphasize the "Rehabilitation" in the California Department of Corrections and Rehabilitation (CDCR)

As discussed in Chapter 11, An Unjust Legal System, mass incarceration has been used to reinforce the subjugation of African Americans nationally and in California.[13] Recidivism is a substantial contributor to mass incarceration. According to CDCR data, approximately two-thirds of formerly incarcerated people in California will recidivate, meaning they will return to prison within three years, either through new offenses or parole violations.14 "Research has shown that targeting

rehabilitation programs towards the highest-risk, highest-need offenders has the greatest potential to reduce recidivism rates."[15] Nonetheless, prison vocational programs often fail to prepare incarcerated persons to secure employment once released,[16] and most of the jobs incarcerated people are required to perform have no real-life application outside of prison.[17] A Legislative Analyst's Office report showed that less than 3.5 percent of the money spent on incarcerating a person goes towards rehabilitative services.[18]

To undo these harms that disproportionately affect African Americans in California, the Task Force recommends the Legislature require the CDCR to prioritize education, job training, substance use and mental health treatment, and other rehabilitative programs for incarcerated people. Rehabilitation programs have proven to be effective in reducing recidivism.[19] One federal prison study found that, "on average, inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not."[20]

Abolish the Death Penalty

Nearly 30 years ago, then-U.S. Supreme Court Justice Harry Blackmun urged the country to no longer "tinker with the machinery of death."[21] Despite once supporting the death penalty, he later felt "morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident . . . now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies . . . [T]he inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants . . . ."[22] And it is a system that has unjustly, and disproportionately, targeted and killed African Americans.[23] For example, "despite accounting for only 6.5% of California's population, over one third of people on death row in the state are Black."[24] Another example can be found from a 1977-1986 San Joaquin County study, which "found that the likelihood of being charged with a special circumstance for defendants in cases with a Black victim was one-fifth the likelihood in cases with a white victim."[25]

COURTESY OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION VIA GETTY IMAGES

San Quentin State Prison's death row gas chamber is shown before being dismantled. (2019)

The Task Force recommends the Legislature amend the California Constitution to abolish the death penalty, in all cases. In 2021, the California Committee on Revision of the Penal Code issued a report recommending abolishment of the death penalty.[26] The Committee found that the death penalty in California has not only become too costly—it has been imposed arbitrarily and discriminatorily, particularly against African Americans.[27] The Committee also found that, no matter what safeguards are imposed, innocent people are far too often sentenced to death.[28] In 2019, Governor Newsom declared a moratorium on executions in California.[29] In 2020, Assemblymembers David Chiu and Marc Levine introduced Assembly Constitutional Amendment 2, which would have abolished the death penalty, but the bill died in committee.[30] At the time of this report's publication, 23 states had abolished the death penalty and three states, including California, had moratoriums on its use.[31]

At the time of this report, 23 states have abolished the death penalty and three states, including California, have moratoriums on its use.

Prohibit Private Prisons from Benefiting from Contracts with CDCR to Provide Reentry Services to Incarcerated or Paroled Individuals

Despite the steps California has taken to leave the private prison business,[32] the state remains heavily invested in backing for-profit correctional services, including facilities that closely resemble the private prisons the state has sought to move away from funding.[33] The Task Force recommends the Legislature eliminate one major state funding stream to private prison companies, by barring state-funded contracts with for-profit correctional companies for the provision of reentry services.

Endnotes

[1] Cal. Const., art. I, § 6; see also Pen. Code, § 2700 (directing the Department of Corrections to "require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Director of Corrections").

[2] Cal. Const., art. I, § 6.

[3] See, e.g., Imai, Analysis of 2020 California Correctional Health Care Services Inmate Mortality Reviews (Dec. 22, 2021) Cal. Prison Receivership, p. 5 (as of May 22, 2023); see generally Chapter 11, An Unjust Legal System; Chapter 10, Stolen Labor and Hindered Opportunity.

[4] Senate Com. on Appropriations, Rep. on Assem. Const. Amend. No. 3 (2021-2022 Reg. Sess.) p. 2 (as of March 14, 2023).

[5] Id. at pp. 2-3.

[6] Id. at p. 2.

[7] Id. at pp. 2-3; Id. at p. 2 (explaining that incarcerated persons housed at state conservation/fire camps are on a different pay scale with a pay rate of $1.45 to $3.90 per day and a $1 per hour increase when working as emergency firefighters during wildfires).

[8] Assem. Const. Amend. No. 3 (2021-2022 Reg. Sess.); see also Assem. Const. Amend. No. 8 (2023-2024 Reg. Sess.).

[9] Assem. Const. Amend. No. 3 (2021-2022 Reg. Sess.).

[10] ACLU & The University of Chicago Law School Global Human Rights Clinic, Captive Labor: Exploitation of Incarcerated Workers (2022) pp. 5-6, 23 (as of May 22, 2023).

[11] Id. at pp. 6, 58.

[12] Sen. Bill No. 1371 (2021-2022 Reg. Sess.).

[13] See generally Chapter 11, An Unjust Legal System.

[14] Duara, Prison Rehab: Can California Learn Anything from Norway?, CalMatters (Jun. 10, 2022) (as of May 23, 2023).

[15] Taylor, Improving In-Prison Rehabilitation Programs (Dec. 6, 2017) Legislative Analyst's Office, p. 9 (as of May 24, 2023).

[16] Duara, Prison Rehab, supra.

[17] ACLU & The University of Chicago Law School Global Human Rights Clinic, Captive Labor, supra, at p. 16 ("the vast majority of work programs in prisons involve menial and repetitive tasks that provide workers with no marketable skills or training").

[18] California Legislative Analyst's Office, How Much Does It Cost to Incarcerate an Inmate? (2021-2022) (as of Jan. 20, 2023).

[19] Jensen, Community Reentry Program for Prisoners Reduces Recidivism, CalMatters (Sept. 23, 2021) (as of May 24, 2023).

[20] Davis, et al., Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults The RAND Corporation (2013) p. 32 (as of May 24, 2023).

[21] Callins v. Collins (1994) 510 U.S. 1141, 1145 (dis. opn., of Blackmun, J. from cert. den.).

[22] Id. at pp. 1145-1146.

[23] Committee on Revision of the Penal Code, Death Penalty Report (November 2021) p. 20 (as of May 25, 2023).

[24] *Ibid.*

[25] Id. at pp. 19-20.

[26] Id. at p. 30.

[27] Id. at pp. 4, 20.

[28] Id. at pp. 9, 15, 31

[29] Governor's Exec. Order No. N-09-19 (Mar. 13, 2019) (as of May 25, 2023).

[30] Assem. Const. Amend. No. 2 (2021-2022 Reg. Sess.).

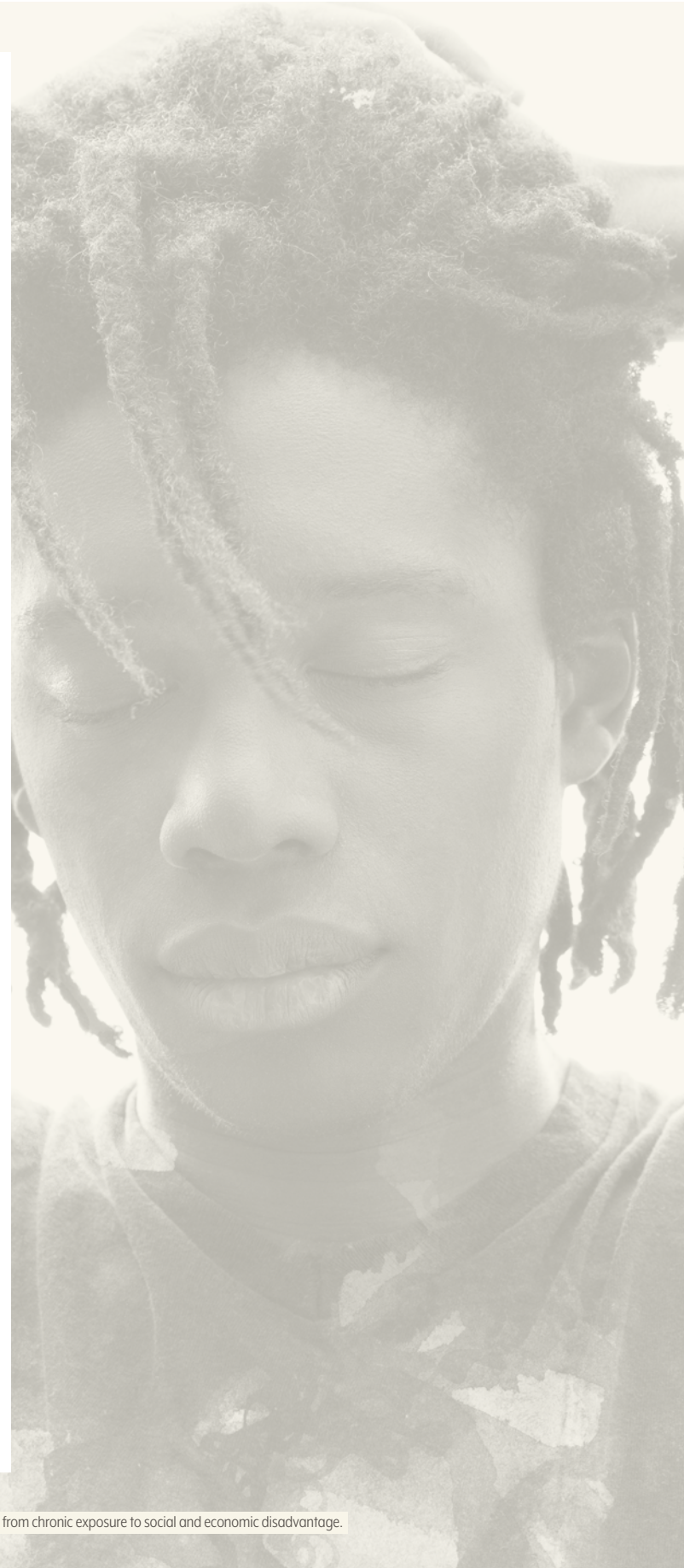
[31] Death Penalty Information Center, States With and Without the Death Penalty – 2023 (2023) (as of May 25, 2023); Ohio and Arizona also paused executions as of early 2023.

[32] Pen. Code, § 9501.

[33] Soriano, Private Prison Firms Make Big Money in California, Capitol Weekly (Dec. 13, 2021) (as of May 25, 2023).

CHAPTER 20 — POLICIES ADDRESSING Racial Terror

COURTESY OF LUMEZIA/ISTOCK VIA GETTY IMAGES PLUS



African Americans suffer from weathering—constant stress from chronic exposure to social and economic disadvantage.

I. Policy Recommendations

This chapter details policy proposals to address harms set forth in Chapter 3, Racial Terror.

- Advance the Study of the Intergenerational, Direct, and Indirect Impacts of Racism
- Establish and Fund Community Wellness Centers in African American Communities
- Fund Research to Study the Mental Health Issues Within California's African American Youth Population, and Address Rising Suicide Rates Among African American Youth
- Expand the Membership of the Mental Health Services Oversight and Accountability Commission to Include an Expert in Reducing Disparities in Mental Health Care Access and Treatment
- Fund Community-Driven Solutions to Decrease Community Violence at the Family, School, and Neighborhood Levels in African American Communities
- Address and Remedy Discrimination Against African American LGBTQ+ Youth and Adults, Reduce Economic Disparities for the African American LGBTQ+ Population, and Reduce Disparities in Mental Health and Health Care Outcomes for African American LGBTQ+ Youth and Adults
- Implement Procedures to Address the Over-Diagnosis of Emotional Disturbance Disorders, Including Conduct Disorder, in African American Children
- Disrupt the Mental Health Crisis and County Jail Cycle in African American Communities
- Create and Fund Equivalents to the UC-PRIME-LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists (See Chapter 29 for the text of this recommendation.)

- Eliminate Legal Protections for Peace Officers Who Violate Civil or Constitutional Rights
- Recommend Abolition of the Qualified Immunity Doctrine to Allow Access to Justice for Victims of Police Violence
- Assess and Remedy Racially Biased Treatment of African American Adults and Juveniles in Custody in County Jails, State Prisons, Juvenile Halls, and Youth Camps (See Chapter 28 for the text of this recommendation.)

Advance the Study of the Intergenerational, Direct, and Indirect Impacts of Racism

As documented in Chapter 12, Mental and Physical Harm and Neglect:

> African Americans suffer from weathering—constant stress from chronic exposure to social and economic disadvantage, which leads to accelerated decline in physical health. Social environments that pose a persistent threat of hostility, denigration, and disrespect lead to chronically high levels of inflammation. Studies have shown that Black youth who are exposed to discrimination and segregation have worse cases of adult inflammation due to race-related stressors. In fact, race-related stress has a greater impact on health among African Americans than their diet, exercise, smoking, or being low income. Cortisol, which is a stress hormone, locates itself in bodies in response to racism—consequently African American adults have higher rates of cortisol than their white counterparts . . . .

A growing body of research has begun to document racism's impact on health,[1] but work remains to be done. Of note, the field of pediatrics has not systematically addressed racism's impact on child health, leaving pediatricians inadequately prepared to identify and respond to racism-related risks and harms.[2] Psychologists writing in JAMA Psychiatry noted that the intergenerational impacts of racism have been less studied than research on structural racism and the experience of racial discrimination, and shared research providing some evidence that "like risk for psychopathology, the nefarious effects of structural racism and of the experience of discrimination can be transmitted to subsequent generations."[3] They went on to propose that viewing racism through an intergenerational lens helps to address mental health disparities by creating new opportunities for action and intervention, and offering models of healing, values, and intergenerational resilience.[4]

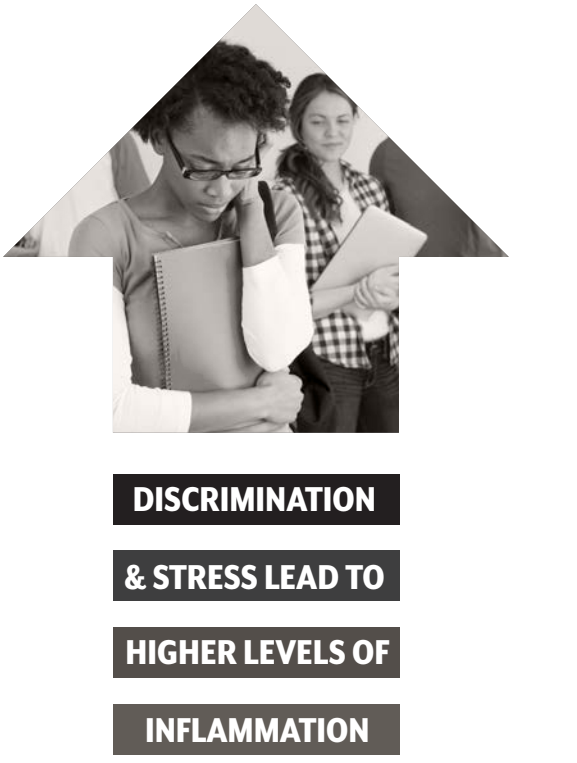


IMAGE SUPPLIED BY SOLSTOCK VIA GETTY IMAGES

The Task Force recommends funding to the California Health and Human Services Agency (or California Department of Public Health within the agency) to further advance the study of the intergenerational, direct, and indirect impacts of racism and to formulate recommendations for enhanced mental health care, including educating mental health care workers. While not focused exclusively on children, in recognition of the harms that racism inflicts upon children, this proposal adopts and directly incorporates recommendations of the American Academy of Pediatrics so that funding would include support for the study of:

1. the impact of perceived and observed experiences of discrimination on child and family health outcomes;
2. the role of self-identification versus perceived race on child health access, status, and outcomes;
3. the impact of workforce development activities on patient satisfaction, trust, care use, and pediatric health outcomes;
4. the impact of policy changes and community-level interventions on reducing the health effects of

racism and other forms of discrimination on youth development; and

5. integration of the human genome as a way to identify critical biomarkers that can be used to improve human health rather than continue to classify people on the basis of their minor genetic differences and countries of origin.[5]

This study could be facilitated through grants to fund the research of established and emerging experts.

Establish and Fund Community Wellness Centers in African American Communities

As discussed in Chapter 3, throughout the history of the United States, racial terror has played a critical role in reinforcing and perpetuating the badges and incidents of slavery. Enslavement was followed by decades of violence and intimidation intended to subordinate formerly enslaved people and their descendants across the United States.[6] Racial terror, especially lynching and the threat of lynching, pervaded every aspect of African American life during and after slavery.[7] "California is no exception; the state, its local governments, and its people have played a significant role in enabling racial terror and [allowing] its legacy to persist here in California."[8]

In addition to physical assault, threats of injury, and destruction of property, racial terror inflicts psychological trauma on those who witness the harm and injury.[9] African Americans continue to experience the effects of trauma induced by racial terror today.[10] That trauma manifests as heightened suspicion and sensitivity to threat, chronic stress, decreased immune system functioning, and an increased risk for depression, anxiety, and substance use.[11]

Despite a significant need for mental health interventions to address the effects of historical and current racial trauma, African Americans experience a range of mental health care disparities. These disparities include problems of access, bias, poorer quality of care, misdiagnosis, inadequate research, and poorer mental health outcomes.

Despite the clear and significant need for mental health interventions to address the effects of historical and current racial trauma, African Americans continue to experience a range of mental health care disparities.[12] These disparities include problems of access, bias, poorer quality of care, misdiagnosis, inadequate research, and poorer mental health outcomes.[13] Further, due to the lack of accessible prevention and early intervention (PEI) programs that prevent serious mental illness in adults, African Americans are more likely to have their first contact with the mental health system through a hospital emergency room or the criminal justice system.[14] For African American children, PEI programs are also lacking, resulting in African American children being over-diagnosed with emotional and behavioral disorders.[15]

Additional barriers include stigma within the community associated with seeking mental health treatment and distrust of the mental health system, which stems from the discrimination that African Americans have experienced when they have sought treatment.[16] The lack of licensed African American mental health professionals or culturally congruent[17] mental health professionals who can provide effective services to California's African American residents increases that distrust.[18]

To address these harms, the Task Force recommends that the Legislature enact legislation to establish and fund Community Wellness Centers (CWCs) within historically African American neighborhoods and in other communities in each city and county where significant numbers of African Americans reside. These CWCs will serve three functions:

First, the CWCs will serve as a source for educating the community about mental health to remove the stigma from experiencing mental health issues and seeking treatment. The CWCs will collaborate with religious leaders, who have traditionally served as a mental health resource for members of their communities,[19] and with community-based organizations (CBOs) to educate community members on mental health issues. The CWCs will also partner with CBOs to offer programs on parenting, processing grief and loss, substance abuse, and intimate partner violence.

Second, the CWCs will provide PEI mental health programs that are supported by community-defined evidence practices (CDEPs).[20] The programs should focus on trauma-informed services anchored in addressing racial stress and trauma. Examples of CDEPs include support groups and healing circles.[21] Support groups and healing circles are examples of CDEPs that have been used by the African American community to address stress from racial terror and trauma. These

practices are rooted in a cultural perspective that has helped African Americans develop resilience in the face of historical and current racial terror and trauma.[22] The CWCs will also function as community gathering spaces for cultural celebrations and other opportunities for the residents to be in community with one another, which is healing unto itself.

In addition to communal practices like racial healing circles, the CWCs will also provide programming that focuses on instilling a positive racial identity in African American children, beginning as early as age three.[23] The development of a positive racial identity is a protective factor against racism. "Racial socialization and racial identity have been documented as culturally strength-based assets—resources that enhance adaptive coping—that are particularly important and protective for Black families."[24] Specifically, a positive racial identity has been linked to higher resilience, self-efficacy, and self-esteem.[25] A recent study indicated that African American adolescents experienced 5.21 racist incidents on average per day, including in schools.[26] These experiences lead to short-term increases in depressive symptoms.[27] Developing a positive racial and ethnic identity has been shown to weaken the effects of both teacher discrimination and other daily discrimination.[28]

Racial socialization and racial identity have been documented as culturally strength-based assets—resources that enhance adaptive coping—that are particularly important and protective for African American families. Specifically, a positive racial identity has been linked to higher resilience, self-efficacy, and self-esteem.

In developing the programming, the CWCs would collaborate with CBOs that promote programs that foster positive racial identity in African American children, like cultural programs and visual and performing arts programs, to offer those programs at the CWCs. The programs would also have a parental education component to provide resources to help parents become more knowledgeable about the importance of fostering a positive racial identity and tools to do so at home. At a minimum, the programs would: 1) expose African American children to historical figures and information about African Americans' accomplishments, capacities, values, and culture; 2) redefine and reframe the concepts of success, strengths, and accomplishments in terms of family commitment, survival of the community, demonstration of spiritual and moral integrity, and the efficacy of civil rights efforts in combatting discrimination, rather than by using standards and definitions based on Euro-American culture and worldview; and 3) expose African American children to Black people in positions of power and control, including those in other countries, using film and other media.

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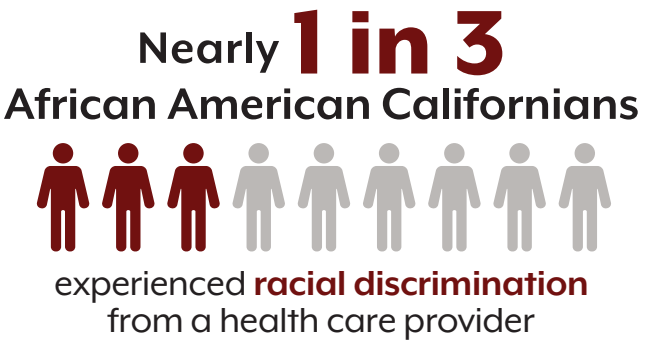
Healing Circles are safe spaces for individuals of African ancestry that draw upon culturally-grounded healing strategies in coping with anti-Black racial trauma/stress and community violence.

Third, the CWCs will serve as access points for screening and referrals to the appropriate level of care for both mental health and medical care. Each CWC should be staffed by a licensed mental health professional who is culturally congruent with the African American culture, who can provide screening and appropriate referrals for people in the community, and who, if requested, can provide urgent mental health intervention. This should include screening for depression and suicide risk for children and adolescents, the group for whom suicide rates have increased the most.[29] The licensed mental health professional should also have knowledge about PEIs, including those supported by CDEPs.

The Task Force relatedly recommends that the Legislature ensure sufficiently increased funding for mental health services provided in traditional clinical settings, including outpatient and inpatient services, to absorb the increased referrals from the CWCs. County departments of mental health across the state should be required to provide CBOs with access to PEI resources at the county level, align county priorities with non-evidence-based intervention opportunities, and provide annual accountability updates to demonstrate the extent to which the cultural and contextual needs of African American residents in their county are addressed.

The staff of the CWCs should also include a culturally congruent general medical provider and a culturally congruent health care advocate. A 2022 survey of Black Californians about their experiences with accessing medical care revealed that about one-third of the respondents experienced racial discrimination from a healthcare provider.[30] About one-fourth of respondents reported avoiding care because of concerns about being treated unfairly or disrespectfully when accessing medical care.[31] The respondents requested that the medical healthcare system implement several changes to improve care for Black Californians. Those improvements included increasing Black representation among health care leadership and the health care workforce, establishing more Black-led, community-based clinics, and expanding community-based education on how to navigate the health care system and advocate for quality care for Black Californians.[32]



To address these concerns, the CWCs will be staffed by a medical provider who is culturally congruent with African American culture and be able to screen adults and children for medical conditions, including those that may present as mental illness,[33] and refer them out for appropriate medical treatment. Further, each CWC should be staffed by a culturally congruent healthcare advocate or a medical social worker who will assist members of the community in navigating the medical and mental health systems to ensure access and provide advocacy when community members experience discrimination or otherwise do not receive respectful and proper care.[34] Additionally, the Office of Health Equity, which is housed in the California Department of Public Health,[35] should be required to collect data regarding the number of people using the medical screening and referral services at CWCs to assess whether there is a need for additional resources for a specific CWC or community.

Fund Research to Study the Mental Health Issues Within California's African American Youth Population, and Address Rising Suicide Rates Among African American Youth

Anxiety, depression, and suicide rates have been rising among African American children and teenagers in recent years.[36] The COVID-19 pandemic compounded these issues by disrupting the lives of adolescents and limiting their social activities.[37] Forty-four percent of African American teenage girls said they need help for emotional and mental health problems such as feeling sad, anxious, or nervous.[38] The rates for suicide for African American children has also increased significantly when compared to the suicide rates for white children. Specifically, suicide rates among white children have dropped from the 1993-1997 to the 2008-2012 periods, but rates have steadily increased among African American elementary school-aged children.[39]

Thirty-seven percent of elementary school-aged children who died by suicide were African American, as were 12 percent of the early adolescents who died by suicide.[40] Between 2014 and 2020, the death-by-suicide rates among African American youth doubled, rising to twice the statewide average.[41] Almost one in four (22 percent) African American seventh graders has considered suicide—more than twice the rate of white students (10 percent) and the highest of any group in seventh grade.[42] As of 2018, suicide was the second leading cause of death among African American children aged 10 to 14, and the third leading cause of death among African American adolescents aged 15 to 19.[43]

Despite the increase in suicidal thoughts, suicide attempts, and deaths by suicide among African American youth, only a small number of research studies have examined death by suicide in African American children; very little is known about causality.[44] "'[C]ommon' risk factors associated with suicidal behaviors recently have been found to not be associated with suicidal behaviors among Black youths."[45] The few studies that have examined the issue suggest that there are a number of factors that could be contributing to the increase.[46] Multigenerational cultural trauma, community violence, adverse childhood experiences (ACEs), stress-response

As of 2018, suicide was the second leading cause of death among African American children aged 10 to 14, and the third leading cause of death among African American adolescents aged 15 to 19.

patterns, systemic and institutional violence, and bullying may play a role.[47] Research also suggests that discrimination plays a significant role in the increase in the risk of suicide among African American youth.

African American youth are less likely than white youth to receive mental health treatment, even after a suicide attempt.

Specifically, one study concluded that discrimination was a universal risk factor for suicidal ideation among African American youth, regardless of their ethnicity or gender.[48] Exposure to online racial traumatic events, such as police killings and videos of people being beaten, is also associated with an increase in depression, post-traumatic stress symptoms, and suicide risk.[49]

Compounding these issues are disparities in access to mental health services for African American youth.[50] African American youth are less likely than white youth to receive mental health treatment, even after a suicide attempt.[51] "Only 16% of Black youth in Medi-Cal have been screened for depression and provided with a follow-up plan if needed."[52] In combination, the higher rates of misdiagnosis among African Americans, psychiatric diagnostic tools that have explicitly racist origins, and a lack of sufficient African American medical professionals lead many African American children and adolescents not to trust the American medical system, which may prevent them from seeking help for mental health issues.[53]

Existing research indicates that "[saving] the lives of Black children and youth [will require] greater investment in protective factors, including social and emotional supports . . . while simultaneously addressing structural racism[,] [the social determinants of their health, mental health stigma, and help-seeking; and [providing] culturally tailored treatment opportunities."[54] The Task Force accordingly recommends a multi-prong approach to researching suicide risk and prevention strategies for African American youth and for addressing their overall mental health.

The Task Force recommends that the Legislature amend the Mental Health Services Act (MHSA) to authorize the Office of Health Equity to establish and fund practice-based suicide prevention research centers throughout California to study suicide risk and prevention in African American youth, building on the example of the National Institute of Mental Health (NIMH), which issued a Notice of Special Interest at the national level to fund research focused on the risk and prevention of suicide in African American youth.[55] The Office of Health Equity is authorized by Health and Safety Code section 131019.5 to lead the effort to reduce health and mental health disparities to vulnerable communities, including African Americans. Like the NIMH, the Office of Health Equity has the authority to direct and fund research on suicide and risk prevention in California, including specific research on suicide risk and prevention in African American youth.

The Task Force recommends that the Legislature enact legislation to mandate annual screening for depression symptoms in all school children beginning in kindergarten, with culturally appropriate screening for African American children, especially those descended from an enslaved person. This recommendation builds on the American Academy of Pediatrics' endorsement of a recommendation to use a self-report screening tool to assess for depression in youth[56] and recognizes that symptoms of depression and anxiety are increasingly seen in younger children.[57] A self-report tool designed to measure core depressive symptoms in children and adolescents can be used for annual screenings without requiring extensive testing for each child.[58] Youth who present with significant depression symptoms should receive further evaluation beyond the mandatory screening required for all students.

Guidelines for assessing depression symptoms in children must note the lack of cultural relevance in empirically-supported approaches to assessing depression in African American children. African American youth may express symptoms differently than other populations.

At the same time, the guidelines for assessing depression symptoms in children and youth must note that there is a lack of cultural relevance in empirically-supported approaches to assessing depression in African American children and adolescents, and that African American youth may express symptoms differently than

other populations.[59] The Task Force recommends that the Legislature fund and support research to develop screening and treatment approaches that are inclusive of African American children and youth and appropriately matched to their needs.

The Task Force also recommends that the Legislature enact legislation to increase funding for public schools throughout California to provide counselors, social workers, and mental health professionals whose practices are culturally congruent[60] with African American culture. Relatedly, the Task Force recommends that the Legislature ensure sufficient state funding for schools to provide "[s]paces and programming aimed at breaking down mental health stigma."[61]

The Task Force recommends that the Legislature enact legislation to fund implementation of programs that address trauma and chronic stress among students, teachers and staff, and the larger school community at high-need schools.

A recent study indicated that students are willing to seek help from school counselors, but that the limited availability of counselors creates a significant barrier to access.[62] In expanding the number of counselors available at each school, the Legislature should require and ensure that African American students have the same counselor-to-student ratio as students at schools in the wealthiest school districts in California. To address and mitigate any stigma some students may experience when seeking help, care must be taken to allow those accessing mental health services to be inconspicuous.

The Task Force additionally recommends that the Legislature enact legislation to provide funding for confidential peer counseling and peer support groups in each school throughout California to help students who are struggling with depression or experiencing discrimination in the school but who may be reluctant to seek help from a school counselor. Studies indicate that peer counseling and peer support groups are beneficial to students experiencing depression.[63] Providing confidential peer support groups at school could be an important PEI protocol for those students at risk for suicide.[64]

The Task Force also recommends that the Legislature enact legislation to provide schools with additional funding to establish healing circles or sharing circles for African American students who may be experiencing discrimination at school.[65] Healing and sharing circles are examples of CDEPs[66] that have been shown to help African Americans process racial trauma.

The Task Force further recommends that the Legislature enact legislation to develop, require, and fund training in "anti-racist and trauma-informed mental health practices" for teachers and school personnel in public schools throughout California.[67]

The Task Force recommends that the Legislature enact legislation to fund training for teachers and school personnel in social and emotional learning programs to teach techniques that can be used to help students cope with their anxiety and manage their emotions.[68]

The Task Force recommends that the Legislature enact legislation to fund implementation of programs that address trauma and chronic stress among students, teachers, staff, and the larger school community at high-need schools.[69]

Expand the Membership of the Mental Health Services Oversight and Accountability Commission to Include an Expert in Reducing Disparities in Mental Health Care Access and Treatment

The entity charged with overseeing the implementation of mental health legislation in California is the Mental Health Services Oversight and Accountability Commission (MHSOAC).[70] The provision establishing the MHSOAC provides for 16 voting members.[71] One of the responsibilities of the MHSOAC is to develop strategies to overcome stigma and discrimination and to increase access to mental health services for underserved groups.[72] In 2017, Governor Brown vetoed legislation that would have added an expert in reducing mental health disparities to the MHSOAC.[73]

The MHSOAC acknowledged in 2022 that structural racism has caused racial disparities to persist in California's mental health system.[74] At its November 17, 2022, meeting, the MHSOAC approved its Racial Equity Plan, which is the MHSOAC's "initial step" to address the demonstrated disparities in access to mental health services and disparities in treatment that result from structural racism.[75]

In this "initial step," the MHSOAC states that it will solicit the help of subject-matter experts in identifying "best practices of policy research that address disparities" and in evaluating and modifying its Racial Equity Plan to meet its "racial equity vision."[76] The acknowledgment that the MHSOAC has to consult with outside experts on the issue of reducing disparities indicates that adding an expert in reducing mental health disparities to the MHSOAC is necessary to address issues of racial disparities.There should be internal capacity and expertise on this subject given the centrality and import of racial disparities, the grace consequences of these disparities, and the MHSOAC's responsibilities.

The Task Force therefore recommends that the Legislature reintroduce legislation to increase the number of voting members from 16 to 17. In addition, the Task Force recommends that the Legislature require and specify that the Governor appoint as a MHSOAC member an expert in reducing disparities in access to mental health services for African Americans, especially descendants of those enslaved in the United States. Appointing an additional member who has expertise in reducing disparities fits with the overall purpose of the MHSA.[77] The proposed appointment also aligns with the Racial Equity Plan approved by the MHSOAC on November 17, 2022.[78]

Fund Community-Driven Solutions to Decrease Community Violence at the Family, School, and Neighborhood Levels in African American Communities

As detailed in Chapter 3 of the report, the racial terror inflicted on the African American community has influenced the use of violence within the community, and as a result, African Americans experience violence at the family, school, and community levels.[79] Exposure to violent crime damages "people's health and development," and pushes "communities into vicious circles of decay."[80] And although rates of violent crime have declined significantly, African American communities are disproportionately affected by it.[81] The data indicates that limited resources and "concentrated disadvantage," in turn, influence the rate of violence within a neighborhood.[82] "Concentrated disadvantage" is a sociological term used to describe neighborhoods or communities with high percentages of residents who are poor and lacking in critical resources, such as access to quality healthcare and education.[83] Investing in programs that increase inclusion and belonging within the community, support education, help residents acquire skills, and increase access to jobs can reduce violent crime within neighborhoods.[84]

The Task Force recommends that the Legislature enact legislation to establish and fund a state-funded grant program to support community-driven solutions to decrease community violence at the family, school, and neighborhood levels in African American communities. The grant program should award grants to CBOs that offer programs to address violence in African American communities and in communities where there is a significant African American population. The grant program would operate similarly to the Ready to Rise Program in Los Angeles and would provide sufficient funding to each recipient organization to ensure that the full panoply of services can be provided at the level needed. The Task Force recommends that the Legislature require that the grant program prioritize funding for programs that use practices that are supported by CDEPs to focus on violence prevention within the youth population. Programs that promote socialization, emotional regulation techniques, and social and cultural competence in early-school-age children have been shown to reduce violence among youth.[85] These include programs that partner with schools to create a trauma-informed, safe, supportive, and equitable learning environment for everyone within the school community.[86]

COURTESY OF SEVENTYFOUR/ISTOCK VIA GETTY IMAGES

Psychologist supporting teenage patient. Programs that promote emotional regulation techniques have been shown to reduce violence among youth.

The Legislature should also prioritize funding for programs that focus on youth empowerment through teaching skills in a variety of areas, such as computer coding, political advocacy, culinary arts, performing arts, and sports. Funding would be provided for equipment and transportation for all children, regardless of means, so that poverty would not serve as a barrier to participation nor as a source of stigma for children who may lack the resources to pay for equipment and supplies.

Programs that provide services to children and families who have been victims of violence or otherwise exposed to violence should also receive priority for grant funding.[87] Peer-to-peer programs, for example, have demonstrated promise in helping victims of violence and their families heal from their experience.[88] The Task Force also recommends that the Legislature specify that funding be prioritized for CBOs that provide mental health support services, including PEI programs like healing circles,[89] peer-to-peer support groups,[90] and other practices supported by community-defined evidence, to African Americans throughout California. The Task Force urges the Legislature not to include a requirement that a client or customer have a mental health diagnosis to qualify for mental health support services funded by the grant program. The Task Force further recommends that the Legislature provide additional funding to CBOs to collect demographic data for the populations served, disaggregated by age, gender, and race.

The Task Force recommends that the legislation also prioritize funding for programs with demonstrated success in gang prevention, gang intervention, and the disruption of gang violence, as well as programs that partner adults within the community with children to escort them along safe routes to and from school to avoid "hot spots," areas in the community where gang activity is likely to take place.[91]

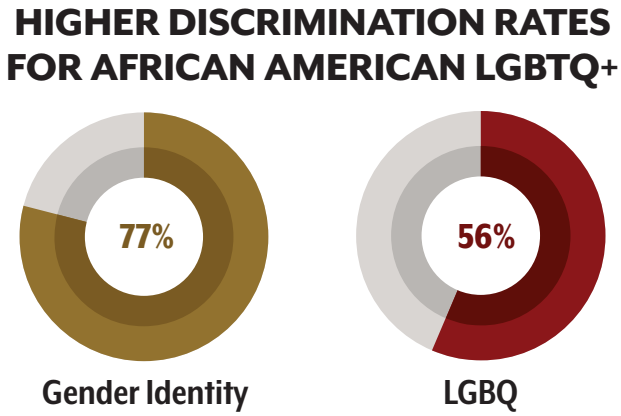
The Task Force recommends that the legislation that establishes and funds the grant program also prioritize funding for programs that invest in rehabilitation of structures and public spaces within neighborhoods to strengthen community connection.[92] Some research studies have indicated that the presence of vacant lots or some types of commercial properties correlate to an increase in crime.[93]For this reason, the Task Force recommends that funding is also prioritized for programs and CBOs that focus on ameliorating these conditions in African American communities and in communities where significant numbers of African Americans reside.

Address and Remedy Discrimination Against African American LGBTQ+ Youth and Adults, Reduce Economic Disparities for the African American LGBTQ+ Population, and Reduce Disparities in Mental Health and Health Care Outcomes for African American LGBTQ+ Youth and Adults

African Americans who identify as LGBTQ+[94] or Same Gender Loving (SGL)[95] live at the intersection of multiple forms of discrimination, as anti-Blackness and anti-LGBTQ+ sentiment compound to result in a higher incidence of discrimination, harassment, and violence in every setting including schools, workplaces, the mental health system, and the health care system. The compounding effects of discrimination for African American LGBTQ+ individuals are reflected in the gaps in education, economic advancement, police interactions, and mental and physical health outcomes.[96] Not only do the outcomes for African American LGBTQ+ individuals lag behind those for white people, but they also lag behind outcomes for African Americans who are non-LGBTQ+.

African American LGBTQ+ Youth

African American LGBTQ+ youth experience higher rates of victimization than non-LGBTQ+ African American youth, with transgender and non-binary youth experiencing higher rates of victimization than their LGBTQ cisgender peers.[97] Seventy-seven percent have felt discriminated against because of their gender identity compared to 56 percent of their African American lesbian, gay, bi and queer peers.[98] Forty percent have been physically threatened or harmed because of their identity.[99]



The educational system in particular has been hostile to LGBTQ+ youth.[100] One study of a national survey of African American LGBTQ+ students found that the majority of African American LGBTQ students surveyed felt unsafe at school because of their sexual orientation while 30 percent felt unsafe because of their race.[101] Transgender and gender non-conforming African American students experienced greater levels of harassment than their cisgender LGBQ+ peers.[102] Because of the harassment they experienced, nearly a third of African American LGBTQ+ students surveyed missed at least one day of school in the previous month because they felt unsafe.[103] The harassment and victimization African American LGBTQ+ students experienced resulted in "lower levels of school belonging, lower educational aspirations, and greater levels of depression."[104] African American students in general are disproportionately disciplined at school, and research shows that African American LGBTQ+ students are at an even greater risk for being disciplined inappropriately or disproportionately.[105]

African American LGBTQ+ students who attended majority African American schools were more likely to experience "out-of-school discipline" than African American LGBTQ+ students at majority white schools.[106] One study indicated that African American LGBTQ+ students were subject to school discipline even when they were being victimized.[107] And African American LGBTQ+ students also experienced discipline based on discriminatory school policies that prevented them from using their preferred name or pronouns, using the restroom or locker room that aligned with their gender identity, expressing public displays of affection, or starting a Gay-Straight Alliance student organization at their school.[108]

Despite the significant levels of harassment and discrimination African American LGBTQ+ students experience because of their LGBTQ+ status and race, these students have few resources available to them. When they complain to teachers and school personnel about being assaulted or harassed, the response is often for the students to just "ignore it."[109] Less than half of the African American LGBTQ+ students who responded to a 2017 school climate survey reported having a supportive school administration.[110] Although there is evidence that Gay-Straight Alliances allow LGBTQ+ students to feel more connected to their schools and improve the overall climate of a school for LGBTQ+ students, LGBTQ+ students at majority African American schools are less likely to have access to a Gay-Straight Alliance.[111] The lack of supportive resources in majority African American schools may be due in part to a lack of funding, as African American schools have disproportionately low levels of funding compared to majority white schools.[112]

One study indicated that African American LGBTQ+ students were subject to school discipline even when they were being victimized.

LGBTQ+ students who experienced an unsupportive and unsafe school environment, one in which they experience both homophobic and racist harassment, had poorer academic outcomes and decreased psychological well-being.[113] These negative effects reverberate beyond high school. African American LGBTQ+ students are less likely to pursue college or other post-secondary education.[114] And many experience greater levels of depression.[115]

In a recent study, 63 percent of African American LGBTQ+ youth reported experiencing symptoms of major depression.[116] Fifty-five percent reported symptoms of generalized anxiety disorder in the past two weeks.[117] In the same study, 44 percent of African American LGBTQ+ youth and 59 percent of African American transgender and nonbinary[118] youth reported that they considered suicide in the previous 12 months.[119] A separate study found that 25 percent of African American transgender or non-binary youth reported attempting suicide sometime within the last year.[120] And although a key factor in suicide prevention is social support from family members, African American transgender and nonbinary youths were "far less likely than their Black lesbian, gay, bi and queer peers to receive [it]."[121]

Despite this urgent crisis, African American youth are less likely than white youth to receive outpatient mental health treatment, even after a suicide attempt.[122] A recent survey reported that 60 percent of African American LGBTQ+ youth who wanted mental health care in the previous year did not receive it.[123] Of these youth, more than half cited affordability as a barrier to mental health care.[124] Over 40 percent of African American LGBTQ+ youth who did not receive mental health care cited concerns around parental permission.[125] African American transgender and nonbinary youth cited concerns with finding an LGBTQ+ competent provider and previous negative experiences with providers as reasons for not obtaining care.[126] Other reasons African American LGBTQ+ youth did not access mental health care included issues related to trust, fear, and ineffectiveness of potential treatment.[127]

To address the issues facing African American LGBTQ+ youth in education and mental health, the Task Force recommends that the Legislature enact the following legislation.

First, the Task Force recommends that the Legislature enact legislation to require the Department of Education to develop an effective anti-bullying and anti-harassment model policy for all ages and grade levels that is anti-racist and LGBTQ+-inclusive. The policy should specifically include language that addresses race, ethnicity, sexual orientation, perceived sexual orientation, gender, gender identity, and gender expression. It is further recommended that the Legislature require the Department of Education to develop an evidence-based model policy for all ages and grade levels to address physical bullying and social bullying. The legislation also should require all local school agencies and school districts in California to adopt and implement the model policies developed by the Department of Education and provide reimbursement for costs associated with implementing the policies.

The Task Force recommends that the Legislature enact legislation requiring all public school personnel, staff, and administrators statewide to receive training and support to increase cultural humility[128] and cultural sensitivity around the treatment of all African American students, including those perceived to be LGBTQ+, as well as African American personnel and staff who identify as LGBTQ+. The training should focus on the specific health and safety of each sub-group within the LGBTQ+ community and intersecting identities, including African American LGBTQ+ students.[129]

The Task Force also recommends that the Legislature enact legislation requiring public school districts to approve and fund a Gay-Straight Alliance at every school within a district where at least one student requests permission to start one. Because of the significant positive impact the presence of a Gay-Straight Alliance has on the overall school environment, the legislation should specifically prohibit local school districts and public schools from denying a student's request to start a Gay-Straight Alliance at their school.[130]

To increase school connectedness and address depression, the Task Force also recommends that the Legislature enact legislation to fund peer-to-peer group programs and healing circles within public schools throughout California for African American LGBTQ+ youth.

To address the mental health crisis that is currently facing African American LGBTQ+ youth, the Task Force recommends that the Legislature pass a resolution stating that African American transgender and nonbinary youth suicide is a public health crisis and enact legislation to fund state-wide research on the issue of suicide risk and prevention in LGBTQ+ youth, including African American transgender and African American nonbinary youth.[131] The Task Force recommends that the legislation funding the research also require that the Office of Health Equity within the California Department of Health collect data on suicide in African American LGBTQ+ youth in California. The legislation should also provide funding to support a public media campaign to disseminate the data the Office of Health Equity collects and the results of the research conducted. These measures are needed to educate African American communities and the larger public on protective factors shown to lower the risk of suicide for African American LGBTQ+ youth.[132]

The Task Force also recommends that the Legislature fund public health and education campaigns that employ voices trusted by African American LGBTQ+ youth to promote mental health wellness and provide information on accessing mental health care within the African American community, including schools, churches, and other spaces where African American LGBTQ+ youth gather.[133]

To address the mental health crisis currently facing African American LGBTQ+ youth, this Task Force recommends that the Legislature pass a measure declaring African American transgender and nonbinary youth suicide a public health crisis and enact legislation to fund state-wide research on the issue of suicide risk and prevention among African American LGBTQ+ youth.

To address disparities in mental health for African American LGBTQ+ youth, the Task Force recommends that the Legislature enact legislation to increase funding to expand publicly-funded mental health treatment programs for African American LGBTQ+ youth. In addition, funding should be provided for CBOs that provide mental health treatment services for African American LGBTQ+ youth. Funding should also be directed to fund the collection of demographic data by publicly-funded mental health treatment programs and CBOs for the population served, disaggregated by age, race, gender, and sexual orientation.

A significant number of African American LGBTQ+ youth who want to access confidential mental health care without a parent's permission are unable to do so. Therefore, the Task Force recommends that the Legislature enact legislation that will allow mental health providers to treat African American LGBTQ+ youth who are under age 18 and may otherwise not receive care because parental permission is required.[134]

African American LGBTQ+ youth also encounter barriers to accessing mental health care when they are unable to find an African American mental health provider or a provider who specializes in working with African American LGBTQ+ youth.[135] The Task Force therefore recommends that the Legislature create and fund recruitment programs in California that recruit diverse candidates for masters and doctoral-level psychology programs and professional counselor and therapist training programs committed to serving

African American LGBTQ+ youth and adults, especially those who reside in African American communities and in other communities where a significant numbers of African Americans reside.

The Task Force also recommends that the Legislature require and fund cultural humility and anti-racist training for all candidates in these programs. That training should include, at a minimum, training protocols on interrogating a mental health professional's personal biases and understanding how racial and heterosexual bias and oppression causes and exacerbates the mental health concerns that impact African American LGBTQ+ youth and lead that population to seek therapy.[136] The Task Force further recommends that the Legislature include adequate funding for the programs to collect and disseminate data disaggregated by race, gender, age, and sexual orientation of the candidates who were admitted into these programs, successfully matriculated through the programs, and are providing mental health services to African American LGBTQ+ youth after graduating.

The Task Force also recommends that the Legislature enact legislation requiring annual competence and cultural sensitivity training that certifies that a mental health professional is qualified to work with culturally diverse populations, specifically, African American youth and African American LGBTQ+ youth.[137]

African American LGBTQ+ Adults

The difficulties African American LGBTQ+ individuals face extend to employment. LGBTQ+ individuals experience high rates of discrimination and harassment in hiring and in the workplace.[138] For example, studies have shown that employers are less likely to reach out to perceived LGBTQ+ job candidates for interviews.[139] Discrimination is heightened for LGBTQ+ applicants who are African American. Seventy-eight percent of African American LGBTQ+ individuals who responded to a survey conducted by the Center for American Progress in 2020 reported that discrimination affected their ability to be hired.[140] For white LGBTQ+ individuals, that number was 55 percent.[141] Even when they are hired, racism and heterosexism affects the ability of 56 percent of African American LGBTQ+ individuals to maintain their jobs.[142]

As detailed in Chapter 10, Stolen Labor and Hindered Opportunity, and Chapter 13, The Wealth Gap, the income disparity between African American and white Californians is significant. The income disparity is worse for African American LGBTQ+ adults. "Across all economic indicators . . . Black LGBTQ adults have a lower economic status than Black non-LGBTQ adults."[143] For example, African American LGBTQ+ adults have higher unemployment rates compared to African Americans who are non-LGBTQ+.[144] Thirty-nine percent of African American LGBTQ+ adults in the United States had a household income of less than $24,000 a year compared to 33 percent of non-LGBTQ+ African Americans.[145] And more African American women who are LGBTQ+ live in low-income households than non-LGBTQ+ African American women.[146]

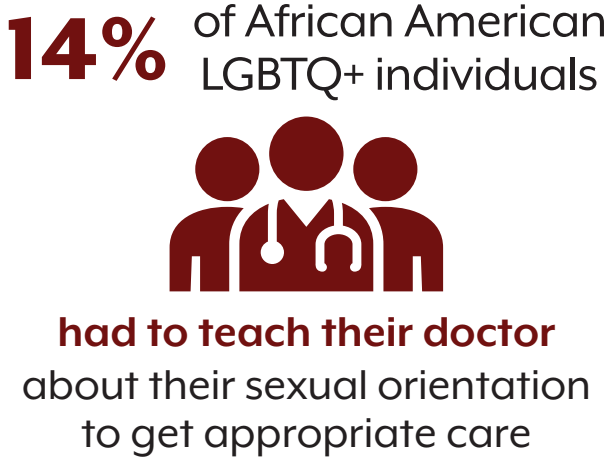
"Across all economic indicators ... Black LGBTQ adults have a lower economic status than Black non-LGBTQ adults." For example, African American LGBTQ+ adults have higher unemployment rates compared to African Americans who are non-LGBTQ+.

Disparities in outcomes for LGBTQ+ African Americans exist in the mental health and healthcare systems as well. "Consistent discrimination takes a significant toll on individuals' mental and physical health. Physiologically, harassment and mistreatment have been shown to lead to cortisol dysregulation, which affects a wide range of bodily functions. As a result, African American LGBTQ individuals often experience mental and physical health challenges."[147]Both African American LGBTQ+ men and women are more likely to have been diagnosed with depression than non-LGBTQ+ African American men and women.[148] African American lesbians have a higher rate of suicide than other LGBTQ+ groups,[149] but they are less likely to seek out traditional professional mental health help than their white counterparts.[150]

Seeking treatment in the mental health and healthcare systems can often cause more harm, however. One barrier to seeking mental health treatment is the concern about being mistreated by mental health providers based on race or sexual orientation.[151] LGBTQ+ individuals can be harmed at every stage in the mental health system including referral, intake and assessment, and intervention.[152] In one survey, African American LGBTQ+ clients who reported that they were very dissatisfied with the treatment they received most frequently felt their providers fell short in addressing race and ethnicity concerns, trauma, sexual orientation concerns, and grief.[153] Specifically, providers did not know how to help with respondents' sexual orientation concerns

or inappropriately focused on their sexual orientation when that was not the reason they sought treatment.[154] Some respondents to the survey also reported that their mental health provider made negative comments about their gender identity or expression.[155] Additional barriers to seeking treatment include mistrust of mental health treatment and lack of resources to pay for treatment.[156]

Medical doctors often lack awareness of LGBTQ+ patients' needs as well. This is in large part because more than half of medical school curricula do not provide information about the health issues and treatment of LGBTQ+ patients beyond work related to HIV.[157] This leaves African American LGBTQ+ individuals facing compounded forms of stigma at the doctor's office, and often encountering substandard care, harsh language, and even physical mistreatment. In a recent survey conducted by the Center for American Progress, 15 percent of African American LGBTQ+ individuals reported some form of negative or discriminatory treatment from a doctor or healthcare provider in the previous year, and seven percent reported being refused care entirely.[158] Fourteen percent of African American LGBTQ+ individuals reported that in order to receive appropriate care they had to teach their doctor about their sexual orientation.[159] Eleven percent reported that the doctor who treated them "was visibly uncomfortable" because of their sexual orientation.[160]



To increase the number of medical and mental health providers treating African American LGBTQ+ individuals, the Task Force recommends that the Legislature enact legislation to fund scholarships and loan forgiveness for physicians and mental health professionals who focus on providing services to African American LGBTQ+ individuals through medical clinics, mental health treatment programs, and community-based organizations that provide mental health services in African American communities and in communities where significant numbers of African Americans reside. The Task Force recommends that the Legislature create and fund recruitment programs in California that recruit diverse candidates for masters and doctoral-level psychology programs and professional counselor and therapist training programs committed to serving the African American LGBTQ+ community. The Task Force also recommends that the Legislature include funding in the legislation for cultural humility and anti-racist training for all candidates in the program. That training would include, at a minimum, training protocols on interrogating a mental health professional's personal biases and understanding the role racial and heterosexual bias and oppression play in causing and exacerbating the mental health concerns that impact African American LGBTQ+ individuals and may lead them to seek therapy.[161] The Task Force further recommends that the Legislature include adequate funding for the programs to collect and disseminate data disaggregated by race, gender, age, and sexual orientation of the candidates who were admitted into these programs, successfully matriculated through the programs, and are providing mental health services to African American LGBTQ+ individuals.

The Task Force recommends that the Legislature enact legislation requiring annual competence and cultural sensitivity training that certifies that a mental health professional is qualified to work with culturally diverse populations, including specifically, African American LGBTQ+ populations.[162] One example of a set of practices that would allow practitioners to develop cultural sensitivity skills in working with the African American LGBTQ+ population is the Gay Affirmative Practice model, which addresses areas of reflection for mental health providers that could help strengthen overall cultural sensitivity in treating members of the African American LGBTQ+ community.[163]

To address the discrimination African Americans who are LGBTQ+ face in hiring and retention, which impacts their economic outcomes, the Task Force recommends that the Legislature amend Government Code section 12999, which requires all employers in California with at least 100 employees to file an annual payee data record with the California Civil Rights Department (formerly the Department of Fair Employment and Housing) showing the number of employees by race, ethnicity, and sex in the job categories specified in Government Code section 12999, subdivision (b).[164] The Task Force recommends that the Legislature amend section 12999 to require employers in California with at least 100 employees to also report the number of employees by sexual orientation in the categories specified in section 12999, subdivision (b). Employees would provide that information voluntarily

and the employer will be required to collect and store the demographic data separately from employees' personnel records. The Task Force further recommends that the Legislature amend section 12999 to require employers to also include in their annual payee data record the number of employees advanced or promoted during the reporting period by race, sex, ethnicity, and sexual orientation. The Task Force further recommends that the Legislature amend section 12999 to require each employer to include in its data payee record the number of unselected job applicants for the categories specified in section 12999, subdivision (b) by race, ethnicity, sex, and sexual orientation. Job applicants would provide this information voluntarily, and the information would be stored separately from the application.

To assist African American LGBTQ+ employees who are terminated from positions, the Task Force recommends that the Legislature enact legislation to provide funding to CBOs that provide free job training services, job counseling, and free continuing education classes to African American LGBTQ+ individuals who were terminated from their positions. It is also recommended that the Employment Development Department include on its provider list job services providers that provide job services and training to African American LGBTQ+ candidates.

Implement Procedures to Address the Over-Diagnosis of Emotional Disturbance Disorders, Including Conduct Disorder, in African American Children

African American children are more likely to be placed in special education classes than white students and are two-to-three times more likely than white students to receive a label of Emotional Disturbance in schools.[165] African American children are also 2.4 times more likely than white children to receive a Conduct Disorder diagnosis.[166] Historically, the adolescents who have been over-diagnosed with Conduct Disorder, a subset of Emotional Disturbance, are "urban," low-income, and African American.[167] Research indicates that white children who exhibit comparable behaviors that would lead to a Conduct Disorder diagnosis in African American children generally receive diagnoses of mood, anxiety, or developmental disorders—conditions that are deemed more treatable.[168]

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Teacher reading a book to a class of preschool children. A 2007 study found that African American children were 5.1 times more likely to be misdiagnosed with Conduct Disorder before eventually being diagnosed with Autism Spectrum Disorder.

Research also indicates that teachers and school staff often have referred African American children, males in particular, for assessment for Emotional Disturbance and special education placements based on a misinterpretation of behaviors that are rooted in cultural differences, such as their posture and how they walk and dress.[169]

Restrictive educational placements, like special education classes, "socialize Black children for prison and contribute to the school-to-prison pipeline."[170] The majority of African American students who receive special education services under a referral of Emotional Disturbance drop out of school, and 73 percent of those students are arrested within five years of dropping out.[171]

Studies suggest that African American children mislabeled with Emotional Disturbance or misdiagnosed with Conduct Disorder may be suffering from other conditions. Specifically, "many youth may express conduct problems in response to underlying mood or anxiety disorders."[172] Depression, for example, has been shown to be a precursor to conduct problems.[173] Research also indicates that African American children are often labeled as

Compared to white students, African American students are

2-3x MORE LIKELY to receive a diagnosis of Emotional Disturbance in schools

emotionally disturbed and underdiagnosed with Autism Spectrum Disorder because Autism Spectrum Disorder can be mistaken as bad behavior.[174] A 2007 study found that African American children were 5.1 times more likely to be misdiagnosed with Conduct Disorder before eventually being diagnosed with Autism Spectrum Disorder.[175]

Conduct problems or concerning behaviors may also be responses to environmental stressors.[176] For instance, racial discrimination from teachers and peers predicted conduct problems and low academic performance for African American adolescents.[177] Poor academic achievement also is a significant contributor to conduct problems.[178] Therefore, clinicians evaluating a child for Conduct Disorder should always consider the child's social context or environment in order to reach an accurate diagnosis[179] Recognizing the distinction between conduct problems that are a normal response to a negative social environment and those that are the result of internal dysfunction, the textual commentary at the end of the criteria list for Conduct Disorder in the DSM-5-TR[180] indicates that the diagnosis would be misapplied where a child's conduct problems are a response to environmental stressors, such as living in "very threatening, high-crime areas," and warns that "reactions to racism that involve anger and resistance-based coping may be misdiagnosed as conduct disorder by uninformed practitioners."[181]

To address both the over-diagnosing of behavioral conditions like Conduct Disorder and the underdiagnosing of other conditions like mood disorders or Autism Spectrum Disorder in African American children, and reduce excessive referrals of African American children to special education, the Task Force recommends that the Legislature amend California's Education Code and California's Code of Regulations,[182] which govern student assessments in conformity with the Individuals with Disabilities Educational Act (IDEA) and its implementing regulations,[183] to require clinicians in California to evaluate first whether the behaviors a child is exhibiting are related to environmental stressors, including the child's social context, before assessing a child for Emotional Disturbance or Conduct Disorder. Requiring consideration of the impact of environmental stressors on a child's behavior would ensure consistent application of the textual commentary to the diagnosis in the DSM-5-TR and minimize the risk of a Conduct Disorder misdiagnosis.

The Task Force also recommends that the Legislature amend California's Education Code and assessment regulations[184] to require that a clinician evaluate a child for Autism Spectrum Disorder or mood disorders, for which early interventions and supports can be critical, and which are less stigmatizing than Emotional Disturbance or Conduct Disorder, before categorizing a child as meeting the legal criteria for Emotional Disturbance or diagnosing a child with Conduct Disorder. The regulations would require a clinician making a diagnosis or special education referral to certify that assessments for environmental stressors, Autism Spectrum Disorder, or other conditions were completed before the assessment of Emotional Disturbance or Conduct Disorder was made. Parents and children would be entitled to appropriate statutory remedies where this step is omitted in an initial evaluation.

To increase the cultural competence of clinicians who diagnose and treat children, the Task Force recommends that the Legislature enact legislation to require those clinicians to complete continuing education or training on conducting culturally sensitive diagnosis and treatment of conduct problems as part of the state's licensing requirements.[185] Currently, psychologists are required to undertake four hours of training in cultural diversity or social justice.[186] The continuing education requirement recommended here is more specific. The requirement would require culturally sensitive training in diagnosing and treating emotional disturbance disorders in children, including African American children in particular, and would apply to all psychologists, psychiatrists, and other mental health professionals involved in diagnosing and treating children and adolescents.

To increase the cultural competence of clinicians who diagnose and treat children, the Task Force recommends that the Legislature enact legislation to require those clinicians to complete continuing education or training on conducting culturally sensitive diagnosis and treatment of conduct problems, as part of the state's licensing requirements.

Consistent with the need for additional training for clinicians who work with African American children, the Task Force recommends that the Legislature amend the MHSA to mandate that the Office of Health Equity provide grants to mental health treatment professionals' member organizations to implement training and continuing education programs for their members on how to conduct culturally sensitive diagnoses, including for Conduct Disorder. The curriculum for the training would impart the need for clinicians to take into account the following considerations

to ensure an accurate diagnosis: 1) the clinician's cultural biases, 2) the child client's cultural background, 3) the cultural biases of any diagnostic assessment measures being used, and 4) a careful differentiation of the client's culture and circumstances from a mental disorder.[187]

To ensure that the children who are appropriately placed in special education programs benefit from their placements, the Task Force also recommends that the Legislature enact legislation requiring the California Department of Education to revise the special education curriculum to include interventions that have been proven to be effective in helping students assessed as meeting statutory criteria for Emotional Disturbance benefit from their special education placements.[188] Three interventions that have been proven to be beneficial for children placed in special education programs include 1) providing quality teacher feedback, including verbal praise, 2) allowing flexibility in the completion of academic tasks, and 3) using behavioral staff as a means of additional academic support.[189]

Disrupt the Mental Health Crisis and County Jail Cycle in African American Communities

The overrepresentation of African Americans in the criminal justice system is well-established. African Americans are 4.2 times more likely than white people to be incarcerated in jail and nearly eight times more likely to be incarcerated in prisons in California.[190] People with mental illness are also overrepresented in the criminal justice system.[191] The most recent available data from the Bureau of Justice Statistics shows that more than one quarter of people in jail met the threshold for serious psychological distress and more than a third had been told by a mental health professional that they have a mental illness.[192] One explanation for these findings is the use of police and the criminal justice system as a response to mental health crises.[193] Police are often involved in responding to mental health emergencies, which can result in incarceration and in many instances the use of force, when mental health professionals would have been better suited to address the situation.[194]

Although African Americans are more likely to be involved in the criminal justice system, once incarcerated if they have not been previously diagnosed with a mental illness, they are less likely than other groups to receive a mental health evaluation, and when they self-report a mental illness, they are less likely to receive treatment.[195] Evidence indicates that the mental health screening tools used in jails reproduce racial disparities, resulting in fewer African Americans screening positive for mental health conditions and being referred to services to address their mental health needs.[196] Once released, formerly incarcerated people are nearly 10 times more likely to be homeless,[197] which can significantly worsen mental health conditions.

Although African Americans are more likely to be involved in the criminal justice system, there is evidence that, once incarcerated, they are less likely to be identified as having a mental health problem and are less likely to receive treatment.

To disrupt the cycle of mentally ill individuals being jailed and released without adequate mental health support, the Task Force recommends that the Legislature enact legislation to implement and fund the following programs and protocols. First, to reduce calls to 911, which increases law enforcement involvement in behavioral health emergencies,[198] the Task Force recommends that the Legislature enact legislation to fund a media campaign to increase awareness within African American communities of 988 as a non-law enforcement emergency call-in option for those experiencing mental health emergencies or crises.[199]

To decrease arrest rates and increase the opportunity for appropriate mental health services being provided to individuals who are experiencing behavioral health emergencies, the Task Force recommends that the Legislature enact legislation to require and fund the establishment of Police-Mental Health Collaboration (PMHC) programs at law enforcement agencies throughout California. PMHCs are collaborative partnerships among law enforcement, mental health providers, and often CBOs.[200] PMHCs are designed to allow law enforcement to safely respond to behavioral health emergencies and have been shown to be effective in diverting individuals to appropriate mental health settings instead of jails without a concomitant

increase in other harms.[201] Key features of effective PMHC programs include training for law enforcement officers on recognizing signs and symptoms of mental illness, education to increase officer awareness of mental health resources within their community and collaboration with those resources, and training for officers in de-escalation techniques.[202] The Task Force recommends that the Legislature require training for law enforcement officers that includes these elements and also require local law enforcement agencies to engage in routine evaluation and reporting of findings to determine effectiveness and to make program improvements.[203]

The Task Force additionally recommends that the Legislature increase funding to courts to expand diversion and mental health collaborative court programs in each city and county. The Task Force further recommends that the Legislature enact legislation requiring the appropriate entity or agency, whether that is the district attorney or the court, to assess all individuals who have been diagnosed with or have a demonstrable mental illness that can be connected to their illegal behavior for entry into a diversion and mental health collaborative court program.[204] The Task Force also recommends that the Legislature enact legislation and provide funding to require cities and counties to collect and retain screening and referral data for diversion and collaborative court programs, disaggregated by race, gender, and age.[205]

The Task Force recommends that the Legislature enact legislation to increase funding to expand county pretrial support services with Public Defender offices, county partnerships that provide mental health services and treatment planning services within jails and other detention facilities, and programs that assess individuals before they are released to connect them with appropriate services within their community.[206] Where possible, the county should identify and augment opportunities for recently released individuals to be linked to culturally congruent CBOs that have a successful history of providing services in African American communities, including programs that incorporate a peer support component in the reentry process.[207]

The Task Force also recommends that the Legislature enact legislation to provide funding to expand existing Offices of Diversion and Reentry (ODR) programs in each county and to establish and fund ODR programs in counties throughout the state where those programs do not exist. At a minimum, the ODR programs should provide mental health programming and services to individuals held in county facilities and help individuals released from county facilities transition to community-based programs that provide mental health treatment planning services, mental health services, medications, and permanent housing.[208] The Task Force recommends that the Legislature provide additional funding to each ODR program to collect demographic data for the populations served, disaggregated by age, race, and gender.

The Task Force recommends that the Legislature enact legislation to increase funding for CBOs that provide mental health services, permanent housing, and mental health treatment planning to people recently released from county facilities, and provide those services in African American communities. The Task Force further recommends that the Legislature provide additional funding to CBOs to collect demographic data for the populations served, disaggregated by age, race, and gender.

The Task Force recommends that the Legislature enact legislation to establish and fund 24/7 receiving centers in each city and county that will provide the following services for recently released individuals:

- Serve as a welcoming station for recently released individuals who are waiting for assignment to a treatment center, after-treatment living facility, home, or other safe destination;
- Connect recently released individuals with wrap-around services provided by CBOs;
- Provide transportation services to safe destinations for recently released individuals.[209]

The Task Force further recommends that the Legislature fund and require each locality to collect demographic data, disaggregated by race, gender, and age, for the population served by the receiving centers to assess the need for additional resources.

The Task Force recommends that the Legislature enact legislation to increase funding for CBOs that provide wrap-around services, including, but not limited to, mental health services, housing, and treatment services, to individuals with mental health needs who have been recently released from county jail or prison.[210] This proposal further recommends that the Legislature ensure funding is provided to CBOs operated by staff that is culturally congruent with the African American community and CBOs that have a demonstrated history of providing satisfactory services to African Americans and in African American communities.[211] The Task Force further recommends that the Legislature include within the legislation additional funding to require each county

to collect and maintain demographic data on the CBOs that receive funding under this legislation, including the racial makeup of each CBO's staff.[212]

Finally, the Task Force recommends that the Legislature enact legislation to increase funding for culturally appropriate mental health treatment and services options for African Americans released from county facilities regardless of their mental health diagnosis.

Eliminate Legal Protections for Peace Officers Who Violate Civil or Constitutional Rights

Under existing law, police officers who violate a person's civil or constitutional rights— such as through excessive force, unjustified shootings, or race-based policing—may be sued under state law (via the Tom Bane Civil Rights Act, Civ. Code § 52.1 et seq. or "Bane Act") and federal law (via 42 U.S.C. § 1983). Under federal law, however, officers are protected by "qualified immunity," which places an often-insurmountable burden on plaintiffs in such cases.[213] Qualified immunity is not applicable under California state law, but the Bane Act (and related judicial precedent) does pose at least one major obstacle to relief: the requirement that a plaintiff prove not only that an officer violated a civil or constitutional right, but also that the officer "specifically intended" to violate the person's civil or constitutional rights.[214] For example, in *Reese v. County of Sacramento* (9th Cir. 2018) 888 F.3d 1030, 1035, a police officer knocked on Mr. Reese's door and shot him after a brief confrontation. The jury ruled in favor of Mr. Reese on his Bane Act claim, having determined that the shooting was unjustified and that Mr. Reese had not posed an immediate threat to the officer.[215] However, the Ninth Circuit Court of Appeals overturned the jury verdict because Mr. Reese had not proven that the officer specifically intended to violate his rights.[216] This artificial legal hurdle is anathema to efforts to redress the history of police violence against African Americans.

Qualified immunity is not applicable under California state law, but the Bane Act (and related judicial precedent) does pose at least one major obstacle to relief: the requirement that a plaintiff prove not only that an officer violated a civil or constitutional right, but also that the officer "specifically intended" to violate the person's civil or constitutional rights.

The Task Force accordingly recommends strengthening the Bane Act by eliminating the requirement that a victim of police violence show that the officer "specifically intended" to commit misconduct. At least two bills have been advanced that would have enacted this proposal (Senate Bill 2 (Bradford, 2021-2022 Reg. Sess.) and Assembly Bill 731 (Bradford, 2019-2020 Reg. Sess.)), but neither were enacted with this specific provision included.[217] The Act should also be amended to provide that unwanted touching or verbal assault can constitute a violation of its provisions.

Recommend Abolition of the Qualified Immunity Doctrine to Allow Access to Justice for Victims of Police Violence

As discussed in Chapter 3, Racial Terror, and Chapter 11, An Unjust Legal System, African Americans, especially descendants of persons enslaved in the United States have faced centuries of violent, oppressive, and discriminatory policing by law enforcement that persists today. Yet the qualified immunity doctrine often shields law enforcement from liability for violating a person's constitutional rights. Under this doctrine, a civil rights plaintiff must show that the officer violated "clearly established law" in order to state a viable claim for relief.[218] Thus, courts often hold that "government agents did violate someone's rights, but that the victim has no legal remedy simply because that precise sort of misconduct had not occurred in past cases."[219] As one analysis has concluded, "[q]ualified immunity is one of the most obviously unjustified legal doctrines in our nation's history."[220] Additionally, legal scholarship has indicated that the doctrine is rooted in an error made between the 1871 enactment of 42 U.S.C. § 1983 and the first compilation of federal law in 1874, leading one federal appeals judge to issue an opinion expressing concern that "Congress's literal language [may have] unequivocally negated the original interpretive premise for qualified immunity[.]"[221]

Recent legislative efforts to reform or end qualified immunity at the federal level have failed, in part due to the threat and availability of a filibuster to block proposed legislation.[222] The Task Force accordingly recommends that California's Senate and Congressional Delegations urge Congress to end both the filibuster and the qualified immunity doctrine. The Task Force also recommends the creation of a state-funded compensation scheme for victims of police misconduct whose claims would otherwise be – or have already been – barred by qualified immunity.

Endnotes

[1] See, e.g., Hankerson et al., *The Intergenerational Impact of Structural Racism and Cumulative Trauma on Depression* (2022) 179 Am. J. Psychiatry 395 (as of May 16, 2023); Comas-Diaz et al., *Racial Trauma: Theory, Research, and Healing: Introduction to the Special Issue* (2019) 74 Am. Psychologist 1 (as of May 16, 2023).

[2] Trent et al., *The Impact of Racism on Child and Adolescent Health* (2019) 144 Pediatrics 2 (as of May 16, 2023).

[3] Lugo-Candelas et al., *Intergenerational Effects of Racism: Can Psychiatry and Psychology Make a Difference for Future Generations?* (2021) 78 JAMA Psychiatry 1065 (as of May 16, 2023).

[4] *Ibid.*

[5] Trent et al., *Racism on Child and Adolescent Health*, *supra*, at p. 7.

[6] See Chapter 3, Racial Terror.

[7] *Id.* at pp. 94, 102-105.

[8] *Id.* at p. 119.

[9] See Chapter 3, Racial Terror.

[10] *Id.* at p. 118.

[11] *Ibid.*

[12] Valle, *Existing Disparities in California's System of Specialty Mental Health Care* (2019) Cal. Pan-Ethnic Health Network (as of May 16, 2023).

[13] *"We Ain't Crazy, Just Coping With a Crazy System": Pathways into the Black Population for Eliminating Mental Health Disparities*, Cal. Reducing Disparities Project, African American Population Report (Woods et al. edits. 2012) p. 28. (as of May 16, 2023) (hereafter African American Population Report).

[14] *Ibid.*

[15] *Id.* at p. 91.

[16] African American Population Report, *supra*, at pp. 50, 75.

[17] A culturally congruent health care practice involves the application of evidence-based medical treatment that is congruent with the preferred cultural values, beliefs, worldview, and practices of the patient. (See Marion et al., *Implementing the New ANA Standard 8: Culturally Congruent Practice* (2016) Online J. of Issues in Nursing (as of May 17, 2023) (discussing cultural congruence in nursing practice).)

[18] Barriers to mental health care in African American communities include lack of providers from diverse racial/ethnic backgrounds, lack of culturally competent providers, and general distrust of the health care system. Am. Psychiatric Assn., Mental Health Disparities: African Americans (2017) p. 3 (as of May 17, 2023); see also Boris Lawrence Henson Foundation, African American Cultural Competency Training (as of May 17, 2023).

[19] African American Population Report, *supra*, at p. 31 (noting that about 10 percent of African Americans who develop behavioral disorders access services through churches).

[20] CDEPs are a "set of practices found to yield positive results as determined by community consensus over time. These practices may or may not have been measured empirically (by a scientific process) but, have reached a level of acceptance by the community. CDE[Ps] take[] a number of factors into consideration, including a population's worldview and historical and social contexts that are culturally rooted. [They are] not limited to clinical treatments or interventions. CDE[Ps are] a complement to Evidence Based Practices and Treatments, which emphasize empirical testing of practices and do not often[]consider cultural appropriateness in their development or application." (*Id.* at Forward.)

[21] The Community Healing Network, an organization focused exclusively on the emotional emancipation of Black people across the African Diaspora, developed a specific version of a racial healing circle called Emotional Emancipation Circles (EECs) in collaboration with The Association of Black Psychologists (ABPsi). (Community Healing Network (as of May 17, 2023).) EECs are "liberatory spaces" in which African American people share stories, learn emotional wellness skills, and deepen their understanding of the impact of historical forces on their sense of self-worth, their relationships, and their communities. (*Ibid.*)

[22] See, e.g., African American Population Report, *supra*, at p. 178.

[23] See White and Young, *Positive Racial Identity Development in Early Education: Understanding PRIDE in Pittsburgh* (2016) U. of Pittsburgh School of Education, p. 5 (noting that "[s]ocial biases in children begin to form as early as 3-5 years, with 3-year-olds attributing more positive traits to the dominant societal race and 5 year olds attributing negative traits to non-dominant races") (as of May 17, 2023).

[24] Carlo et al., *Culture-Related Adaptive Mechanisms to Race-Related Trauma Among African American and US Latinx Youth* (2022) J. Adversity and Resilience Science (as of May 17, 2023).

[25] White and Young, *Positive Racial Identity Development in Early Education*, *supra*, at p. 4.

[26] English et al., *Daily Multidimensional Racial Discrimination Among Black U.S. American Adolescents* (2020) 66 J. Applied Developmental Psych. p. 12 (as of May 17, 2023).

[27] *Id.* at pp. 13-14.

[28] White and Young, *Positive Racial Identity Development in Early Education*, *supra*, at p. 4; see also Carlo et al., *Culture-Related Adaptive Mechanisms to Race-Related Trauma*, *supra*.

[29] See Meza et al., *Black Youth Suicide Crisis: Prevalence Rates, Review of Risk and Protective Factors, and Current Evidence-Based Practices* (2022) 20 Am. Psych. Assn.: Focus 197, 197-198 (as of May 25, 2023).

[30] Cummings, *Listening to Black Californians: How the Health Care System Undermines Their Pursuit of Good Health—Executive Summary*, Cal. Health Care Foundation (Oct. 2022) pp. 1-2 (as of May

17, 2023); see also van Ryn and Burke, *The Effect of Patient Race and Socio-Economic Status on Physicians' Perceptions of Patients* (Mar. 2000) 50 Soc. Sci. & Med. 813, 828 (describing a study that determined physicians tended to perceive African Americans and members of low and middle socioeconomic status groups more negatively on a number of dimensions than they did white patients and patients of upper socioeconomic status; study also found that physicians assessed a patient's likelihood of adhering to medical advice based on the patient's race) (as of May 17, 2023).

[31] Cummings, *Listening to Black Californians*, *supra,* at p. 2.

[32] *Ibid.*

[33] Some medical illnesses and their associated medications have side effects that can "masquerade" as psychological disorders. See Magnani, Psychological Masquerade: Physical Illness and Mental Health (2010) (as of May 18, 2023).

[34] Existing provisions in California law direct resources toward reducing disparities in healthcare services. See, e.g., Welf. & Inst. Code, § 5830, subd. (c)(2) (authorizing funding for programs that promote advocacy for underserved populations including advocacy to improve access to mental health services); Health and Saf. Code, § 131019.5, subd. (c)(2).

[35] Office of Health Equity (as of May 18, 2023).

[36] Kamleiter, *Helping African American Kids and Teens with Mental Health* (Sept. 23, 2020) Children's Minnesota (as of May 18, 2023).

[37] *Ibid.*; Abdi and Sanders, *Bridging the Mental Health Care Gap for Black Children Requires a Focus on Racial Equity and Access* (May 30, 2022) Child Trends.

[38] The Children's Partnership, *A Child is a Child, Snapshot: California Children's Health, Black Children's Health* (Feb. 2023) (as of May 18, 2023).

[39] Grills et al., *Black Child Suicide: A Report* (Oct. 15, 2019) National CARES Mentoring Movement, p. 5 (as of May 18, 2023).

[40] *Ibid.*

[41] The Children's Partnership, *Black Children's Health*, *supra*.

[42] *Ibid.*

[43] Gordon, *Addressing the Crisis of Black Youth Suicide* (Sept. 22, 2020) Nat. Inst. of Mental Health (as of May, 31, 2023).

[44] Grills et al., *Black Child Suicide*, *supra*, at p. 7.

[45] Meza et al., *Black Youth Suicide Crisis*, *supra*, at p. 199.

[46] Congressional Black Caucus Emergency Taskforce on Black Youth Suicide and Mental Health, *Ring the Alarm: The Crisis of Black Youth Suicide in America* (2019) pp. 14-15.

[47] Grills et al., *Black Child Suicide*, *supra,* at p. 10.

[48] Assari et al., *Discrimination Increases Suicidal Ideation in Black Adolescents Regardless of Ethnicity and Gender* (Nov. 6, 2017) Behav. Sci., p. 6 (as of May 18, 2023); see also Brooks et al., *Capability for Suicide: Discrimination as a Painful and Provocative Event* (2020) 50 Suicide and Life-Threatening Behav. 1173 (research study determined that discrimination increased risk of suicide in Black adults).

[49] Congressional Black Caucus Emergency Taskforce on Black Youth Suicide and Mental Health, *Ring the Alarm*, *supra,* at p. 15 (citing Tynes et al., *Race-Related Traumatic Events Online and Mental Health Among Adolescents of Color* (2019) 65 J. of Adolescent Health 371, 376).)

[50] Gordon, *Addressing the Crisis of Black Youth Suicide*, *supra*.

[51] *Ibid.*

[52] The Children's Partnership, *Black Children's Health*, *supra*.

[53] Quirk, *Mental Health Support for Students of Color During and After the Coronavirus Pandemic* (July 28, 2020) Center for American Progress (as of May 18, 2023).

[54] Grills et al., *Black Child Suicide*, *supra,* at pp. 27-28.

[55] National Institutes of Health, Notice of Special Interest (NOSI) in Research on Risk and Prevention of Black Youth Suicide, No. NOT-MH-20-055 (2020) (as of May 18, 2023).

[56] In 2018, the American Academy of Pediatrics endorsed the Guidelines for Adolescent Depression in Primary Care recommendation that adolescents 12 years and older be screened annually for depressive disorders using a self-report screening tool. (Selph and McDonagh, *Depression in Children and Adolescents: Evaluation and Treatment* (Nov. 15, 2019) 100 American Family Physician 609, 610.)

[57] Lebrun-Harris et al., *Five-Year Trends in US Children's Health and Well-being, 2016-2020*, (Mar. 14, 2022) JAMA Pediatrics 176(7):e220056.

[58] An example of a self-report tool is The Short Mood and Feelings Questionnaire (SMFQ), a 13-item self-report questionnaire designed to measure core depressive symptoms in children and adolescents aged 6-17 years old. One study found that children self-report tools were valid and reliable in screening children for depression. Reynolds et al., *Measuring Depression In Children: A Multimethod Assessment Investigation* (1985) 13 J. Abnormal Child Psych. 513, 513–526. In the same study, parent assessment tools to screen children for depression were not found to be reliable. (*Ibid.*)

[59] See Rutgers University, *Depression in Black Adolescents Requires Different Treatment*, Science Daily (Jan. 18, 2018) (as of Jan. 23, 2023).

[60] Cultural congruence in the educational context is "the idea that learning is best accomplished in classrooms compatible with the cultural context of the communities they are supposed to serve." (Singer, *What Is Cultural Congruence, and Why Are They Saying Such Terrible Things about It?* Occasional Paper No. 120. (1988).)

[61] This proposal directly incorporates certain recommendations made by the Center for American Progress. (See Quirk, *Mental Health Support for Students of Color*, *supra*.)

[62] McKinney et al., *Youth-Centered Strategies for Hope, Healing and Health* (May 2022) National Black Women's Justice

Institute and The Children's Partnership, p. 18 (as of May 18, 2023).

[63] Nardi et al., *Effectiveness Of Group CBT In Treating Adolescents With Depression Symptoms: A Critical Review* (Jan. 2016) Internat. J. Adolescent Med. Health (as of May 18, 2023) (meta-analysis finding both Group Cognitive Behavioral Therapy (G-CBT) and group interpersonal psychotherapy effective in reducing depressive symptoms in adolescents.) "Successful G-CBT outcomes were related to the presence of peers, who were an important source of feedback and support to observe, learn, and practice new skills to manage depressive symptoms and improve social-relational skills." (*Ibid.*). See also Walker, *Peer Programs Helping Schools Tackle Student Depression, Anxiety*, National Education Association News (Nov. 14, 2019) (as of May 31, 2023).

[64] "Peer mentoring helps schools create safer and more nurturing school environments to help support students' social and emotional needs and general well-being." (Walker, *Peer Programs Helping Schools Tackle Student Depression, Anxiety*, *supra.*); see also Congressional Black Caucus Emergency Taskforce on Black Youth Suicide and Mental Health, *Ring the Alarm, supra,* at p. 24 (describing a successful peer-to-peer program at the University of Virginia, Project Rise, which is focused on helping Black students on campus with a myriad of issues).

[65] Mizock and Harkins, *Diagnostic Bias and Conduct Disorder: Improving Culturally Sensitive Diagnosis* (2011) 32 Child & Youth Services 243, 248 (summarizing research finding discrimination at school predicts conduct problems and low academic performance in African American adolescents).

[66] As explained *supra,* CDEPs are "practices that a (historically marginalized) community has mutually agreed to be healing, though not typically empirically validated by Western standards." McKinney et al., *Youth-Centered Strategies for Hope, Healing and Health*, *supra*, at p. 21.

[67] Quirk, *Mental Health Support for Students of Color*, *supra.*

[68] See Ferren, *Social and Emotional Supports for Educators During and After the Pandemic* (July 20, 2021) Center for American Progress (as of May 23, 2023).

[69] One such example of a trauma-informed school program is the University of California San Francisco (UCSF) HEARTS program. (UCSF, *Program Overview* (as of May 18, 2023) (hereafter HEARTS Overview).) The stated goals of HEARTS include: "(1) increasing student wellness, engagement, and success in school; (2) building staff and school system capacities to support trauma-impacted students by increasing knowledge and practice of trauma-informed classroom and school-wide strategies; (3) promoting staff wellness through addressing burnout and secondary traumatic stress; and (4) interrupting the school to prison pipeline through the reduction of racial disparities in disciplinary office referrals, suspensions, and expulsions." (*Ibid.*) To achieve these goals, HEARTS services include: "(1) professional development training and consultation for school personnel and community partners; (2) workshops for parents/caregivers; and (3) individual psychotherapy for trauma-impacted students." (*Ibid.*)

[70] Specifically, the MHSOAC oversees the Adult and Older Adult Mental Health System of Care Act and the Children's Mental Health Services Act. The MHSOAC also oversees Prevention and Early Intervention Programs, Education and Training Programs, Innovative Programs, and Human Resources. (Welf. & Inst. Code, § 5845, subd. (a).)

[71] *Ibid.*

[72] Welf. & Inst. Code, §§ 5830, 5845, subd. (d)(8).

[73] Assem. Bill No. 850, vetoed by Governor, Oct. 2, 2017 (2017-2018 Reg. Sess.).

[74] MHSOAC, Elevating the Commission's Voice on Racial Equity: Racial Equity Plan (2022), pp. 1-2, in Meeting Materials Packet, Commission Teleconference Meeting (as of May 19, 2023).

[75] *Id.* at p. 5; see also MHSOAC, Agenda Item 8, in Meeting Materials Packet (2022) (as of May 19, 2023.

[76] MHSOAC, Racial Equity Plan, *supra,* at p. 5.

[77] See Welf. & Inst. Code, §§ 5830, 5845.

[78] MHSOAC, Agenda Item 8, *supra*.

[79] See Chapter 3, Racial Terror.

[80] Office of Policy Development and Research, *Neighborhoods and Violent Crime* (2016) Evidence Matters (as of May 19, 2022).

[81] *Ibid.*

[82] *Ibid.*

[83] Carpiano et al., *Concentrated Affluence, Concentrated Disadvantage, and Children's Readiness for School: A Population-Based, Multi-Level Investigation* (2009) 69 Soc. Sci. & Med. 420 (as of May 19, 2023).

[84] Office of Policy Development and Research, *Neighborhoods and Violent Crime*, *supra.*

[85] African American Population Report, *supra*, at p. 191.

[86] For an example, see the UCSF HEARTS program, an intervention program that is "largely aimed at school climate and culture change through building capacity of school personnel around implementing trauma-informed practices, procedures, and policies." UCSF, *HEARTS Overview*, *supra.*

[87] Unaddressed exposure to violence, racism, and other ACEs can lead to toxic stress, which can impede learning and lead to a host of other negative outcomes. (See, e.g., Center on the Developing Child, Harvard University, *ACEs and Toxic Stress: Frequently Asked Questions* (as of May 19, 2023).) "[Y]outh with [post-traumatic stress symptoms] have deficits in key areas of the [prefrontal cortex] responsible for cognitive control[,] attention, memory, response inhibition, and emotional reasoning—cognitive tools that may be necessary for learning[.]" (Carrion and Wong, *Can Traumatic Stress Alter the Brain? Understanding the Implications of Early Trauma on Brain Development and Learning* (2012) 51

J. Adolescent Health S23, S26 (as of May 19, 2023).) Trauma also affects areas of the brain responsible for organization, goal-setting, planning, understanding and following instructions, and classroom behaviors. (Wolpow et al., *The Heart of Learning and Teaching: Compassion, Resiliency, and Academic Success* (2016) p. 12 (as of May 19, 2023).)

[88] Bartone et al., *Peer Support Services for Bereaved Survivors: A Systematic Review* (2019) 80 Omega – J. Death and Dying ("Of the 32 studies meeting all inclusion criteria, most showed evidence that peer support was helpful to bereaved survivors, reducing grief symptoms and increasing well-being and personal growth. Studies also showed benefits to providers of peer support, including increased personal growth and positive meaning in life.").

[89] See, for example, the Community Healing Network's Emotional Emancipation Circles (EECs), one form of healing circles developed in collaboration with The Association of Black Psychologists (ABPsi).

[90] Bartone et al., *Peer Support Services for Bereaved Survivors*, *supra*.

[91] Research suggests that "violent crime occurs in a small number of 'hot spots,'" either particular street intersections or blocks. (See Office of Policy Development and Research, *Neighborhoods and Violent Crime*, *supra*.)

[92] See Sharkey, *Uneasy Peace: The Great Crime Decline, The Renewal Of City Life, And The Next War On Violence* (2018) p. 144. Patrick Sharkey posits that the most fundamental change that took place in U.S. cities that led to a decline in violent crime was the reclaiming, and subsequent transformation, of public spaces, by local community organizations that provided social services and safe spaces for young people, created stronger neighborhoods, and confronted violence.

[93] See Anderson et al., *Reducing Crime by Shaping The Built Environment With Zoning: An Empirical Study of Los Angeles* (2013) 161 U. Pa. L.Rev. 699, 723-724 (as of May 19, 2023).

[94] Traditionally, LGBTQ stood for Lesbian, Gay, Bisexual, Transgender, and Queer community. Some sectors of the LGBTQ community use Q to refer to "Questioning" and others use it to refer to "Queer." (Mikalson et al., *First, Do No Harm: Reducing Disparities for Lesbian, Gay, Bisexual, Transgender, Queer and Questioning Populations in California*, The California LGBTQ Reducing Mental Health Disparities Population Report (2012) p. 20 (as of May 19, 2023).) The plus symbol "is used to signify all of the gender identities and sexual orientations that are not specifically covered by the other five initials." (Cherry, *What Does LGBTQ+ Mean?* (Nov. 7, 2022) Verywell Mind (as of May 19, 2023).)

[95] Same-Gender Loving (SGL) is an alternative term used by some African Americans to describe their sexual orientation because they view the terms "gay" and "lesbian" as primarily white terms. (GLAAD, GLAAD Media Reference Guide, LGBTQ Communities of Color (2022) (as of May 19, 2023)); see also Douglas and Turner, *How Black Boys Turn Blue: The Effects of Masculine Ideology on Same-Gender Loving Men* (April 20, 2017) Psychology Benefits Society (as of May 19, 2023).

[96] GLSEN and the National Black Justice Coalition, *Erasure and Resilience: The Experiences of LGBTQ Students of Color, Black LGBTQ Youth in U.S. Schools* (2020) p. xvii (as of May 19, 2023); Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination* (July 13, 2021) Center for American Progress (as of May 19 2023).

[97] Ramirez, *A 'Crisis': 1 in 4 Black Transgender, Nonbinary Youths Attempted Suicide in Previous Year, Study Finds* (Feb. 28, 2023) USA Today (as of May 19, 2023).

[98] *Ibid*.

[99] *Ibid*.

[100] Black LGBTQ students experienced verbal harassment, physical harassment, and physical assault at school. (GLSEN and the National Black Justice Coalition, *Black LGBTQ Youth in U.S. Schools*, *supra*, at p. 14.)

[101] *Id*. at pp. xvi, 13.

[102] *Id*. at p. 15.

[103] *Id*. at pp. 13-14.

[104] *Id*. at p. 15.

[105] *Id*. at p. 23.

[106] *Id*. at p. 24.

[107] *Id*. at p. 25.

[108] *Ibid*.

[109] *Id*. at p. 18.

[110] *Id*. at p. 30.

[111] Centers for Disease Control and Prevention, *Protective Factors for LGBTQ Youth* (2019); GLSEN and the National Black Justice Coalition, *Black LGBTQ Youth in U.S. Schools*, *supra*, at p. 26.

[112] *Id*. at p. 38.

[113] *Id*. at pp. 20, 37.

[114] *Id*. at p. xviii.

[115] See *id*. at p. xvii.

[116] Green et al., *All Black Lives Matter: Mental Health of Black LGBTQ Youth* (2020) Trevor Project, p. 8.

[117] *Ibid*.

[118] People who identify as nonbinary do not identify their gender as man or woman. Gender nonconforming means that an individual's physical appearance or behaviors do not align with a specific gender. (Centers for Disease Control and Prevention, Adolescent and School Health: Terminology (as of May 19, 2023).)

[119] Green et al., *All Black Lives Matter*, *supra*, at p. 8.

[120] The Trevor Project, *Research Brief: Mental Health of Black Transgender and Nonbinary Young People* (Feb. 2023) p. 1 (as of May 19, 2023); Ramirez, *A 'Crisis,' supra*.

[121] Ramirez, *A 'Crisis,' supra*.

[122] Gordon, *Addressing the Crisis of Black Youth Suicide*, *supra*.

[123] Green et al., *All Black Lives Matter*, *supra*, at p. 10.

[124] *Ibid*.

[125] *Ibid*.

[126] *Ibid.*

[127] *Ibid.*

[128] Cultural humility is defined as having an interpersonal stance that is other-oriented rather than self-focused. It is "characterized by respect and lack of superiority toward an individual's cultural background and experience." (Hook et al., *Cultural Humility: Measuring Openness to Culturally Diverse Clients* (2013) 60 J. Counseling Psychol. 353, 353 (as of May 19, 2023).) "Cultural humility is a lifelong process of self-reflection and self-critique whereby the individual not only learns about another's culture, but one starts with an examination of her/his own beliefs and cultural identities." (Yeager and Wu, *Cultural Humility: Essential Foundation for Clinical Researchers* (2013) 26 Applied Nursing Research, p. 2 (as of May 19, 2023).)

[129] Mikalson et al., *First, Do No Harm*, *supra*, at p. 177.

[130] The Centers for Disease Control identified GSAs as a protective factor for LGBTQ youth. (Centers for Disease Control and Prevention, *Protective Factors for LGBTQ Youth*, *supra*.)

[131] Green et al., *All Black Lives Matter*, *supra*, at p. 17.

[132] See, e.g., *id.* at p. 4 (listing presence of supportive family or other support person and in-person access to LGBTQ+-affirming spaces as protective factors); Centers for Disease Control and Prevention, *Protective Factors for LGBTQ Youth*, *supra*.

[133] See Green et al., *Breaking Barriers to Quality Mental Health Care for LGBTQ Youth* (2020) The Trevor Project, pp. 21-22 (as of May 19, 2023).

[134] *Id.* at p. 20.

[135] *Id.* at pp. 20-21; see also Green et al., *All Black Lives Matter*, *supra*, at p. 10.

[136] Green et al., *Breaking Barriers*, *supra*, at p. 21.

[137] Mikalson et al., *First, Do No Harm*, *supra*, at p. 176.

[138] Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*, *supra*.

[139] *Ibid.*

[140] *Ibid.*

[141] *Ibid.*

[142] *Ibid.*

[143] Choi et al., *Black LGBT Adults in the US: LGBT Well-Being at the Intersection Of Race* (2021) U.C.L.A. School of Law Williams Inst., p. 16 (as of May 19, 2023).

[144] *Ibid.*

[145] *Ibid.*

[146] *Ibid.* Low income is defined as reporting an income household size ratio at or below the 200 percent federal poverty level (FPL).

[147] Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*, *supra*.

[148] Choi et al., *Black LGBT Adults in the US*, *supra*, at p. 18.

[149] Mikalson et al., *First, Do No Harm*, *supra*, at p. 54.

[150] *Id.* at p. 90.

[151] *Id.* at pp. 159-160.

[152] *Id.* at p. 55.

[153] *Id.* at p. 161-162.

[154] *Id.* at pp. 160-161.

[155] *Id.* at p. 161.

[156] *Id.* at p. 159.

[157] Kates et al., *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in the U.S.* (May 3, 2018) Kaiser Family Foundation (as of May 19, 2023).

[158] Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*, *supra*.

[159] *Ibid.*

[160] *Ibid.*

[161] Green et al., *Breaking Barriers*, *supra*, at p. 21.

[162] Mikalson et al., *First, Do No Harm*, *supra*, at p. 176.

[163] The Gay Affirmative Practice Model requires practitioners to reflect on the following issues when treating LGBTQ+ clients: (1) the attitude of the provider toward LGBTQ+ identity, that is, whether the provider views same-gender sexual desires and behaviors as a normal variation in human sexuality; (2) The provider's knowledge about the patient/client that is, whether the provider automatically assumes heterosexuality and understands the coming out process; and (3) the provider's skills in being able to assess and deal with their own heterosexual bias and homophobia. (*Id.* at p. 63.)

[164] See Sen. Bill No. 973 (2019-2020 Reg. Sess.) § 3.

[165] Garwood and Carrero, *Lifting the Voices of Black Students Labeled with Emotional Disturbance: Calling All Special Education Researchers*, 48 Behav. Disorders 121, 121-122. "Emotional Disturbance" is a category of special education eligibility criteria under federal and state law that includes some recognized psychiatric diagnostic conditions, such as schizophrenia, but is not itself a mental health diagnosis, and can be applied to a child who meets the legal criteria even if that child has not received a clinical mental health diagnosis. (34 C.F.R. § 300.8, subd. (c)(4)(i); 5 Code Regs. § 3030, subd. (b)(4); Disability Rights California, *What Are the Eligibility Criteria for Emotional Disturbance?* (as of May 22, 2023).)

[166] Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at p. 245. Conduct Disorder is a psychiatric diagnosis in which a person exhibits a "repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated." (Am. Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (5th Ed., Text Revision, 2022) (DSM-5-TR).) Youth diagnosed with Conduct Disorder experience significant stigma and more adverse outcomes in their physical and mental health and when they encounter the criminal legal system. (Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at pp. 246-247.)

[167] *Id.* at p. 244.

[168] *Id.* at p. 245.

[169] Clark, *Conduct Disorders in African American Adolescent Males: The Perceptions That Lead to Overdiagnosis and Placement in Special Programs* (2007) 33 Ala. Counseling Assn. J. 1, 2 (as of May 19, 2023); Garwood and Carrero, *Lifting the Voices of Black Students Labeled with Emotional Disturbance*, *supra*, at p. 122.

[170] Garwood and Carrero, *Lifting the Voices of Black Students Labeled with Emotional Disturbance*, *supra*, at p. 122.

[171] *Ibid.*

[172] Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at p. 245.

[173] *Ibid.*

[174] Rentz, *Black and Latino Children Are Often Overlooked when It Comes to Autism* (2018) NPR (as of May 19, 2023).

[175] *Ibid.*

[176] Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at pp. 247-248.

[177] *Id.* at p. 248.

[178] *Ibid.*

[179] Wakefield et al., *Should the DSM-IV Diagnostic Criteria for Conduct Disorder Consider Social Context?* (2002) 159 Am. J. Psychiatry 380 (as of May 19, 2023).

[180] The DSM-5-TR is the text revision of the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders, the leading treatise for the classification, diagnosis, and treatment of mental disorders in the field of psychiatry. (DSM-5-TR, *supra*; see Am. Psychiatric Assn., *DSM History* (as of May 19, 2023).) The DSM-5-TR was published following significant backlash over the DSM-5's "diagnostic expansiveness" many in the field believed would lead to a "tidal wave of false positive diagnoses [by] transforming normal conditions into . . . disorders." (Wakefield, *Diagnostic Issues and Controversies in DSM-5: Return of the False Positives Problem* (2016) 12 Annu. Rev. Clin. Psychol. 107, 107.)

[181] Am. Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (5th Ed., Text Revision, 2022) p. 535; Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at p. 247.

[182] California Education Code sections 56320 through 56330 and Title 5 California Code of Regulations sections 3021 through 3023 govern assessments in conformity with the federal Individuals with Disabilities Educational Act (IDEA) and its implementing regulations.

[183] The IDEA is codified at 20 U.S.C. § 1400 et seq. Its implementing regulations are codified at 34 C.F.R. § 300.1 et seq.

[184] See Ed. Code, §§ 56320-56330; see also Cal. Code Regs., tit. 5, §§ 3021-3023.

[185] Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at p. 247-248.

[186] See Cal. Board of Psychology, *Continuing Professional Development Information* (as of May 20, 2023).

[187] Mizock and Harkins, *Diagnostic Bias and Conduct Disorder*, *supra*, at pp. 248-249.

[188] See, e.g., Lukowiak, *Academic Interventions Implemented to Teach Students with Emotional Disturbance* (2009) J. Am. Academy of Special Ed. Professionals 63, 69-71 (as of May 20, 2023).

[189] *Ibid.*

[190] Vera Institute of Justice, *Incarceration Trends in California* (Dec. 2019) (as of May 20, 2023); see also NAACP *Criminal Justice Fact Sheet* (2023) (noting that African Americans nationally are incarcerated at five times the rate of white people) (as of May 31, 2023).

[191] Franco, *The Prevalence of Mental Illness in California Jails is Rising: An Analysis of Mental Health Cases & Psychotropic Medication Prescriptions*, 2009-2019 (Feb. 2020) Cal. Health Policy Strategies L.L.C., p. 3 (as of May 20, 2023); see also Collier, *Incarceration Nation* (Oct. 2014) Monitor on Psychology (as of May 20, 2023).

[192] Bronson and Berzovsky, *DOJ Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (June 2017) U.S. Dept. of Justice Bureau of Justice Statistics, pp. 4-5 (as of May 20, 2023).

[193] Scully, *Criminal Justice Reform Means Reforming the Mental Health System* (March 5, 2021) Nat. Alliance on Mental Illness Blog (as of May 20, 2023); see also Collier, *Incarceration Nation*, *supra*.

[194] Watson et al., *Police Reform From the Perspective of Mental Health Services and Professionals: Our Role in Social Change* (2021) 72 Psychiatric Services 1085 (as of May 20, 2023); see Rafla-Yuan et al., *Decoupling Crisis Response from Policing—A Step Toward Equitable Psychiatric Emergency Services* (2021) N. Engl. J. Med. 1769, 1769-1771 (describing incidents where people suffering mental health emergencies were seriously injured or killed by law enforcement) (as of May 20, 2023).

[195] Thompson, *Gender, Race, and Mental Illness in the Criminal Justice System* (2020) Corrections & Mental Health, An Update of the Nat. Inst. Of Corrections, pp. 4-5 (as of May 20, 2023); see Schlesinger, *Racial Disparities in Pretrial Diversion: an Analysis of Outcomes Among Men Charged with Felonies and Processed in State Court* (2013) 3 Race and Justice 210, 223, 228 (as of May 20, 2023).

[196] See Prins et al., *Exploring Racial Disparities in The Brief Jail Mental Health Screen* (2012) 39 Crim. Justice Behav. 635 (as of May 21, 2023).

[197] Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (Aug. 2018) Prison Policy Initiative (as of May 21, 2023).

[198] Behavioral health emergencies include emergencies based on mental health and/or substance abuse issues. (Emergency Nurses Association, *Behavioral Health* (as of May 22, 2023).)

[199] The number 988 became operational in July 2022 as the new three-digit number for suicide prevention and mental health crises. (Substance Abuse and Mental Health Services Administration, *988 Appropriations Report* (Dec. 2021) p. 2 (as of May 22, 2023); Silva, *988 Suicide Prevention Hotline Launches Nationwide* (July 14, 2022) NBC News (as of May 22, 2023).)

[200] The U.S. Department of Justice PMHC Toolkit includes the following types of PMHC programs: The Crisis Intervention Teams model (CIT), which involves trained officers and trained call dispatchers collaborating with mental health providers to transport individuals to mental health treatment centers with a "no refusal policy" instead of county jail; the Mobile Crisis Team model, which involves a group of mental health professionals who respond to calls for service at the request of law enforcement officers; a Co-Responder Team model, which partners a specially trained officer with a mental health crisis worker to respond to mental health calls; a Case Management Team model, which involves behavioral health professionals and officers proactively providing outreach and follow-up to individuals who call frequently and often use emergency services; and a "Tailored Approach" where the agency selects elements of the above options for a particular community's needs to build an individualized, robust, end effective program. (Bureau of Justice Assistance, *Police-Mental Health Collaboration (PMHC) Toolkit*, Types of PMHC Programs (as of May 22, 2023); Watson and Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners* (2012) 8 Best Pract. Mental Health 71 (as of May 22, 2023).)

[201] See e.g., Rogers et al., *Effectiveness of Police Crisis Intervention Training Programs* (2019) 47 J. Am. Academy Psychiatry & Law, 414, 418 (as of May 22, 2023); Watson and Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners*, *supra* (stating that research studies indicate that the CIT Model is effective in diverting people with mental health emergencies from jails to treatment settings) (as of May 21, 2023); see also International Association of Chiefs of Police and UC Center for Police Research and Policy, *Assessing the Impact of Co-Responder Team Programs: A Review of Research*, pp. 6-8 (stating that research indicates that co-responder teams are effective in connecting individuals to mental health treatment resources and may result in fewer arrests than regular police intervention) (as of May 22, 2023). Research also indicates that diversion, whether at the initial contact with police or later in the legal process, may be one option for increasing access to and utilization of mental health services: "increasing time in the community, and reducing jail days, without a concomitant increase in arrests, substance use, or psychiatric symptoms." (Broner et al., *Effects of Diversion on Adults with Co-Occurring Mental Illness and Substance Use: Outcomes from a National Multi-Site Study* (2004) 22 Behav. Sci. Law 519, 537 (as of May 22, 2023).)

[202] See, e.g., Bureau of Justice Assistance, *Police-Mental Health Collaboration (PMHC) Toolkit, The Essential Elements of PMHC Programs* (as of May 31, 2023).

[203] See, e.g., Meehan et al., *Do Police–Mental Health Co-Responder Programmes Reduce Emergency Department Presentations or Simply Delay The Inevitable?* (2019) 27 Australasian Psychiatry 18 (assessing co-responder model and concluding that the co-responder model was effective in resolving immediate mental health crises and in diverting individuals away from emergency departments and inpatient facilities) (as of May 22, 2023); see also Waters, *Enlisting Mental Health Workers, Not Cops, In Mobile Crisis Response* (Jun. 2021) Health Affairs (describing successes of programs in several localities that dispatch health crisis workers and emergency medical technicians, instead of police, to people experiencing serious mental health distress).

[204] A study of four mental health courts, two of which were in California, found that participants had lower rearrest rates and fewer incarceration days than the "treatment as usual" group. (California Administrative Office of the Courts, *Mental Health Courts: An Overview* (2012) p. 7 (as of May 22, 2023.) Research also showed that mental health courts effectively link "mentally ill offenders with necessary treatment services," which leads to participants having a "greater likelihood of treatment success and access to housing and critical supports than mentally offenders in traditional court." (*Id.* at p. 5.) Mental health courts helped participants avoid "hospitalizations, rearrests, violence against others, and homelessness." (*Id.* at p. 6.)

[205] See *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 53, 61-63 (holding data collection regarding minority business participation does not violate Proposition 209).

[206] See, e.g., OnTrack Program Resources, *Community Health & Justice Project: Blueprint* (Dec. 2022) p. 12 (discussing recommendations of Sacramento agency-community working group focusing on outcomes for African Americans with mental health issues involved with criminal legal system) (as of May 22, 2023); c.f. Salas and Fiorentini, *Looking Back at the Brad H. Settlement: Has the City Met Its Obligation to Provide Mental Health & Discharge Services in the Jails?* (May 2015) New York City Independent Budget Office, pp. 5-6 (discussing New York City's obligations to provide direct mental health services and discharge planning and case management services to persons in custody at its jails before they are released) (as of May 22, 2023).

[207] OnTrack Program Resources, *Community Health & Justice Project*, *supra*, at pp. 10-11; see Annie E. Casey Foundation, *Reentry: Helping Former Prisoners Return to Communities* (2005) p. 30 (noting successful transition for individuals with mental health needs into the community requires collaboration between community mental health services and correctional facilities before release) (as of May 22, 2023).

[208] Several programs stress the importance of providing a variety of wraparound services to individuals reentering their communities after incarceration. (See, e.g., OnTrack Program Resources, *Community Health & Justice Project*, *supra* at p. 12; see also Pettus-Davis and Kennedy, *Researching and Responding to Barriers to Prisoner Reentry: Early Findings From A Multi-State Trial* (2018) Florida State U. Inst. for Justice Research and Development, p. 5

(describing ongoing process and early lessons of a study of the 5-Key Model, a prisoner reentry model designed by formerly incarcerated individuals, practitioners, and researchers).) The 5-Key Model identifies five considerations necessary for successful reentry programs: healthy thinking patterns; meaningful work trajectories; effective coping strategies; positive social engagement; and positive interpersonal relationships. (*Id*. at p. 6.) Programs based on the 5-Key Model begin reentry preparation "as early as possible during an individual's incarceration and continue the supports in the community after an individuals' release from incarceration." (Florida State U. Inst. for Justice Research and Development, *The 5-Key Model for Reentry* (as of May 22, 2023); see also Bianco, *Op-Ed: An L.A. Program Helps People Get Mental Health Care Instead Of Jail Time. Why Not Expand It?* L.A. Times (July 18, 2022) (noting that ODR programs are effective in "moving people with mental health issues out of jail and onto a path to permanent supportive housing, keeping them off the streets and out of hospitals and incarceration long term") (as of May 22, 2023).)

[209] OnTrack Program Resources, *Community Health & Justice Project*, *supra*, at p. 12.

[210] *Id*. at pp. 11-12.

[211] OnTrack Program Resources, *Community Health & Justice Project*, *supra*, Attachment 8: Agency Stakeholder Key Informant Interview Summary, at pp. 1, 2-3, 7.

[212] See *Connerly, supra,* 92 Cal.App. at 16, 53, 61-63 (holding data collection regarding minority business participation does not violate Proposition 209).

[213] For a more detailed discussion of qualified immunity, see Chapter 20, Policies Addressing Racial Terror, section J, *infra*.

[214] See, e.g, *Cornell v. City and County of San Francisco* (2017) 17 Cal. App.5th 766, 801-04.

[215] *Reese*, *supra*, 888 F.3d at 1036.

[216] *Id*. at 1044-1045.

[217] SB 2 was signed into law, but the elimination of "specific intent" had been amended out of a prior version. (See Cal. Leg. Information, *SB-2 Peace Officers: Certification: Civil Rights* (as of May 22, 2023) (March 11, 2021 version, Civil Code § 52.1(b)(2)).) AB 731 was shelved. (See Cal. Leg. Information, *SB-731 Peace Officers: Certification: Civil Rights* (as of May 22, 2023) (August 25, 2020 version, Civil Code § 52.1(b)(2)).)

[218] See *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818.

[219] Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure* (Sept. 14, 2020) Cato Institute Policy Analysis, at p. 2 (as of May 22, 2023).

[220] *Id*. at p. 1.

[221] *Rogers v. Jarrett* (5th Cir. 2023) 63 F.4th 971, 979 (conc. opn. of Willett, J.); Reinert, *Qualified Immunity's Flawed Foundation* (2023) 111 Cal. L.Rev. 201.

[222] See, e.g., Levine and Wu, *Lawmakers Scrap Qualified Immunity Deal in Police Reform Talks*, Politico (Aug. 17, 2021) (as of May 22, 2023).

CHAPTER 21 — POLICIES ADDRESSING Political Disenfranchisement

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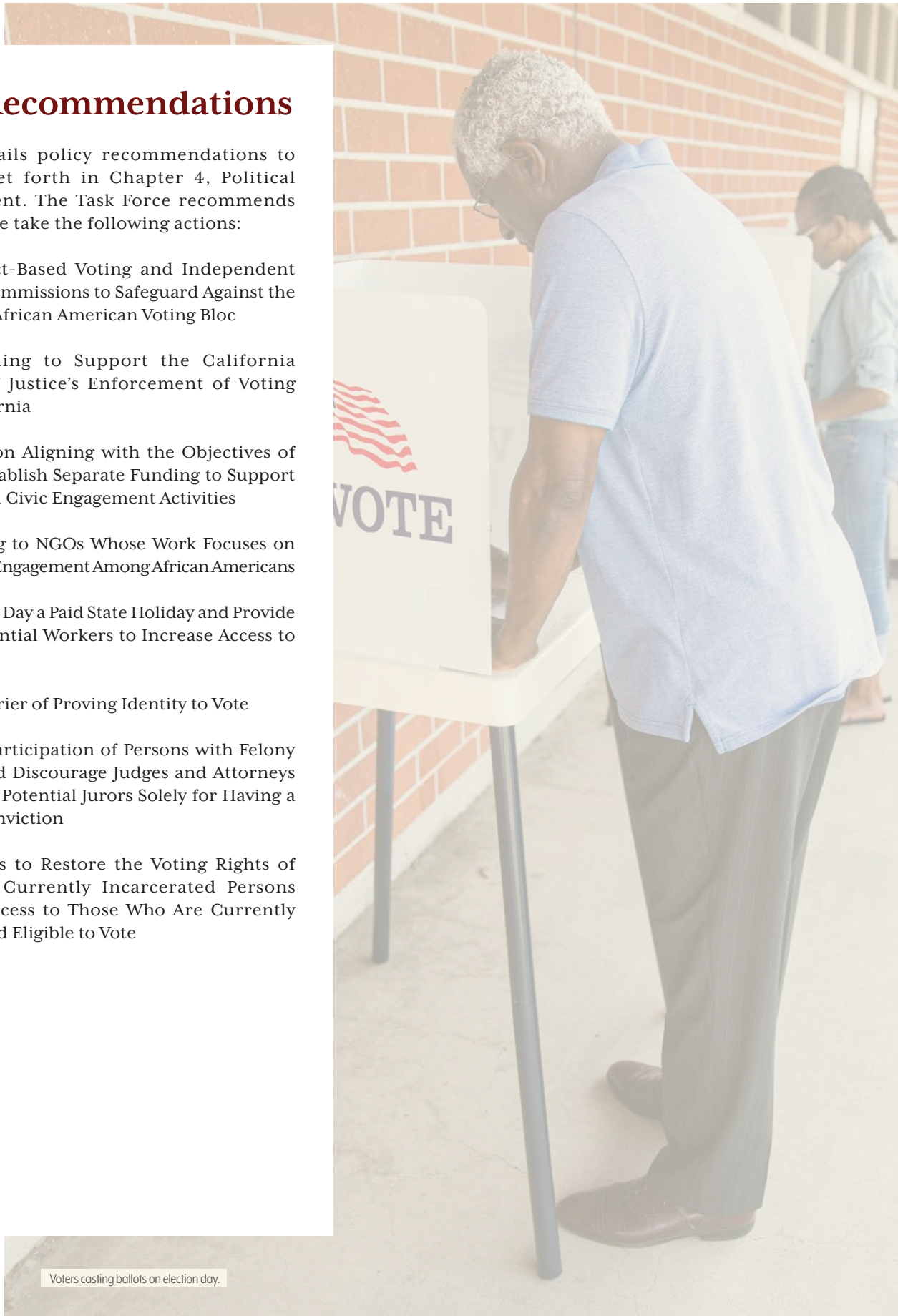


Voters casting ballots on election day.

I. Policy Recommendations

This chapter details policy recommendations to address harms set forth in Chapter 4, Political Disenfranchisement. The Task Force recommends that the Legislature take the following actions:

- Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the African American Voting Bloc
- Increase Funding to Support the California Department of Justice's Enforcement of Voting Rights in California
- Enact Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities
- Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among African Americans
- Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls
- Remove the Barrier of Proving Identity to Vote
- Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction
- Increase Efforts to Restore the Voting Rights of Formerly and Currently Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote

Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the African American Voting Bloc

Political gerrymandering has a disproportionate impact on African American voters. The experience of African American voters, which is documented in Chapter 4, stems from the perception that African American voters pose a threat to the white political establishment, which historically aimed to maintain the racial hierarchy. Researchers have found that the expansion and protection of Black Americans' political rights improved the socioeconomic position of Black Americans and may have created opportunities for Black American workers to move up the economic ladder.[1] The Voting Rights Act (VRA) is a national law that protects African American voters and others against attacks on their freedom to vote and their right to fair representation.[2] One of the law's key enforcement mechanisms, section 2, bans racial discrimination in voting.[3] Because the U.S. Supreme Court weakened other protections offered by the VRA, many states and their political subdivisions have taken the opportunity to pass more discriminatory district maps that unfairly silence the voices of African American voters.[4]

The Voting Rights Act (VRA) is a national law that protects African American voters and others against attacks on their freedom to vote and their right to fair representation.

The California Voting Rights Act of 2001 (CVRA) is the state law that expanded on the federal VRA. The CVRA prohibits an at-large method of election that "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class."[5] Upon a finding of a violation, a court is required to implement appropriate remedies that are tailored to remedy the violation, which could include, among other measures, the imposition of district-based elections.[6] The CVRA helped increase the number of by-district jurisdictions, by making it easier for potential plaintiffs to force at-large-election jurisdictions into by-district elections.[7] To date, over 170 cities and towns, over 300 school and community college districts, and over 50 hospital, fire, airport, water, and other special districts shifted from at-large to by-district elections since the CVRA became law.[8]

At-large voting in particular poses barriers to equal voting. More equitable and representative results are produced when subdivisions elect their officials by district. Independent redistricting commissions put citizens and commissioners in charge of the process, removing politicking and partisan deal making.

In order to address the harms associated with the historical political disenfranchisement of African Americans, the Task Force recommends that the Legislature implement measures to protect the strength of the African American voting bloc by requiring district-based voting, and independent redistricting commissions whose maps have binding effect. These independent redistricting commissions should be comprised of members who are representative of the districts being drawn or redrawn and they should be equipped with resources that are both adequate for their mandate and equal to those afforded to similarly charged commissions. The Task Force recommends that the Legislature take steps to counter political gerrymandering, which has a disproportionately disenfranchising and vote-diluting impact on African American voters. At-large voting in particular poses barriers to equal voting.[9] More equitable and representative results are produced when subdivisions elect their officials by district.[10] Independent redistricting commissions put citizens and commissioners in charge of the process, removing politicking and partisan dealmaking.[11] When the responsibility of drawing district lines is left with incumbents, concerns about gerrymandering arise, and special interests and protecting incumbency may prevail over fair and equal representation. The City of Los Angeles, for example, currently appoints a commission to draw district maps; however, those maps are subject to revision by councilmembers, and attempts to gerrymander certain districts could still occur.[12]

Increase Funding to Support the California Department of Justice's Enforcement of Voting Rights in California

State attorneys general are uniquely positioned to monitor and take action on voting rights concerns within their jurisdictions. Voting rights investigations and

lawsuits, however, are unusually onerous to prepare, sometimes requiring as many as 6,000 hours in staff time combing through registration records in preparation for trial.[13] Moreover, with respect to federal lawsuits, "[e]ven when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration."[14] These concerns, along with the perverse incentive to prolong litigation in these matters, result in relatively few attorneys willing to bring complex voting rights cases, and even fewer attorneys who have an opportunity to develop expertise to litigate these cases well.[15] Consequently, state attorneys general, who have a unique combination of law enforcement and state-level perspective, are better positioned to enforce, monitor, and investigate voting rights claims.[16] This however, does not address the complexity and resources required to undertake this work.

COURTESY OF ROBYN BECK/AFP VIA GETTY IMAGES

A student (picture right) hands in her completed mail-in ballot to a poll worker at a busy polling station on the campus of the University of California, Irvine. (2018)

In order to root out and address the harms associated with the erosion of voting rights of African American voters, the Task Force recommends that the Legislature dedicate funding for the California Attorney General's Office to enforce the California Voting Rights Act and federal voting rights laws. This could include targeting at-large political subdivisions and reviewing efforts to transition to district-based representation where appropriate. This work should also include monitoring and collecting data on racially polarized voting, and publishing racially polarized voting analyses, a key component of demonstrating violations of the federal Voting Rights Act. The publication of racially polarized voting analyses may provide greater clarity about and oversight of sensitive regions and lead to a concentration of resources for areas that are at risk of disenfranchising African American voters. Enforcement by the California Attorney General should seek to determine whether political subdivisions use the drawing or redrawing of district lines to substantially dilute or weaken the political power of African Americans.

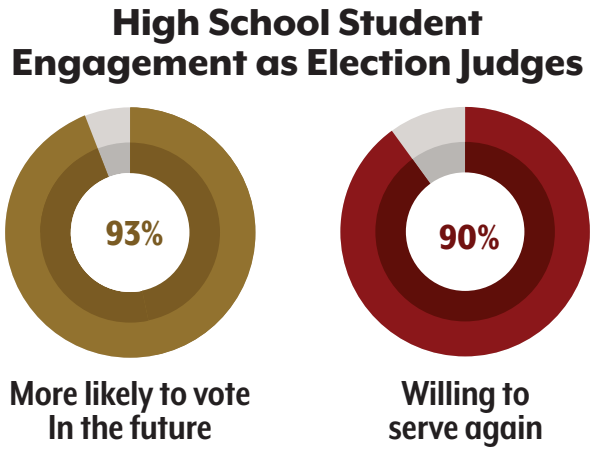
Enact Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities

As discussed in Chapter 4, Political Disenfranchisement, African Americans faced increased threats to their liberty after the end of Reconstruction. Groups like the National Association for the Advancement of Colored People organized and mobilized to assert equal rights, including upholding the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution. To ensure that these efforts are not lost on younger generations, and to cultivate a sense of reverence for the journey of African American political power, the Task Force recommends that the Legislature provide funding and direction to support grants to county registrars of voters for programs that integrate voter registration and preregistration with civic education for high school students, including programs to allow students to serve as election workers, as was intended by Assembly Bill No. 2576.[17] Through this recommendation, the Task Force intends for these programs to be institutionalized through legislation so that there is a long-term and continued commitment to increase the importance of African American civic engagement by creating educational opportunities for young adults. In implementing this recommendation, the Legislature could fulfill the objectives of AB No. 2576 by providing separate funding with the intent to support African Americans, who have historically experienced disproportionate disenfranchisement.

AB No. 2576 would have required the Secretary of State to provide grants to county elections officials or other specified entities for voter registration efforts in counties where voter registration is less than 80 percent of eligible voters.[18] AB No. 2576 would have also required the Secretary of State to make grants for learning and outreach, and to county registrars of voters for

programs that integrate voter registration and preregistration with civic education for high school students, including programs to allow students to serve as election workers. While some of these programs have been implemented under California Secretary of State Dr. Shirley N. Weber, the aim of this recommendation is to institutionalize these programs such that they remain in place irrespective of future changes in administration. The Task Force recommends that the Legislature adopt the grant programs contemplated by AB No. 2576, with a directed focus on school districts and voting precincts whose registered voter populations do not reflect the proportionality of African American populations.

The Task Force recommends amendments to the Education Code and Elections Code, where appropriate, to provide opportunities for high school students to participate in live elections and take part in mock elections and other civic educational opportunities. The Task Force recommends that the Legislature establish a funding stream specifically for schools predominately attended by African Americans or establish annual funding for a broader statewide program. Student surveys for a similar program in Illinois have shown that 93 percent of students reported being more likely to vote in the future, with 90 percent reporting that they would be willing to serve as election judges again in the future.[19]



The Task Force recommends that the Legislature declare Election Day a paid state holiday. The aim of this recommendation is to address the historical barriers to voting, including the financial burdens that disproportionately affect African American voters and limit their ability to access the polls.

Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among African Americans

From Ella Baker to John Lewis, and from the Organization of Colored Ladies to the Student Nonviolent Coordinating Committee, African Americans and African American organizations have long played an important role in organizing, educating, and registering African American voters. To support the initiatives discussed above, the Task Force recommends that the Legislature provide a funding stream for local organizations that focus on increasing civic engagement among African Americans. Nongovernmental organizations in turn could provide support in campaign strategy training, political discourse seminars, and workshops offering support and training for those wishing to organize within their communities. Funding could also support voter education and outreach campaigns in communities of low voter turnout and among youth to establish a pipeline of voter engagement. Selection and oversight of these organizations could be administered by the California American Freedman Affairs Agency, which may review grant proposals and program efficacy.

Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls

The Task Force recommends that the Legislature declare Election Day a paid state holiday. The aim of this recommendation is to address the historical barriers to voting, including the financial burdens that disproportionately affect African American voters and limit their ability to access the polls. While many voters utilize voting by mail, California could use this day to organize state-sponsored events on Election Day to facilitate voting, such as free public transportation and informational bulletins. The Task Force further recommends as a potential expansion of this recommendation that primary elections also be included for holiday consideration. This would recognize the history of excluding African American voters from state primary elections, as discussed in Chapter 4,

Political Disenfranchisement. For political subdivisions that are dominated by a single political party, primary elections often determine who will ultimately hold office.

Further, to increase the impact of making Election Day a paid holiday, the Task Force recommends establishing a funding stream for the publication of voter education materials, such as fact sheets dispelling the myth of widespread voter fraud, and publications disseminating post-election statistics to promote confidence in state elections.

Remove the Barrier of Proving Identity to Vote

Claims of voter fraud have been used to justify laws that suppress African American voting—most prominently, voter identification laws. States disproportionately enforce voter ID laws against African American voters. This is so despite that voter fraud is very rare. Indeed, voter impersonation is virtually nonexistent, and many instances of alleged fraud are, in fact, mistakes by voters or administrators.[20] Voter ID laws have also served as a proxy for disenfranchising non-white voters.[21] With respect to mail-in ballots, the votes of African Americans are often rejected at higher rates than those of white voters.[22]

COURTESY OF LEO PATRIZI VIA GETTY IMAGES

Young woman voting from home for the USA election.

The Task Force recommends that the Legislature direct the undertaking of a study to identify, examine, and address barriers to voter registration that have been enacted in response to myths of voter fraud, such as by documenting the limited availability of DMV services in rural areas and the cost of obtaining identification or supporting documents to prove identity. In most cases, a California voter is not required to show identification to a polling place worker before casting a ballot. However, those voting for the first time after registering to vote by mail and who did not provide a driver's license number, California identification number, or the last four digits of their Social Security number on their registration form may be asked to show a form of identification when going to the polls.[23] Additionally, a voter may have their qualification to vote challenged as not being the person whose name appears on the roster, at which point the voter may be required to affirm their identity to resolve the challenge.[24]

This recommendation seeks to recognize and address the harms in this area with respect to voter identification by cutting off an opportunity for voter disenfranchisement through identification requirements. The Task Force recommends that the Legislature provide African Americans with stipends or fee waivers to obtain government-issued documents such as driver's licenses, identification cards, birth certificates, and passports to meet any voter registration or identification requirement that may be promulgated.

Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction

In California, as of April 2020, the felony arrest rate of African Americans was 3,229 per 100,000 in the population, three and a half times the overall rate.[25] Overall, African Americans remain overrepresented in California's prison population.[26] African American men are imprisoned at a rate 10 times higher than that of white men, while African American women are imprisoned at a rate five times higher than that of white women.[27] Across the United States, one-third of African American men have been convicted of a felony.[28] This data suggests that there may also be an overrepresentation of African Americans who have been excluded from jury service because of their prior felony conviction.

Existing California law now allows those with a prior felony conviction and those who have completed probation and parole to participate in jury service as long as they are not a registered felony sex offender.[29] One aim of this law was to ensure that underrepresented groups, including African Americans, truly have a jury of their peers. While the law in this area restored eligibility for jury service, the aim of this recommendation is to encourage participation in jury service. To accomplish this goal, the Task Force recommends that the Legislature offer guidance to courts about disfavoring the disqualification of jurors based solely on their prior status as an incarcerated individual or a person's general opposition

to the death penalty.[30] This should also include conducting ongoing surveys and analyses of excused jurors to identify trends. The Task Force further recommends that the Legislature implement measures or programs to provide greater support for those serving on juries, including free childcare and transportation during jury duty, and educational materials that highlight the importance of jury duty among African Americans and the implications of not serving on a jury.

The right to vote is fundamental to American citizenship, but our unjust legal system has perpetuated the disenfranchisement of African Americans. That disenfranchisement has left this community at a comparative disadvantage in political representation.

To support this recommendation, the Task Force recommends that the Legislature consider eliminating peremptory challenges altogether, as is the case in Arizona,[31] or encouraging the modification of existing rules to emphasize that a prior felony conviction is an invalid basis for the exercise of a peremptory challenge.

Increase Efforts to Restore the Voting Rights of Formerly and Currently Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote

The right to vote is fundamental to American citizenship, but the unjust legal system has perpetuated the disenfranchisement of African Americans. That disenfranchisement has left this community at a comparative disadvantage in political representation, as discussed in Chapter 4, Political Disenfranchisement. In October 2022, the California Department of Justice issued two Information Bulletins that relate to the voting rights of persons with a criminal history. One Information Bulletin was directed to all local law enforcement agencies in California, detailing the categories of incarcerated individuals who are and are not eligible to vote.[32] Incarcerated individuals in California who are not eligible to vote are those serving time in state or federal prison, or in county jail under prison terms/conditions. Proposition 17 was approved in November 2020 and amended the California Constitution to provide people on parole for felony convictions the right to vote in California.[33] Another Information Bulletin was directed to all county probation departments in California, to ensure access to voting for eligible persons who are under the supervision of probation departments.[34]

In order to begin to correct this aspect of the legacy of an unjust legal system, the Task Force recommends that the Legislature enact legislation to preserve and expand the voting rights of incarcerated individuals. All eligible Californians deserve the right to vote, even those involved in the criminal justice system. Specifically, the Task Force recommends that the Legislature increase efforts to restore the voting rights of persons who have completed their terms or are on parole by increasing access to voter registration and polling precincts. Legislation should require the California Department of Corrections and Rehabilitation (CDCR) to affirmatively provide individuals being released from prison with voter registration information.[35] The Task Force further recommends that the CDCR and Secretary of State receive funding to facilitate voting in correctional settings by either establishing polling sites within correctional facilities or providing access to mail-in voting while incarcerated, consistent with eligibility.[36]

Finally, the Task Force calls on the Legislature to take the re-enfranchisement movement further, and restore voting rights to all incarcerated persons, including those serving state or federal prison terms.

Endnotes

[1] Aneja and Avenancio-Leon, *The Effect of Political Power on Labor Market Inequality: Evidence from the 1965 Voting Rights Act* (Oct. 2020) Wash. Center for Equitable Growth, p. 1 (as of May 11, 2023).

[2] 52 U.S.C. § 10101 et seq.

[3] 52 U.S.C. § 10301.

[4] See *Shelby County, Ala. v. Holder* (2013) 570 U.S. 529, 556-57.

[5] Elec. Code, § 14025 et seq.

[6] Elec. Code, § 14029.

[7] Mounts, *California's Voting Rights Act Continues to Force More Local Governments into By-District Elections* (Sept. 19, 2022) Civic Business J. (as of May 11, 2023).

[8] *Ibid.*

[9] See *Shelby County, Ala. v. Holder, supra,* 570 U.S. at p. 563 (dis. opn. of Ginsburg, J.).

[10] See Vankin, *District vs. At-Large Races: The Final Frontier of Voting Rights* (June 7, 2021) California Local (as of May 11, 2023).

[11] *Independent Redistricting*, Unite America (as of May 11, 2023).

[12] Washington, *What I Learned About Redistricting In LA And Why It Matters* (Oct. 28, 2022) LAist (as of May 11, 2023).

[13] *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 314.

[14] *Ibid.*

[15] Grossman, *The Case For State Attorney General Enforcement of the Voting Rights Act Against Local Governments* (2017) 50 U. Mich. J. Law Reform 565, 592 (as of May 12, 2023).

[16] *Id.* at p. 599.

[17] See Assem. Bill No. 2576, held in Comm. Nov. 30, 2022 (2021-2022 Reg. Sess.).

[18] *Ibid.*

[19] Cook County Clerk's Office, Elections, *High School Student Election Judges* (as of May 12, 2023).

[20] *The Myth of Voter Fraud*, Brennan Center for J. (as of May 12, 2023); see also *Debunking the Voter Fraud Myth* (Jan. 2017) Brennan Center for J. (as of May 12, 2023).

[21] See *Voter ID Laws Discriminate Against Racial and Ethnic Minorities, New Study Reveals* (June 25, 2020) Univ. of Cal., San Diego (citing Hajnal, et al., *A Disproportionate Burden: Strict Voter Identification Laws and Minority Turnout* (June 4, 2020) Politics, Groups, and Identities, 10:1, 126-134) (as of May 12, 2023).

[22] Stiles et al., *Mail-in Ballots Flagged for Rejection Hit 21,000; Black, Latino Voters Rejected at Higher Rate* (Nov. 3, 2020) L.A. Times (as of May 12, 2023).

[23] *What to Bring to Your Polling Place*, Cal. Sect. of State (as of May 12, 2023).

[24] See Elec. Code, § 14240, subd. (a)(1); see also Elec. Code, § 14243.

[25] Lofstrom et al., *Felony Arrests in California* (April 2020) Public Policy Inst. of Cal. (as of May 12, 2023).

[26] Hayes et al., *California's Prison Population* (July 2019) Public Policy Inst. of Cal. (as of May 12, 2023).

[27] *Ibid.*

[28] Trilling, *Number of U.S. Felons Tripled in Three Decades* (Dec. 1, 2017) Harvard Kennedy School Shorenstein Center on Media, Politics, and Public Policy (as of May 12, 2923).

[29] Code Civ. Proc., § 203, subd. (a)(10), (11).

[30] "Disproportionate numbers of Black jurors . . . are excluded from death penalty juries." (Hill and Stull, *The Sinister and Racist Practice Infecting Death Penalty Juries* (Aug. 30, 2022) ACLU (as of May 12, 2023).)

[31] Ariz. R. Crim. P. 18.4, 18.5; Ariz. R. Civ. P. 47(e); *In the Matter of Rules 18.4 and 18.5, Rules of Criminal Procedure and Rule 47(e), of the Arizona Rules of Civil Procedure* (2021) Ariz. Supreme Ct. No. R-21-0020 Order Amending Rules 18.4 and 18.5 of The Rules of Criminal Procedure, and Rule 47(e) of The Rules Of Civil Procedure, filed Aug. 8, 2021.

[32] Cal. Dept. of Justice, *Information Bulletin: Access to Voting for Eligible Persons With a Criminal History or Who are Incarcerated* (Oct. 11, 2022) Bulletin No. 2022-DLE-14.

[33] Cal. Const., art. II, §§ 2, 4.

[34] Cal. Dept. of Justice, *Information Bulletin: Access to Voting for Eligible Persons Under the Supervision of Probation Departments* (Oct. 11, 2022) Bulletin No. 2022-DLE-15.

[35] See Elec. Code, § 2105.5 (requiring posting a hyperlink on the CDCR and county probation department websites, and physical notices at probation and parole offices with information for the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found).

[36] See, e.g., ACLU of Northern California et al., *Voting in California Jails: A Community Toolkit* (2021) (as of May 12, 2023).

CHAPTER 22 — POLICIES ADDRESSING Housing Segregation & Unjust Property Takings

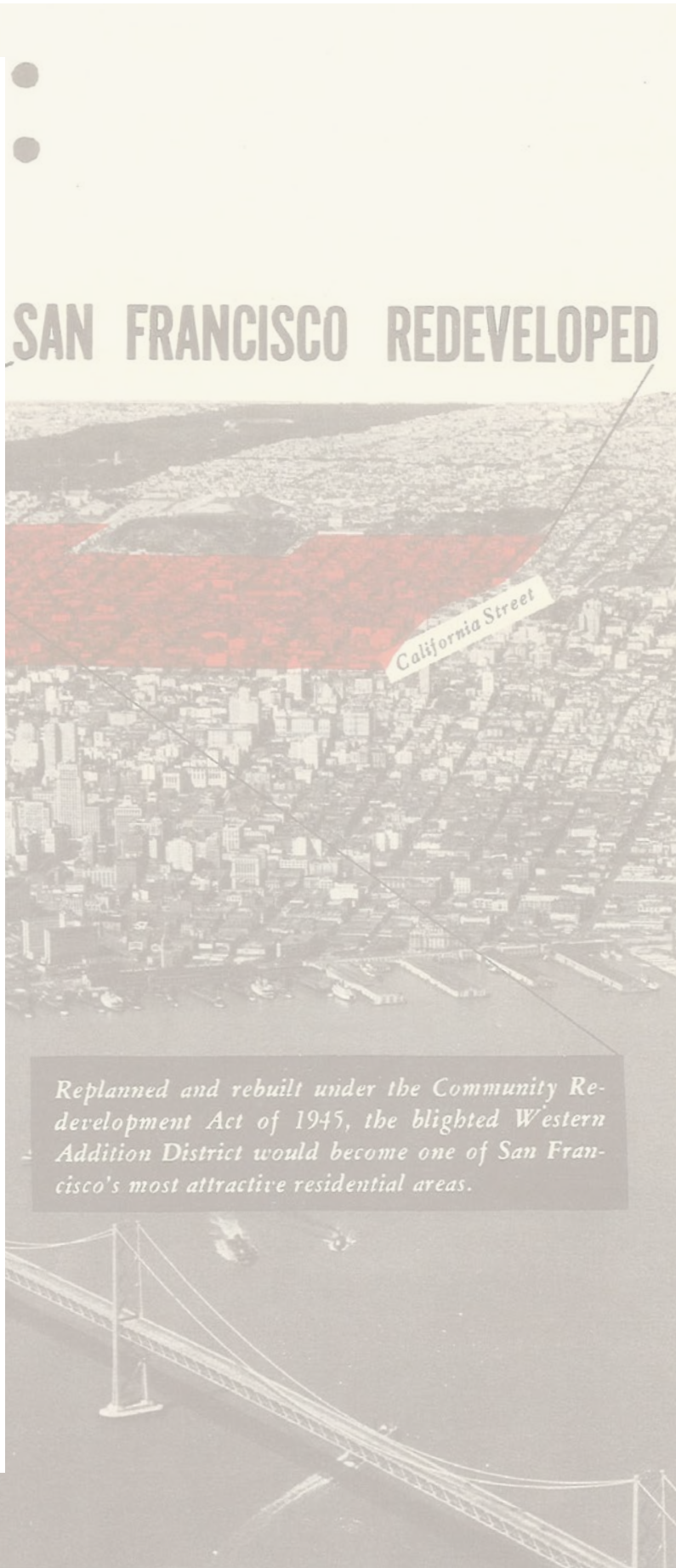
COURTESY OF ERICA FISCHER VIA CREATIVE COMMONS

I. Policy Recommendations

This chapter details the policy proposals to address the harms set forth in Chapter 5, Housing Segregation.

Prioritize Responsible Development in Communities and Housing Development

- Enact Policies Overhauling the Housing Industrial Complex
- Collect Data on Housing Discrimination
- Provide Anti-Racism Training to Workers in the Housing Field
- Expand Grant Funding to Community-Based Organizations to Increase Home Ownership
- Provide Property Tax Relief to African Americans, Especially Descendants, Living in Formerly Redlined Neighborhoods, Who Purchase or Construct a New Home
- Provide Direct Financial Assistance to Increase Home Ownership Among African Americans, Especially Descendants, Through Shared Appreciation Loans and Subsidized Down Payments, Mortgages, and Homeowner's Insurance
- Require State Review and Approval of All Residential Land Use Ordinances Enacted by Historically and Currently Segregated Cities and Counties
- Repeal Crime-Free Housing Policies
- Increase Affordable Housing for African American Californians
- Provide Restitution for Racially Motivated Takings
- Provide a Right to Return for Displaced African American Californians



New City: San Francisco Redeveloped (1947)

Prioritize Responsible Development in Communities and Housing Development

The Task Force recommends the Legislature prioritize responsible development by enacting statewide "Responsible Development" standards to require new developments to enhance the surrounding contributing resources (e.g., prioritize a medical facility instead of a coffee shop), improve overall environmental quality, and advance climate justice. These standards should lead to the development of more hospitals, community-based mental health facilities, urgent care medical training programs, and first responder ambulance services in neighborhoods significantly populated by African Americans, especially those who are descendants of enslaved persons. This expanded public health infrastructure should be staffed with culturally competent providers. The Legislature should also support community-based programs and research groups that use the "housing first" and harm reduction models to work with chronically homeless-dually diagnosed populations suffering from mental illness and addiction due to self-medication. A "housing first" approach prioritizes providing permanent housing, therefore addressing people's basic needs before attending to less critical needs like securing a job, budgeting properly, or attending to substance use issues.[1] Harm reduction models aim to reduce the negative consequences of drug use and include strategies such as safer use, managed use, abstinence, meeting people who use drugs "where they're at," and addressing conditions of use along with the use itself.[2] Harm reduction strategies are tailored to meet individual and community needs.[3]

In tandem with "housing first" programming, the Legislature should fund mobile crisis units staffed with psychiatric experts to assist chronically unhoused people in lieu of criminalizing homelessness. Mobile crisis teams are often managed by community mental health organizations, hospitals, or government agencies, such as a health department, and provide a range of comprehensive crises services such as administering medication, referring people to additional treatment, and providing follow-up support.[4]

Enact Policies Overhauling the Housing Industrial Complex

As discussed in Chapter 5, the persisting harms of housing segregation include more than just the discrimination by those who directly own or sell homes. These persisting harms include the discrimination by many other entities that play a role in housing—from landlords to property developers to banks and financial institutions. To address this historical and ongoing discrimination among these other parties that play a role in housing—what the Task Force refers to as the housing industrial complex[5]—the Task Force recommends the Legislature adopt several measures.

First, the Task Force recommends the Legislature fund increased enforcement of laws requiring landlords to accept housing vouchers (such as federal Section 8 housing vouchers). In 2020, the Legislature amended the Fair Employment and Housing Act to include people using a federal, state, or local housing subsidy as a group protected from housing discrimination,[6] as landlords had long discriminated against those receiving housing subsidies as an often thinly-masked form of discrimination against African Americans.[7] One study sponsored by California's Civil Rights Department found that nearly half of Los Angeles County properties tested in 2022 "showed evidence of unlawful discrimination."[8] Housing advocates have called for greater enforcement of laws prohibiting discrimination against those receiving housing subsidies,[9] and the Task Force recommends that the Legislature adequately fund sufficient positions to enforce this anti-discrimination provision.

Second, the Task Force recommends the Legislature further protect African American tenants by implementing rent caps—not just rent control—for historically redlined ZIP codes; the Task Force recommends that the Legislature prohibit increased rents for units that are either run-down or that have not been improved, to prevent landlords from raising rents on units simply because the market rate has increased.[10]

The state's Civil Rights Department, for instance, found that nearly half of Los Angeles County properties tested in 2022 "showed evidence of unlawful discrimination."

Third, the Task Force recommends the Legislature provide funding for developers, land trusts, and community-based organizations for affordable housing operated by or serving African Americans, especially descendants of persons enslaved in the United States. Land trusts, for instance, provided a model of shared-equity homeownership that emerged during the civil rights movement to combat housing discrimination, and originated in efforts by African American farmers in the South to combat discrimination and eviction.[11] The Task Force recommends that the Legislature first fund studies documenting the

substantial evidence of discrimination and disparities in housing, to provide justification for such funding.

Fourth, the Task Force recommends the Legislature provide for a private right of action (or immediate action) against banks and private entities that knowingly or purposefully appraise African American-owned homes at lower values, a discriminatory practice that persists to this day in California, as homeowner Paul Austin relayed in his testimony before the Task Force.[12]

The Legislature should also require governments to collect and make transparent quantitative data and statistics on housing disparity.

Fifth, the Task Force recommends the Legislature provide compensation to redress the discriminatory harms eligible individuals experience from other predatory housing industrial complex issues—such as having to pay higher costs on insurance—due to race or other contributing factors.

Collect Data on Housing Discrimination

The Task Force recommends the Legislature collect data on housing discrimination by providing community-based organizations (CBOs) with resources and fund capacity to collect anecdotal (qualitative) data of stories about ongoing housing discrimination and to conduct focus groups.

The Legislature should also require local governments to collect and make transparent quantitative data and statistics on housing disparities. This data should be racially-disaggregated data, including, where possible, identifying those who are descendants of persons enslaved in the United States. Finally, the Legislature should provide resources to CBOs and subject matter experts to periodically analyze the data and make recommendations for the remediation of continuing disparities exposed by the data.

Provide Anti-Racism Training to Workers in the Housing Field

The Task Force recommends that the Legislature provide resources to community-based organizations with subject matter expertise in equity, cultural competence, and bias elimination to establish Diversity, Equity, and Inclusion (DEI) certification programs for affordable housing contractors, providers, and decision makers. The Legislature should also fund housing-focused anti-racism education programs and communications to help communities move away from the NIMBY (Not in My Back Yard) mentality to the reparatory justice mentality of redressing past harms due to state action.

Expand Grant Funding to Community-Based Organizations to Increase Home Ownership

Discriminatory policies, including redlining, have produced persistent and longstanding housing segregation and inequities in home ownership in California.[13] Between 1934 and 1962, the federal government issued $120 billion in home loans, 98 percent of which went to white people.[14] Between 1946 and 1960 in Northern California, African Americans received less than one percent of Federal Housing Authority loans.[15] By ensuring that funds flowed almost entirely to white Californians, the state has enabled discriminatory policies that produce persisting inequities today: in 2019, the percentage of African American Californians who owned homes was lower than the percentage of African American Californians who did so in the 1960s, when express forms of housing discrimination were legal.[16]

To address housing discrimination, the Task Force recommends providing hyper-local grants or contracts to community-based organizations that focus primarily on providing financial and homeownership assistance to African Americans, with funds reserved for those who are descendants of enslaved persons. This recommendation should include specific grant criteria or changes to existing local ordinances to ensure that community-based organizations—rather than government entities, for example—are the recipients of grants. This grant program will also facilitate a process for community-based organizations to buy property in historically African American neighborhoods and create gathering spaces to act as a bulwark against African American pushout and displacement.

Additionally, the Task Force recommends the Legislature (or administering agency) impose transparency and quality control mechanisms on these grants and contracts, including, for example, reporting requirements to assess whether the funds are being spent as intended. The Legislature should also allocate funding for disparity studies of public contracts and grants to community-based organizations seeking to provide financial aid (and other assistance) to increase homeownership among African Americans in California.

If the Legislature enacts this proposal, the Legislature will need to identify a state agency that will administer the grants—likely the Housing Finance Agency or

Housing Community Development Agency[17]—and the Legislature should define eligibility criteria for the recipient community-based organizations.

Provide Property Tax Relief to African Americans, Especially Descendants, Living in Formerly Redlined Neighborhoods, Who Purchase or Construct a New Home

To address housing discrimination, the Task Force recommends providing property tax relief by allowing descendants who reside in formerly redlined neighborhoods to transfer the assessed value of their primary home to a newly purchased or constructed primary residence. If the Legislature enacts these property tax cuts, it should also consider accompanying proposals that would supplement any public school funding that would be lost from the reduced tax revenue.

Such a proposal follows the model of Proposition 19, which amended the California Constitution to provide property tax relief to Californians who are severely disabled, victims of wildfires, or over the age of 55 when purchasing or constructing a new home.[18] Under Proposition 19, such individuals who purchase or construct a new home in California "may transfer the taxable value of their primary residence to a replacement primary residence located anywhere in this state, regardless of the location or value of the replacement primary residence[.]"[19] A similar policy created for African Americans, especially those who are descendants of a person enslaved in the United States, in formerly redlined neighborhoods would counteract the property tax barriers that have reinforced existing patterns of housing segregation.

Other jurisdictions, like the City of Evanston, Illinois, have also offered down payment and mortgage assistance as part of their reparatory program.

Provide Direct Financial Assistance to Increase Home Ownership Among African Americans, Especially Descendants, Through Shared Appreciation Loans and Subsidized Down Payments, Mortgages, and Homeowner's Insurance

As another proposal to address housing discrimination, the Task Force recommends providing financial aid to African Americans, with funds reserved for those who can demonstrate that they are the descendants of a person enslaved in the United States, who reside in formerly redlined neighborhoods to enable them to become homeowners by: (1) providing them shared appreciation loans for the purchase of homes anywhere in the state,[20] with subsidized down payments; and (2) subsidizing mortgage payments and homeowner's insurance fees. Shared appreciation loans could follow the model of the existing California Dream for All Shared Appreciation Loan Program, which seeks to increase homeownership among low- and moderate-income homebuyers, generally.[21] Other jurisdictions, like the City of Evanston, Illinois, have also offered down payment and mortgage assistance as part of their reparatory program.[22]

Alternatively, the Legislature could provide such financial aid to those currently living in or seeking to move to formerly redlined neighborhoods, but further limit eligibility to first time homeowners or those who do not currently own a house to maximize home ownership and focus on those most in need. The Legislature could also consider an alternative approach, and provide such financial aid to any California African American, with funds reserved specifically for those who are descendants of an enslaved person, to broaden the eligible recipients of such aid.

To the extent the state subsidizes down payments or homeowner's insurance, rather than providing the money to the eligible Californian, the state should disburse the funds to the closing agent when an applicant closes on a home purchase; to the lender for a mortgage payment; or to the insurance company for a homeowner's insurance payment. Doing so would ensure maximum use of the subsidy to aid home ownership, as otherwise portions of the subsidy would become taxable income.[23]

Require State Review and Approval of All Residential Land Use Ordinances Enacted by Historically and Currently Segregated Cities and Counties

Residential zoning ordinances have been used for decades in California to prevent African Americans from moving into neighborhoods, thereby maintaining residential segregation.[24] Various laws were also used to restrict additional housing from being built, effectively shutting out African Americans.[25]

To address local zoning laws that reinforce and recreate this systemic housing segregation, the Task Force recommends that the Legislature: (1) identify California cities and counties that have historically redlined

neighborhoods and whose current levels of residential racial segregation are statistically similar to the degree of segregation in that city or county when it was redlined;[26] (2) require identified cities and counties to submit all residential land use ordinances for review and approval by a state agency, with the agency rejecting (or requiring modification of) the ordinance if the agency finds that the proposed ordinance will maintain or exacerbate levels of residential racial segregation;[27] and (3) remove this process of additional review and approval for identified cities or counties if the city or county eliminates a certain degree of housing segregation in its geographic territory.

Scholars have found that similar efforts by California to influence localities' residential zoning decisions—through state supervisory authority—have had some beneficial effects. In 1991, only 19 percent of California jurisdictions had a Housing and Community Development-approved housing element in place;[28] in May 2023, about 73 percent of California jurisdictions had a Housing and Community Development-approved housing element.[29]

As an alternative to state review and approval of ordinances in the localities described above, the state could adopt a post-hoc approach by creating an administrative appeal board to review challenges to developmental permitting decisions or zoning laws and reversing the denial of a development permit if the underlying zoning requirement is deemed to maintain or reinforce residential racial segregation.

COURTESY OF FOTOSEARCH VIA GETTY IMAGES

A Photograph of a Black male looking at a sign on a plot of land saying 'This Tract is Exclusive and Restricted.' (c. 1920)

Repeal Crime-Free Housing Policies

Crime-free housing policies have proliferated across California as part of a national trend adopted by landlords and public housing authorities to ban renting to individuals with a criminal history, incorporate crime-free addendums into their lease agreements to facilitate evictions, and evict tenants who allegedly commit crimes or drug-related activities.[30] Alongside crime-free housing policies, municipalities have often adopted chronic nuisance ordinances, which classify certain tenant activities like excessive noise or contact with the local police department as a nuisance and encourage or require landlords to evict tenants who engage in those activities.[31] The result of these policies and ordinances is a disproportionally negative effect on people of color and heightened racial segregation in housing.[32] According to the Los Angeles Times's analysis of eviction data for Los Angeles, Long Beach, Oakland, and Sacramento, four of California's largest cities, nearly 80 percent of those targeted for eviction under crime-free housing ordinances from 2015 through 2019 were not white.[33] In Oakland, African American tenants faced eviction under these policies at twice their share of the city's renter population.[34]

Nearly **80%** of people targeted for eviction under crime-free housing ordinances from 2015-2019 were **not white**

The Task Force recommends that the Legislature require jurisdictions to review and modify or repeal any crime-free housing policies that result in disparate impacts on African Americans or otherwise violate state or federal fair housing laws. The Legislature should also limit the scope of crimes and associations with criminal activity that qualify for eviction and require landlords to use look-back periods and individualized assessments of relevant mitigating factors like post-conviction rental history, nature of underlying conduct, age of the conviction, age at the time of conviction, and general post-conviction record when reviewing evictions. Landlords should be prohibited from evicting tenants based on any of the following:

- A previous arrest that did not result in a conviction;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, sealed, vacated, pardoned, or otherwise rendered inoperative, including under sections 1203.4, 1203.4a, or 1203.41 of the Penal Code, or for which a certificate of rehabilitation has been granted pursuant to Chapter 3.5

(commencing with section 4852.01) of title 6 of part 3 of the Penal Code;

- A determination or adjudication in the juvenile justice system or information regarding a matter considered in or processed through the juvenile justice system;
- Information pertaining to a conviction, if consideration of that conviction would violate section 12269 of title 2 of the California Code of Regulations,[35] or any successor to that regulation, as it reads on the date of the application for rental housing accommodations;
- A conviction that is not directly related to one or more substantial, legitimate, nondiscriminatory purposes that support the owner's business interests. In determining whether a criminal conviction is directly related, a practice should include consideration of the nature and severity of the crime and the amount of time that has passed since the criminal conduct occurred;
- Information pertaining to a conviction that occurred more than seven years before the date of the conviction; or
- Information indicating that an individual has been questioned, apprehended, taken into custody, detained, or held for investigation by a law enforcement, police, military, or prosecutorial agency.[36]

Assembly Bill No. 2383 (AB 2383), which was introduced in 2022 and passed all policy committees in both houses before being stopped by the Senate Appropriations Committee, would have prohibited landlords from inquiring about an applicant's criminal record during the initial phase of the rental application.[37] The bill additionally would have completely banned inquiries into certain types of criminal records, such as arrests that did not result in a conviction, juvenile records, and convictions that were dismissed or expunged.38 AB 2383 would have replicated existing protections for job seekers, but applied them in a housing context. The Task Force recommends that the would-be protections for housing applicants proposed in AB 2383 should be extended to protect prospective renters as well as existing tenants.

Finally, the Task Force recommends the Legislature make affordable housing a fundamental right that entitles a tenant to legal representation in eviction proceedings.

Increase Affordable Housing for African American Californians

Throughout California's history, state and local governments displaced African American residents through various housing policies and prevented them from obtaining access to sufficient funds or credit to purchase a home.[39] As a result, African American Californians are more likely to rent than own their homes, and because home ownership has traditionally been a key means of wealth building, they cultivate less intergenerational wealth.[40] Building out affordable housing in areas of high poverty or high segregation can facilitate racial and economic residential integration.[41] Along with other policies addressing structural and systemic inequities, affordable housing can also help bridge the racial wealth gap. The Task Force recommends the Legislature increase affordable housing for African Americans in California by requiring housing built pursuant to the Regional Housing Needs Allocation (RHNA) process to explicitly advance racial equity and address these housing needs.

Black Californians are more likely to rent than own their homes, and thus own less assets and cultivate less intergenerational wealth.

The California Housing and Community Development Department (HCD) issues a Regional Housing Needs Determination to each regional council of governments (COGs) in the state that requires the region to meet the housing needs of everyone in the community.[42] The COGs then determine how much housing is needed in each city for each income category and develops the RHNA and a Regional Housing Needs Plan.[43] The RHNA establishes the total number of housing units that each city and county must plan for in an eight-year planning period.[44] Cities and counties then update the housing elements of their general plans to account for how the city and/or county will grow and develop.[45] This involves zoning land to accommodate the region's housing needs, identifying sites suitable for housing development, and issuing the quantity of housing permits that match their respective RHNA.[46]

The housing element of the city's general plan requires a fair housing assessment.[47] This analysis must include each of the fair housing issue areas: (1) segregation and integration; (2) racially and ethnically concentrated areas of poverty (R/ECAPs); (3) access to opportunity; and (4) disproportionate housing needs, including displacement.[48] Cities and counties have discretion to develop their own

RHNA methodology that furthers the RHNA objectives, including affirmatively promoting fair housing.[49] COGs must affirmatively further fair housing by "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[50]

The Task Force recommends the Legislature: (1) require the RHNA objectives to be implemented in a race-conscious way that includes tangible goals and realistic targets for compliance; (2) enforce RHNA objectives and withhold funding streams if racial equity goals/targets are not met; (3) incorporate the housing needs of descendants as a factor in RHNA methodology; (4) redefine what qualifies as affordable housing by readjusting area median income limits for state subsidies, or, for example, redefine based on federal poverty guidelines; and (5) ensure that the construction of affordable housing is accompanied by adequate renter protections to prevent gentrification and displacement by requiring regional councils of government to make funding for new development projects conditional upon protecting existing renters.

Provide Restitution for Racially Motivated Takings

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.[51] As a result, the construction of public infrastructure disproportionately displaced and fractured African American communities.[52] One example of many discriminatory eminent domain takings is the construction of the Century Freeway in Los Angeles, which dislocated 3,550 families, 117 businesses, and numerous parks, schools, and churches, mainly in the African American neighborhoods of Watts and Willowbrook, in 1968.[53] Other examples of unjust takings include, but are not limited to, the 210 Freeway construction in Pasadena,[54] construction of the 10 Freeway in Santa Monica,[55] construction of Interstate 980 in Oakland,[56] construction of Interstate 5 in San Diego,[57] Burgess family land in Coloma that now comprises the Marshall Gold Discovery State Historic Park,[58] Bruce's Beach in Manhattan Beach,[59] Russell City in Alameda County,[60] the Fillmore District and Western Addition in San Francisco,[61] Sugar Hill in Los Angeles,[62] and Section 14 in Palm Springs.[63]

The Task Force recommends the Legislature restore property taken during race-based uses of eminent domain to its original owners or provide another effective remedy where appropriate, such as restitution or compensation. To effectuate this idea, the Legislature should create and fund an agency, or utilize the California African American Freedman Affairs Agency proposed by the Task Force, to: (1) research and document California state properties acquired as a result of racially-motivated eminent domain; (2) create a database of property ownership in the state; (3) review and investigate public complaints from people who claim their property was taken without just compensation; (4) distribute just compensation for the fair market value, adjusted for property price appreciation, of the property at the time of the taking; and (5) develop and implement a public education campaign regarding the cycle of gentrification, displacement and exclusion, the connection between redlining and gentrification, and the history of discriminatory urban planning in California.

The enactment of Senate Bill No. 796 (SB 796) in 2021 to transfer "Bruce's Beach," an African American-owned beach resort, back to its former owners is an example of this policy proposal in action. In 1924, the Manhattan Beach Board of Trustees voted to condemn Bruce's Beach through the power of eminent domain with the intention of bringing an end to a successful African American business and to thwart other African Americans from settling in or developing businesses in Manhattan Beach.[64] The Bruce family was forcibly removed, preventing generational wealth accumulation. SB 796 amended the necessary deed provisions and tax code to facilitate the return of the public land to the Bruce family.

Regulation of the realty market can only be effective if the necessary information is publically available.

Assembly Bill No. 889 (AB 889), which was introduced in 2021 and passed by the State Assembly, but failed in the Senate Judiciary Committee, would have required beneficial owner transparency for rental properties that are owned by LLCs and thus evade disclosure requirements by not revealing the true owners on the deed.[65] Passing the disclosure requirements of AB 889 would help facilitate the identification of current property ownership to include in the database of state property ownership to be developed by this proposal.

Provide a Right to Return for Displaced African American Californians

Throughout the 1900s, California state and local government agencies targeted majority-African American communities for urban renewal projects.[66] Racially restrictive covenants simultaneously worked to segregate neighborhoods and prevent African American property ownership in white communities.[67] State-sanctioned violence and racial terror reinforced and exacerbated the exile of African American residents from their communities.[68] Redevelopment projects continue to displace African American residents in gentrifying neighborhoods today, perpetuating housing segregation harms.[69]

In response to displacement caused by redevelopment, the California Legislature codified a right for low- and moderate-income families to return to low- and moderate-income housing units in the redeveloped project area as part of the Community Redevelopment Law (CRL) of 1951.[70] Cities have also developed their own eligibility programs for providing displaced persons and businesses preference in rental housing, home ownership, and business opportunities at the redeveloped sites.[71]

The Task Force recommends the Legislature enact measures to support a right to return for those displaced by agency action, restrictive covenants, and racial terror that drove African Americans from their homes as described in Chapter 3. The right to return should give the victims of these purges and their descendants preference in renting or owning property in and around the area of redevelopment. The right to return should extend to all agency-assisted housing and business opportunities in the redevelopment project area.[72]

The Task Force also recommends the Legislature give preference in rental housing, home ownership, and business opportunities for those who were displaced or excluded from renting or owning property in agency-assisted housing and business opportunities developed in or adjacent to communities formerly covered by restrictive covenants. This preference extends to all agency-assisted housing and business opportunities in the redevelopment project area formerly covered by a restrictive covenant. This preference should extend to the families and descendants of persons displaced by agency-assisted redevelopment.

Endnotes

[1] National Alliance to End Homelessness, *Housing First* (Mar. 20, 2022, updated Aug. 2022) (as of May 11, 2023).

[2] National Harm Reduction Coalition, *Principles of Harm Reduction* (as of May 11, 2023).

[3] *Ibid.*

[4] Thomas, *How to Successfully Implement a Mobile Crisis Team* (Apr. 2021) Justice Center, Council of State Governments (as of May 11, 2023).

[5] The housing industrial complex refers to the system of public-private partnerships built around housing development that have become entrenched in society and difficult to reform. Many of these partnerships and resulting polices have been harmful to and racist against African Americans. (See Husock, *The Time the Federal Government Built a Flawed Housing Project and Tore It Down 20 Years Later* (Mar. 16, 2022) Reason (as of Apr. 11, 2023).)

[6] See Dept. of Fair Employment and Housing, *Source of Income FAQ* (Feb. 2020) (as of May 15, 2023). The Department of Fair Employment and Housing was renamed the Civil Rights Department in July 2022. (Civil Rights Department, *About CRD* (as of May 18, 2023).)

[7] See, e.g., Khouri, *For First Time, California Civil Rights Officials File Lawsuit Alleging Section 8 Discrimination*, L.A. Times (Jan. 5, 2023) (as of May 16, 2023) (alleging that landlord rejected housing applicant with a Section 8 voucher as a "government leech[]" and called the tenant the "N-word").

[8] Khouri, *California Outlawed Section 8 Housing Discrimination. Why it Still Persists*, L.A. Times (Nov. 19, 2022) (as of May 16, 2023).

[9] *Ibid.*

[10] See Desmond, *Why Poverty Persists in America*, N.Y. Times (Mar. 9, 2023, updated Apr. 3, 2023) (as of May 16, 2023) (observing how "rents have jumped even in cities with plenty of apartments to go around," with a particular effect on "poor Black families"); see also Desmond and Wilmers, *Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets* (Jan. 2019) 124 Am. J. Soc. 1090, 1092 (documenting "higher levels of renter exploitation in poor neighborhoods" and that "[l]andlords operating in those neighborhoods also enjoy higher profits") (as of May 16, 2023).

[11] Weekly, *How Community Land Trusts Can Advance Black Homeownership* (Apr. 27, 2022) Federal Reserve Bank of St. Louis (as of May 16, 2023).

[12] California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021), *Testimony of Paul Austin* (as of May 16, 2023).

[13] See generally Chapter 5, Housing Segregation.

[14] Adelman, Real Life/Affirmative Action for Whites/The Houses that Racism Built, SF Gate (Jun. 29, 2003) (as of Nov. 23, 2022).

[15] Chapter 5, Housing Segregation.

[16] Cal. Housing Finance Agency, *Black Homeownership Initiative: Building Black Wealth* (as of May 17, 2023).

[17] Cf., e.g., Cal. Housing Finance Agency, *California Dream For All Shared Appreciation Loan* (as of May 17, 2023) (describing mortgage products "offered through private loan officers who have been approved and trained by our [a]gency").

[18] Cal. Const., art. XIII A, § 2.1, added by initiative, Gen. Elec. (Nov. 3, 2020).

[19] Cal. Const., art. XIII A, § 2.1, subd. (b), par. (1).

[20] In California, a shared appreciation loan (or mortgage) is one with a fixed interest rate set below prevailing market rates, where the borrower eventually pays a percentage of the appreciation of the home's value to the lender. (See Friend, *Shared Appreciation Mortgages* (1982) 34 Hastings L.J. 329, 339.)

[21] See Health & Saf. Code, § 51520 et seq.; see also Cal. Housing Finance Agency, *California Dream for All Shared Appreciation Loan Program* (as of May 17, 2023).

[22] See City of Evanston, Ill., *Local Reparations: Restorative Housing Program Official Program Guidelines* (Mar. 22, 2021) (as of May 17, 2023).

[23] Cf. City of Evanston, Ill., *Local Reparations* (explaining in its FAQ that direct payments to recipients of reparations would be subject to taxation). Though the state could exempt reparations subsidies from state taxes, it is not be able to exempt the subsidy from federal income taxes.

[24] See, e.g., Chapter 5, Housing Segregation; Taylor, Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility (2014) pp. 152-155; see also Baldassari and Solomon, *The Racist History of Single-Family Home Zoning*, KQED (Oct. 5, 2020) (as of May 17, 2023).

[25] See, e.g., Smith, *California Still Highly Segregated by Race Despite Growing Diversity, Research Shows*, L.A. Times (June 28, 2021) (as of May 20, 2023); National Low Income Housing Coalition, *California Legislature Passes Bills to Limit Exclusionary Zoning and Increase Density* (Sept. 13, 2021) (as of May 20, 2023).

[26] For example, the state could use the methodology the Brookings Institution used to compare racial segregation in formerly redlined cities to levels of racial segregation in those cities today. (See Perry and Harshbarger, *America's Formerly Redlined Neighborhoods Have Changed, and So Must Solutions to Rectify Them* (Oct. 14, 2019) Brookings Institution (as of May 17, 2023).) The Department of Housing and Community Development also has, among its publicly available data tools, an "Affirmatively Furthering Fair Housing Data Viewer," which includes data concerning segregation and integration. (See Cal. Dept. of Housing and Community Development, *AFFH Data and Mapping Resources* (as of May 17, 2023).)

[27] The reviewing agency could be either the Department of Housing and Community Development, the Civil Rights Department, the Department

of Justice, or some form of joint-partnership between these agencies.

[28] Lewis, *California's Housing Element Law: The Issue of Local Noncompliance* (2003) Pub. Policy Institute of Cal., pp. 21–22 (as of May 17, 2023) (19% were compliant in 1991, 37% by 1993, and 52% by 1995).

[29] Cal. Dept. of Housing and Community Development, *Housing Element Review and Compliance Report* (as of May 31, 2023).

[30] See Dillon et al., *Black and Latino Renters Face Eviction, Exclusion amid Police Crackdowns in California*, L.A. Times (Nov. 19, 2020) (as of May 17, 2023). In this Chapter, crime-free housing policies refer to both crime-free housing ordinances and crime-free housing programs. For a discussion on crime-free rental housing ordinances, see Werth, *The Cast of Being "Crime Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (2013) Sargent Shriver National Center on Poverty Law, pp. 2-4 (as of May 17, 2023).

[31] See NYCLU and ACLU, *More than a Nuisance: The Outsized Consequences of New York's Nuisance Ordinances* (Aug. 2018) p. 6 (as of May 18, 2023).

[32] Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances* (2019) 118 Mich. L. Rev. 173, 207-215 (as of May 18, 2023).

[33] Dillon et al., *Black and Latino Renters Face Eviction, Exclusion Amid Police Crackdowns in California*, L.A. Times (Nov. 19, 2020) (as of May 18, 2023).

[34] *Ibid.*

[35] This section of the California Code of Regulations lists unlawful uses and practices related to criminal history information.

[36] This list is based on Assembly Bill No. 2383 (2021-2022 Reg. Sess.) § 2.

[37] California Assembly Bill No. 2383 (2021-2022 Reg. Sess.).

[38] *Ibid.*

[39] See Chapter 5, Housing Segregation.

[40] See Desilver, *As National Eviction Ban Expires, A Look at Who Rents and Who Owns in the U.S.* (Aug. 2, 2021) Pew Research Center (as of May 18, 2023).

[41] Menendian et al., *Racial Segregation in the San Francisco Bay Area, Part 5: Remedies, Solutions, and Targets* (Aug. 11, 2020) Othering & Belonging Institute (as of May 18, 2023).

[42] California Department of Housing and Community Development, *Regional Housing Needs Allocation (RHNA)* (as of May 18, 2023).

[43] See, e.g., Casparis, *Sacramento County Housing Element Update Approved* (July 28, 2021) SacCounty News (as of May 18, 2023).

[44] See, e.g., Association of Bay Area Governments, *Frequently Asked Questions about RHNA* (May 2020) p. 2 (as of May 18, 2023).

[45] See California Department of Housing and Community Development, *Building Blocks* (as of May 18, 2023).

[46] *Ibid.*

[47] Gov. Code, § 65583, subd. (c)(10)(A).

[48] *Ibid.*

[49] Gov. Code, § 65584, subd. (d).

[50] Gov. Code, § 65584, subd. (e).

[51] See Chapter 5, Housing Segregation.

[52] *Ibid.*

[53] Mohl, *The Interstates and the Cities: Highways, Housing, and the Freeway Revolt* (2002) Poverty and Race Research Action Council, p. 25 (as of May 18, 2023).

[54] *Ibid.*; see also Robb, *Reparations for Pasadena Families Displaced by the 210 Freeway?*, ColoradoBoulevard.net (Dec. 29, 2021) (as of May 18, 2023).

[55] See Chapter 5, Housing Segregation.

[56] *Ibid.*

[57] *Ibid.*

[58] California Task Force to Study and Develop Reparation Proposals for African Americans, *Testimony of Jon Burgess* (Sept. 23, 2021) (as of May 18, 2023).

[59] Xia, *Manhattan Beach Was Once Home to Black Beachgoers, but the City Ran Them Out. Now It Faces a Reckoning*, L.A. Times (Aug. 2, 2020) (as of May 18, 2023).

[60] Chapter 5, Housing Segregation.

[61] California Task Force to Study and Develop Reparation Proposals for African Americans, *Testimony of Helen H. Kang* (Oct. 12, 2021) (as of May 18, 2023).

[62] Chapter 5, Housing Segregation.

[63] Rode, *Palm Springs City Council Apologizes for Section 14, Moves to Remove Bogert Statue*, The Desert Sun (Sept. 30, 2021) (as of May 18, 2023).

[64] California Senate Bill No. 796 (2021-2022 Reg. Sess.).

[65] California Assembly Bill No. 889 (2021-2022 Reg. Sess.).

[66] Chapter 5, Housing Segregation.

[67] Reft, *How Prop 14 Shaped California's Racial Covenants* (Sept. 20, 2017), KCET (as of May 18, 2023).

[68] See Archer, *Reparations and the Right to Return* (2021) 45 N.Y.U. Rev. L. & Soc. Change 343, 356-361 (as of May 18, 2023).

[69] Chapter 5, Housing Segregation.

[70] Health and Saf. Code, §§ 33411.3, 34178.8. Initially, the CRL authorized the establishment of redevelopment agencies in communities to conduct urban renewal projects, but the Legislature dissolved those redevelopment agencies in February 2012. Current law allows dissolved redevelopment agencies to create successor housing entities to perform certain specified functions. The right to return for low- and moderate-income residents remains the same. (Health and Saf. Code, § 34178.8.)

[71] See e.g., City and County of San Francisco, *Learn about the Certificate of Preference (COP)* (updated Dec. 21, 2022) (as of May 18, 2023); City of Portland, Oregon, *Preference Policy*, N/NE Neighborhood Housing Strategy (as of May 18, 2023).

[72] As used here, agency-assisted housing and business opportunities are created, controlled, operated, or at least partially funded through a local or state public entity's actions, subsidies, and/or abatements.

CHAPTER 23 — POLICIES ADDRESSING Separate and Unequal Education

COURTESY OF SEVENTYFOUR/ISTOCK VIA GETTY IMAGES PLUS

I. Policy Recommendations

This chapter details policy proposals to address harms set forth in Chapter 6, Separate and Unequal Education.

- Increase Funding to Schools to Address Racial Disparities
- Fund Grants to Local Educational Agencies to Address the COVID-19 Pandemic's Impacts on Preexisting Racial Disparities in Education
- Implement Systematic Review of School Discipline Data
- Improve Access to Educational Opportunities for All Incarcerated People
- Adopt Mandatory Curriculum for Teacher Credentialing and Trainings for School Personnel and Grants for Teachers
- Employ Proven Strategies to Recruit African American Teachers
- Require that Curriculum at All Levels Be Inclusive and Free of Bias
- Advance the Timeline for Ethnic Studies Classes
- Adopt a K-12 Black Studies Curriculum
- Adopt the Freedom School Summer Program
- Reduce Racial Disparities in the STEM Fields for African American Students
- Expand Access to Career Technical Education for Descendants
- Improve Access to Public Schools
- Fund Free Tuition to California Public Colleges and Universities

Students using computer in IT class.

- Eliminate Standardized Testing for Admission to Graduate Programs in the University of California and California State University Systems
- Identify and Eliminate Racial Bias and Discrimination in Statewide K-12 Proficiency Assessments

Increase Funding to Schools to Address Racial Disparities

As Chapter 6, Separate and Unequal Education, establishes, "[a]s of the early 2000s and through today, the vast majority of African American children remain locked into schools separate from their white peers, and possibly more unequal than the schools that their grandparents had attended under legal segregation."[1] As the U.S. Government Accountability Office noted, even 60 years after the Supreme Court's decision in *Brown v. Board of Education* (1954) 347 U.S. 483, African American students are increasingly attending segregated, high-poverty schools where they face multiple educational disparities.[2] Data from the U.S. Department of Education's Office of Civil Rights collected from 2014 to 2018 confirm the same disparities—fewer resources and large and persistent opportunity and achievement gaps for African American students.[3]

"As of the early 2000s and through today, the vast majority of African American children remain locked into schools separate from their white peers, and possibly more unequal than the schools that their grandparents had attended under legal segregation."

As noted in Chapter 6, African American students are less likely to attend schools that offer advanced coursework and math and science courses, and they are less likely to be placed in gifted and talented programs.[4] Further exacerbating these disparities is the severe and persistent funding disparity between schools serving white students and those serving African American students.[5] A 2021 report found that "[n]eighborhood poverty rates are highest in segregated communities of color (21 percent), which is three times higher than in segregated white neighborhoods (7 percent)."[6] At the same time, wealthy and often more predominantly white neighborhoods continue to fund their schools at greater levels, both because a percentage of funding for California schools comes from local property taxes and because wealthier communities can easily raise additional funds through donations and local bonds.[7]

The Task Force recommends that the Legislature provide and direct additional funding to African American students, with a special consideration for those who are descendants, at the level needed to ensure that they have every resource needed to excel academically and close the opportunity gap. This last point bears emphasis. No student should have fewer opportunities because of race or due to a lack of resources. California must end racial disparities once and for all.

One way to provide this funding is through the Local Control Funding Formula (LCFF). The LCFF was first implemented in 2013-14 to provide schools with greater flexibility and authority over resources.[8] The LCFF sets forth specific funding allocations to all school districts and charter schools in California. Supplemental grants are provided to schools with targeted disadvantaged pupils—specifically, English learners, students meeting income requirements to receive a free or reduced-price meal, foster youth, or any combination of those factors.[9] However, critics have noted the LCFF does not focus specifically on African American students or require schools to ensure that funds are spent on high-needs students.[10] Assembly Bill (AB) No. 2774 serves as an example of a proposal that could do more to address disparities, especially for African American students.[11] The bill would have created new supplemental funding for California's lowest performing subgroups of students who are not currently receiving funding.[12]

Whether through an approach like AB 2774 or some other manner, the Task Force recommends that the Legislature commit the level of funding needed to ensure that African American students across California, especially those who are descendants of persons enslaved in the United States, have every educational resource, support, and intervention needed to end persistent racial disparities, permanently close the opportunity gap, and allow every student to thrive. The funding must be used for the direct benefit of students and should not be used on security, police, or law enforcement.[13]

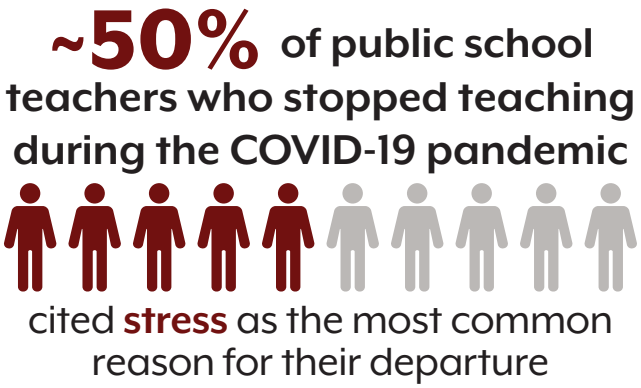
Fund Grants to Local Educational Agencies to Address the COVID-19 Pandemic's Impacts on Preexisting Racial Disparities in Education

The COVID-19 pandemic exacerbated preexisting disparities in academic growth, access, and opportunities for African American students in public schools. In particular, students appear to be falling even further behind

in math and reading.[14] The evidence also shows that the academic growth gap has continued to widen for many African American students.[15] African American students did not experience the recovery in growth in math and reading that their white peers experienced.[16]

Research from the U.S. Department of Education and other sources has shown further impacts on education resulting from the pandemic. During the pandemic, African American adults, among others, disproportionately faced increased health risks, including increased risk of contracting COVID-19, and economic disruptions that impacted their families and students in particular.[17] Technology barriers further worsened the existing inequality in the educational system. As of summer 2020, nearly a third of teachers in majority-African American schools reported that their students lacked the technology necessary for virtual instruction; only one in five teachers reported the same in schools where African American students comprised less than 10 percent of the total student population.[18]

The pandemic also precipitated a mental health crisis for young children and teenagers, and it compounded the need for mental health services for African American students, among others, who disproportionately rely on their schools for these services.[19] Finally, the pandemic has had a significant impact on school systems, with workplace attrition and teacher shortages becoming critical concerns.[20] Almost half of the public school teachers who stopped teaching after March 2020 left because of the pandemic, citing stress as the most common reason for their departure.[21] School district administrators and principals also cited concerns about burnout and turnover.[22]



Based on the foregoing, the Task Force recommends that the Legislature provide funding to the California Department of Education (CDE) to administer grants to local educational agencies (LEAs) for the purposes set forth in this subsection.[23] As part of receiving funding, LEAs would have to plan for how the following proposals would be supported by the budget and identified in the Local Control and Accountability Plan (LCAP)[24] and any grant materials, with a requirement to focus on reducing existing racial disparities. This funding should continue for as long as is needed, not only to return to the pre-pandemic norm, but to address and eliminate the long-existing racial disparities as well.

As detailed in another recommendation presented later in this chapter, funding could be used for positive and restorative discipline practices such as analyzing disciplinary data, shifting from zero tolerance approaches, and reconsidering or eliminating the presence of police and security in schools. In particular, the Task Force recommends that school districts take six weeks over the summer or at the beginning of the year to focus on restorative practices that address whole child needs.[25] Funding could also be used to conduct regular wellness screenings and review data on attendance, engagement, and grades to identify and address the individual needs of students at the classroom, school, and district levels. Schools should administer diagnostic assessments and surveys to inform instructional planning (but not to hold students back or to track them) and measure school conditions and climate.[26] Schools could also use existing resources such as the "Whole Child Policy Toolkit," produced by the Learning Policy Institute.[27]

As detailed in Chapter 20's recommendation "Implement Procedures to Address the Over-Diagnosis of Emotional Disturbance Disorders, Including Conduct Disorder, in African American Children," funding could also be used to increase staffing and community-based partnerships to address students' individualized learning and mental health needs. This should include providing full wraparound services for African American students across all California public schools, including appropriate mentoring, tutoring, and mental and physical health services. On a school district level, this could include high-dosage tutoring and investment in expanded learning opportunities and partnerships with community organizations. School districts could use this funding to provide mental health supports by establishing multidisciplinary teams and processes for implementing a comprehensive continuum of supports to: further student learning; promote student wellness and address barriers to learning; develop a centralized, school- or district-wide referral and tracking system for students, teachers, and families to connect to appropriate resources; and review the effectiveness of interventions and supports collaboratively and systematically. School districts should increase their staff and work with community partners, with an emphasis on hiring and partnering with individuals who demonstrate cultural congruence with the student community to be served.[28]

The Task Force also recommends providing additional funding to the CDE to administer grants to organizations and researchers in California to fund research and data collection efforts in order to assess the full impact of the pandemic on African American students in California. Further research would inform learning recovery in the short-term and improved performance and equity in the long-term.[29]

Implement Systematic Review of School Discipline Data

Chapter 6, Separate and Unequal Education, detailed the ways in which African American students are disproportionately subject to exclusionary discipline in school, which in turn leads to a higher risk of dropping out and involvement with the juvenile justice system.[30] Moreover, African American students are more likely to attend schools with law enforcement on campus and greater security measures, and African American students are also more likely to be arrested than their white peers.[31] Commonly known as the "school-to-prison pipeline," this dynamic has devastated the African American community by victimizing its youth.[32]

"Students of color as a whole, as well as by individual racial group, do not commit more disciplinable offenses than their white peers—but African American students, Latino students, and Native American students in the aggregate receive substantially more school discipline than their white peers and receive harsher and longer punishments than their white peers receive for like offenses."

African American students experience higher rates of suspension, expulsion, in-school arrests, and law enforcement referrals than white students.[33] The U.S. Commission on Civil Rights has found that "[s]tudents of color as a whole, as well as by individual racial group, do not commit more disciplinable offenses than their white peers—but [African American] students, Latino students, and Native American students in the aggregate receive substantially more school discipline than their white peers and receive harsher and longer punishments than their white peers receive for like offenses."[34] The Task Force accordingly recommends several measures to mitigate and ultimately end the school-to-prison pipeline.

The Legislature should address and remedy racially disparate discipline, particularly expulsions and suspensions, in California schools.[35] First, the Task Force recommends requiring the CDE to implement a systematic review of public and private school disciplinary records to determine levels of racial bias. This would include, on an annual basis, requiring every school to collect and review data and to issue a public report analyzing the disparities in discipline. Every district or county board of education should hire a management-level employee to coordinate the public reporting of data in each school and be responsible for failures to report the required data. The Task Force recommends reporting on the status of implementation of these requirements to CDE as a part of the LCAP or on a more frequent basis. The Legislature should also provide funding to districts to implement these requirements and to the CDE and DOJ for investigations of any schools that have high levels of racial disparities.

Second, the Task Force recommends requiring the CDE by 2030 to set statewide, school district, and LEA-level interim and long-term numeric targets and interim timetables to end the disproportionate suspension, expulsion, and discipline-related transfer of African American K-12 students, including African American students with disabilities, starting with the school districts or LEAs with the highest rates of disproportionality. The CDE should also be required to use a data collection and monitoring system to allow for prompt identification of districts with highly disproportionate discipline of African American students and the development of a concrete plan for corrective intervention by the CDE. The CDE should be required to use all necessary mechanisms to achieve the 2030 goal,[36] including an annual report of statistics at the statewide, district, and LEA-level to the Legislature, Governor, and the public. The CDE should also be empowered to impose monetary sanctions at the district or LEA level.

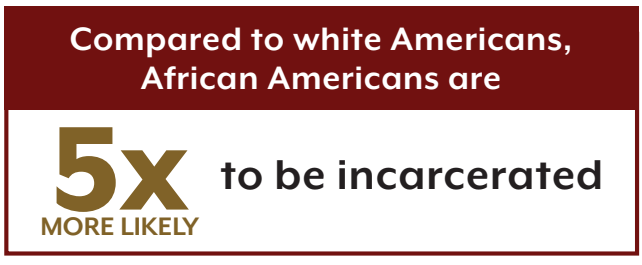
Third, the Task Force recommends the CDE collect and publish additional data on students who are transferred to alternative schools, both voluntarily and involuntarily. African American students are overrepresented in alternative schools,[37] which provide a substandard education. Attending an alternative school is associated with negative outcomes; students who attend alternative schools are less likely to graduate and less likely to attend college.[38] Because transfers to alternative schools are often used as an alternative to discipline in order to avoid the original school having a record of said discipline, but have

the same effect as pushing out African American students through suspension and/or expulsion, transfer data should also be systematically reviewed by the CDE. The CDE shall include reducing the use of alternative school transfers in any goals related to ending the disproportionate discipline of African American students.

Finally, the Task Force recommends requiring schools to implement racially equitable disciplinary practices using culturally responsive positive behavioral interventions and supports ("CR-PBIS"). As a related requirement, the Legislature should mandate and fund training on implicit bias, cultural competency, CR-PBIS, and related subject matters to school staff on an annual basis.

Improve Access to Educational Opportunities for All Incarcerated People

There are stark racial and ethnic disparities across the incarcerated population in the United States, as "Black Americans are incarcerated at nearly 5 times the rate of white Americans."[39] A report published by The Sentencing Project, a research and advocacy center, cites to a number of causes for this disparity, including "the nation's history of white supremacy over Black people [that] created a legacy of racial subordination that impacts their criminal justice outcomes today."[40] At the time of this report, African Americans comprised six percent of the total population in California, but 28 percent of the total incarcerated population in the state.[41]



Formerly incarcerated people "rarely get the chance to make up for the educational opportunities from which they [have] been excluded—opportunities that impact their chances of reentry success."[42] The barriers to higher education for formerly incarcerated people "include the limited number of prison-based college programs, ineligibility for Pell Grants and federal student loans, occupational license restrictions based on criminal history, and college admissions officers' inquiry into applicants' criminal history."[43]

A report by the Vera Institute of Justice on the Second Chance Pell Experimental Sites Initiative[44] documents the positive impacts resulting from postsecondary education in prison, such as positive inmate self-worth and development, preparation for post-release jobs, and successful reentry, and increased public safety, safety inside prisons, and economic savings.[45] These positive impacts also include racial equity, as the Vera report states that "[p]ostsecondary education is a primary avenue for upward mobility—especially among people of color, who disproportionately make up the prison population."[46] Vera also finds that "[p]eople who participate in education programs in prison are more likely to be employed after their release and to earn higher wages."[47] The Brookings Institution also has found that "postsecondary prison education programs are inextricably linked to advancing racial equity, especially given inequality in K-12 education that feeds low-income [African American] . . . students into the school-to-prison pipeline."[48] Additionally, "[i]ndividuals who enroll in postsecondary education programs are 48% less likely to be reincarcerated than those who do not, and the odds of being employed post-release are 12% higher for individuals who participate in any type of correctional education."[49]

> **"People who participate in education programs in prison are more likely to be employed after their release and to earn higher wages[.]"**

The Task Force recommends that the Legislature provide robust funding for and improved access to educational opportunities for all incarcerated people in both juvenile detention and adult correctional facilities at the state and local level. This recommendation includes funding to allow all schools in the University of California and California State University system to join the Second Chance Pell Experimental Sites Initiative if it is expanded beyond the 2022-2023 award year.[50] If it is not expanded beyond the 2022-2023 award year, the Legislature should establish a California state counterpart to this system. This would also include requiring California community colleges and California State University schools to partner with juvenile detention and adult correctional facilities to offer a specified number of classes per year for a formal educational program such as a GED, associate degree, or bachelor's degree. Finally, the Task Force recommends that the Legislature require the CDE to identify, assess, and monitor implementation of further measures needed to ensure the provision of

high-quality education in detention settings, including education-based incarceration programs.[51]

A proposal in Chapter 20 recommends that the California Department of Corrections and Rehabilitation be required conduct audits of its policies and practices, including practices related to access to educational programming. Any disparities and gaps found in this audit, as well as any audits of jails and juvenile facilities, should be used to support the implementation of education-based incarceration.

Adopt Mandatory Curriculum for Teacher Credentialing and Trainings for School Personnel and Grants for Teachers

African American students have long been underserved by the education system, which includes teachers who are not culturally responsive.[52] Culturally responsive teachers affirm African American students' experiences through their lesson plans, which "incorporate books, visuals, and other materials that reflect Black histories, lives, and points of view."[53] When teachers use the "history and me" concept, "which celebrates the richness of African American history and the roles Black [people] have played in bringing about social change through taking a stand for social justice and equity," they emphasize African American people as valuable community members.[54] This lesson is critical to African American students' sense of self and agency.[55]

A review of the statewide requirements on the Commission on Teacher Credentialing website shows that there are no requirements to complete trainings or courses on culturally responsive pedagogy, anti-bias training, or restorative practices prior to receiving a teaching credential.[56] As noted in Chapter 6, Separate and Unequal Education, "teacher preparation is inadequate in training teachers to be culturally-responsive and to carry those practices into the classroom in both the way they teach and the materials they use when they teach."[57] Culturally responsive instruction helps students feel valued and empowered and builds students' sense of belonging and self-confidence.[58] A number of studies on brain science demonstrate that positive relationships in the classroom build motivation, create safe spaces for learning, build new pathways for learning, and improve student behavior.[59]

The Task Force recommends the adoption of mandatory curriculum for teacher credentialing and trainings for school personnel that include culturally-responsive pedagogy, anti-bias training, and restorative practices that specifically address the unique needs of African American students, especially those who are descendants.[60] The Task Force also recommends identifying and supporting teachers who provide culturally responsive instruction and adopting new models for teacher development to improve teacher habits in the classroom. This can be accomplished by having the CDE issue a request for proposals for grants established by the Legislature to fund teachers and schools to develop models based on best practices and to share examples of successes in their proposals. Teachers and schools would then report back to the Legislature on any models and outcomes, so that they may be scaled up.

Employ Proven Strategies to Recruit African American Teachers

As set forth in Chapter 6, Separate and Unequal Education, recent studies have established the importance of students having at least one teacher who looks like them.[61] While African American students comprise 4.7 percent of California's student population, the percentage of African American teachers in California declined from 5.1 percent in 1997-98 to 3.9 percent in 2021-2022.[62] African American men comprise only one percent of teachers in California.[63]

One major barrier to African Americans' pursuit of a career in teaching has been the cost of teacher preparation programs, but experts have noted that a recent increase in funding for these residency programs demonstrates a concrete and successful tactic for removing this barrier.[64] Studies have also found that "Grow Your Own" teacher programs lead to positive outcomes for diverse student populations.[65]

The Task Force recommends the Legislature remedy the ongoing harm by enacting laws that foster and fund proactive strategies to recruit African Americans, especially descendants of enslaved persons, as teachers in

K-12 schools all across California. This should include establishing programs in the University of California and California State University systems for teacher credentialing, modeled on the UC PRIME program for medical students, to be focused on teaching in schools that predominantly serve African American students.[66] This should also include providing funding for and creating partnerships with the University of California and California State University teacher credential programs for teacher residency, and Grow Your Own programs[67] at the district level to recruit African American teacher candidates among high school students, paraprofessionals, and after-school program staff. Finally, the programs should include funding to establish an intensive teacher preparation support program with ongoing mentorship, tutoring, exam stipends, and job placement services and funding for districts to retain staff in Grow Your Own programs. The Legislature should also establish a fund or scholarship program to pay for the education of African Americans, especially descendants of persons enslaved in the United States, pursuing education degrees (consistent with recommendations elsewhere in this report for those pursuing medical, science, and legal degrees).

Require That Curriculum at All Levels Be Inclusive and Free of Bias

As set forth in Chapter 6, redefining curriculum on Black and African American experiences is particularly important in California,[68] which according to 2021 Census Bureau data is home to the sixth largest African American population in the United States.[69] According to an Education Week Research Center survey of mostly-white educators, only one in five think their textbooks accurately reflect the experiences of people of color.[70] The United States has seen opposition from elected officials to discussing the truth about slavery and a heightened focus on critical race theory in public K-12 schools, even though this theory is actually an academic one taught in law schools.[71] Opponents contend that teaching about race and painful history such as enslavement and legal segregation divides Americans and places the blame on white Americans for current and historical harm to African Americans.[72] Others take the position that this opposition misapprehends or misrepresents the educational content at issue and comes from a place of seeking to maintain a white supremacist status quo by denying facts.[73] Research shows that curriculum that includes African American history and experiences is important. Erasure of African American history, denial of African American contributions, and dehumanization of African Americans in school textbooks contribute to cultural and social alienation.[74] Additionally, African American students can be left feeling unimportant, invisible, and voiceless in classrooms where they do not see their experiences and history reflected in school curricula, leading to poorer educational outcomes.[75]

The Task Force recommends the Legislature remedy the ongoing harm by ensuring curriculum at all levels and in all subjects be inclusive, free of bias, and honor the contributions and experiences of all peoples, regardless of ethnicity, race, gender, or sexual orientation, by funding a department or center with appropriate specialty within the University of California or California State University system to review all curriculum and issue a public report or series of reports to the Governor and the California State Legislature on its findings and recommendations for curriculum changes.[76]

Advance the Timeline for Ethnic Studies Classes

As stated in the preceding section, curriculum that includes African American history and experiences is important, as erasure of this history contributes to cultural and social alienation and African American students feeling unimportant, invisible, and voiceless.[77] A peer-reviewed study published in the *Proceedings of the National Academy of Sciences* that was conducted with San Francisco Unified School District students found quantitative evidence of a long-term academic impact of ethnic studies.[78] The benefits for students who took an ethnic studies course in ninth grade lasted throughout high school and resulted in higher attendance, higher graduation rates, and increased enrollment in college.[79] Thomas Dee, a professor at the Stanford Graduate School of Education and co-author of the research, noted that "not only did the strikingly large benefits from the course not fade after ninth grade, but the course produced 'compelling and causally credible evidence' of the power to 'change learning trajectories' of the students targeted for the study—those with below-average grades in eighth grade."[80] Further studies have found that there is "a positive link between ethnic studies programs that feature a curriculum designed and taught from the perspective of a historically marginalized group," including African Americans, "and students' ethnic identity development and sense of empowerment."[81]

Governor Newsom signed a bill in October 2021 to require California high school students to take ethnic studies as a graduation requirement commencing in the 2029-2030 school year.[82] The Task Force recommends advancing the timeline for ethnic studies classes. Given the demonstrated long-term value of these classes to students' academic success and progression to college, implementation of this course requirement should proceed as expeditiously as possible.

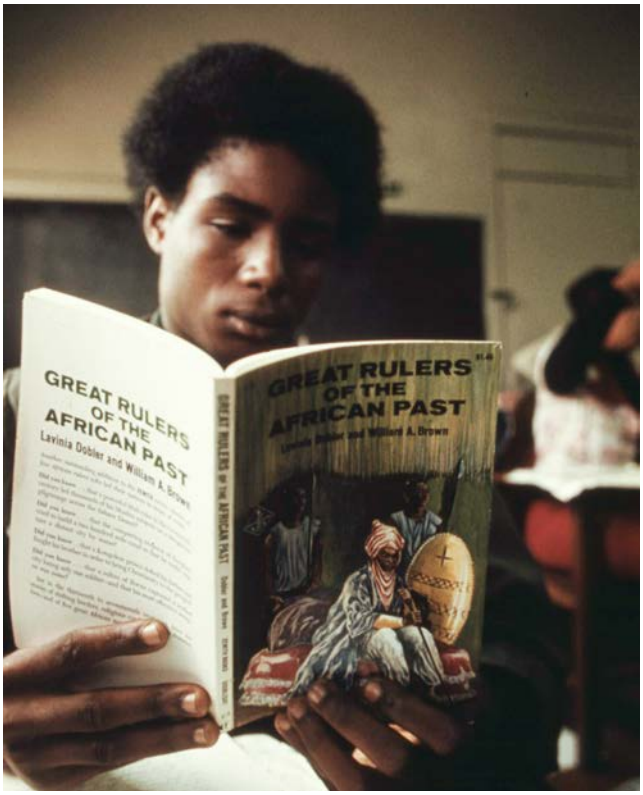
Adopt a K-12 Black Studies Curriculum

As set forth in Chapter 6, Separate and Unequal Education, "[a]s important as how schools shape their curriculum concerning the history of Black people in America is how schools teach the humanity of Black people before, during, and after enslavement."[83] This kind of curriculum requires teaching "about humanity's origins in Africa thousands of years before either Arabs or Europeans encountered people of West and Central African ancestry" and that "African Americans' stories did not begin with enslavement."[84] As noted earlier, this curriculum is especially important given that, as of 2021, California has the sixth largest African American population in the country.[85]

The Task Force recommends adoption of a K-12 Black Studies curriculum that introduces students to concepts of race and racial identity, teaches the more expansive history noted above, accurately depicts historic racial inequities and systemic racism, honors Black lives, fully represents contributions of Black people in society, advances the ideology of Black liberation, and highlights the particular contributions of those who are descendants of individuals who were enslaved in the United States. The curriculum could be modeled on the approach taken by the San Francisco Unified School District, among other examples.[86] It should include:

> University of California a-g approved courses for ... high schools and required unit plans for PK-8 that introduce students to the concept of race, racial identity, African and African American history, equity, and systemic racism. There would be at least three "a" courses: one on African history, culture, and geographies; one on African diasporic studies; and another on African American history and phases of African American resistance. At least one "b" course would be focused on classic and modern African, African American, and diasporic literature, while at least one "g" course would be youth-driven in curriculum development and implementation.[87]

COURTESY OF SMITH COLLECTION/GADO/VIA GETTY IMAGES



A student in a Black studies class reading a book titled "Great Rulers of the African Past." (1973)

The Task Force also recommends the establishment of a Black Studies Fund within the Instructional Quality Commission to fully fund this ongoing effort, which includes curriculum development, staff to administer the program, and educators to teach the curriculum. The Black Studies Fund staff would also review the original curriculum of the Freedom Schools of Mississippi Summer Project and incorporate this curriculum where appropriate.[88]

Adopt the Freedom School Summer Program

Studies have found African American students gain less academically over the school year and lose more over the summer, a phenomenon referred to as summer learning loss.[89] Researchers have established that summer learning programs reduce summer learning loss, and there are certain practices that can help students succeed in summer programs, such as using an evidence-based curriculum, incorporating hands-on and recreational activities, and hiring effective teachers.[90] Additionally, a recent household survey found that African American families are participating in summer learning programs at record high levels, with half of African American families with children reporting that their child participated in a summer learning program in 2019.[91] The survey found that while 1.9 million African American children participated in a summer learning program in 2019, parents reported that 2.3 million more African American children would have enrolled had a program been available to them.[92]

The Task Force recommends the adoption and funding of a Freedom School summer program. This could begin with a pilot program, as initially introduced by Assembly Bill (AB) No. 2498 in the 2021-2022 Regular Session of the California State Legislature. AB 2498 proposed a pilot program of the Freedom School summer program

that could be used as a model. As would have been the case under AB 2498, the Task Force recommends that its proposed summer programs develop summer literacy and learning loss mitigation programs for public school students. These programs would: celebrate students and the cultural richness of the diversity of the United States; increase the reading, writing, and comprehension abilities of students; and prevent learning loss during summer recesses. A number of studies from PACE and the RAND Corporation were cited in support of AB 2498 for the proposition that effective summer programs can improve academic, behavioral, and social and emotional learning outcomes and are noted here as support for the Task Force's recommendation.[93] Finally, the Task Force recommends the Freedom School summer programs incorporate, where appropriate, the curriculum of the Freedom Schools of Mississippi Summer Project, as referenced previously in this chapter.

Reduce Racial Disparities in the STEM Fields for African American Students

Racial disparities exist in science, technology, engineering, and math (STEM) education in California and nationwide.[94] African American students lack access to critical STEM opportunities in middle school. For example, taking Algebra I in Grade 8 creates a pathway to the math classes in high school that are required for admission to many four-year colleges.[95] According to 2018 data from the U.S. Department of Education Office for Civil Rights, for the 2015-16 school year, Black students constituted 17 percent of students in schools that offered Algebra I in Grade 8, but only 11 percent of the students actually enrolled.[96] Eighty-five percent of white students and 74 percent of Asian students who enrolled in Algebra I in Grade 8 passed the course, while 65 percent of Black students enrolled in Algebra I passed the course.[97] Additionally, approximately 5,000 high schools with more than 75 percent Black and Latino student enrollment offered math and science courses at a lower rate than was the case for all high schools, with the difference being the greatest for advanced math, calculus, and physics.[98]

A study conducted by The Education Trust noted that roughly two in five Black and Latino students aspire to go to college and enjoy STEM subjects, but less than three percent enroll in STEM courses due to systemic barriers.[99] These include funding inequities, education leaders' reliance on a student's persistence or assumptions about their intelligence, racialized tracking (not receiving the same opportunities as affluent and white students to enroll in advanced STEM courses), and reliance on single denominators of readiness (e.g., GPA or test scores).[100] The Education Trust also issued a set of recommendations for state leaders on how to increase access to and success in advanced coursework for Black students.[101]

A study conducted by The Education Trust noted that roughly two in five Black and Latino students aspire to go to college and enjoy STEM subjects, but less than three percent enroll in STEM courses due to systemic barriers.

This proposal adopts and directly incorporates the recommendations offered in reports published by The Education Trust and Kapor Center, but with the Task Force's intent that there be specific focus on African American students, with special consideration for those who are descendants.[102] Limited revisions have been made to ensure this proposal is consistent with other recommendations of the Task Force and its decision, with some exceptions, to use "African American" instead of "Black"; substantive revisions are identified in corresponding footnotes, and where language has been added, it is identified in italics. Accordingly, following the recommendations set forth in The Education Trust report, the Task Force recommends the Legislature:

1. Enact[] more equitable enrollment policies and practices, such as: (i) requiring districts to use multiple measures to identify students for advanced coursework opportunities, including but not limited to expressed desire to enroll, exam scores, grades in relevant prerequisite courses, and recommendations from trusted school staff *who have taken implicit bias training*;[103] (ii) passing automatic enrollment policies for all advanced coursework opportunities (K-12) so that students identified for advanced coursework through any of the measures above are automatically enrolled in advanced coursework opportunities, with the option to opt out;[104] (iii) monitoring progress of automatic enrollment to ensure schools are implementing the policy in ways that increase enrollment in advanced courses for historically underserved students; (iv) and providing technical support for schools and districts struggling to enroll [African American] students in advanced coursework opportunities, especially those opportunities that are the foundation for future success (e.g., Algebra I and II, Biology, Physics, Chemistry);[105]

2. Eliminat[e] longstanding barriers to accessing advanced coursework opportunities by: (i) covering the cost of exams, transportation, books, and other required materials for advanced coursework; (ii) requiring districts and/or schools to notify families about advanced coursework opportunities available in the school and district, the benefits of enrolling in those courses, and the process around how to enroll, in the family's home language; (iii) providing funding to recruit or train teachers to teach advanced courses, especially in schools serving large concentrations of [African American] students . . . ;

3. Annually monitor[] disaggregated data on enrollment in advanced courses, by course type, and provide technical assistance to districts that are under-enrolling [African American] students . . . in advanced courses (this data should be publicly reported on report cards, so that communities have a better understanding of course availability, enrollment, and success in advanced courses);

4. Requir[e] districts to set and hold themselves accountable for public goals that, within an ambitious number of years, [African American] students will be fairly represented in access to and success in advanced coursework from elementary through high school;

5. [Ensure] accountab[ility] for public goals that, within an ambitious number of years, [African American] . . . students . . . will be fairly represented in access to and success in advanced coursework from elementary through high school; and

6. Implement[] policies to support district and school leaders in creating safe, equitable, and positive learning environments in advanced courses by: (i) providing professional development and coaching for educators to create culturally affirming environments, build relationships with and understand their students, support students' academic success, and develop anti-racist mindsets; (ii) investing in preparing, recruiting, and supporting [African American] teachers and counselors . . ., given the research that shows educators of color are more likely to refer students of color for advanced courses; (iii) requiring districts and schools to use culturally relevant, anti-racist pedagogy, practices, and curricula and provide technical assistance and funding for professional development; (iv) supporting engagement with families and members of underserved communities by requiring districts to survey students and families to understand their interests, aspirations, and experiences with school, especially related to STEM; (v) creating guidance for schools about identifying and partnering with community-based organizations that provide rigorous after-school and/or summer enrichment opportunities that expose underserved students to STEM and STEM careers.[106]

Following the recommendations set forth in the Kapor Center report, the Task Force also recommends the Legislature:

1. Utilize the Computer Science Strategic Implementation Plan ("CSSIP")[107] as a guidance document for expanding access to computer science in California;

2. Increase participation of students from underrepresented backgrounds in computer science education, especially [African American] . . . students *by prioritizing funding and developing initiatives for the most underserved schools and populations*;

3. Establish rigorous computer science teacher preparation, certification, and professional development for K-12 teachers;

4. Ensure access to technology infrastructure to support computer science education*, prioritizing districts and local education agencies ("LEAs") with the highest needs*;

5. Implement K-12 computer science standards within all computer science courses*, and integrated across subjects, by providing support for LEAs, administrators, and teachers*;

6. Develop assessment, data collection, and accountability mechanisms to track the implementation and efficacy of computer science education *and track equity gaps*;

7. Ensure computer science is prioritized as a high school graduation and college entry requirement; and

8. Implement large-scale policies and initiatives that address systemic education inequity affecting student outcomes across subject areas.[108]

Finally, the Task Force additionally recommends the Legislature:

1. Provide state funding for districts to obtain the resources necessary to achieve equity of resources across the board for African American students, including but not limited to, hiring teachers, implementing advanced course offerings, purchasing technology, supplies, and equipment, and waiving the fees to take advanced placement ("AP") exams.

Expand Access to Career Technical Education for Descendants

Discriminatory policies have created persisting inequalities in educational attainment and employment for African Americans.[109] The Center for American Progress, for instance, notes that schools have historically tracked African American students into low-quality vocational programs "as an extension of Jim Crow-era segregation."[110] High quality Career Technical Education (CTE) programs—which combine academic education with occupational training to prepare students for careers in current or emerging professions[111]—offer an essential tool to remedy this persisting discrimination.[112]

To address the ongoing effects of racial discrimination and inequality in employment, education, and wealth, the Task Force recommends: (1) collecting and disaggregating data about CTE enrollment in California by race;[113] (2) funding and requiring all California public high schools and colleges to offer students access to at least one CTE program; and (3) creating a competitive grant program to increase enrollment of descendants in STEM-related CTE programs (such as green technology) at the high school and college levels.[114]

COURTESY OF HILL STREET STUDIOS VIA GETTY IMAGES

Students working with a sound mixer. Arts, Media, & Entertainment is one of fifteen career pathways in California.

For the requirement that all public high schools and colleges offer students access to at least one CTE program, schools could comply by partnering with another entity that has such a program available. For example, high schools could partner with nearby community colleges to enable their students to attend the community college's CTE courses.

For the competitive grants to increase enrollment of descendants, these funds could support programs implementing strategies that the Urban Institute has recommended for increasing Black enrollment in CTE programs, including outreach, mentorship, equity-focused training for instructors, and providing potential students with access to adequate technology and software to access online CTE courses.[115] As with other educational grants,[116] the CDE would administer and award grants on a competitive basis to school districts, county superintendents of schools, direct-funded charter schools, and community colleges to increase descendant participation in STEM-related CTE programs, including electrical engineering, information technology, renewable energy, green technology, advanced manufacturing, health care, or cybersecurity.[117]

Improve Access to Public Schools

As set forth in the Task Force's first recommendation to address the harms identified in Chapter 6, the state must increase funding to ensure that schools serving descendants provide the best possible public education available in the state. But in addition to quality schools, African Americans have long been denied access to schools of their choice. As detailed in Chapter 6, enslavement, segregation, redlining, and neighborhood gerrymandering have denied African American families meaningful and equitable access to a variety of high-quality schools.[118]

Thus, the Task Force recommends that the Legislature improve school access by: (1) requiring school districts to prioritize creating and supporting new public schools (including magnet schools and community college campuses) in African American communities, with substantial weight given to input from those communities and descendants in particular; and (2) requiring districts to permit students to transfer to public schools of their choice within their district or between neighboring districts if doing so would not maintain or exacerbate racial segregation (i.e., if the transfer would improve racial or socioeconomic diversity), while funding free public transportation for students who participate in this school transfer program and ensuring funding to offset the loss in per-pupil funding in districts from which those students transfer.[119]

The first element of this proposal addresses how, through historic and ongoing discrimination, the state has failed to fund, staff, or support public schools in African American communities to the same degree it has done so for white communities.[120] Requiring school districts to prioritize the creation and funding of new schools in African American communities would also address the ways in which redlining and neighborhood gerrymandering have at times created artificial political boundaries that excluded African American families from nearby schools that they otherwise would have attended.[121]

The second element of this proposal similarly addresses how redlining and neighborhood gerrymandering have created artificial district lines that can exclude African American families from nearby schools—as well as the ways in which schools can apply the discretionary inter-district transfer process in an inequitable manner with respect to African American families and their children.[122]

The second element of this proposal would also improve school access for African Americans, especially families including descendants of individuals enslaved in the United States, by building on the model of the Berkeley Unified School District's (BUSD) intra-district public elementary school admissions process to create an equitable model for intra- and inter-district transfers.[123] Under the BUSD system, parents complete a parent preference form in which parents rank the elementary schools they wish their child to attend.[124] BUSD assigns students based on their parents' preferences but assignments are made within the constraints of six priority categories.[125] Within a given priority category, BUSD uses diversity categories to assign students to each school to avoid segregation and ensure that the student body at each elementary school reflects the racial and socioeconomic diversity of the total school population in the attendance zone.[126]

Whereas the BUSD system is a system for *intra*-district transfers (i.e., within the same district), the Task Force's recommendation is for a model that permits *inter*-district transfers (between neighboring districts), to create an equitable system for transfers within and between neighboring school districts.[127]

If this recommendation is implemented, the Task Force also recommends that the Legislature implement budgetary provisions to provide funding to offset any loss in per-pupil funding that may occur if a student transfers to another school within their district or to one in a neighboring district, to ensure that improved school access does not come at the cost of school quality if students and their families choose to transfer to other schools within their district or neighboring ones.[128]

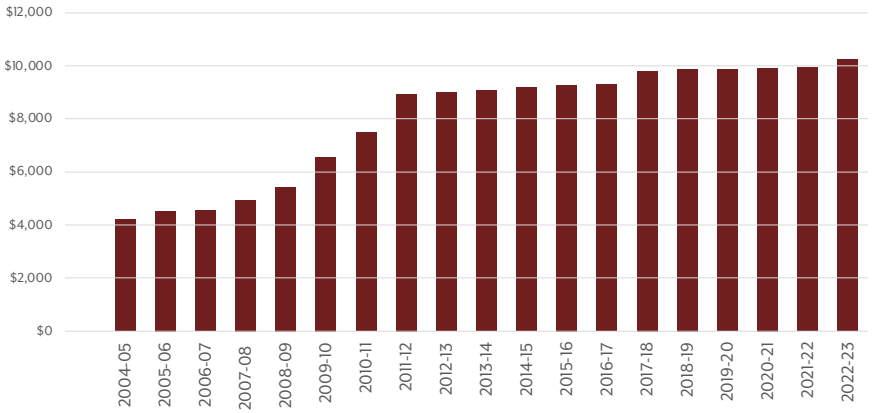
While the focus of this recommendation is on addressing the historic and ongoing exclusion of descendants and other African American families from a range of school options, a 2009 study of the BUSD school transfer policy concluded that its model also resulted in racial "integration across the district" being "fairly high[,]" and that "BUSD has substantially integrated schools ... within the confines of the Supreme Court's guidance on voluntary integration plans[.]"[129] A subsequent study, examining "Berkeley-style geographic integration plans in the nation's 10 largest metropolitan districts," found that "the majority of schools in the study sample would experience gains in diversity," and that such school district plans could have the effect of reducing segregation in elementary schools, small schools, and schools in relatively more segregated districts with less diverse neighborhoods.[130]

Fund Free Tuition to California Public Colleges and Universities

Colleges play a critical role in the socioeconomic mobility of Californians.[131] But the costs of attending college have grown exponentially over the last several decades,[132] and that rising cost excludes many African Americans from the promise of higher education,[133] reinforcing the ongoing history of discrimination in education.[134] Thus, the Task Force recommends that the Legislature fund California public colleges and universities to ensure free tuition for all California residents determined, by the Task Force, to be eligible for monetary reparations.

CALIFORNIA PUBLIC INSTITUTIONS OF HIGHER LEARNING

Average Four-Year In-State Tuition and Fees



Source: College Board

As a 2020 report states, the "high proportion of low-income Black students means that this population is greatly affected by rising college costs and dependent on federal and state financial aid in order to attend college."[135] Within California, for instance, more than half of African American students at UC or CSU colleges receive Pell Grants, which are awarded to students with exceptional financial need.[136]

California's community colleges already waive or fund tuition, through the Promise program, for approximately 50 percent of students—nearly one million students.[137] For the UC and CSU systems, through a mix of state, federal, and other financial aid programs, about 60 percent of CSU students and 60 percent of in-state UC students currently attend college tuition-free.[138] Building on these measures, this proposal would follow the precedent of an existing policy, begun in fall 2022, through which the UC system will waive tuition and fees for Native American students who are state residents and members of federally recognized tribes.[139]

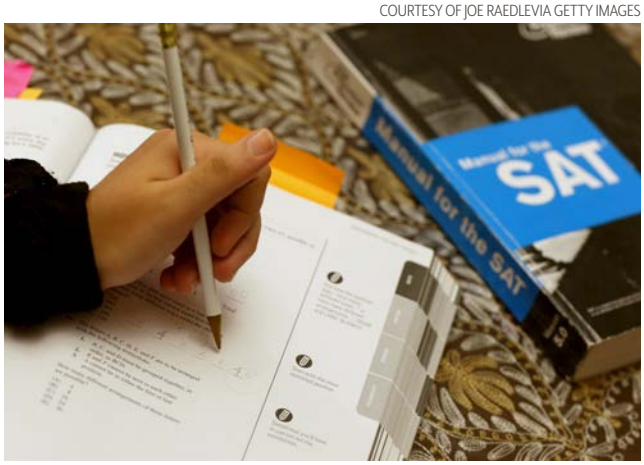
Eliminate Standardized Testing for Admission to Graduate Programs in the University of California and California State University System

Standardized testing traces its beginnings to racist origins.[140] And researchers have identified standardized testing as one key cause behind the decline in African Americans enrolling in higher education, as the scores from such tests reflect either biased design or administration,[141] or reflect the inequities that African Americans experience throughout their education.[142]

To remedy the discriminatory effect of standardized testing in education, the Task Force recommends eliminating standardized testing for admission to the graduate programs within the University of California and California State University systems until racial bias is eliminated in the administration of standardized testing for admission.[143]

Standardized tests reinforce structural inequalities in education, resulting in the exclusion of African American students from advanced degrees and careers. With respect to medical schools, for example, the Dean of Morehouse School of Medicine observes that, "[w]hile MCAT performance has had an adverse influence on the number of Black matriculants," the MCAT score "has not been shown to significantly predict whether students will successfully progress in their medical education."[144] Moreover, deemphasizing MCAT scores "could potentially lead to 3,000 more Black physicians either practicing or in the training pipeline in the U.S. today."[145] Similarly, for the GRE, which is required "for most graduate programs in the United States, including master's and doctoral programs in public health," one study found that eliminating the GRE as a requirement increased the number of African American students with "no loss of quality, as measured by undergraduate grade point averages . . . performance in required core courses . . . and graduate employment."[146] The Task Force's recommendation to eliminate standardized tests as a requirement for graduate school admission follows the lead of numerous schools, including those in the UC and CSU systems, that have removed these requirements after recognizing that standardized testing reinforces structural biases and barriers without predicting success.[147]

COURTESY OF JOE RAEDLE/VIA GETTY IMAGES



Student studying for the SAT. (2014)

Identify and Eliminate Racial Bias and Discrimination in Statewide K-12 Proficiency Assessments

While standardized tests should be eliminated as a prerequisite for admission into undergraduate and graduate programs, standardized testing plays a different role in K-12 education. As standardized assessments in K-12 are mainly used to assess proficiency and identify areas for improvement and need, if the state chooses to maintain such assessments, it must carefully evaluate them to identify and eliminate racial bias within these systems.[148]

Thus, the Task Force recommends that the CDE conduct an annual review of the California Assessment of Student Performance and Progress ("CAASPP") tests for racial bias, both in the way its tests are administered and in the types of questions that are included. The review should require that changes be made to the CAASPP test administration and contents in the event that racially biased procedures or materials are uncovered.

The legislative findings behind the CAASPP call for the state to ensure that the exam "do[es] not use procedures, items, instruments, or scoring practices that are racially, culturally, socioeconomically, or gender biased."[149] However, there appears to be no provision in the Education Code chapter governing the CAASPP that requires a review or assessment for such bias.[150]

The Task Force recommends reviewing, identifying, and eliminating racial bias in the CAASPP using bias review procedures that the state has already created for standardized tests in other contexts. For example, aspiring teachers in California must pass a "reading instruction competence assessment," and the Education Code requires the Commission on Teacher Credentialing to "analyze possible sources of bias on the assessment."[151] Consequently, the Commission has a Bias Review Committee, "which reviews all test content and questions for potential bias, making changes, suggestions, and even eliminating questions if necessary, and differential item functioning (DIF) analysis, which more deeply compares question-level responses of members of various subgroups to flag for potential bias after test administration."[152] The Task Force recommends that the Legislature create a similar process for the CAASPP.

Endnotes

[1] Chapter 6, Separate and Unequal Education.

[2] *Ibid.*

[3] Shores et al., *Categorical Inequalities Between Black and White Students Are Common in US Schools—but They Don't Have to Be (Feb. 21, 2020) Brookings Institution (as of May 18, 2023).*

[4] Chapter 6, Separate and Unequal Education.

[5] *Ibid.*

[6] Menendian et al., *The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States* (June 21, 2021, updated June 30, 2021) Othering & Belonging Inst. (as of May 18, 2023).

[7] *Ibid.*

[8] See Cal. Dept. of Ed., *LCFF FAQs* (as of May 18, 2023).

[9] See Cal. Dept. of Ed., *Local Control Funding Formula Overview* (as of May 18, 2023); Cal. State Auditor, Rep. No. 2019-101 (Nov. 2019) *K-12 Local Control Funding*, pp. 6-7 (as of May 18, 2023).

[10] See Chapter 6, Separate and Unequal Education.

[11] See Black in School Coalition, *About AB 2774* (as of May 18, 2023).

[12] Assem. Bill No. 2774 (2021-2022 Reg. Sess.).

[13] While the Task Force's recommendations in this chapter focus primarily on K-12 and higher education, the need for accessible, high-quality early childhood education cannot be overstated. (See, e.g., Sparks, Early Education Pays Off. A New Study Shows How (Mar. 29, 2022) Education Week (as of May 31, 2023); McCoy et al., Impacts of Early Childhood Education on Medium- and Long-Term Educational Outcomes.) The Task Force urges the Legislature to fund early childhood education at the level needed to ensure all African American children in California have access to high-quality early childhood education.

[14] Off. for Civil Rights, U.S. Dept. of Ed., *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students* (June 9, 2021), p. 15 (as of May 19, 2023); Hough, et al., *The Impact of the COVID-19 Pandemic on Students and Educational Systems: Critical Actions for Recovery and the Role of Research in the Years Ahead* (Sept. 2021) Policy Analysis for Cal. Ed., p. 8 (as of May 19, 2023).

[15] Off. for Civil Rights, *Education in a Pandemic*, *supra*, at pp. 15-17; see also Hough et al., *Impact of the COVID-19 Pandemic*, *supra*, at p. 8; Dorn et al., *COVID-19 and Learning Loss—Disparities Grow and Students Need Help* (Dec. 8, 2020) McKinsey & Co. (as of May 19, 2023) (finding that by Fall 2020, students "learned only 67 percent of the math and 87 percent of the reading that grade-level peers would typically have learned," which means a three-month learning loss in reading and a one-and-a-half-month loss in reading).

[16] Off. for Civil Rights, *Education in a Pandemic*, *supra*, at p. 16.

[17] *Id.* at p. 11.

[18] *Id.* at p. 13.

[19] *Id.* at p. 12; Calderon, *U.S. Parents Say COVID-19 Harming Child's Mental Health* (June 16, 2020) Gallup (as of May 19, 2023) (noting that nearly three in ten parents (29%) surveyed said their child was "experiencing harm to their emotional or mental health," with 45% stating that the separation from teachers and classmates is a "major challenge of remote learning").

[20] See Off. for Civil Rights, *Education in a Pandemic*, *supra*, at pp. 3-4 (noting that a survey in early 2021 found nearly 70% of school principals said they could not meet their students' mental health needs with the staff they had"); see also Carver-Thomas et al., *California Teachers and COVID-19: How the Pandemic is Impacting the Teacher Workforce* (Mar. 4, 2021) Learning Policy Inst. (as of May 19, 2023).

[21] Diliberti et al., *Stress Topped the Reasons Why Public School Teachers Quit, Even Before COVID-19*, (2021) RAND Corp., pp. 5-6 (as of May 20, 2023).

[22] Hough et al., *Impact of the COVID-19 Pandemic*, *supra*, at pp. 10-11.

[23] See Cal. Dept. of Ed., *COVID-19 Relief and School Reopening Grants* (as of May 19, 2023).

[24] As stated by the CDE: "The LCAP is a three-year plan that describes the goals, actions, services, and expenditures to support positive student outcomes that address state and local priorities. The LCAP provides an opportunity for LEAs (county office of education [COE], school districts and charter schools) to share their stories of how, what, and why programs and services are selected to meet their local needs." (Cal. Dept. of Ed., *Local Control and Accountability Plan (LCAP)* (as of May 19, 2023).)

[25] See *Advancement Project et al., Reimagine and Rebuild: Restarting School with Equity at the Center* (Apr. 2021), p. 2 (as of May 19, 2023).

[26] *Id.* at p. 5.

[27] See Learning Policy Inst., *Whole Child Policy Toolkit* (as of May 19, 2023).

[28] See Advancement Project et al., *Reimagine and Rebuild*, *supra*, at p. 6.

[29] See Hough et al., *Impact of the COVID-19 Pandemic*, *supra*, at pp. 18-20.

[30] Chapter 6, Separate and Unequal Education.

[31] *Ibid.*

[32] See *ibid.*

[33] Kelly et al., *Racial Bias Associated With Disparities in Disciplinary Action Across U.S. Schools* (Apr. 2, 2019) Princeton Univ. (as of May 19, 2023).

[34] U.S. Com. on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities* (July 2019) (as of May 19, 2023).

[35] See Racial and Identity Profiling Advisory Bd., *2023 Annual Report* (Jan. 1, 2023), p. 136 (as of May 19, 2023) ("[S]tudies show that students of color, students with disabilities, and LGBTQ+ students are the most likely to experience disciplinary exclusion, when compared to their peers, although evidence does not suggest higher rates of problematic behavior.").

[36] To the extent feasible, the target should be advanced, and all efforts should be made to achieve the goals on an accelerated basis.

[37] See U.S. Gov. Accountability Off., *K-12 Education: Certain Groups of Students Attend Alternative Schools in Greater Proportions Than They Do Other Schools* (Jun. 13, 2019) (as of May 19, 2023).

[38] Warren, *Accountability for California's Alternative Schools* (May 2016) Public Policy Inst. of Cal., p. 3 (as of May 19, 2023).

[39] Rezal, *The Racial Makeup of America's Prisons* (Oct. 31, 2021) U.S. News (as of May 19, 2023).

[40] *Ibid.*

[41] Vera Inst. of J., *Incarceration Trends: California* (Feb. 14, 2023) (as of May 19, 2023).

[42] Prison and J. Initiative, *Incarceration Can Put Education Out of Reach for Life, Report Says* (Nov. 9, 2018) Georgetown Univ. (as of Apr. 5, 2023).

[43] *Ibid.*

[44] The Second Chance Pell Experimental Sites Initiative is a program launched by the U.S. Department of Education in 2015 to provide Pell Grants to individuals in federal and state prisons. Second Chance Pell was expanded in April 2022 with the expansion of 73 additional sites, which "will mean that up to 200 programs will be able to participate in the program as the lead-up to the broader implementation of reinstatement of access to Pell Grants for incarcerated students starting on July 1, 2023." (Press Release, *U.S. Department of Education Announces Expansion of Second Chance Pell Experiment and Actions to Help Incarcerated Individuals Resume Educational Journeys and Reduce Recidivism* (Apr. 26, 2022) U.S. Dept. of Ed. (as of May 19, 2023).)

[45] Chesnut et al., *Second Chance Pell: Five Years of Expanding Higher Education Programs in Prisons, 2016-2021* (May 2022) Vera Inst. of J. (as of May 19, 2023); see also Davis et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults* (2013) RAND Corp. (as of May 19, 2023) (finding that correctional education improves inmates' outcomes after release, and recommending, among other things, funding grants to enable correctional educators to partner with researchers and evaluator to evaluate their programs).

[46] Chesnut et al., *Second Chance Pell*, *supra*, at p. 2.

[47] Delaney and Montagnet, *Second Chance Pell: A Snapshot of the First Three Years* (Apr. 2020) Vera Inst. of J., p. 1 (as of May 19, 2023).

[48] Gibbons and Ray, *The Societal Benefits of Postsecondary Prison Education* (Aug. 20, 2021) The Brookings Institution (as of May 19, 2023).

[49] *Ibid.*

[50] As of the date of this report, the U.S. Department of Education has only asked for applications for institutions to be accepted for the 2022-23 award year, anticipating that it would "implement the legislative changes to allow eligible students in college-in-prison programs to access federal Pell Grants beginning on July 1, 2023." (Press Release, *U.S. Department of Education Announces It Will Expand the Second Chance Pell Experiment for the 2022-2023 Award Year* (Jul. 30, 2021) U.S. Dept. of Ed. (as of May 19, 2023).)

[51] As implemented in Los Angeles County, education-based incarceration "focuses on promoting intellectual growth" in individuals who are incarcerated and using that time "to study for success once their sentence is up." (NPR Staff, *Sheriff's Program Teachers Prisoners To Get Out of Jail* (May 1, 2011) NPR (as of May 19, 2023); see also L.A. County Sheriff's Dept., *Education Based Incarceration: Creating a Life Worth Living* (2012) (as of May 19, 2023).)

[52] Go Greenva, *The Importance of Culturally Responsive Teaching for Black Students* (Sept. 26, 2022) (as of May 19, 2023).

[53] Wright, *Black Boys Matter: Strategies for a Culturally Responsive Classroom* (April/May 2019) Nat. Assn. for the Ed. of Young Children (as of May 19, 2023).

[54] *Ibid.*

[55] *Ibid.*

[56] Cal. Com. on Teacher Credentialing, *Teaching Credentials Requirements* (as of May 19, 2023); Culturally responsive pedagogy describes a method of teaching that calls for engaging students whose experiences and cultures have been excluded from mainstream settings. (New America, *Understanding Culturally Responsive Teaching* (as of May 19, 2023).)

[57] Chapter 6, Separate and Unequal Education.

[58] New America, *Understanding Culturally Responsive Teaching*, *supra*.

[59] Kaufman, *Building Positive Relationships with Students: What Brain Science Says*, Understood (as of May 19, 2023).

[60] This could be modeled on Government Code section 12950.1, which requires employers to provide sexual harassment training and education to employees.

[61] Assem. Com. on Ed., Analysis of Assem. Bill 520 (2021-2022 Reg. Sess.) as amended March 25, 2021, pp. 6–7 (research shows that "[t]eachers of color boost the academic performance of students of color"); Freedburg, *Despite Progress, California's Teaching Force Far From Reflecting Diversity of Students* (Apr. 25, 2018) EdSource (as of May 19, 2023); see also Chapter 6, Separate and Unequal Education.

[62] Cal. Dept. of Ed., *Fingertip Facts on Education in California* (2022-2023) (as of May 19, 2023); Assem. Com. on Ed., Analysis of Assem. Bill 520 (2021-2022 Reg. Sess.) (as amended March 25, 2021),

p. 6; Cal. Dept. of Ed., *State Superintendent Tony Thurmond, Assemblymember Mike Gipson, Educators and Scholars Urge Support for First-of-its-Kind Legislation to Diversify the Teaching Workforce* (Apr. 13, 2021) (as of May 19, 2023).

[63] Sentinel News Service, *Gipson Bill Supports Male Educators of Color: AB 520 Diversifies Teaching Workforce* (Apr. 15, 2021) L.A. Sentinel (as of May 19, 2023).

[64] Tadayon, *How California Districts Seek to Recruit, Retain Black Teachers Amid Shortage* (Jan. 25, 2022) Lake County Record-Bee (as of May 19, 2023) (profiling Michael Obah, who was supported by Oakland Unified's Grown Our Own teacher residency program that pays student teachers a $15,000 stipend while they earn their credentials and apprentice under a mentor and received emotional support, job-site support, test preparation, interview assistance, and connections to Oakland schools for jobs).

[65] Xu et al., *Teacher Workforce Development: 'Grow Your Own' Teacher Programs* (Oct. 2021) Penn State Social Science Research Institute (as of May 19, 2023).

[66] As explained below, UC PRIME (University of California's Programs in Medical Education) is an innovative training program at University of California medical schools that focuses on training medical professionals to meet the needs of California's underserved populations.

[67] Grow Your Own teacher programs are partnerships among school districts, institutions of higher education, and community-based organizations to recruit and prepare community members to become teachers in local schools. (Xu et al., *Grow Your Own*, *supra*.)

[68] Chapter 6, Separate and Unequal Education.

[69] Office of Minority Health, U.S. Dept. of Health and Human Services, *Profile: Black/African Americans* (last modified Feb. 24, 2023) (as of May 19, 2023).

[70] Gewertz, *Survey of Mostly-White Educators Finds 1 in 5 Think Textbooks Accurately Reflect People of Color* (Jun. 29, 2020, updated July 2, 2020) Ed. Week (as of May 19, 2023) (finding that "[e]ducators of color were more likely than their white peers to answer 'none' or 'a little' when asked whether their schools' or districts' textbooks accurately and fully reflect the experiences of people of color").

[71] See Kaur, *Bills in Several States Would Cut Funding to Schools that Teach the 1619 Project. But They Mostly Aren't Going Anywhere* (Feb. 11, 2021, updated Feb. 12, 2021) The Philadelphia Tribune (as of May 19, 2023); Bernstein, *Republican Lawmakers Introduce Bill to Defund '1619 Project' Curricula in Schools* (July 14, 2021) Nat. Rev. (as of May 19, 2023); Sawchuk, *What is Critical Race Theory, and Why is It Under Attack?* (May 18, 2021) EdSource (as of May 19, 2023).

[72] Sawchuck, *What is Critical Race Theory*, *supra*.

[73] See Bunts and Tawa, *How Abolishing Critical Race Theory Preserves White Power* (Feb. 10, 2022) Center for Law and Social Policy (as of May 20, 2023).

[74] Verne A. Shepherd, Member of the UN Committee on the Elimination of Racial Discrimination (CERD), presentation to the United Nations, *Justice for People of African Descent through History Education: Addressing Psychological Rehabilitation* (Mar. 31- Apr. 4, 2014), p. 1.

[75] See Wright, *Black Boys Matter*, *supra*[cite]; Richardson, *Tomorrow's Super Teacher* (2021), p. 13.

[76] See Chapter 33 for another recommendation to develop such a curriculum.

[77] See Chapter 23, Policies on Separate and Unequal Education.

[78] Fensterwald, *Research Finds Ethnic Studies in San Francisco Had Enduring Impact* (Sept. 7, 2021) EdSource (as of May 19, 2023).

[79] *Ibid.*

[80] *Ibid.*

[81] *Sleeter and Zavala, What the Research Says About Ethnic Studies* (2020) Nat. Ed. Assn. Center for Enterprise Strategy, p. 6 (as of May 19, 2023).

[82] Assem. Bill. No. 101 (2021-2022 Reg. Sess.).

[83] Chapter 6, Separate and Unequal Education.

[84] *Ibid.*

[85] Office of Minority Health, U.S. Dept. of Health and Human Services, *Profile: Black/African Americans* (last modified Feb. 24, 2023) (as of May 19, 2023).

[86] Press Release, *Board of Education Approves K-12 Black Studies Curriculum* (Oct. 20, 2020) S.F. Unified School Dist. (as of May 19, 2023).

[87] *Ibid.*; In order to attend a California State University or University of California campus, students must complete California's minimum high school graduation requirements, in addition to a sequence of courses termed "A–G" while in high school. (Cal. Career Center, *"A–G" Courses Required by California Public University Systems (as of May 19, 2023).)*

[88] As background, the Freedom Schools of Mississippi Summer Project, a network of alternative schools sponsored by various civil rights groups led by the Student Nonviolent Coordinating Committee ("SNCC"), flourished briefly in the summer of 1964. (Perlstein, *Teaching Freedom: SNCC and the Creation of the Mississippi Freedom Schools* (1990) 30(3) Hist. of Ed. Q. 297, 297 (as of May 19, 2023).) Freedom Schools provided African American students with an education that public schools would not give them—"one that both provided intellectual stimulation and linked learning to participation in the movement to transform the South's segregated society." (*Ibid.*) The curriculum is still available online. (See Emery et al., *Mississippi Freedom School Curriculum*, Ed. and Democracy (as of May 19, 2023).)

[89] Quinn and Polikoff, *Summer Learning Loss: What is It, and What Can We Do About It?* (Sept. 14, 2017) The Brookings Institution (as of May 19, 2023).

[90] You for Youth, U.S. Dept. of Ed., *Research in the Field* (2018) (as of May 19, 2023) (citing studies).

[91] *Study: 2.3 Million Black Students Lack Access to Summer Learning Programs* (June 10, 2021) The Seattle Medium (as of May 19, 2023) (citing survey).

[92] *Ibid.*

[93] Assem. Com. on Ed., Analysis of Assem. Bill 2498 (2021-2022 Reg. Sess.) (Apr. 20, 2022), pp. 5-6.

[94] The addition of the study of arts to "STEM" or "STEAM" is becoming increasingly popular. There is substantially more data on racial disparities in STEM education specifically, which is what provides the justification for this proposal. However, any policy recommendations from the Task Force will also include arts education.

[95] Patrick et al., *Inequities in Advanced Coursework: What's Driving Them and What Leaders Can Do* (Sept. 2014) The Ed. Trust, p. 8 (as of May 19, 2023).

[96] Off. for Civil Rights, U.S. Dept. of Ed., *2015-16 Civil Rights Data Collection, STEM Course Taking* (Apr. 2018), p. 3 (as of May 19, 2023).

[97] *Id.* at p. 4.

[98] *Id.* at p. 5.

[99] Patrick, et al., *Shut Out: Why Black and Latino Students Are Under-Enrolled in AP STEM Courses* (Apr. 21, 2022) The Ed. Trust, pp. 5, 11 (as of May 19, 2023).

[100] *Id.* at pp. 7, 14–15.

[101] *See id. at p. 22.*

[102] Patrick et al., *Shut Out of AP STEM Courses*, *supra*, at pp. 11, 14; Scott et al., *Computer Science in California's Schools: An Analysis of Access, Enrollment, and Equity* (June 17, 2019) Kapor Center, p. 15 (as of May 19, 2023) (hereafter Computer Science in California's Schools).

[103] This original clause contained PSAT/SAT scores. This language has been removed to ensure the proposal is consistent with the Task Force's other recommendations.

[104] For example, Illinois, Washington, and North Carolina have laws that require students meeting or exceeding expectations on the state exam to be automatically enrolled in the next most rigorous course offered in the school. (Patrick et al., *Shut Out of AP STEM Courses*, *supra*, at p. 24.)

[105] See *ibid.*

[106] *Id.* at p. 25.

[107] The CSSIP is a report put together at the direction of the Superintendent of Public Education to transform K-12 CS education "so all of California's students will be better prepared to contribute to our digital world." (See Educator Excellence and Equity Division, Teaching and Learning Support Branch, Cal. Dept. of Ed., *California Computer Science Strategic Implementation Plan* (Jul. 15, 2019) (as of May 19, 2023).)

[108] Scott et al., *Computer Science in California's Schools*, *supra*, at p. 15.

[109] See generally Chapter 6 Separate and Unequal Education; Chapter 10, Stolen Labor and Hindered Opportunity.

[110] Smith, *Advancing Racial Equity in Career and Technical Education Enrollment* (Aug. 28, 2019) Center for Am. Progress (as of May 19, 2023); see generally McCardle, *A Critical Historical Examination of Tracking as a Method for Maintaining Racial Segregation* (2020) 45 Intersectionality & The Hist. of Ed. 1, 1-12 (as of May 19, 2023).

[111] See U.S. Dept. of Ed., *Bridging the Skills Gap: Career and Technical Education in High School* (Sept. 2019) (as of May 19, 2023). CTE programs differ from traditional vocational programs in two main ways: (1) CTE programs span nearly every industry (see Flynn, *What is Career and Technical Education, and Why Does it Matter?* (Feb. 2021) Ed. Northwest (as of May 19, 2023)); and (2) while vocational programs aimed to funnel students into the targeted career after high school, CTE programs prepare students for a career at whatever point they decide to, including after the attainment of a college degree (see Weingarten, *Vocational Education is Out; Career and Technical Education is In* (Feb. 16, 2015) EdSurge (as of May 19, 2023)).

[112] See Stevens et al., *Career-Technical Education and Labor Market Outcomes: Evidence from California Community Colleges* (May 2015) Center for Analysis of Postsecondary Ed. and Employment, p. 32 (as of May 19, 2023) (finding "substantial" and "statistically significant" financial returns for students who specifically enrolled in CTE courses throughout California's community colleges).

[113] See Smith, *Advancing Racial Equity in Career and Technical Education Enrollment*, *supra* (recommending states increase equity in CTE by reporting data disaggregated by race).

[114] CTE programs are also available to those already in the workforce — those programs typically follow apprenticeship models. See Chapter 27 for the Task Force's recommendation addressing those programs.

[115] See Anderson et al., *Racial and Ethnic Equity Gaps in Postsecondary Career and Technical Education* (Mar. 2021) Urban Inst., pp. 2, 19 (as of May 19, 2023).

[116] See, e.g., Cal. Dept. of Ed., *Allocations & Apportionments* (as of May 19, 2023).

[117] For a full list of CTE industry sectors as categorized by the California Department of Education, see Cal. Dept. of Ed., *General Information* (as of May 19, 2023).

[118] See Chapter 6, Separate and Unequal Education; see also Richards, *The Gerrymandering of School Attendance Zones and the Segregation of Public Schools: A Geospatial Analysis* (2014) 51 Am. Ed. Research J. 1119, 1121-1123, 1149-1153 (as of May 19, 2023); Carrillo and Salhotra, *The U.S. Student Population is More Diverse, But Schools are Still Highly Segregated*, NPR (July 14, 2022) (as of May 19, 2023).

[119] See Mays, *California is Richer than Ever. Why is it Last in the Nation for School Bus Access?*, L.A. Times (June 22, 2022) (as of May 19, 2023).

[120] See, e.g., Ludwig, *'The System has Imploded': A Look at Redlining, Academic*

Achievement Gaps (Apr. 7, 2022) The Daily Californian (as of May 19, 2023); see also Parrish and Ikoro, Chicago Public Schools and Segregation, South Side Weekly (Feb. 24, 2022) (as of May 19, 2023) (discussing how redlining and other discriminatory policies led to school closures in African American neighborhoods in Chicago); Jackson, School Closures Threaten Long-Term Prospects for Blacks in Baltimore, Beyond, Atlanta Black Star (Dec. 26, 2017) (as of Feb. 8, 2023) (discussing same in Baltimore).

[121] Richards, *The Gerrymandering of School Attendance Zones and the Segregation of Public Schools*, *supra*, at pp. 1149-1153. The creation of new schools may raise concerns about the risks of neighborhood gentrification and the risk of excluding African American families from these investments. Recommendations addressing the housing segregation harms outlined in Chapter 22, Policies Addressing Housing Segregation, include provisions expressly designed to prevent such outcomes, including the Task Force's recommendation to impose rent caps in formerly redlined neighborhoods. (See Chapter 22.)

[122] Ed. Code, § 48301, subd. (a)(1). The Education Code contains a few narrow exceptions to this rule—for instance, for children of active military duty parents. (Ed. Code, § 46600, subd. (d)(1).)

[123] Berkeley Pub. Schools, Information on Berkeley Unified's Student Assignment Plan (as of May 19, 2023).

[124] *Ibid.*

[125] *Ibid.* The priority categories are: (1) students currently attending the school who live within that school's geographic "attendance zone"; (2) students currently attending the school who live outside the zone; (3) siblings of students currently attending the school; (4) school district residents not attending the school who live within the zone; (5) school district residents not attending the school who live outside the zone; and (6) nonresidents wanting an inter-district transfer.

[126] *Am. Civil Rights Found. v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th, 207, 213. BUSD uses three diversity factors: (1) the average household income of those living in the planning area; (2) the average education level attained by adults living in the planning area; and (3) the percentage of "students of color" living in the planning area. BUSD determines diversity by comparing the diversity of the attendance zone with the diversity of the neighborhood in which a student resides, not the diversity characteristics of individual students.

[127] Though students ordinarily must attend schools within the district in which they reside, the Education Code creates an exception for students who undergo an inter-district transfer process. (Ed. Code, § 48204, subd. (a)(3).)

[128] If sufficient funding is ensured, some data suggest that inter-district transfers could contribute to improvements in the schools from which students transfer, as they enable schools to better identify areas for improvement. (See Taylor, Evaluation of the School District of Choice Program (Jan. 27, 2016) Cal. Leg. Analyst's Off., pp. 10-11 (as of May 19, 2023) (noting ways in which funding follows students); *id.* at pp. 5, 22-23 (discussing how home districts developed improvements to address reasons why students transferred away).)

[129] Chavez and Frankenberg, Integration Defended: Berkeley Unified's Strategy to Maintain School Diversity (Sept. 2009) Univ. Cal., Berkeley Law School Civil Rights Project, pp. 15-16 (as of May 19, 2023).

[130] Richards et al., Achieving Diversity in the Parents Involved Era: Evidence for Geographic Integration Plans in Metropolitan School Districts (2012) 14 Berkeley J. African-Am. Law & Policy, 67, 89, 92 (as of May 19, 2023).

[131] See generally Johnson et al., Higher Education as a Driver of Economic Mobility (Dec. 2018) Pub. Policy Inst. of Cal. (as of May 19, 2023).

[132] See, e.g., *id.* at 16; Johnson et al., Making College Affordable (Sept. 2017) Pub. Policy Inst. of Cal., p. 1 (as of May 19, 2023) ("Tuition and fees are at their highest point ever at California's public universities.").

[133] See Allen and Wolniak, *Exploring the Effects of Tuition Increases on Racial/Ethnic Diversity at Public Colleges and Universities* (2019) 60 Research in Higher Ed. 18, 37-39.

[134] See Chapter 6, Separate and Unequal Education.

[135] Bates and Siqueiros, State of Higher Education for Black Californians (Feb. 2019) The Campaign for College Opportunity, p. 27 (as of May 19, 2023).

[136] Cook and Jackson, Keeping College Affordable for California Students (Dec. 2021) Pub. Policy Inst. of Cal., p. 4 (as of May 19, 2023).

[137] Replogle, What California's Free Tuition Programs Can Teach the Nation (May 19, 2021) LAist (as of May 19, 2023).

[138] Winograd and Lubin, Tuition-Free College is Critical to Our Economy (Nov. 2, 2020) EdSource (as of May 19, 2023).

[139] Torchinsky, University of California will Waive Tuition and Fees for Many Native American Students (Apr. 28, 2022) NPR (as of Nov. 15, 2022); President Michael V. Drake, University of California, Letter to University of California Chancellors (Apr. 22, 2022) (as of May 19, 2023).

[140] See Leslie, The Vexing Legacy of Lewis Terman (Jul./Aug. 2000) Stanford Magazine (as of May 19, 2023); Winston, Scientific Racism and North American Psychology (May 29, 2020) Oxford Research Encyclopedias, Psychology (as of May 19, 2023).

[141] See Jimenez and Modaffari, Future of Testing in Education: Effective and Equitable Assessment Systems (Sept. 16, 2021) Center for Am. Progress (as of May 19, 2023).

[142] Nichols, 'Segregation Forever?': The Continued Underrepresentation of Black and Latino Undergraduates at the Nation's 101 Most Selective Public Colleges and Universities (Jul. 21, 2020) The Ed. Trust, pp. 6-7 (as of May 19, 2023).

[143] As of 2022, the UC and CSU systems have already eliminated standardized

testing as a requirement for undergraduate admission; this proposal seeks to expand that policy to the UC and CSU graduate programs

[144] Rice, *Diversity in Medical Schools a Much-Needed New Beginning* (Jan. 2021) Morehouse School of Medicine (as of Jan. 10, 2023); see also Murphy, *How to Get Up to 3,000 More Black People in the Physician Pipeline* (Jan. 29, 2021) Am. Medical Assn. (as of May 19, 2023).

[145] Rice, *Diversity in Medical Schools*, *supra*.

[146] Sullivan et al., *Removing the Graduate Record Examination as an Admissions Requirement Does Not Impact Student Success* (Sept. 26, 2022) Pub. Health Rev. (as of May 19, 2023).

[147] See, e.g., *Nietzel, Most of University of California at Berkeley Graduate Programs Will Not Require the GRE This Year* (Sept. 30, 2021) Forbes (as of May 20, 2023); see also Office of the Chancellor, Cal. State Univ., *CSU First-Time Freshman Standardized Exams and Admissions Recommendations* (Jan. 5, 2022), p. 14 (as of May 20, 2023).

[148] See Knoester and Au, *Standardized Testing and School Segregation: Like Tinder for Fire?* (Dec. 28, 2015) 20 Race, Ethnicity, and Education 1, 5 (noting that the criticism of racial discrimination perpetuated through "high-stakes" testing does not necessarily apply to "assessment writ large").

[149] Ed. Code, § 6062.5, subd. (a)(3); see also Ed. Code, § 60604.5, subd. (b)(8) (legislative findings for reauthorization statute calling to ensure "that no aspect of the system creates any bias with respect to race, ethnicity, culture, religion, gender, or sexual orientation"). Likewise, California's education regulations do not appear to require a review of the CAASPP for bias. (See generally Cal. Code Regs., tit. 5, §§ 805-876.)

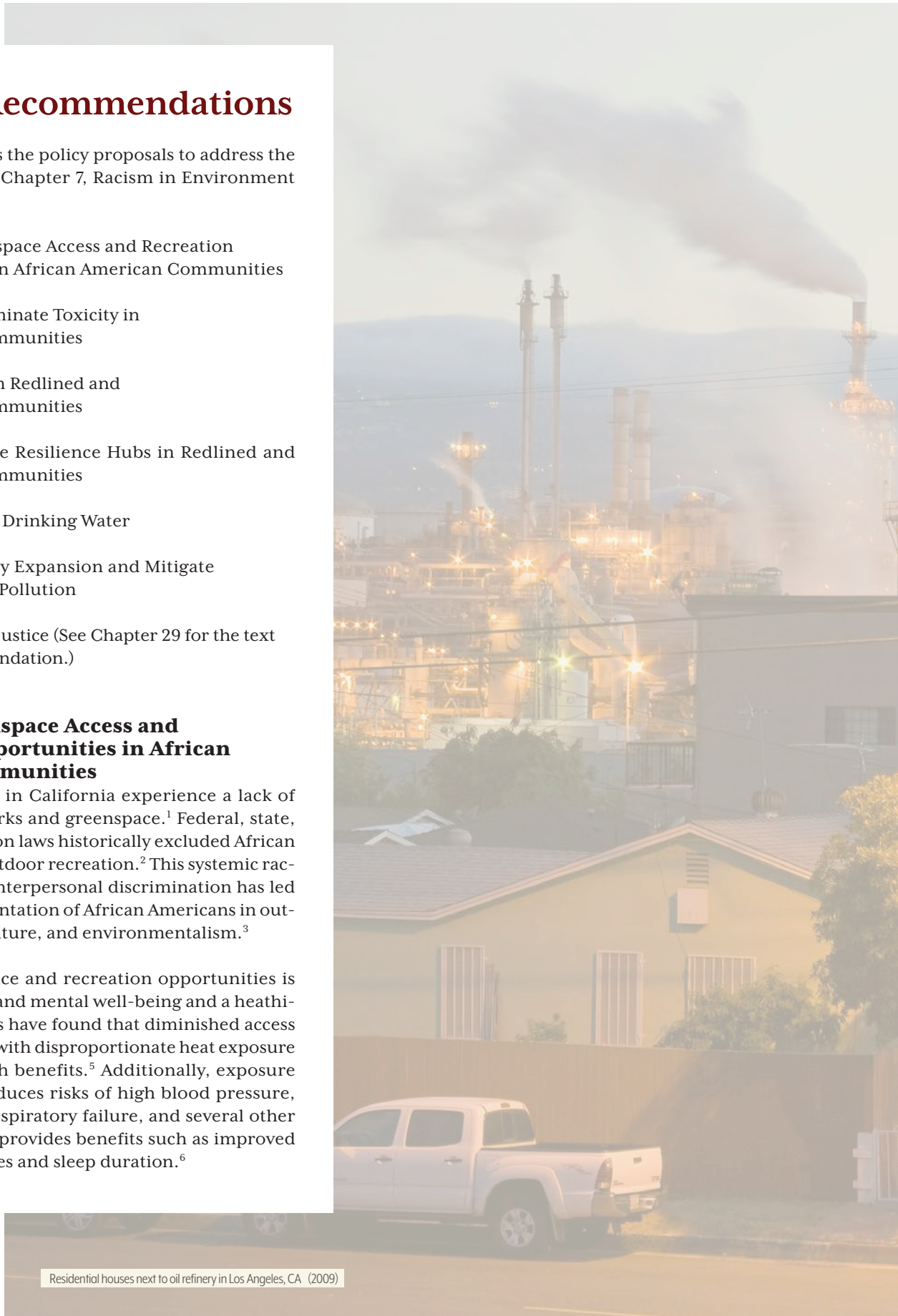
[150] See generally Ed. Code, §§ 60600-60659.

[151] Ed. Code, § 44283, subd. (b).

[152] Taylor and Mendoza, *Annual Report on Passing Rates of Commission-Approved-Examinations from 2015-16 to 2019-20* (Jun. 2021) Cal. Com. on Teacher Credentialing, Ed. Preparation Committee, pp. 4J-3-4J-4 (as of May 20, 2023).

CHAPTER 24 — POLICIES ADDRESSING Racism in Environment & Infrastructure

COURTESY OF CITIZEN OF THE PLANET/EDUCATION IMAGES/UNIVERSAL IMAGES GROUP VIA GETTY IMAGES



Residential houses next to oil refinery in Los Angeles, CA (2009)

I. Policy Recommendations

This chapter details the policy proposals to address the harms set forth in Chapter 7, Racism in Environment and Infrastructure.

- Increase Greenspace Access and Recreation Opportunities in African American Communities
- Test for and Eliminate Toxicity in Descendant Communities
- Increase Trees in Redlined and Descendant Communities
- Develop Climate Resilience Hubs in Redlined and Descendant Communities
- Remove Lead in Drinking Water
- Prevent Highway Expansion and Mitigate Transportation Pollution
- Address Food Injustice (See Chapter 29 for the text of this recommendation.)

Increase Greenspace Access and Recreation Opportunities in African American Communities

African Americans in California experience a lack of access to urban parks and greenspace.[1] Federal, state, and local segregation laws historically excluded African Americans from outdoor recreation.[2] This systemic racism coupled with interpersonal discrimination has led to an underrepresentation of African Americans in outdoor recreation, nature, and environmentalism.[3]

Access to greenspace and recreation opportunities is critical to physical and mental well-being and a heathier lifestyle.[4] Studies have found that diminished access to parks correlates with disproportionate heat exposure and reduced health benefits.[5] Additionally, exposure to green spaces reduces risks of high blood pressure, diabetes, stroke, respiratory failure, and several other health harms, and provides benefits such as improved pregnancy outcomes and sleep duration.[6]

The harms of systemic racism, especially historically racist urban planning policies that produced inequitable access to greenspace exposure for African American Californians, have not yet been corrected. The Task Force recommends the Legislature fund the development of local parks in African American communities, with special consideration for descendant communities, to acquire land, build and renovate parks, purchase play equipment, support programming, and build indoor and outdoor recreation facilities (e.g., fields, playgrounds, basketball and tennis courts, ice rinks, public pools);[7] include African American communities, with special consideration for descendants, as stakeholders in the process of creating and programming parks to develop universally accessible park designs and increase access to parks for African Americans, with special consideration for descendants;[8] and support the work of community-based organizations to ensure safe access to neighborhood-level physical activity spaces and services (e.g., public parks and playgrounds).[9]

Test For and Eliminate Toxicity in Descendant Communities

Seventy percent of hazardous waste sites listed on the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) are located within one mile of federally assisted housing.[10] Communities that live in federally assisted housing are disproportionately Black.[11] Proximity to a contaminated site during flooding events can expose nearby residents to hazardous pollutants and groundwater contamination.[12] Disproportionately African American, disadvantaged communities[13] face greater risks from sea-level rise and subsequent climate change flooding than the general population.[14] In California, they are five times more likely to live within half a mile of a toxic site that could flood by 2050.[15]

Exposure to green spaces reduces risks of high blood pressure, diabetes, stroke, respiratory failure, and several other health harms, and provides benefits such as improved pregnancy outcomes and sleep duration.

Compared to the general population in California, African Americans are

5x MORE LIKELY to live within half mile of a toxic site that could flood by 2050

The Task Force recommends the Legislature amend existing state law to (1) require coordination between the Department of Toxic Substances Control (DTSC) and water boards (the State Water Resources Control Board and Regional Water Quality Control Boards, collectively) to allocate resources to remediate contaminated sites with a high flood risk where descendant communities are specifically located; (2) expand the definition of "Vulnerable Community" used in the Cleanup in Vulnerable Communities Initiative to include descendant communities as a category; and (3) allow tenants to terminate their lease early if their housing is on or within one-half mile of a toxic site.[16]

The Legislature should direct the California Environmental Contaminant Biomonitoring Program, also called Biomonitoring California, to develop a program to conduct environmental exposure screenings in public housing adjacent to Superfund sites in a manner that is readily available to communities. Screenings should be mobile, offered directly in the community before and after school and work hours, and provided in the resident's primary language.[17] In addition to exposure screenings, local health departments and organizations should offer informational sessions for community members about the exposure risks, potential health harms, and opportunities for screening and care,[18] using materials created by the California Department of Public Health and Biomonitoring California.

Finally, the Task Force recommends the Legislature require local governments with high flood risk zones to develop community action plans to relocate residents in high-risk hazardous flood zones during climate emergencies, and offer vouchers for temporary housing relocation. This should include a notification system that alerts residents whenever land is discovered to have toxic contamination following a climate disaster event.[19] Following a climate emergency, Biomonitoring California should provide free community biomonitoring for toxic chemicals including lead, mercury, and arsenic, and for elevated levels of natural elements such as iron and zinc for residents living in contaminated communities with a high flood risk.

Increase Trees in Redlined and Descendant Communities

In the 1930s, the Home Owners' Loan Corporation (HOLC) developed neighborhood appraisal maps to assess loan risk, and their legacy correlates with infrastructure inequality and housing segregation today.[20] Under that appraisal process, areas with older housing, typically economically disadvantaged neighborhoods and communities of color, were almost always labeled "hazardous," outlined in red, and given the lowest grade, "D."[21] Today, the same neighborhoods that received an "A" grade have nearly twice as much tree coverage as communities that were "redlined" by receiving the "D" grade.[22] Without trees, communities suffer from increased health and environmental hazards.[23]

The Task Force recommends the Legislature require local governments to identify redlined and descendant communities within their jurisdiction and make plans to increase tree canopy coverage and access to greenspace to limit pollution exposure, ameliorate heat island effects, and improve air quality.[24] This proposal would strengthen Senate Bill No. 1000 (SB 1000),[25] California's current law that requires cities and counties to adopt environmental justice elements or integrate environmental justice policies into their general plans. The Task Force recommends the Legislature further the aims of SB 1000 in the following ways:

- Define "disadvantaged communities" to include redlined and descendant communities with a "D" HOLC rating and minimal tree canopy coverage;
- Require timelines and deadlines for environmental justice plans, with regular public reporting on the progress toward implementation;
- Require the adoption and regular updating of environmental justice policies regardless of when other elements are considered;[26] and
- Ensure investments in climate change adaptation projects do not displace residents (via, for instance, gentrification), by implementing rent control policies tailored to local communities.[27]

Develop Climate Resilience Hubs in Redlined and Descendant Communities

African Americans bear some of the greatest risks from climate change, such as increased asthma diagnoses and premature mortality from extreme heat or pollution exposure.[28] Because redlined communities suffer disproportionately from extreme heat, the expanding duration and frequency of heat waves due to climate change pose a particular threat to African Americans,[29] who are more likely to live in redlined areas.[30] Redlined communities lack the public infrastructure necessary to adapt to the gravest climate change risks.

This Task Force recommends the Legislature provide economic support to ameliorate these disparities through the development of climate resilience hubs, community-driven facilities that support residents, facilitate communication, distribute aid, and provide an opportunity for communities to become more self-sustaining during climate emergencies. Specifically, the Task Force recommends the Legislature utilize the Transformative Climate Communities (TCC) Program to fund climate resilience hubs.[31] The TCC is operated by the California Strategic Growth Council, a 10-member executive council comprised of seven state agencies and three public members, with funding from California's Cap and Trade system and the California General Fund.[32]

The Legislature should establish and increase TCC funding to provide grants to redlined and descendant communities to improve infrastructure and climate resiliency, and address other health harms associated with the legacy of redlining. The Legislature should also invest in retrofitting public buildings to serve as climate resilience hubs, to respond to community needs caused by a climate disaster by providing clean water, food distribution, high-speed internet, electricity, and heat or cool air, among other necessities.[33] The Legislature should also require local governments to develop accessible warning/alert systems and climate shelters for unhoused residents.[34]

This Task Force recommends the Legislature provide economic support to ameliorate these disparities through the development of climate resilience hubs, community-driven facilities that support residents, facilitate communication, distribute aid, and provide an opportunity for communities to become more self-sustaining during climate emergencies.

At the same time, the Legislature must ensure that these environmental investments do not displace residents (via, for example, gentrification), by implementing rent control policies tailored to local communities.[35] Developing resilient community infrastructure can lead to increased property values and spur cycles of gentrification that make the now-improved communities unaffordable for their original residents.[36]

Remove Lead in Drinking Water

Lead pollution is disproportionately high in African American communities that were segregated through federal redlining.[37] One major lead pollution source is lead service lines (LSL) that deliver drinking water to homes.[38] Replacing LSLs can be prohibitively expensive, costing thousands of dollars.[39] California has addressed the replacement of the publicly-owned portion of LSLs through legislation, but funding LSL replacement on privately-owned properties in less affluent communities remains an issue.[40] Many individual homeowners cannot afford to replace their LSL, and some property owners refuse to cover the costs of LSL replacement on rental properties.[41] If the LSL is replaced on only one side of the water system, it is called a partial replacement.[42] Partial LSL replacement can significantly increase short-term lead exposure in the time after replacement and lead to greater health risks,[43] while also creating a disproportionate burden of health harms on poor communities.[44]

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Source: https://www.epa.gov/ground-water-and-drinking-water/infographic-lead-drinking-water

The Task Force recommends the Legislature ban partial lead service line replacement and fund full LSL replacement on privately-owned property to remove lead in drinking water. The Legislature should allocate 40 percent of the Drinking Water State Revolving Fund from the federal Infrastructure Investment and Jobs Act funds for full lead service line replacement to go directly to African American neighborhoods that were formerly redlined, with special consideration for descendants. To ensure accountability, the Legislature should require the State Water Resources Control Board's Division of Drinking Water to track federal Infrastructure Investment and Jobs Act fund distribution to ensure money reaches African American neighborhoods.

Prevent Highway Expansion and Mitigate Transportation Pollution

From the 1950s to the 1970s, state and federal highway construction targeted "blighted" neighborhoods and valuable inner city land that tended to be overwhelmingly poor and African American.[45] These highways destroyed African American communities or otherwise suffocated their economic vitality by cutting off their access to the rest of the city.[46] Today, Black communities are disproportionately located near highways and subsequently suffer more from on-road sources of carcinogenic pollution.[47] The Task Force recommends the Legislature reduce the pollution burden shouldered by African American communities, by ending highway expansion in areas with high levels of pollution. Assembly Bill No. 1778 (AB 1778), which was passed by the Assembly but failed in Senate Transportation Committee, would have prohibited California from funding or permitting freeway expansions or widening transportation projects in disadvantaged communities.[48] AB 1778 would have required the Department of Transportation to consult the California Healthy Places Index, an online resource developed by the Public Health Alliance of Southern California that uses indicators like income level and PM 2.5 pollution, to identify disadvantaged communities before initiating any projects.[49] The Task Force recommends the Legislature pass such a law, tailored to serve the needs of African American communities.

Endnotes

[1] Chapman et al., *Parks and an Equitable Recovery: A Trust for Public Land Special Report* (May 27, 2021) (as of May 18, 2023); Rigolon, *A Complex Landscape of Inequity in Access to Urban Parks: A Literature Review* (Sept. 2016) 153 Landscape and Urban Planning 160, 161,165 (as of May 18, 2023).

[2] 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's Beginning to Change*, cnn.com (Dec. 14, 2021) (as of Feb. 7, 2023).

[3] See generally Finney, *Black Faces, White Spaces: Reimagining the Relationship of African Americans to the Great Outdoors* (2014).

[4] See Borunda, *How 'Nature Deprived' Neighborhoods Impact the Health of People of Color*, (July 29, 2020) nationalgeographic.com (as of Feb. 7, 2023).

[5] See Rigolon, *153 Landscape and Urban Planning*, *supra*, at pp. 161,167.

[6] Twohig-Bennett and Jones, *The Health Benefits of the Great Outdoors: A Systematic Review and Meta-Analysis of Greenspace Exposure and Health Outcomes* (Oct. 2018) 166 Environmental Research 628, 628-637.

[7] Chapman, *Parks and an Equitable Recovery*, *supra*.

[8] Finney, *Black Faces, White Spaces*, *supra*.

[9] See, e.g., Outdoor Afro, *Our Mission* (as of Feb. 7, 2023).

[10] Shriver Center on Poverty Law and Earthjustice, *Poisonous Homes: The Fight for Environmental Justice in Federally Assisted Housing* (June 2020) p. 2 (as of Jan. 5, 2023); see also Caputo and Lerner, *House Poor, Pollution Rich* (Jan. 13, 2021) (as of May 19, 2023).

[11] Shriver Center on Poverty Law and Earthjustice, *Poisonous Homes*, *supra*, at p. 15.

[12] See *id.* at pp. 14-15.

[13] These are communities, designated by CalEPA for the purpose of Senate Bill No. 535, that represent the 25-percent highest scoring census tracts in CalEnviroScreen 4.0—tracts with high amounts of pollution. (California Office of Environmental Health Hazard Assessment, SB 535 Disadvantaged Communities (Update 2022) (as of May 19, 2023).

[14] University of California, Berkeley, Sustainability and Healthy Equity Laboratory, Toxic Tides Project, Fact Sheet (2021).

[15] *Ibid.*

[16] See Shriver Center on Poverty Law and Earthjustice, *Poisonous Homes*, *supra*, at p. 60.

[17] See *id.* at p. 67.

[18] See *ibid.*

[19] See *ibid.*

[20] Locke et al., *Residential Housing Segregation and Urban Tree Canopy in 37 US Cities* (Mar. 25, 2021) 1 NPJ Urban Sustainability 15, 1 (as of Dec. 2, 2022).

[21] *Id.* at p. 2.

[22] *Id.* at p. 3.

[23] Infrastructure absorbs and re-emits the sun's heat, and trees are critical to cooling down the temperature to prevent a "heat island" effect. (EPA, Learn About Heat Islands (as of Dec. 2, 2022).) Heat-related deaths in California are disproportionate along racial lines with "Black Californians . . . more likely than those of any other race to die from heat." (Phillips, et al., *Extreme Heat is One of the Deadliest Consequences of Climate Change But California Undercounts the Human Toll*, L.A. Times (Oct. 7, 2021) (as of May 30, 2023).)

[24] Legislative efforts targeting redlined areas might not aid predominantly African American communities and will likely exclude important African American communities. Adequately addressing the needs of all African American Californians will require a consideration of more than just redlining maps and should consider socioeconomic status and race. (Perry and Harshbarger, *America's Formerly Redlined Neighborhoods Have Changed, and so Must Solutions to Rectify Them*, Brookings Institute (Oct. 14, 2019) (as of Nov. 28, 2022).)

[25] Gov. Code, § 65302.

[26] SB No. 1000 requires that environmental justice policies be adopted when two or more general plan elements are adopted. (Gov. Code, § 65302, subd. (h)(2).)

[27] See CEJA, Environmental and Housing Justice Platform (Oct. 2021) p. 17 (as of Dec. 2, 2022).

[28] EPA, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* (Sept. 2021) p. 6 (as of Nov. 22, 2022).

[29] Cal. Dept. of Public Health, Off. of Health Equity, *Climate Change & Health Equity: Issue Brief* (May 2019) p. 2 (as of May 30, 2022).

[30] Plumer et al., *How Decades of Racist Housing Policy Left Neighborhoods Sweltering*, N.Y. Times (Aug. 24, 2020) (as of Nov. 22, 2022); Locke et al., Residential Housing Segregation and Urban Tree Canopy, *supra*, at p. 2.

[31] The TCC awards grants to specified eligible-entities such as community-based organizations, local governments, and nonprofits, to implement plans that reduce greenhouse gas emissions or provide local economic, workforce, health and environmental benefits. (See California Strategic Growth Council, Transformative Climate Communities (as of May 19, 2023).)

[32] See California Strategic Growth Council, *Vision* (as of Dec. 2, 2022).

[33] See CEJA, Environmental and Housing Justice *Platform* (2021) p. 14 (as of May 30, 2023).

[34] See also *ibid.*

[35] See *id.* at p. 17.

[36] *Ibid.*; see also California Task Force to Study and Develop Reparation

Proposals for African Americans (Oct. 12, 2021) Testimony of Helen H. Kang (as of May 19, 2023).

[37] Muller et al., *Environmental Inequality: The Social Causes and Consequences of Lead Exposure* (2018) 44 Annual Review of Sociology 263, 266-268.

[38] See Comments of the Attorneys General of California, Oregon, Minnesota, Connecticut, Pennsylvania, Wisconsin, Illinois, Maryland, New York, and New Jersey (Feb. 12, 2020) p. 10 (as of May 19, 2023).

[39] *Id.* at p. 8.

[40] *Id.* at pp. 7-9.

[41] *Id.* at pp. 7-9, 11.

[42] *Id.* at p. 10.

[43] EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements (Sept. 28, 2011) p. 1 (as of May 19, 2023).

[44] EPA, *Lead and Copper Rule Revisions White Paper* (October 2016) p. 4 (as of May 19, 2023).

[45] Mohl, *The Interstates and the Cities: Highways, Housing, and the Freeway Revolt* (2002) Poverty & Race Research Action Council p. 3 (as of May 19, 2023).

[46] *Ibid.*

[47] Pratt et al., *Traffic, Air Pollution, Minority and Socio-Economic Status: Addressing Inequities in Exposure and Risk* (May 2015) 12 International Journal of Environmental Research and Public Health 5355, 5360 (as of May 30, 2023).

[48] Assem. Bill No. 1778 (2021-2022 Reg. Sess.).

[49] *Ibid.*

CHAPTER 25 — POLICIES ADDRESSING Pathologizing the African American Family

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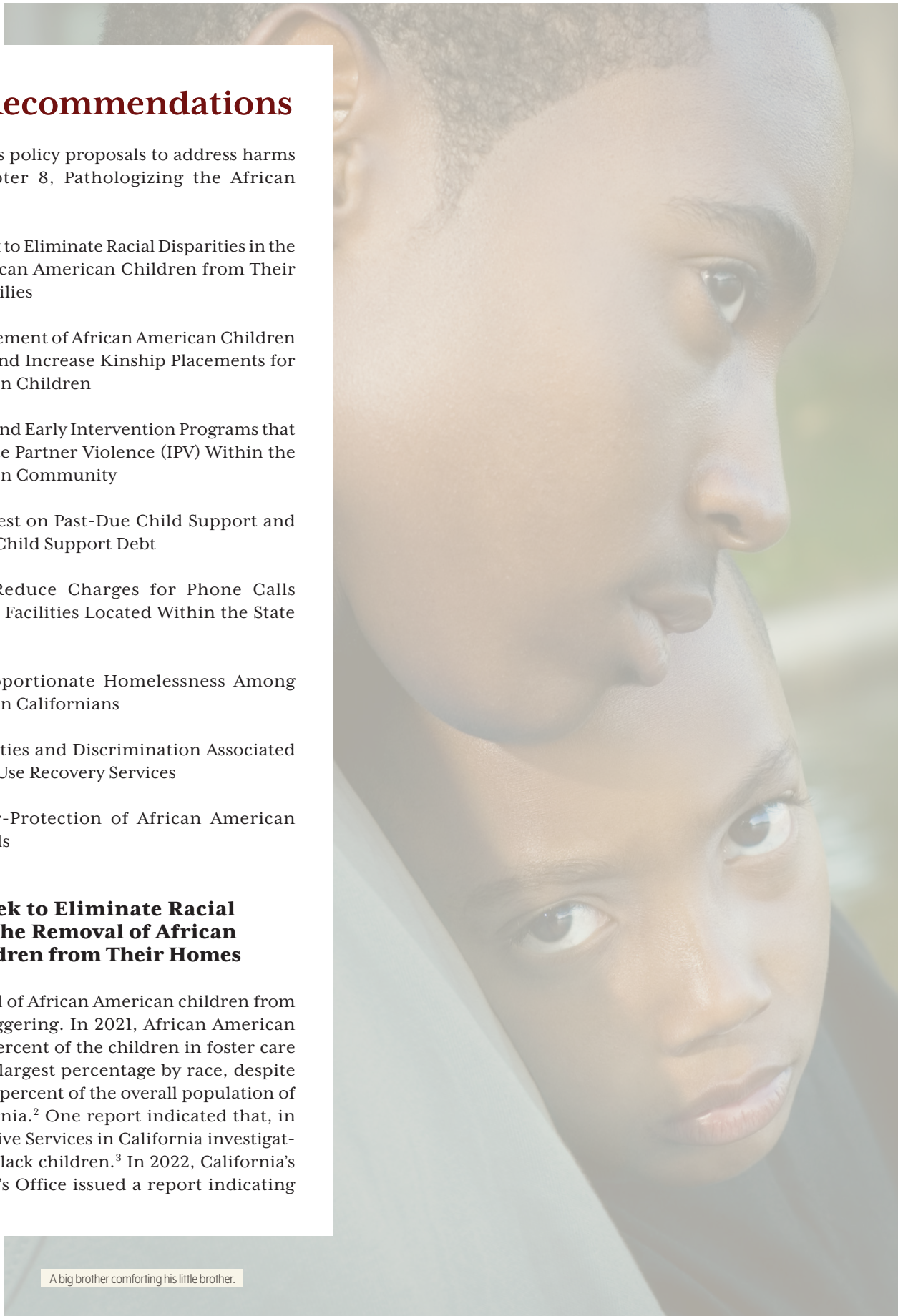


A big brother comforting his little brother.

I. Policy Recommendations

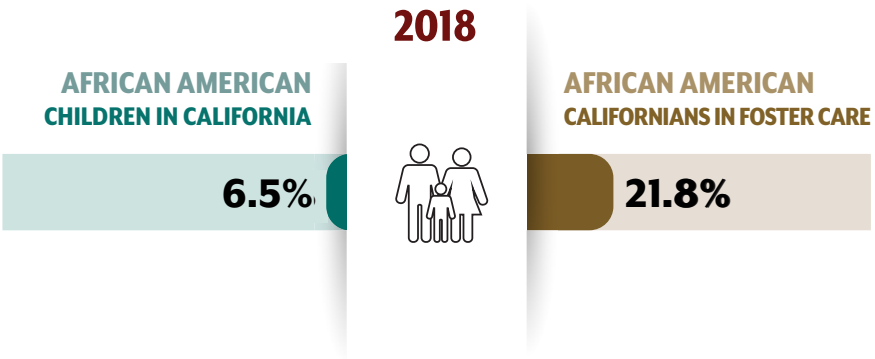
This chapter details policy proposals to address harms set forth in Chapter 8, Pathologizing the African American Family.

- Reduce and Seek to Eliminate Racial Disparities in the Removal of African American Children from Their Homes and Families
- Reduce the Placement of African American Children in Foster Care and Increase Kinship Placements for African American Children
- Establish and Fund Early Intervention Programs that Address Intimate Partner Violence (IPV) Within the African American Community
- Eliminate Interest on Past-Due Child Support and Eliminate Back Child Support Debt
- Eliminate or Reduce Charges for Phone Calls from Detention Facilities Located Within the State of California
- Address Disproportionate Homelessness Among African American Californians
- Address Disparities and Discrimination Associated with Substance Use Recovery Services
- End the Under-Protection of African American Women and Girls

Reduce and Seek to Eliminate Racial Disparities in the Removal of African American Children from Their Homes and Families

The rate of removal of African American children from their homes is staggering. In 2021, African American children were 18 percent of the children in foster care in California,[1] the largest percentage by race, despite constituting only 5 percent of the overall population of children in California.[2] One report indicated that, in 2021, Child Protective Services in California investigated one-half of all Black children.[3] In 2022, California's Legislative Analyst's Office issued a report indicating

that the proportion of Black youth in foster care is four times larger than the proportion of Black youth in California overall.[4] Given the disparities, it is likely that racial bias impacts African American families at all stages of the process, including during the reporting of abuse or neglect, the investigation of the allegation, the substantiation of the allegation, the decision to the remove



the child from the home, and ultimately where to place a child once the child is removed.[5] As detailed in Chapter 8, Pathologizing African American Families, one 1996 study indicated that the "disproportionality of Black children being taken from their parents and placed in foster care 'does not derive from inherent differences in the rates at which they are abused or neglected,' but rather reflects the 'differential attention' received by Black children 'along the child welfare service pathway.'"[6] Vague or nebulous definitions of mistreatment or abuse, which are inherently subjective, may allow racial bias to intrude into a lone social worker's decision-making process about whether to initiate an investigation or remove a child.[7] Recent research has shown that with respect to drug-positive newborns, African American mothers were more likely to have their infants removed than white mothers even though the overall characteristics or conditions of the infants were similar.[8]

The following recommendations provide a multi-prong approach to eliminate racial disparities for African American families by implementing procedures in the child welfare system to eliminate the influence racial bias may have on decision-making at every stage.

The Task Force recommends that the Legislature require "blind" removal meetings where a committee of social workers, who are unaware of the race of the child and their family, make the decision regarding whether a claim of child abuse is substantiated and whether the initial detention of a child from their home is warranted.[9] This recommendation does not include predictive risk modeling tools some agencies have used to augment their decision-making process around initial detentions and removals. Many stakeholders have expressed concerns that predictive risk modeling tools "may infringe on civil rights and civil liberties, and exacerbate racial disproportionality and disparities in child welfare."[10]

The Task Force also recommends that the Legislature enact legislation to prohibit child welfare agencies from detaining a child on the basis of a nebulous claim of neglect where the investigation was initiated based on a report that is rooted in a parent's poverty or lack of resources.[11] This recommended legislation would establish that, before a child welfare agency can detain a child based on general neglect, the agency must demonstrate that it has engaged in "active efforts." "Active efforts" means the agency has taken proactive steps, which may include financial assistance and support services, to help parents ameliorate or eliminate the conditions that caused the agency to investigate the family.[12]

To address concerns that incongruent cultural standards are often applied to justify the removal of African American children from their families, the Task Force recommends that the Legislature require the testimony of an independent qualified expert on the prevailing cultural practices and standards of the African American community, including child rearing practices, before a child can be removed from their home. A child could be removed only where the qualified expert testifies that continued custody in the home is likely to result in serious emotional or physical damage to the child.[13]

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A woman holding a child in the nursery at Junior Village, Washington, D.C. (1958)

Substance abuse or addiction issues are often a driver for the removal of children from their parents. Existing legislation does not disqualify a noncustodial parent

from being considered for placement where the parent is in a substance abuse treatment facility so long as that facility allows minor children to remain with their parent during treatment.[14]

Because existing law acknowledges that substance abuse issues, without more, do not require separating a child from their parent,[15] the Task Force recommends that the Legislature mandate that, in cases where the sole issue is a parent's substance abuse, child welfare agencies place the family on family maintenance services[16] and use active efforts to place the custodial parent and child in a residential treatment program that allows minors to remain with their parents during treatment before the agency can file a petition to detain the child. Where outpatient treatment has a likelihood of success, the Task Force recommends legislation requiring agencies to provide family maintenance services along with outpatient treatment before filing a petition to detain a child.

For the vast majority of children, kinship placements are less traumatic, lead to better outcomes, play a pivotal role in ensuring children's safety, increase placement stability, better assure success in school, and maintain family and community connections.

The Task Force further recommends that the Legislature enact legislation requiring child welfare agencies to place a child with the noncustodial parent in cases where removal from the custodial parent was necessary—even if the noncustodial parent is in an inpatient substance abuse treatment facility—if the facility allows dependent children to stay with their parents and placing the child with the noncustodial parent would not be detrimental to the child.[17]

Reduce the Placement of African American Children in Foster Care and Increase Kinship Placements for African American Children

As detailed in Chapter 8, Pathologizing African American Families, beginning with slavery and continuing through today, extended kinship networks have been necessary for survival for African American mothers and families.[18] Kinship placements also play a key role in the child welfare system for African American children removed from their parents.

When a child has been removed from both parents, existing law allows a court to place a child in a variety of placements, including a kinship placement, which refers to the approved home of a relative or nonrelative extended family member.[19] Under existing law, placement with a relative is the preferred placement.[20] For the vast majority of children, kinship placements are less traumatic, lead to better outcomes, play a pivotal role in ensuring children's safety, increase placement stability, better assure success in school, and maintain family and community connections.[21]

Despite research showing that children placed with relatives have better outcomes—and the statutory preference to place children with relatives—a disproportionate number of African American children continue to be placed in foster care with strangers or in congregate care settings instead.[22] Being Black is a predictive factor of a child's placement in a congregate care setting.[23] The Legislature passed Continuum of Care Reform legislation in 2015, a collection of reforms aimed at ensuring that children removed from their parents are placed in home-based family placements with committed and nurturing caregivers. Under Continuum of Care Reform, congregate settings would be used only as short-term residential therapeutic settings.[24]

Even after the passage of Continuum of Care Reform legislation, disparities in foster care placement for African American children persist.[25] One explanation for the disproportionate placement of African American children in foster care or congregate settings is racial bias. Existing law allows a social worker to consider a relative's "good moral character" when assessing a relative for placement.[26] But whether a relative has good moral character is a subjective consideration that could be impacted by racial bias.

Even when a child is placed in kinship care, however, disparities in resources persist. Children in kinship care and their caregivers are among the most underserved in the welfare system.[27] If a child does not qualify for Aid to Families with Dependent Children (AFDC) benefits under Title IV-E of the Social Security Act at the time of removal, under California's regulations, a child placed with a relative will receive less cash assistance than if the same child was placed with a non-relative foster care family.[28] Thirty-nine percent of kinship households live below the federal poverty line while only 13 percent of non-relative foster care households do.[29] The financial hardships relatives face can influence whether a relative with modest economic means decides to be considered for placement.[30] Further, a relative's lack of resources

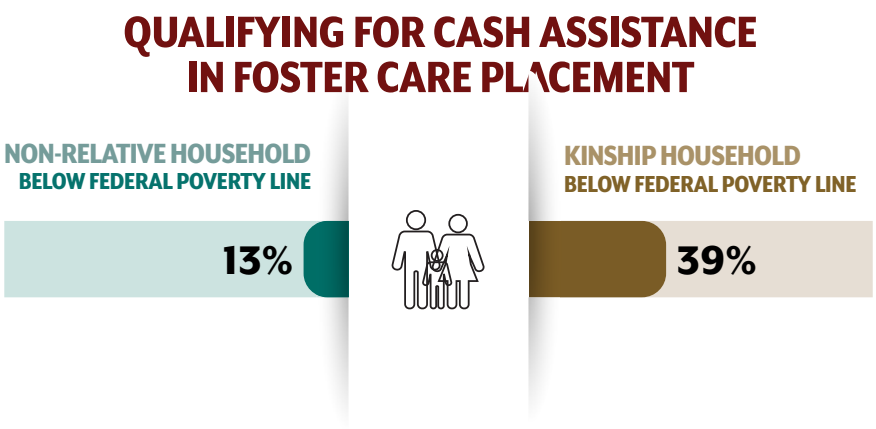
can also factor into a social worker's decision to exclude that relative from consideration for placement.[31]

The Task Force recommends that the Legislature enact legislation requiring the Department of Social Services to provide the same level of foster care cash assistance benefits to children placed in kinship placements that it provides for children placed in foster-home placements.[32] Equalizing foster care cash assistance benefits based on the child, instead of on the child's placement, makes it financially feasible for minors to be placed with relatives who otherwise lack the financial means to take in a child. And placing a child with relatives provides the benefits of familial connection and continuity of community without additional costs to the county or the state, as there is one less child placed in a foster home.

In the alternative, the Task Force recommends that the Legislature enact legislation eliminating or waiving the consideration of a child's eligibility for federal AFDC aid under Title IV-E from its determination of the amount of foster care cash assistance a child placed with relatives will receive, and instead require the Department of Social Services to pay the same level of cash assistance to a child placed in a kinship placement as the child would have received if placed with a non-relative foster family.[33]

The Task Force also recommends that the Legislature amend Welfare and Institutions Code section 309, subsection (d) to authorize financial payments to relatives to purchase whatever is required to provide a home and the necessities of life for the child for as long as the child remains with the relative. Beyond section 309, existing social welfare programs, such as CalWorks and CalFresh, or a special fund established by the Legislature, can be used to provide additional support. The Task Force further recommends that the Legislature include a requirement that the agency actively assist relatives in applying for and obtaining benefits under existing social welfare programs.

To address potential racial bias in the assessments of relatives for placement, the Task Force recommends that the Legislature amend Welfare and Institutions Code 361.3 to eliminate "good moral character" from the list of criteria a social worker may consider in deciding whether to place a child with a relative.



Another barrier to relative placements is a criminal background check, which is required for anyone being considered for placement. Under existing law, the child welfare agency has discretion to grant an exemption from disqualification to a relative who has a criminal record.[34] The Task Force recommends that the Legislature enact legislation to prohibit an agency from using a relative's prior *nonviolent* conviction to disqualify a relative from being considered for placement. Prohibiting agencies from disqualifying relatives with convictions for *nonviolent offenses* from being considered for placement acknowledges that the criminal justice system in California has disproportionately targeted and convicted African Americans.[35] And because most convictions stem from guilty pleas,[36] which may have been accepted solely to avoid trial and a potentially higher sentence, a nonviolent conviction should not disqualify a relative for placement.

The Task Force recommends that the Legislature enact legislation requiring the Department of Social Services to provide the same level of foster care cash assistance benefits to children placed in kinship placements that it provides for children placed in foster-home placements.

The Task Force further recommends that the Legislature enact legislation permitting a relative with a prior conviction for a violent offense to be considered for kinship placement where: 1) the conviction is not for a reportable offense under Penal Code section 290 or similar provision; 2) the relative has been free from incarceration and supervision for at least 10 years; 3) the prior conviction for a violent offense is

more than 10 years old; and 4) the relative has demonstrated that they are not likely to reoffend.

The Task Force also recommends that the Legislature enact legislation permitting relatives with a substantiated instance of prior child abuse or neglect to be considered for placement if the substantiated instance occurred at least 10 years before the relative's current placement application and the relative has demonstrated that they are not likely to reoffend.

Establish and Fund Early Intervention Programs that Address Intimate Partner Violence (IPV) Within the African American Community

African American victims of Intimate Partner Violence (IPV) face unique and historically-rooted challenges in seeking and obtaining services related to safety, prevention, and treatment. For example, African American victims of IPV may harbor a justifiable distrust of law enforcement and social service providers, which in turn limits the protection and support that victims receive. Many women refrain from seeking assistance out of fear of losing their children to a discriminatory child welfare system.[37] And even when assistance is sought, many of the service providers fail to provide the kind of culturally competent, trauma-informed services that are most effective. Moreover, because African American women face disproportionally higher rates of IPV, these challenges result in the neediest populations receiving the least amount of support.[38]

The Task Force recommends that the Legislature fund community-based organizations (CBOs) and treatment programs that provide IPV services to treat victims, perpetrators, and minor children within the family who may have been exposed to IPV. The legislation would include adequate funding for CBOs and treatment centers to expand services to improve outreach to victims and perpetrators of IPV, and provide appropriate services tailored to address the needs of the family based on the severity and duration of the IPV.

The CBOs and treatment programs would provide a range of services including: partnering with hospitals, clinics, and mental health centers to provide IPV self-assessment tools and referral information for IPV victims where providers may encounter victims of IPV; providing direct cash assistance to IPV victims to allow victims to separate from the perpetrator; and assisting victims in applying for benefits and accessing job training. CalWorks can be used to provide temporary direct cash assistance for IPV victims.[39] Because exposure to IPV causes trauma to children, the Task Force recommends that the Legislature require the CBOs and treatment programs to provide services or a referral and payment for appropriate services for minor children who have been exposed to IPV.

The legislation would also fund IPV prevention and early intervention treatment programs, including graduated treatment options for victims and IPV perpetrators based on the severity and duration of IPV. One study indicated that conjoint couples' treatment was more effective in reducing recidivism over a six-month period than individual couples treatment.[40] Where the victim is fully supportive of conjoint treatment, where the violence has been mild-to-moderate, and where both parties want to remain together, the victim and perpetrator can be referred to a multi-couple conjoint treatment program for IPV.[41]

The Task Force recommends that the Legislature fund community-based organizations and treatment programs that provide Intimate Partner Violence services to treat victims, perpetrators, and minor children within the family who may have been exposed to IPV .

Eliminate Interest on Past-Due Child Support and Eliminate Back Child Support Debt

As discussed throughout Chapter 8, Pathologizing African American Families, discriminatory federal and laws have torn African American families apart.[42] One effect of these longstanding harms is the disproportionate amount of African Americans who are burdened with child support debt. Although African Americans are less than seven percent of California's population, they represent around 18 percent of the parents who owe child support debt.[43] Under current law, California charges 10 percent interest on back child support, which is more than 3.5 times greater than the national average.[44] The 10 percent interest rate quickly increases the amount of the child support debt owed.[45] As a result of the debt owed for back child support and interest, a disproportionate number of African American parents are saddled with crushing debt that hinders their ability to attend school or job training, maintain housing,[46] and find employment if their professional licenses and/or driver's licenses have been suspended because of the failure to pay child support debt.[47]

A 2003 study commissioned by the California Department of Child Support Services estimated that 27 percent of California's child support arrears was unpaid interest.[48] The same study showed that child support debtors had lower incomes than the typical California worker.[49] The study indicated that even if debtors paid 50 percent of their net income towards their child support debt (back support and interest), only about 25 percent of the debt owed for child support arrears and interest would be collected over the next 10 years.[50] In 2020, Governor Gavin Newsom vetoed AB 1092,[51] which would have prospectively terminated interest on child support arrears owed to the state.[52]

California charges 10% interest on back child support, which is more than

2.5x GREATER than the national average

The Task Force recommends that the Legislature enact legislation to terminate all interest accrued on back child support, requiring only the payment of the principal owed. At a minimum, the proposal recommends that the Legislature eliminate the prospective accrual of interest on child-support debt for low-income parents.

The Task Force further recommends that the Legislature amend Family Code section 17560, the "offers in compromise"[53] provision, to allow for offers in compromise and forgiveness of child support debt based solely on a parent's financial circumstances and ability to pay. The Task Force recommends that the Legislature amend section 17560 to eliminate the requirements that the amount of the compromise equal or exceed the amount the state would be reimbursed under federal programs like Temporary Assistance to Needy Families.[54]

Eliminate or Reduce Charges for Phone Calls from Detention Facilities Located Within the State of California

Under current law, county sheriffs may charge incarcerated persons per-minute fees and associated charges for telephone calls.[55] Although the profits from these fees ostensibly go toward services and resources for those who are detained, the funds are often mismanaged and/or misdirected.[56] Moreover, the financial burden falls disproportionately on low-income African American families during what can be the most challenging and destabilizing time of life—when a loved one is incarcerated. Ultimately, the fees force families to choose between not communicating with incarcerated family members or spending scarce resources to do so.[57] Moreover, studies have shown that consistent family contact for incarcerated individuals improves reentry outcomes and reduces recidivism.[58]

In recognition of these dynamics, Senate Bill 1008 (2021-2022 Reg. Sess.) made all calls from state prisoners and juvenile detainees free. And many local governments have made county jail calls free.[59] In furtherance of this movement, the Task Force recommends that the Legislature preclude county jails from profiting from their incarcerated persons by mandating that all calls from incarcerated individuals, state and county, be free. The Legislature should similarly limit the price markups of commissary items—items sold to incarcerated individuals by stores within jails or prisons—another instance of jails profiting from the most vulnerable Californians.

Address Disproportionate Homelessness Among African American Californians

African American Californians make up a disproportionate share of the state's unhoused population. While Black individuals make up only 5.3 percent of the state's population, they comprised 26.6 percent of unhoused individuals that contacted homeless service providers in the 2021-2022 fiscal year.[60] A recent report on Black homelessness in Los Angeles concluded that "[t]he impact of institutional and structural racism in education, criminal justice, housing, employment, health care, and access to opportunities cannot be denied: homelessness is a by-product of racism in America."[61] The same study concluded that "[t]he interconnectedness of incarceration and homelessness creates a revolving door that only

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Homeless man, alley east of Lake St. south of 12th St., Los Angeles, CA (2019)

serves to make the plight of homelessness more challenging and complex."[62] To address the complex web of issues associated with disproportionate homelessness among African Americans, the Task Force makes the following recommendations.

Streamline and Incentivize Development of Permanent Supportive Housing and Extremely Low Income Housing

As discussed in Chapter 5, Housing Segregation, discriminatory state and local urban renewal, highway construction, and gentrification policies have destroyed African American communities and produced, among other effects, disproportionate homelessness among African American Californians.[63] Permanent supportive housing and extremely low-income housing are critical components of addressing the homelessness crisis.[64] Permanent supportive housing provides housing to those with substantial physical or behavioral disabilities and provides on-site treatment and services. Extremely low-income households are those whose incomes are at or below the poverty guideline, or 30 percent of the area median income.[65] Unfortunately, the costs and delays associated with permanent supportive housing developments have severely impacted their feasibility in many communities.[66] The Task Force accordingly recommends that the Legislature: provide subsidies to developers and property managers of permanent supportive housing and extremely low-income housing; establish state-funded and state-operated permanent supportive housing and/or extremely low-income housing (akin to those proposed in Assembly Bill 2053 (2021-2022 Reg. Sess.)); and create exemptions for extremely low-income and permanent supportive housing developments from applicable zoning and permitting regulations.[67]

Mandate Anti-bias and Other Trainings for Staff of Homeless Services Providers

A recent report by the California Policy Lab found that implicit anti-Black bias and prejudice exist among the case managers, property managers, and landlords that ostensibly should be supporting unhoused individuals.[68] The Task Force thus recommends the Legislature mandate implicit bias training for designated homeless services providers and/or fund statewide studies of racism within homeless services systems. Other training topics should include cultural competency; trauma-informed care; institutional racism; and the needs of diverse unhoused populations, particularly Descendant and African American individuals.

Fund Permanent Supportive Housing Diversion Programs for Individuals Incarcerated in County Jails

Permanent supportive housing reduces homelessness among those with substantial physical disabilities or mental health issues.[69] A pilot program in Los Angeles County, Just in Reach Pay for Success, created a diversion program for county jail inmates with histories of homelessness and physical or behavioral disabilities.[70] The program placed qualifying individuals into permanent supportive housing units and provided wrap-around services.[71] A study of the program found that its cost was fully offset by decreased use of shelters, inpatient hospitalization, and incarceration.[72] In light of the program's success and cost-effectiveness, the Task Force recommends that the Legislature allocate funding for similar programs throughout the state.

In light of the disproportionate numbers of African American unhoused individuals, the Task Force recommends that the Legislature mandate a racial equity analysis of California's housing and homelessness programming.

Fund a Study and Analysis of County Jail Efforts to Secure Housing for Incarcerated Individuals upon Release

Studies have shown that formerly incarcerated individuals are almost 10 times more likely to be homeless than the general public, and that "formerly incarcerated Black men have much higher rates of unsheltered homelessness than white or Hispanic men."[73] Senate Bill 903 (2021-2022 Reg. Sess.) requires a rigorous study and analysis of the Department of Corrections and Rehabilitation's efforts to assist those individuals recently released from incarceration with any housing needs. The Task Force recommends that the Legislature mandate a similar study with respect to individuals recently released from county jails.

Develop and Launch Racial Equity Initiative and Targeted Funding Measures

In light of the disproportionate numbers of African American unhoused individuals, the Task Force recommends that the Legislature mandate a racial equity analysis of California's housing and homelessness programming. The analysis would be geared towards: ensuring equitable contracting; increasing African American participation and employment in such programs, with special consideration for Descendants;

promoting racial diversity at all relevant agencies and offices; ensuring that management is appropriately trained in cultural competency; and creating opportunities for people with lived experiences with homelessness to participate in reform efforts.

Relatedly, the Task Force recommends that the Legislature allocate sufficient funding to address the root causes of African American Californians experiencing homelessness and, through grants to qualified, culturally-congruent services providers (particularly African American-founded organizations that serve African American communities, with special consideration for Descendants), support the delivery of comprehensive services needed to reduce and eliminate this disparity and more generally improve access to affordable housing, employment, mental and physical health services, youth development, public benefits, education, and civic engagement. Funding priorities should include, but not be limited to, emergency rental assistance, eviction counseling, and rapid-rehousing plans.[74] Funding and training should also be provided to faith institutions and nontraditional sites (e.g., beauty/barbershops, community colleges, neighborhood markets) that interact with unhoused populations to enable these entities to provide services and/or resources. The funding would be prioritized for organizations that use a community-based, participatory approach to services, and that rely on or employ individuals with lived experience with homelessness. Finally, funding should also be prioritized for efforts to prevent loss of homeownership (particularly among African American seniors), including education around financial literacy and investment, education to protect against scams, and access to resources to prevent foreclosure.

COURTESY OF FREDERIC J. BROWN/AFP VIA GETTY IMAGES

Homeless people wait in line for breakfast in front of the Fred Jordan Mission in Los Angeles, CA. (2022)

Increase Compensation for Homeless Services Providers

Front-line workers staff the myriad programs and services that support the unhoused community. Unfortunately, wages for these workers are frequently extremely low.[75] Unsurprisingly, "[l]ow wages relative to the cost of housing have contributed to chronic understaffing and extremely high turnover among homeless service providers in California."[76] The end result is a substantial negative impact on the quality of homeless services. Accordingly, the Task Force recommends that the Legislature include compensation requirements or wage floors/baselines in its grants to service providers.[77] The funding or statutory scheme should include resources and requirements for 24-hour skilled staffing at shelters and permanent supportive housing; ongoing training for case managers on trauma-informed practices; and peer-advocate programs that pair residents with individuals with lived experience being unhoused.[78]

Strengthen Housing Eligibility and Tenant Protections

To address the housing crisis in the African American community, the Task Force recommends that the Legislature pass legislation as needed, and call for federal action as appropriate, to ensure more robust protections within the private market as well as within public housing and voucher programs. These protections should advance a number of reforms, including: (1) a fully funded framework for the investigation of and enforcement against discriminatory practices in housing and employment; (2) removing barriers to eligibility and expanding access to public housing; (3) protections to preserve and enhance the rights of tenants living in public housing; (4) protections against Section 8 and other housing subsidy discrimination; (5) expansion of source of income discrimination protections; (6) expansion of

"Low wages relative to the cost of housing have contributed to chronic understaffing and extremely high turnover among homeless service providers in California."

just cause eviction requirements to all residential rental housing; (7) prohibition of criminal background checks in tenant screening; (8) broader rent control measures; (9) right to counsel and financial assistance for eviction proceedings; and (10) stronger protections against landlord retaliation.[79]

The Task Force recommends that the Legislature require that any referral to CARE court specify all prior, voluntary efforts to secure housing and treatment for the referred individual, and that such efforts be pre-requisites to CARE court acceptance.

Enact Protections to Ensure that CARE Courts Do Not Disproportionately Impact the Descendant and African American Community

CARE[80] Courts were established through the recently passed Senate Bill 1338 (2021-2022 Reg. Sess.). The legislation authorizes a new civil court proceeding to encourage and ultimately compel those suffering from severe mental illness to engage in a treatment and housing program.[81] Proceedings may be initiated by family, behavioral health professionals, medical providers, various designees of community health organizations, or first responders including firefighters and peace officers.[82] If the court determines that the individual meets the CARE criteria but refuses to engage voluntarily in services, the court orders the development of a CARE plan.[83] If the individual does not abide by the CARE plan, the court can initiate conservatorship proceedings.[84]

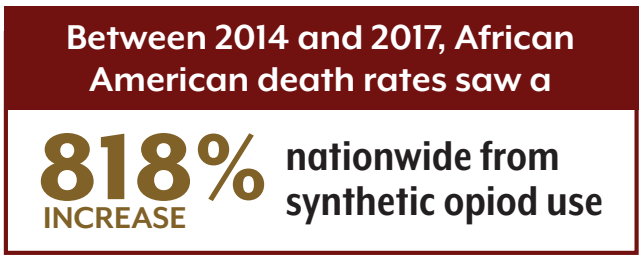
Although the Legislature was nearly unanimous in passing the CARE Act, advocates and analysts have raised a host of concerns.[85] For example, many have argued that there are insufficient resources—such as housing, mental health workers, and treatment programs—to implement the legislation.[86] Of particular concern to the Task Force is the likelihood that CARE courts will disproportionately impact the African American community. Indeed, as discussed in Chapter 12, Mental and Physical Harm and Neglect, and Chapter 11, An Unjust Legal System, this community is consistently over-policed, misdiagnosed, and subject to higher rates of homelessness. CARE courts will therefore disproportionately enmesh African Americans in a new web of compelled court proceedings.[87] For these and other reasons, organizations such as the ACLU,[88] Human Rights Watch,[89] and Disability Rights Advocates[90] opposed the legislation.

The CARE Act includes various data collection and reporting requirements (including demographic and health equity data),[91] as well as certain training mandates, including training for key participants in elimination of bias.[92] However, in order to fully guard against the potentially harmful impact of CARE courts on the African American and Descendant communities, the Task Force recommends that the Legislature require relevant agencies to collect and report data on the source of the referral, to ensure, for example, that over-policing is not contributing to an over-representation of African Americans. Moreover, all existing data collection and reporting requirements should be expanded to include Descendant status.

To address the documented persistence of misdiagnosis of African Americans, the Task Force recommends that the Legislature require training and technical assistance for relevant behavioral health agencies in the misdiagnosis of African American individuals for psychotic and other mental disorders. Finally, the CARE Act currently requires petitioners to show that compelled treatment "would be the least restrictive alternative necessary to ensure the person's recovery and stability."[93] But this requirement is likely insufficient to ensure that unhoused individuals are not automatically shunted into CARE courts. Accordingly, the Task Force recommends that the Legislature require that any referral to CARE courts specify all prior, voluntary efforts to secure housing and treatment for the referred individual, and that such efforts be prerequisites to CARE court acceptance. This final recommendation would ensure that unhoused and mentally ill individuals are afforded comprehensive, community-based supports prior to being compelled to participate in the CARE process.

Address Disparities and Discrimination Associated with Substance Use Recovery Services

Substance use disorder and addiction are prevalent across all ethnicities, but certain substance issues, such as with opioids and amphetamines, are most common among the African American population.[94] Inequities also exist in the treatment and recovery fields. For example, death rates from synthetic opioid use increased nationwide by 818 percent between 2014 and 2017 among African Americans,



more than for any other racial group during the same period.[95] Moreover, "significant gaps exist within the provision of equitable services and treatment outcomes for those in the Black community."[96] These gaps include a disproportionately small number of Black professionals in the addiction treatment workforce, as well as disparate treatment outcomes for Black clients.[97] Finally, economic barriers lead Black clients to use treatment services less than white clients, and they also have lower treatment retention rates compared to white clients.[98]

The disparities also exist at the level of prescription medication used to treat addiction: African American patients are 77 percent less likely to be prescribed buprenorphine, and are more likely to receive methadone as an alternative treatment for opioid addiction.[99] While both drugs are effective, buprenorphine treatment is much easier to maintain. Methadone is more highly regulated, and patients receiving methadone (unlike those receiving buprenorphine) must travel to a clinic each day to receive treatment, causing significant additional recovery burdens.[100] Methadone treatment is also generally more stigmatized than buprenorphine, and methadone programs require random drug testing and counseling that are not similarly mandated for buprenorphine.[101]

Funding would be prioritized for organizations taking a holistic approach to recovery that addresses root causes of substance use, such as housing instability, unemployment, and criminal justice involvement.

Finally, addiction and treatment disparities must be understood within the broader context of urban planning, land use, and zoning. Indeed, "nuisance properties," including alcohol, tobacco, and marijuana shops, are disproportionately located in low-income communities of color,[102] which in turn can lead to higher rates of substance use and abuse.[103] In light of these systemic issues, the Task Force recommends a number of measures to reduce disparities in treatment and recovery.

Increase Funding Streams to Community-based Treatment and Prevention Organizations, Including Those Linked to the Criminal Justice System

Community-based organizations play a central role in both preventing and treating substance use disorders.[104] The Task Force thus recommends increased funding for community-based organizations that provide substance use treatment and related services, with particular focus on organizations run and staffed by African American professionals and that serve the African American community, with special consideration for Descendants. A primary funding source could be the Health Equity and Racial Justice Fund within the California Department of Public Health's Office of Health Equity.[105] (A separate proposal in Chapter 29, Policies Addressing Mental and Physical Harm and Neglect, recommends funding the Health Equity and Racial Justice Fund.)

Funding would be prioritized for organizations taking a holistic approach to recovery that addresses root causes of substance use, such as housing instability, unemployment, and criminal justice involvement. Funding should also be prioritized for community-based organizations that address community-wide issues related to addiction—such as land-use and zoning factors (e.g., density of liquor stores, cannabis dispensaries, and smoke shops).[106] Finally, since substance use is frequently associated with recent incarceration,[107] funding should be allocated for service providers stationed near county jails and state prisons that can provide treatment assistance immediately upon release. The use of evidence-based practices would not be a bar to funding nor would it be prioritized. In addition, jails and prisons should increase community-based organizations' access to incarcerated individuals so they can provide treatment to those in custody. This access may be more limited in the county jails, and therefore require greater attention by the Legislature and state entities enforcing legislation that permits community-based organizations to have such access.

Promote Educational and Employment Opportunities in Substance Use Treatment Fields

The lack of cultural competency or cultural humility[108] in healthcare and substance use treatment likely contributes to racial disparities in treatment outcomes.[109] Thus, as urged by the National Association for Addiction Professionals, "[i]t is imperative that we recommit our efforts to the recruitment and training of Black individuals to build a powerfully diverse substance use and mental healthcare workforce."[110] A separate set of proposals set forth in Chapter 29, Policies Addressing Mental and Physical Harm and Neglect, calls for expansion of the UC-PRIME-LEAD-ABC program (and the funding of equivalents for other fields) to increase the number of African American physicians, psychologists, and counselors.[111] To the extent not already covered by those proposals, the Task Force also recommends

similar funding and program expansion for substance use treatment professionals.

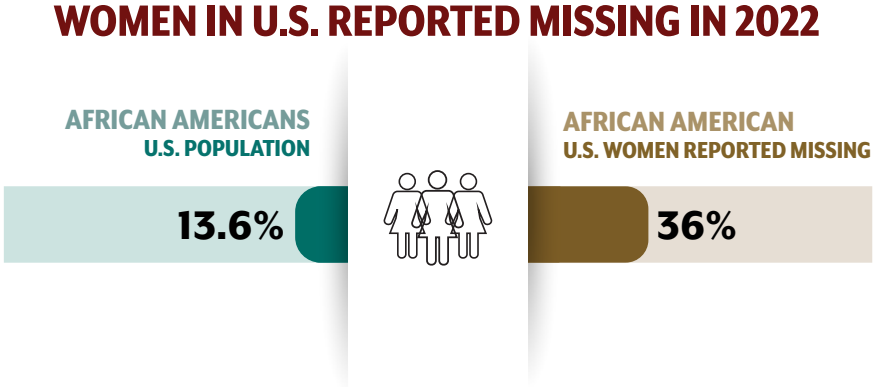
Mandate Statewide Data Collection and Analysis of California Drug Courts.
Drug courts, in which defendants charged with drug crimes are directed to treatment rather than incarceration or other punishment, can be a powerful tool in combatting both addiction and recidivism.[112] But participation in California's drug courts has plummeted in recent years, potentially due, in part, to the passage of laws that removed state funding for drug courts, such as Assembly Bill 109.[113] To address this pressing issue, policymakers and stakeholders need comprehensive statewide data, which is currently unavailable.[114] Accordingly, the Task Force recommends that the Legislature mandate data collection and publication of key metrics from every drug court and other diversion court throughout the state, including data that would expose disparities, if any, in the offer of diversion, enrollment, and completion. These data could then be leveraged to craft policies to improve the reach and efficacy of these programs.

"A two-tiered treatment system exists where buprenorphine is accessed by Whites, high-income, and privately insured, while methadone is accessed by people of color, low-income, and publicly insured."

Expand Access to Naloxone, Buprenorphine, and Other Critical Substance Use Medications and Assess the Scope and Genesis of Any Treatment Disparities
Naloxone, commonly known as "Narcan," is the only FDA-approved medication to reverse opioid-related overdoses.[115] The United States Surgeon General and the United States Department of Health and Human Services have both encouraged the widespread use and availability of naloxone to prevent overdose deaths.[116] In California, the Naloxone Distribution Project, within the Department of Health Care Services, distributes free naloxone to qualifying organizations and entities.[117] The Task Force recommends that the Legislature make naloxone more readily available to save lives, particularly because of the disproportionate rate at which African Americans in California die from opioid overdoses. Under this proposal, funding for the Naloxone Distribution Project would be increased as necessary and all public schools within California would be required to keep naloxone on school premises. In addition, all jails, prisons, and juvenile facilities should have naloxone readily available on all floors, modules, or segments, as occurs in Los Angeles County jails.[118]

Additionally, as discussed above, buprenorphine is an effective and convenient treatment for opioid addiction, but is under-prescribed in the African American population.[119] Thus, "a two-tiered treatment system exists where buprenorphine is accessed by [w]hites, high-income, and privately insured, while methadone is accessed by people of color, low-income, and publicly insured."[120] Accordingly, the Task Force recommends that the Legislature fund a study of this problem within California — including potential disparities associated with other medications —and to identify potential solutions to remedy African American patients' unequal access to buprenorphine and other addiction treatments. Specific focus should be placed on Medi-Cal reimbursement rates to ensure they provide sufficient incentive to healthcare providers to remedy unequal access.[121]

End the Under-Protection of African American Women and Girls
While suffering the harms of over-policing, African American communities also endure the harm of being under-protected. African American women and girls, in particular, face heightened risks of harm, and yet crimes against them do not draw the same attention given to crimes against white women.[122] In 2022, for example, 36 percent (97,924) of the 271,493 women who were reported missing in the United States were African American, though they were less than 15 percent of the population.[123] At least four African American women per day were murdered in 2020, and African American



women comprised 40 percent of the female homicides in the United States that year.[124] More than 20 percent of African American women experience rape in their lifetime, a higher share than women overall, and 45 percent experience physical violence, sexual violence, or stalking from their intimate partner.[125] African American transgender women face an especially heightened risk of violence—violence that has been described as a "pandemic within a pandemic."[126] African American women and girls also face an increased risk of being trafficked—40 percent of sex trafficking victims in a 2-year study were identified as African American women.[127] And more than half of "juvenile prostitution" arrests (the arrests of children who have been trafficked) are of African American children.[128]

Despite substantial anecdotal evidence of police under-investigating crimes against African American women and girls with the same level of resources dedicated to other victims, little effort has been made to document the racial gap in protection.[129] Pathologizing myths and stereotypes about African American women and girls, coupled with less willingness to believe these women and girls, may explain the gap.[130]

To generate data on this subject and bring about more equitable levels of protection, the Task Force recommends that the Legislature pass legislation, with adequate funding, to require local law enforcement agencies to document resources devoted to crime investigation, disaggregated by race, gender, income, and reported harms, report this data to the Department of Justice, and make the data available to the public. The Task Force further recommends that the Legislature examine means of ensuring more just and equitable treatment of African American crime victims, including women and girls in particular, and to take further steps needed to reduce harms, investigate as needed, and provide appropriate, respectful, comprehensive, culturally congruent services to victims. This study should include the identification and assessment of policies and programs that have been shown to be effective in reducing risks and improving outcomes for African American women and girls.[131]

Despite substantial anecdotal evidence of police under-investigating crimes against African American women and girls with the same level of resources dedicated to other victims, little effort has been made to document the racial gap in protection.

Endnotes

[1] Kids Count Data Center, Children in Foster Care by Race and Hispanic Origin in California (April 2023) (as of May 12, 2023).

[2] Kids Count Data Center, Child Population by Race and Ethnicity in California (Oct. 2022) (as of May 12, 2023).

[3] Lurie, *Child Protective Services Investigates Half of All Black Children in California*, Mother Jones (April 26, 2021) (as of May 12, 2023).

[4] See Legislative Analyst's Office, Initial Analysis and Key Questions: Racial Disproportionalities and Disparities in California's Child Welfare System (March 9, 2022) p. 2 (as of May 12, 2023).

[5] Child Welfare Information Gateway, *Child Welfare Practice to Address Racial Disproportionality and Disparity* (2021) p. 6 (as of May 12, 2023).

[6] Dettlaff et al., It Is Not a Broken System, It Is a System That Needs to Be Broken: The UpEND Movement to Abolish the Child Welfare System (2020) 14 J. of Public Child Welfare 500 [quoting congressionally-mandated national incidence study of 1996].

[7] Child Welfare Information Gateway, *supra*, at p. 6.

[8] *Ibid.*

[9] Child Welfare Information Gateway, *supra*, at p. 16.

[10] See Jones et al., ACLU Public Records Act Request Regarding Use of Predictive Risk Modeling in California Child Welfare System (Jan. 5, 2021) p. 2 (as of May 12, 2023).

[11] See Legislative Analyst's Office, Initial Analysis and Key Questions: Racial Disproportionalities and Disparities in California's Child Welfare System (March 9, 2022) p. 5 (as of May 12, 2023) (noting that the most cited reason for removals is neglect, not physical or sexual abuse). Welfare and Institutions Code section 300, subdivision (b)(2) states that a child shall not be found to be a person described by section 300, subdivision (b)(1) based on a parent's poverty alone. But children can be detained from their parents based on an allegation of neglect before a court determines whether the child comes within the definition of section 300, subdivision (b). The Task Force's recommendation applies to this initial detention stage of the proceedings where a child can be detained from their parents before a finding under section 300, subdivision (b)(1) is even made.

[12] "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with their family. (Welf. & Inst. Code, § 224.1, subd. (f).) It is a term borrowed from California's version of the Indian Child Welfare Act (ICWA).

[13] See e.g., Welf. & Inst. Code, § 361, subd. (c)(6).

[14] See Welf. & Inst. Code, § 361.2, subd. (a).

[15] A child can only be removed if the parent's substance abuse issue places the child at substantial risk of harm. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453 ["[W]e have no quarrel with Father's assertion that his use of medical marijuana, *without more*, cannot support a jurisdiction finding that such use brings the minors within the jurisdiction of the dependency court, not any more than his use of the medications prescribed for him by his psychiatrist brings the children within the jurisdiction of the court."]).

[16] Family maintenance services are time-limited services provided to children who are at risk for abuse and neglect in their homes. Welf. & Inst. Code, § 16506; see e.g, Contra Costa County Employment and Human Services, Family Maintenance (as of May 12, 2023).

[17] Cf. Welfare and Institutions Code section 361.2, which states that placement cannot be denied solely because parent is enrolled in a substance abuse treatment facility. But the provision does not require placement where the facility allows minor children to stay with their parents.

[18] See Chapter 8, Pathologizing African American Families.

[19] Welf. & Inst. Code, § 361.2, subd. (e).

[20] Welf. & Inst. Code, § 361.3, subd. (a).

[21] Los Angeles County Blue Ribbon Commission on Child Protection, The Road to Safety for Our Children (April 18, 2014) p. 22 (as of May 12, 2023).

[22] Congregate care placements are widely understood to be less suited to a child's healthy development and tend to lead to poorer outcomes as compared to family-based placements like kinship and foster home placements. (Casey Family Programs, What Are the Outcomes for Youth Placed in Group and Institutional Settings? (June 29, 2022) (as of May 12, 2023).)

[23] See Palmer et al., Correlates of Entry into Congregate Care Among a Cohort of California Foster Youth (March 2020) 110 Children and Youth Services Rev. (as of May 12, 2023).

[24] See Department of Social Services, Continuum of Care Reform (as of May 31, 2023).

[25] Legislative Analyst's Office, Initial Analysis and Key Questions: Racial Disproportionalities and Disparities in California's Child Welfare System (March 9, 2022) pp. 2-3 (as of May 12, 2023).

[26] Welf. & Inst. Code, § 361.3, subd. (a)(5).

[27] Los Angeles County Blue Ribbon Commission on Child Protection, The Road to Safety for Our Children (April 18, 2014) p. 22 (as of May 12, 2023)..

[28] Specifically, a child placed in kinship care families would receive only CalWorks cash benefits while a non-relative foster care family would receive cash benefits based on state AFDC benefits for the child. (Alliance for Children's Rights, Continuum of Care Reform (2013) (as of May 12, 2023); see California Department of Social Services, Payments (as of May 12, 2023).

[29] Alliance for Children's Rights, Continuum of Care Reform (2013) (as of May 12, 2023).

[30] *Id.* at pp. 22-23.

[31] See Welf. & Inst. Code, § 361.3, subd. (a)(7). A social worker may not solely exclude a relative from consideration based on a lack of resources, however. (Welf. & Inst. Code, § 309, subd. (d)(3).)

[32] Title IV-E provides funds to states to pay for the costs associated with placing children, who are eligible for public assistance, in an *approved* or licensed foster care setting that meets the statutory safety requirements. (See U.S. Department of Health and Human Resources, Title IV-E Foster Care Eligibility Review Guide (2032) p. 2 (as of May 12, 2023).) Under California's Continuum of Care Reform legislation, both relatives and foster care families are approved for placement using the Resource Family Approval process. (Department of Social Services Continuum of Care Reform Resource Family Approval Child And Family Teams (2017) (as of May 12, 2023).)

[33] Title IV-E agencies are subject to periodic reviews to validate the accuracy of the agency's claim for reimbursement based on the placement of children in approved or licensed foster family homes and child care institutions. (45 C.F.R. 1356.71(d)(iv); 42 U.S.C § 472.)

[34] Health & Saf. Code, § 1522, subd. (g).

[35] See generally, Chapter 11, An Unjust Legal System.

[36] Lyon, Whether State or Federal, Most Convictions Are Overwhelmingly Based on Guilty Pleas,, Criminal Legal News (Oct. 2019) (as of May 12, 2023).

[37] Joyce, *She Said Her Husband Hit Her. She Lost Custody of Their Kids* The Marshall Project (July 08, 2020) (as of May 12, 2023).

[38] DuMonthier et al., The Status of Black Women in the United States (2017) Institute for Women's Policy Research and The National Domestic Worker's Alliance (as of May 12, 2023).

[39] The federal Family Violence Prevention Act prohibits direct cash assistance. (42 U.S.C. §10408, subs. (d).)

[40] Heru, Intimate Partner Violence: Treating Abuser and Abused (2007) 13 Advances in Psychiatric Treatment 376, 379 (citing Stith et al., Treating Marital Violence within Intact Couple Relationships: Outcomes of Multi-Couple Versus Individual Couple Therapy (2004) J. Marital Fam. Therapy, pp. 305-318.) The reauthorized Violence Against Women Act that was signed into law in 2022 approved pilot programs on restorative justice practices if certain parameters were met. Those parameters include the requirement that the victim initiate the process and that the perpetrator voluntarily engage in the process. (Sen. No. 3623, 117th Cong., 2nd Sess. (2022) (as of May 12, 2023).)

[41] Stith et al., Treating Marital Violence within Intact Couple Relationships: Outcomes of Multi-Couple Versus Individual Couple Therapy (2004) J. Marital Fam. Therapy, pp. 305-318 (as of May 12, 2023).

[42] See generally Chapter 8, Pathologizing African American Families.

[43] The Financial Justice Project in the Office of the Treasurer for the City and County of San Francisco, The Payback Problem: How Taking Parents' Child Support Payments to Pay Back the Cost of Public Assistance Harms California Low-Income Children & Families A Call For Reform to Put Families First (2019) p. 13 (as of May 12, 2023).

[44] See Cal. Civ. Pro. § 685.010; see also National Conference of State Legislatures, Interest on Child Support Arrears (Oct. 15, 2021) (as of May 12, 2023).. The term child support debt or arrears includes the principal back child support owed plus the 10 percent interest the state charges.

[45] Hahn et al., Relief from Government-Owed Child Support Debt and Its Effects on Parents and Children Evaluation of the San Francisco Child Support Debt Relief Pilot (Aug. 2019) Urban Institute at p. viii (as of May 12, 2023).

[46] Cimini, *California Keeps Millions in Child Support While Parents Drown in Debt* CalMatters (May 3, 2021) (as of May 12, 2023).

[47] Hahn et al., Relief from Government-Owed Child Support Debt and Its Effects on Parents and Children Evaluation of the San Francisco Child Support Debt Relief Pilot, *supra*, at p. viii.

[48] Sorensen et al., Examining Child Support Arrears in California: The Collectability Study (March 2003) Urban Institute p. 18 (as of May 12, 2023).

[49] *Id.* at Report 2, p. 14.

[50] *Id.* at Report 3, pp. 11-13.

[51] Assem. Bill No. 1092 (2019-2020 Reg. Sess.).

[52] Cimini, *supra*.

[53] The California Compromise of Arrears Program is a debt reduction program for parents with past-due child support payments owed to the state that is authorized under Family Code Section 17560. If a parent qualifies for the program, they pay a smaller amount to satisfy the full debt owed to the state.

[54] Family Code section 17560, subdivision (f)(1) provides that the compromise amount must equal or exceed "what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay."

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[70] Hunter et al., Just in Reach Pay for Success Impact Evaluation and Cost Analysis of a Permanent Supportive Housing Program (2022) RAND Corporation (as of May 15,, 2023).

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[72] *Ibid.*

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[76] *Ibid.*

[77] *Ibid.*

[78] See Milburn et al., Inequity in the Permanent Supportive Housing System in Los Angeles (Oct. 2021) California Policy Lab, pp. 32-33 (recommending and stressing importance of 24-hour staffing) (as of May.15, 2023).

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[80] "CARE" stands for Community, Assistance, Recovery, and Empowerment.

[81] See Sen. Bill No. 1338 (2021-2022 Reg. Sess.).

[82] See Welf. & Inst. Code, § 5974.

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[87] See, e.g., Garrow & Rogers, *Why We Vehemently Oppose the Governor's "CARE Court" Proposal — And So Should You* (June 22, 2022) ACLU California Action (as of May 15, 2023).

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[89] Ensign & Ralphing, *Human Rights Watch Urges a No Vote on CARE Court* (SB 1338) (Aug. 15, 2022) Human Rights Watch (as of May 15, 2023).

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[94] Valentine & Brassil, Substance Use in California: Prevalence and Treatment (Jan. 2022) California Healthcare Foundation, pp. 13, 17, 19 (as of May 15, 2023).

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[96] National Association for Addiction Professionals, NAADAC Position Statement on Critical Issues in the Black Community: Complexities of SUD Treatment (Feb. 2022) (as of May 15, 2023).

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[104] U.S. Dept. of Health and Human Services The Opioid Crisis, *supra,* at pp. 10-13.

[105] The California Health Equity and Racial Justice Fund, We Are All Public Health (as of May 16, 2023); Public Health Institute, Health Equity & Racial Justice Advocates Outraged at Lack of Funding for Communities to Address Disparities (Jun. 28, 2022) (as of May 16, 2023).

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[107] Bronson et al., Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009 (rev. Aug. 10, 2020) U.S. Dept. of Justice, Bureau of Justice Statistics, p. 1 (as of May 19, 2023).

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[118] See Los Angeles County Sherriff's Department, Sheriff's Naloxone Custody Pilot Project Saves Inmates from Overdose (May 27, 2021) (as of May 19, 2023).

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[120] *Id.* at p. 9.

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[131] Concerns about the treatment of African American women and girls have also arisen at the federal level. Bipartisan legislation known as the Protect Black

Women and Girls Act was introduced in 2021 in response to such concerns. The version of the bill that was introduced would have created an inter-agency task force "to examine the conditions and experiences of Black women and girls, to identify and assess the efficacy of policies and programs of Federal, State, and local governments designed to improve outcomes for Black women and girls, and to make recommendations to improve such policies and programs as necessary." (H.R. No. 6268,117th Cong., 1st Sess. (2021), (as of May 19, 2023).) The bill also would have directed the United States Commission on Civil Rights to conduct a comprehensive study to collect data specific to Black women and girls across a range of topic areas. (*Ibid.*)

COURTESY OF FRANCOIS NEL VIA GETTY IMAGES

Sha'Carri Richardson of USA celebrates after winning the Women's 100m final during the Diamond League 2023 meeting at Khalifa International Stadium in Doha, Qatar. (2023)

I. Policy Recommendations

This chapter details policy proposals to address harms set forth in Chapter 9, Control Over Creative, Cultural, & Intellectual Life. The Task Force recommends that the Legislature take the following actions:

- Provide State Funding to African Americans to Address Disparity in Compensation Among Athletes in the University of California and State System and Funding to Support African American Athletes in Capitalizing on their Name, Image, and Likeness and Intellectual Property
- Prohibit Discrimination Based on Natural and Protective Hair Styles in All Competitive Sports
- Identify and Remove Monuments, Plaques, State Markers, and Memorials Memorializing and Preserving Confederate Culture; Erect Monuments, Plaques, and Memorials Memorializing and Preserving the Reconstruction Era and the African American Community
- Provide Funding to the Proposed California American Freedmen Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life
- Eliminate the California Department of Corrections and Rehabilitation's Practice of Banning Books

Provide State Funding to African Americans to Address Disparity in Compensation Among Athletes in the University of California and State System and Funding to Support African American Athletes in Capitalizing on their Name, Image, and Likeness and Intellectual Property

As documented in Chapter 9, Control Over Creative, Cultural, & Intellectual Life, following the end of formal slavery, most African American athletes were forced to compete in segregated teams, sports, and organizations. In the University of California system, "Black male student-athletes," who comprise a large portion of the male student athlete population, have some of the lowest graduation rates compared to overall graduation rates.[1]

At the same time, college student-athletes generate millions of dollars in profits for schools, coaches, and conference and network executives.[2]

College athletics operate under the auspices of the National Collegiate Athletic Association (NCAA), a private nonprofit organization.[3] Under previous NCAA regulations, compensation for student-athletes was limited to scholarships for their education; universities, in contrast, have been able to secure "multimillion dollar deals with cable networks and athletic brands—all of which profit from using athletes' images in marketing campaigns, apparel sales, and ticket sales, among other revenue sources."[4]

COURTESY OF JONATHAN FERREY/ALLSPORTVIA GETTY IMAGES

University of Stanford Cardinals vs University of Southern California Trojans in an NCAA Pac-10 football game. (1997)

As others have reaped the benefits, student-athletes have often borne the costs. According to one estimate, among the approximately 500,000 college athletes who annually compete in NCAA athletics, there are more than 210,000 injuries per year, ranging from minor to catastrophic and even fatal.[5] Research has also shown that Black male student-athletes have had the experience of having athletic accomplishment prioritized over academic engagement and of being discouraged from participating in activities beyond their sport.[6]

Effective July 1, 2021, the NCAA adopted the Interim Name, Image and Likeness (NIL) Policy, allowing NCAA student-athletes the opportunity to benefit from their NIL without jeopardizing their NCAA eligibility.[7] In August 2022, the NCAA Division I Board of Directors announced that schools are now empowered to support student-athletes in a variety of ways without asking for waivers, including providing support needed for a student-athlete's personal health, safety, and well-being; paying for items to support a student's academic pursuits; purchasing insurance of various types (including loss-of-value and critical injury); and funding participation in elite-level training, tryouts, and competition.[8]

To address the harms associated with discrimination in competitive sports and the imbalance of profit-generating income based on an athlete's NIL, the Task Force recommends that the Legislature conduct a study to determine the value African American athletes bring to academic institutions. In addition, the Task Force recommends that the Legislature appropriate funds to academically support African American athletes and appropriately compensate African American athletes for the value they bring to the institution, through non-contingent scholarship funds, private athlete insurance, and ongoing academic support. If history is any indicator, African American athletes are likely to be undercompensated for their talents compared to white athletes. Further study is needed to determine whether the impact of changed NCAA polices benefit African Americans in the same way other athletes might benefit. The Task Force recommends that the Legislature direct that this study be undertaken. To support African Americans further in this area, the Task Force also recommends that a funding stream be created to assist African American athletes with monetizing their image and likeness while protecting their personal brand. This could include sponsored legal assistance and marketing training that may be administered by the California American Freedmen Affairs Agency.

Prohibit Discrimination Based on Natural and Protective Hair Styles In All Competitive Sports

In January 2021, Talyn Jefferson, a young Black student at Ottawa University, was removed from her cheerleading team for refusing to remove her bonnet during practice.[9] Jefferson wore the bonnet to prevent her braids from hitting other team members.[10] In December 2018, Andrew Johnson, a high school student on the wrestling team, was forced by a referee to either cut his dreadlocks or forfeit his match.[11] As discussed in Chapter 9, Control Over Creative, Cultural & Intellectual Life, Eurocentric norms of professionalism often have a disparate impact on African American individuals. To remedy and address the

harms in this area, the Task Force recommends that the Legislature extend the reach of Senate Bill No. 188 (SB 188) to explicitly include competitive sports within California. SB 188, the Create a Respectful and Open Workplace for Natural Hair Act, amended the Government Code and Education Code so that the definition of race now also includes traits historically associated with race, including hair texture and protective hairstyles.[12] This recommendation seeks to ensure that African American athletes are not subject to discrimination and exclusion based on their natural hair.

Identify and Remove Monuments, Plaques, State Markers, and Memorials Memorializing and Preserving Confederate Culture; Erect Monuments, Plaques and Memorials Memorializing and Preserving Reconstruction Era and the African American Community

The erection of the sort of monuments we make today and the naming of objects we name today are practices with historical roots, but not especially deep roots.[13] "In fact, it is mainly a western and post-medieval practice, which puts it at only a few hundred years at the oldest."[14]

Confederate monuments harm African Americans because of what the monuments mean, the messages they convey, and the white supremacist ideology they advance.[15] Most monuments to the Confederacy were erected either in the wake of Reconstruction or during the civil rights movement, when African Americans in the South were striving for greater political power and social equality, and those who were resistant wished to express opposition to these developments.[16] Confederate monuments commend those who committed treason against the United States, and who ascribed to—and fought and died to advance—a white supremacist ideology that sought to preserve slavery and the continued subjugation of African Americans.

"As the philosopher Jeremy Waldron points out, public art and architecture are important means by which society and government can provide assurances to members of vulnerable groups that their rights and constitutional entitlements will be respected."[17] As documented in Chapter 9, Control Over Creative, Cultural & Intellectual Life, however, a great number of Confederate monuments have been erected in many locations across California, including memorials dedicated to Confederate generals and soldiers in places such as Monterey, Fort Bragg, and San Diego.

To remedy and address the harms associated with these ever-present markers of an insurrection dedicated to the preservation of the enslavement and oppression of African Americans, the Task Force recommends that the Legislature identify and remove monuments, plaques, state markers, memorials, and any similar structures or markers memorializing and preserving Confederate culture. Only when all are removed will California have begun to address the history of monuments glorifying rebellion, enslavement, and white supremacy. This includes all such monuments, plaques, state markers, building names, and memorials so identified on government property and on private property that benefits from state funding. Additionally, the Task Force recommends that the Legislature commit to identifying resources to fund monuments, plaques, state markers, and memorials that memorialize and preserve the brief period of Reconstruction in the United States and various key figures within the African American community.

COURTESY OF RYAN M. KELLY/AFP VIA GETTY IMAGES

Workers in Richmond, Virginia, removed a statue of Thomas "Stonewall" Jackson, a Confederate general, after the city's mayor ordered the "immediate removal" of Confederate monuments. (2020)

Provide Funding to the Proposed California American Freedmen Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life

As detailed in Chapter 9, Control Over Creative, Cultural & Intellectual Life, African American Californians continue to face discrimination in the television and film industries. Despite earning higher returns, "Black-led" projects are often characterized as economically inviable, which results in "Black-led" projects being underfunded. To rectify the harms in this area, the Task Force recommends that the Legislature provide funding to the proposed California American Freedmen Affairs Agency on an annual basis to re-create and support African American cultural hubs and leisure sites, news publications, arts (including film, radio, television, visual arts, creative writing, podcasting, and other forms of art and media), and lifestyle activities. The intent behind this recommendation is to help bring about the restoration of the "Harlem of the West" in communities

where African American-led businesses, facilities, churches, and shared cultural interests were able to thrive.[18] Examples of where resources should be directed include funding for rebuilding and supporting African American-led businesses—including providing stipends for the acquisition of licenses, such as liquor or cosmetology licenses; building and preserving outdoor recreational spaces such as parks, pools, sport fields, courts, rinks, beach access, and trails; curating African American art and integrating African American art within existing museums; creating a reparative fund or funded fellowship program for African American media institutions and African American media makers in California to help repair the harm caused by anti-African American narratives produced by dominant white media institutions and to help nurture innovative media, civic-technology projects, and African American-owned media outlets; and supporting access to patents, copyrights, and trademarks through community-based education and legal assistance designed to assist African Americans through means such as funding for an African American public trust, funding for legal incubator programs specifically benefiting African Americans, and funding to support educational opportunities for African Americans, such as continuing education, certificate programs, symposia, and technology conventions.

These recommendations seek to address the harms associated with the disruption of African American cultural centers in the name of redevelopment and to address the history of censorship of African American-produced media and arts.[19] These public works, educational, and legal services initiatives should be prioritized for areas predominately occupied by African Americans, or spaces where African Americans have traditionally gathered for recreation in an effort to restore community watering holes and thriving cultural hubs that were lost in the name of urban renewal. The Task Force recommends that the proposed California American Freedmen Affairs Agency be granted authority to administer these programs and have the discretion to provide this funding directly to individual applicants or to fund grants to NGOs that are involved in this work. These recommendations are intended to stand irrespective of whether the Agency is ultimately created by the Legislature and, if so, whether it is constituted in a manner that would encompass the roles and responsibilities specified here.

Eliminate the California Department of Corrections and Rehabilitation's Practice of Banning Books

States and local governments have engaged in racist censorship of books written by African American authors, primarily in public schools and in prisons.[20] The Task Force recommends that the Legislature direct the appropriate state agency to review the California Department of Corrections and Rehabilitation's list of banned books to determine whether the ban should remain in effect. The Task Force aims to address the censorship of African American creative works by examining whether written work, or publications featuring the stories or experiences of African American people and their forbearers, should be removed from the list of banned books. Alternatively, the Task Force recommends that the Legislature direct the California Department of Corrections and Rehabilitation to provide criteria and justification for banning particular books, and require evidence that a book ban is an effective means of accomplishing a legitimate stated goal or purpose.

COURTESY OF JOHN MOORE VIA GETTY IMAGES

Prison inmates read in the library of the York Community Reintegration Center in Niantic, CT. (2016)

Endnotes

[1] Harper, *Black Male Student-Athletes and Racial Inequities in NCAA Division I College Sports* (2018) USC Race and Equity Center, pp. 3, 9-13 (as of May 25, 2023).

[2] Rauenzahn et al., *Paying College Athletes* (Feb. 6, 2021) The Regulatory Review (as of May 25, 2022).

[3] *Ibid.*

[4] *Ibid.*

[5] Dart, *College athletes are unpaid. What if injury ruins their chance of turning pro?* (Sept. 6, 2021) The Guardian (as of May 25, 2023).

[6] See Harper, *Black Male Student-Athletes and Racial Inequitie*, *supra*, at p. 5; Chapter 9, Control Over Creative, Cultural & Intellectual Life.

[7] National Collegiate Athletic Association Division I, *Institutional Involvement in a Student-Athlete's Name, Image and Likeness* (Oct. 26, 2022) p. 1 (as of May 26, 2023).

[8] Hosick, *DI Board of Directors Adopts Student-Athlete Benefit Legislation* (Aug. 3, 2022) NCAA (as of May 26, 2023).

[9] Wells, *College Cheerleader Reportedly Kicked Off Team For Wearing A Bonnet To Practice* (Jan. 26, 2021) Madamenoire, (as of May 26, 2023).

[10] *Ibid.*

[11] Ahmed, *The Cutting of a Teenage Wrestler's Hair Was a Familiar Act of Violence for Black Athletes* (Dec. 23, 2018) The Guardian, (as of May 26, 2023).

[12] Sen. Bill No. 188 (2019-2020 Reg. Sess.) §2.

[13] Laden, *Erasing History by Removing Monuments and Renaming Things* (Sept. 6, 2017) ScienceBlogs, (as of May 26, 2023).

[14] *Ibid.*

[15] Rossi, *Removing Monuments, Grappling with History* (June 19, 2020) The Prindle Institute for Ethics DEPAUW, (as of May 26, 2023).

[16] *Ibid.*

[17] *Ibid.*

[18] See Hix, *'Harlem of the West': Oakland's once-bustling jazz and blues scene along Seventh Street* (May 6, 2020) Bay City News Foundation (as of May 29, 2023); see also *Harlem of the West: The San Francisco Fillmore Jazz Era* (2021) Bolinas Museum Photography Gallery Curated by Lewis Watts (as of May 29, 2023).

[19] See Chapter 9, Control Over Creative, Cultural & Intellectual Life.

[20] See *ibid.*; Bellamy-Walker, *Book bans in schools are catching fire. Black authors say uproar isn't about students* (Jan. 20, 2022) NBC News (as of May 29, 2023).

CHAPTER 27 — POLICIES ADDRESSING Stolen Labor and Hindered Opportunity

COURTESY OF JOSE LUIS PELAEZ INC VIA GETTY IMAGES

Woman holding open store sign in window. Studies have demonstrated the substantial wealth advantages to self-employment.

I. Policy Recommendations

To address harms set forth in Chapter 10, Stolen Labor and Hindered Opportunity, the Task Force recommends the following.

- Create Greater Transparency in Gubernatorial Appointments
- Provide Guaranteed Income Program for Descendants
- Eliminate Barriers to Licensure for People with Criminal Records
- Transform the Minimum Wage Back into a Living Wage
- Advance Pay Equity Through Employment Transparency and Equity in Hiring and Promotion
- Create and Fund Professional Career Training
- Create or Fund Apprenticeship Grant Programs
- Fund African American Businesses
- Fund African American Banks

Create Greater Transparency in Gubernatorial Appointments

The Governor of California appoints hundreds of people to the most important positions in public service, so there is a strong need for transparency in these appointments to ensure diverse and inclusive representation. Currently, there are no means to determine the demographic composition of these gubernatorial appointments. The Task Force recommends the Legislature require that the employing agency of any gubernatorial appointee report to the Legislature, on an annual basis, the demographics of all current gubernatorial appointees, including their race, ethnicity, and whether they are a descendant of an enslaved individual. The demographic data should also include the appointees' age, gender, religion, party affiliation,

veteran status, and sexual orientation. For gubernatorial appointees who oversee social services programs, consideration should be given to the proportionate populations served.

Provide Guaranteed Income Program for Descendants

Nearly two-thirds of Americans live paycheck to paycheck[1] and more than half of Americans cannot afford a $1,000 emergency.[2] The Task Force recommends that the Legislature create a guaranteed income program for descendants of an enslaved person. The Legislature should determine the parameters of the program. A study of the City of Stockton's guaranteed income program showed that providing families with a guaranteed income reduced income volatility, improved mental health, provided better job prospects, and provided greater financial security.[3] The study also showed that recipients of a guaranteed income obtained full-time jobs at over twice the rate of non-recipients, and that recipients were nearly twice as likely to be prepared to pay for a $400 unexpected expense.[4]

A study of the City of Stockton's guaranteed income program showed that providing families with a guaranteed income reduced income volatility, improved mental health, provided better job prospects, and provided greater financial security.

In 2021, the California Guaranteed Income Pilot Program was established as part of the Fiscal Year 2021-22 budget agreed upon by Governor Newsom and the Legislature, to be overseen by the California Department of Social Services (CDSS).[5] This is the first state-funded guaranteed income program in the United States.[6] The plan is taxpayer-funded, and local governments and organizations apply for the money to run their own programs, with CDSS determining who will receive funding.[7] The goal of the program is to help pregnant women and young adults who recently aged out of the foster system to transition to a life on their own.[8] The program will allocate more than $25 million for monthly cash payments to qualifying pregnant women and young adults who recently left the foster care system.[9] The Task Force's proposed guaranteed income program could be modeled after this Pilot Program.

Eliminate Barriers to Licensure for People with Criminal Records

One of the root causes of high recidivism rates is the inability of formerly incarcerated persons to obtain gainful employment.[10] Nearly 30 percent of jobs require licensure, certification, or clearance by an oversight board or agency.[11] But California law makes it more difficult for a person with a criminal record to obtain an occupational license after their release from incarceration.[12] The current system views people with criminal records as unequal by having them suffer what the Institute for Justice calls a "civil death" by continuing to punish them after their release.[13]

In 2018, Governor Brown signed Assembly Bill (AB) No. 2138, legislation that helped reduce barriers to licensure for individuals with prior criminal convictions, by removing some of the broad discretion licensing boards had in denying applications for licensure.[14] The Task Force recommends that the Legislature expand upon AB No. 2138 by: (1) Prioritizing African American applicants seeking occupational licenses, especially those who are descendants; (2) eliminating or reducing the period in which a prior conviction for a "serious felony" can be held against a person, which is currently at seven years, with certain exceptions; and (3) reducing or shortening the requirement that "substantially related criminal convictions" be considered and held against a person for seven years, with certain exceptions.

Transform the Minimum Wage Back into a Living Wage

The minimum wage in California is $15.50/hour,[15] a rate likely less than a living wage, as the cost of living has significantly surpassed the minimum wage.[16] The Task Force recommends that the Legislature raise the minimum wage to a living wage. The minimum wage should also be automatically adjusted on a regular basis to adjust for increases to the cost of living (including inflation).

In 2022, a proposed initiative (the California Living Wage Act) to raise the minimum wage to $18 an hour over the next three years failed to qualify for the November ballot.[17] The proposal would have increased the minimum wage to $16 an hour in January 2023, increased it again to $18 an hour in January 2025, and then it would have adjusted the minimum wage annually to account for the cost of living.[18] The measure fell short because it failed to garner enough verified signatures by the deadline.[19] The Task Force recommends that the Legislature conduct hearings

on what an appropriate amount would be for a living wage in California, and raise the minimum wage accordingly.

Advance Pay Equity through Employment Transparency and Equity in Hiring and Promotion

Black Californians earn 72 cents for every dollar earned by white Californians.[20] This highlights a need for greater transparency and accountability in employment. Though research has not demonstrated a solid causal link between openness about pay in the workplace and greater equity in pay, it does suggest a connection.[21] "Companies that are more forthcoming about their compensation policies and practices tend to have smaller gaps with respect to gender, race, ethnicity, and protected groups statuses of different kinds . . . ."[22] Senate Bill No. 1162 (SB 1162), effective January 1, 2023, requires nearly 200,000 companies with 15 or more employees to disclose pay ranges in ads for jobs that will be performed in the state.[23] In addition to requiring salary ranges, the law requires employers of all sizes to provide the salary range to an employee for the position they hold, if requested.[24] The law also requires employers with 100 or more workers who are hired through third-party staffing agencies to submit pay data reports to the California Civil Rights Department for those workers, segregated by gender, race, and ethnicity.[25]

Also, Senate Bill No. 973 (SB 973) requires a private employer that has 100 or more employees, and that is required to file an annual Employer Information Report under federal law (i.e., employers engaged in interstate commerce with 100 or more employees), to submit a pay data report to the California Civil Rights Department that contains specified wage information.[26]

The Task Force recommends that the Legislature expand upon SB No. 973 and SB No. 1162 and enact legislation to ensure that the reach of those bills extends to all industries operating in California, such that public disclosure of compensation and benefits for all employers is required by California law. Specifically, the Task Force recommends that the Legislature expand on these laws by: (a) requiring the Civil Rights Department to publish each private employer's pay data report; (b) providing for several forms of penalties to be assessed against employers for violating these requirements; and (c) including employers that are not currently within the scope of the law.

With respect to the media and creative industries, this recommendation also aims to address the inequities and disparities that African American artists, media executives, and employees behind the camera, especially those who are descendants of enslaved persons, face in recruitment, salary, and promotion, as documented in Chapter 9, Control Over Creative, Cultural, & Intellectual Life. Legislation relevant to this area should specifically require media companies operating in California to provide periodic reports to a designated agency, such as the Civil Rights Department, detailing the compensation and benefits of artists in California. This public report may then be used as a tool to identify and further remediate disparity in hiring, pay, and compensation for these and others involved in bringing artistic endeavors to the public. This recommendation is also designed to provide consumers with information to make informed purchasing decisions. While SB No. 973 was enacted to address the gender pay gap, this recommendation seeks to surface similar information in the media industry specifically to identify and address pay disparities that exist for African American artists and executives.

Create and Fund Professional Career Training

As of 2019, median African American wages were equivalent to only 75.6 percent of white wages, falling from a height of 79.2 percent in 2000.[27] African American women average 63 cents for every dollar white men earn.[28] A key contributing factor to these disparities is that African Americans are less likely to be hired into high wage occupations and compensated equitably than comparably educated workers of other races.[29] African American workers are chronically underrepresented compared with whites in high salary jobs in technology, business, life sciences, architecture, and engineering, among other areas.[30]

COURTESY OF JHORROCKS VIA GETTY IMAGES

Architect at a construction site.

The Task Force recommends that the Legislature create and fund training programs that enable African Americans, and especially descendants, to access employment opportunities in areas in which they have been

underrepresented, including in the fields of medicine, management, information technology, mathematics, law, business, construction, and other sciences. There should also be a focus on building professional pipelines to create more investment bankers, CPAs, tax advisors, and financial advisors among descendants. Descendants who receive this financial wealth training should be encouraged, as part of their professional development, to engage in pro bono training that focuses on helping build generational wealth in African American and descendant communities. This recommendation is modeled after California's Song-Brown Healthcare Workforce Training Act. The Legislature should amend Song-Brown, or create a new program that would add the above professions to the list of training programs eligible to contract with the state. For programs contracting with the state based on meeting the eligibility criteria, the authorizing state agency would determine the amount to pay a contracted program, and authorize the program to use funds received under the contract, pursuant to specified provisions of the law.

Create or Fund Apprenticeship Grant Programs

State licensure systems have historically worked in tandem with unions and professional societies to exclude African American workers from skilled, higher-paying jobs.[31] Apprenticeship is way for individuals learn skills while earning a wage in order to upskill or reskill into a new career or new level of their career.[32]

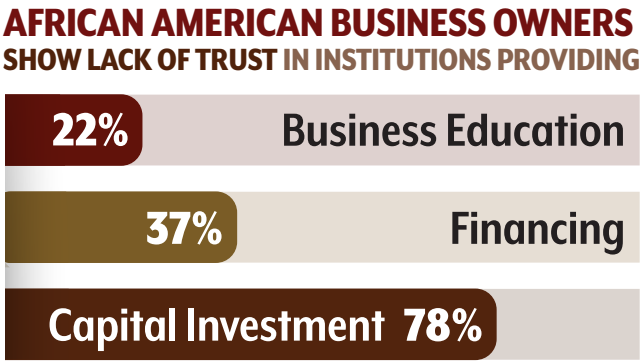
The Task Force recommends that the Legislature create an apprenticeship grant program and/or target existing programs, to increase participation by African Americans, especially descendants, in apprenticeship industries and technical occupations. To effectuate this recommendation, the Task force recommends that the California Department of Industrial Relations be tasked to administer and award grants on a competitive basis to eligible registered entities to increase African American participation in registered apprenticeship programs. In issuing grants, the Department would target registered apprenticeship programs in traditional and nontraditional apprenticeship industries or occupations, such as for programs in construction, welding, electrical engineering, plumbing, information technology, energy, green technology, advanced manufacturing, health care, or cybersecurity.

Grantees under such a program could use the funds to establish or expand partnerships with organizations that provide African American participants access to financial planning, mentoring, and supportive services that are necessary to enable an individual to participate in and complete a program under the apprenticeship system. Funds could also be used to conduct outreach and recruitment activities, including assessments of potential African American participants in a program under the apprenticeship system. Those who are recipients of these apprenticeship programs would be highly encouraged to engage in pro bono training to help build generational wealth in African American communities, especially for those who are descendants of enslaved persons.

Fund African American Businesses

African Americans face many systemic barriers to building social and financial capital, which makes it increasingly difficult for African American entrepreneurs to secure the financial capital necessary to launch or grow their own businesses.[33] This has led to what the Association for Enterprise Opportunity (AEO) calls "the wealth gap, the credit gap, and the trust gap."[34] Business ownership allows African Americans to participate in local, regional, and global markets from which they have historically been excluded due to systemic racism and discrimination. Studies have demonstrated the substantial wealth advantages to self-employment and have shown that those who become self-employed experience much stronger gains in wealth compared to individuals who never become self-employed.[35]

In 2017, AEO conducted a study that found "investing to support the launch and growth of Black-owned businesses could build wealth for individuals and their families, assist with closing the wealth gap, revitalize communities, and contribute to an overall healthier economy . . . ."[36] In 2022, AEO conducted another study in which it found around 22 percent of Black business owners reported strongly or somewhat disagreeing with the statement that they trusted institutions that provide



business education and training, over 35 percent reported strongly or somewhat disagreeing with the statement they trusted the institutions that finance businesses, and 78 percent of respondents reported deciding not to approach lenders or investors for capital, even when their

business needed it.[37] These concerns can be addressed by intentional investment in African American business ownership, especially businesses owned and operated by those who are members of the descendant community.

The Task Force recommends that the Legislature create and provide funding for a Small Business Investors Fund, which would be a forgivable, interest-free loan program available to owners of small businesses in African American commercial areas. These funds would be used for startup costs, store upgrades, and other business investments. The loans could range from $10,000 to $25,000, and a portion of the loan would be forgiven each year as long as the recipient remains in business in the same location.

Approximately 130 African American-owned banks were established between 1900 and 1934. Only eight banks survived the Great Depression, and today, "only 20 Black-owned banks qualify as Minority Depository Institutions."

Fund African American Banks

African Americans have historically faced systemic discrimination in banking, which has impacted their ability to accumulate wealth. African American owned banks have long provided banking services to African American communities, compensating for the discrimination that prevented African American families from accessing financial capital at other institutions.[38] African American-owned banks played a vital role in providing financial support not only to individuals, but to African American churches, stores, newspapers, and nursing homes.[39] Approximately 130 African American-owned banks, and 50 savings and loans and credit unions, were established between 1900 and 1934.[40] However, only eight of the African American-owned banks survived the Great Depression,[41] and today, "only 20 Black-owned banks qualify as Minority Depository Institutions, according to the Federal Deposit Insurance Corporation."[42]

Additionally, as the Brookings Institute has reported, "racial discrimination and various types of market failure have led to banking and credit deserts . . . . "[43] Access to banks in African American communities has not only been limited by the decrease in the number of African American-owned banks, but by an overall decrease in the number of banks in African American neighborhoods.[44] Between 2010 and 2018, the number of banks in majority-Black neighborhoods decreased 14.6 percent, with some banks having an even larger drop. JP Morgan, for example, had 22.8 percent fewer banks in majority-African American neighborhoods by 2018 even though its overall decline in branches was only 0.2 percent.[45] As the Brookings Institute concludes, "[b]y 2021, majority Black census tracts were much less likely to have a bank branch than non-majority Black neighborhoods."[46]

Federal, California, and local governments have historically undermined African American-owned banks by excluding them from full participation in the banking market. For example, government-sanctioned discrimination forced African American banks into precarious positions by denying these banks (and their customers) the ability to diversify their assets or loan portfolios. Since most white banks refused to provide mortgages to African Americans—a practice legally enforced by redlining—African Americans had to depend upon African American banks for home loans. Consequently, the majority of financial assets held by African American banks were often home loans, and the lack of diverse assets made these banks vulnerable to economic shifts, especially due to the other expressly discriminatory laws that denied their African American borrowers the ability to earn enough money to pay back those loans.[47] Additionally, the government's redlining of African Americans devalued those homes (and home loans) and treated those home loans as risky investments, further denying African American banks a market in which to trade or leverage those investments.[48] Similarly, the success of African American banks was often tied up with the fate of the African American businesses that they financed. But discrimination throttled the ability of African American businesses to make profits, and when these businesses collapsed, so did the African American banks that invested their money into them.[49] Likewise, the expressly discriminatory policies of federal, state, and local governments that deprived African Americans of wealth and fair compensation for their labor denied African Americans the ability the accumulate the money or deposits necessary to infuse African American banks with the capital necessary to finance loans for the community more broadly.[50]

To remedy the discrimination that has undermined African American banking, the Task Force recommends that the Legislature create a California Community Development Financial Institutions Program. This would be a state program modeled upon the federal Community Development Financial Institutions Program (CDFI

Program). Such a program would invest state resources, matched with private funding, in African American-owned Minority Depository Institutions (MDIs). The program would also offer financial assistance and technical assistance awards to MDIs.

Further, the Task Force recommends that the Legislature create an MDI Investment Tax Credit Program to support equity investments in African American owned MDIs, to encourage investors to make equity investments in those institutions.

Finally, the Task Force recommends that the Legislature create a Bank Deposit Program to expand the use of MDIs specifically for African American owned banks, especially ones owned by California descendants of persons enslaved in the United States.[51] Through this program, the California Department of Financial Protection and Innovation[52] would receive applications from depository institutions or credit unions, and certify whether such depository institution or credit union is an African American-owned depository institution. The Department would also maintain and publish a list of all depository institutions and credit unions that have been so certified, and periodically distribute the list to all state departments and agencies, local governments, and interested private sector companies. The Task Force also recommends that the Legislature require each state department or agency to develop and implement standards and procedures to prioritize, to the maximum extent possible as permitted by law and consistent with principles of sound financial management, the use of African American-owned depository institutions to hold the deposits of each such department or agency. The head of each department or agency would also be required to submit to the Legislature a report on the actions taken to increase the use of African American-owned depository institutions to hold the deposits of each such department or agency. Institutions owned by a descendant of an enslaved individual should receive special consideration.

Today, African American-owned banks still play a vital role in repairing the persisting harm from discrimination, and these proposals serve to support these banks and their critical role. In a 2022 joint notice of proposed rulemaking to update federal regulations, for example, the Department of Treasury, Federal Reserve Board, and Federal Deposit Insurance Corporation recognized how discriminatory policies like redlining have "greatly contributed to the economic distress" now experienced by "minority communities," and the proposed rulemaking acknowledged community feedback that bank partnerships with minority depository institutions—such as African American-owned banks—"are key in helping to meet the credit needs" of the communities harmed by the legacies of persisting discrimination.[53]

African American-owned banks not only provide financial services to African American businesses—they also play a critical role "giving members of the African American community a sense of security and confidence in their ability to gain a foothold in mainstream America."

As the Brookings Institute explained, limited access to capital is "the most important factor that constraints the establishment, expansion, and growth of Black-owned businesses."[54] African American-owned banks help reverse the discriminatory policies that continue to limit African American access to capital, as these banks approve a higher percentage of loans to African American applicants than other banks.[55] As one scholar puts it, African American-owned banks not only to provide financial services to African American businesses—they also play a critical role "giving members of the African American community a sense of security and confidence in their ability to gain a foothold in mainstream America."[56]

The Task Force urges the Legislature to implement the recommendations contained in this chapter to ensure that these critical institutions are uplifted and empowered to build wealth for African Americans, especially descendants, and reverse the vestiges of racist banking policies in our state and country.

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CHAPTER 28 — POLICIES ADDRESSING The Unjust Legal System

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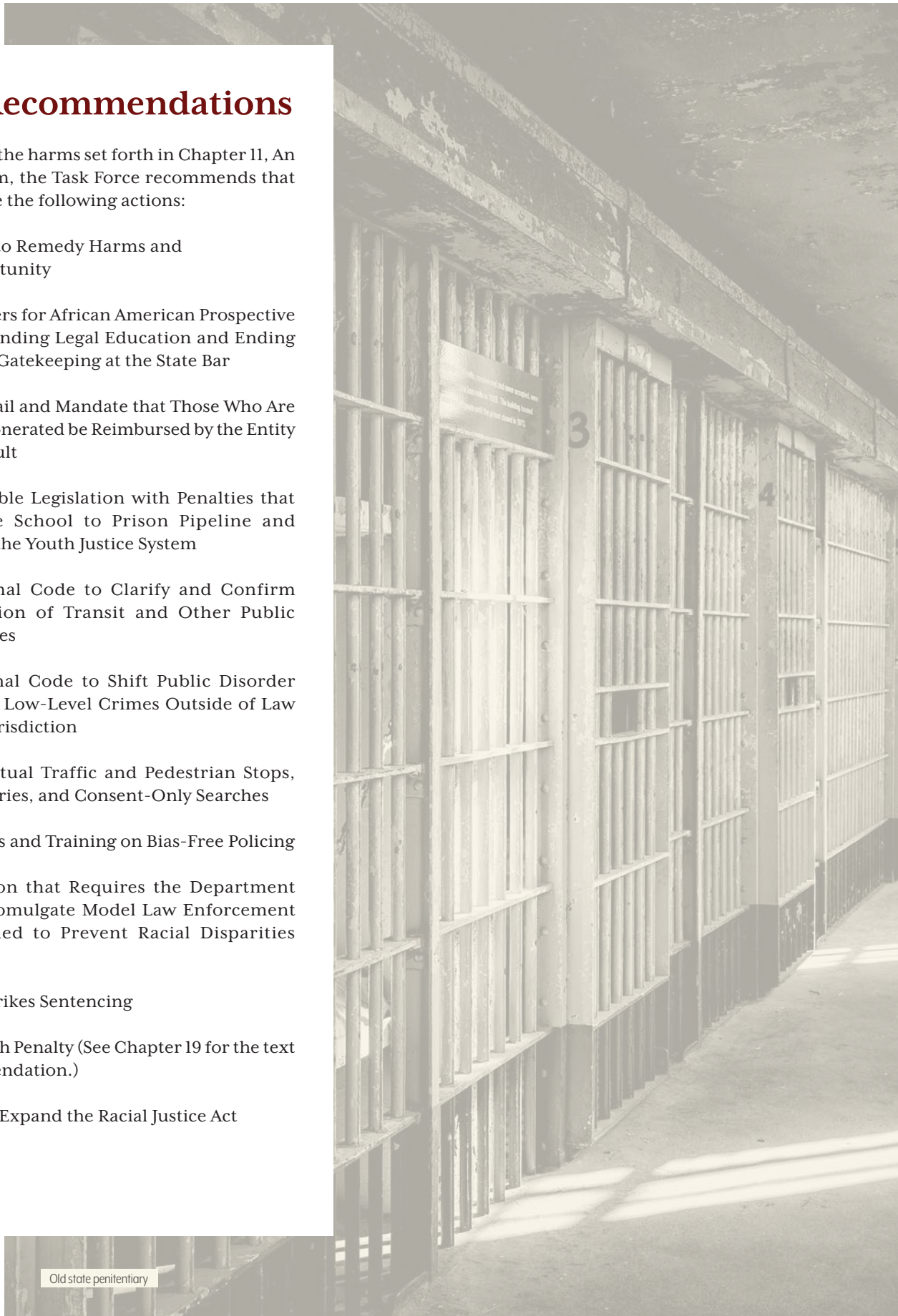

Old state penitentiary

I. Policy Recommendations

In order to redress the harms set forth in Chapter 11, An Unjust Legal System, the Task Force recommends that the Legislature take the following actions:

- Allocate Funds to Remedy Harms and Promote Opportunity
- Eliminate Barriers for African American Prospective Attorneys by Funding Legal Education and Ending Discriminatory Gatekeeping at the State Bar
- Prohibit Cash Bail and Mandate that Those Who Are Acquitted or Exonerated be Reimbursed by the Entity or Entities at Fault
- Enact Enforceable Legislation with Penalties that Dismantles the School to Prison Pipeline and Decriminalizes the Youth Justice System
- Amend the Penal Code to Clarify and Confirm Decriminalization of Transit and Other Public Disorder Offenses
- Amend the Penal Code to Shift Public Disorder Infractions and Low-Level Crimes Outside of Law Enforcement Jurisdiction
- Prohibit Pretextual Traffic and Pedestrian Stops, Probation Inquiries, and Consent-Only Searches
- Mandate Policies and Training on Bias-Free Policing
- Enact Legislation that Requires the Department of Justice to Promulgate Model Law Enforcement Policies Designed to Prevent Racial Disparities in Policing
- Repeal Three Strikes Sentencing
- Abolish the Death Penalty (See Chapter 19 for the text of this recommendation.)
- Strengthen and Expand the Racial Justice Act

- Assess and Remedy Racially Biased Treatment of African American Adults and Juveniles in Custody in County Jails, State Prisons, Juvenile Halls, and Youth Camps
- Accelerate Scheduled Closures of Identified California State Prisons and Close Ten Prisons Over the Next Five Years, with Financial Savings Redirected to the California American Freedmen Affairs Agency
- Require Payment of Fair Market Value for Labor Provided by Incarcerated Persons (See Chapter 19 for the text of this recommendation.)
- Emphasize the "Rehabilitation" in the California Department of Corrections and Rehabilitation (See Chapter 19 for the text of this recommendation.)
- Prohibit Private Prisons from Benefiting from Contracts with CDCR to Provide Reentry Services to Incarcerated or Paroled Individuals (See Chapter 19 for the text of this recommendation.)
- Increase Efforts to Restore the Voting Rights of Formerly and Currently Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote (See Chapter 21 for the text of this recommendation.)
- Eliminate Legal Protections for Peace Officers Who Violate Civil or Constitutional Rights (See Chapter 20 for the text of this recommendation.)
- Recommend Abolition of the Qualified Immunity Doctrine to Allow Victims of Police Violence Access to Justice (See Chapter 20 for the text of this recommendation.)
- End the Under-Protection of African American Women and Girls (See Chapter 25 for the text of this recommendation.)

Allocate Funds to Remedy Harms and Promote Opportunity

For too long, state funds have been used inefficiently and in a manner that did not achieve results for African Americans in California. The existence of an unjust legal system, as detailed in Chapter 11, is due in no small part to the lack of funding available to those who have been most victimized by a system that is racist not only in effect, but as described herein, *by design*. The Task Force accordingly recommends that the Legislature fund a number of programs and initiatives that will empower the African American community to support itself in working to overcome this institutional racism in the legal system.

First, in order to create a body of reference for repeatable, scalable programs, the Legislature should create a program to provide hyper-local grants or contracts to community-based organizations with track records of successful public safety work, and ensure that there is effective reporting, publication of methodologies and outcomes, and transparency and quality control mechanisms on the grants and contracts. Second, the Legislature should allocate funding, potentially through state-funded universities, for disparity studies to inform public contracts and grants to community-based organizations working to further criminal justice reforms. Third, in order to ensure that law enforcement is inclusive of the African American population, the Legislature should fund grant programs to incentivize African American employment in law enforcement, especially those who are descendants of persons enslaved in the United States, particularly in underserved areas or in areas that have an established history of racist laws, policies, or impact. Fourth, to ensure that African American individuals on probation are able to fully participate in society and overcome the negative effects of their supervision as a result of an unjust legal system, the Legislature should create a mechanism to compensate individuals on probation. Finally, exoneration compensations should be increased, with particular compensation to be provided for lost wages.

The Task Force accordingly recommends that the Legislature fund a number of programs and initiatives that will empower the African American community to support itself in working to overcome this institutional racism in the legal system.

Eliminate Barriers for African American Prospective Attorneys by Funding Legal Education and Ending Discriminatory Gatekeeping at the State Bar

As discussed in Chapter 11, An Unjust Legal System, part of the reason that the criminal justice system fails California's African American population is the lack of African American attorneys, due to the barriers that prevent individuals from becoming attorneys. One such barrier involves the moral character review process associated with admission to the State Bar, which places

particular emphasis on criminal history.[1] "[B]ecause applicants are screened based on their criminal records, the moral character review process will likely reflect the racial disparities that plague the U.S. criminal justice system as a whole."[2] The Task Force accordingly recommends that the Legislature take action to make the legal profession more accessible for aspiring African American attorneys, especially individuals who are descendants of an enslaved person, by prohibiting the State Bar of California from considering offenses in moral fitness determinations that disproportionately affect African Americans and that do not reflect on moral character. The Legislature should also establish a fund or scholarship program to pay for the education of descendants pursuing legal degrees (consistent with recommendations elsewhere in this report for those pursuing medical, science, and education degrees). The Legislature should consider emphasizing community-serving roles such as public defenders, public interest attorneys, and children's rights positions in establishing eligibility for the receipt of these funds, in order to maximize the beneficial impact on the relevant community, but without precluding or discouraging opportunities to pursue other subject matter areas as well as private practice.

Prohibit Cash Bail and Mandate that Those who are Acquitted or Exonerated be Reimbursed by the Entity or Entities at Fault

The cash bail system is at the core of many of the class and race-based inequities in the criminal legal system. As discussed in Chapter 11, An Unjust Legal System, those with resources can bail out and return to their homes, families, and jobs; those without resources languish in jail and suffer innumerable collateral consequences, despite not having been convicted of any crime and despite the presumption of innocence. Pretrial detention can last months and even years, during which incarcerated individuals suffer countless harms including deteriorating mental and physical health, risk of sexual violence, and lasting trauma.[3] Ties to the outside world can be quickly severed, including through the loss of housing, employment, and even children.[4] Ultimately, these harms exert significant pressure on defendants to accept plea bargains in order to be released from custody rather than fighting the charges at trial.[5]

As with other stages of the criminal legal system, racial disparities persist in pretrial detention outcomes and the setting of bail.[6] For example, Black defendants are 10 to 25 percent more likely to be detained pretrial or to face financial conditions upon release, and median bond amounts are often about $10,000 more (and potentially as high as double the amount) for Black defendants than for white defendants.[7] Despite the staggering cost of bail, many individuals and their families piece together the funds needed, and then end up indebted to bail bondsmen. The result, as a recent study of the Los Angeles County bail program concluded, "is a multi-billion dollar toll that demands tens of millions of dollars annually in cash and assets from [the] most economically vulnerable persons, families, and communities."[8]

The disparities associated with cash bail have led to widespread reform efforts across the nation and in California, with mixed results. For example, the implementation of pretrial assessment tools in New Jersey and Kentucky have not reduced disparities to the extent anticipated.[9] In California, the Legislature in 2018 passed Senate Bill No. 10 (SB 10), which would have replaced cash bail with a pretrial risk assessment tool assessing flight and danger risks.[10] But the legislation was stayed and, in 2020, SB 10 was repealed through Proposition 25.[11]

In parallel with these and other legislative efforts, litigants have also raised constitutional challenges to the cash bail framework. Most significantly, in *In re Humphrey* (2021) 11 Cal.5th 135, the California Supreme Court held that the setting of bail that an individual cannot afford violates the rights to both equal protection and substantive due process.[12] The Court accordingly ruled that bail must be set at a level that an accused individual can reasonably afford, and it further ruled that an accused individual cannot be held in custody prior to trial absent an individualized determination regarding danger and flight risk.[13] Unfortunately, despite the breadth of the *Humphrey* decision, it has had little practical impact on the corrosiveness of bail.[14] For example, despite *Humphrey*, the pretrial jail population, bail amounts, and average length of pretrial detention have not decreased.[15] Moreover, lower courts consistently fail to follow the dictates of *Humphrey*, and many have read *Humphrey* to increase their authority to impose no-bail holds.[16]

Ultimately, the problem of wealth-based detention requires legislative action, and the Task Force accordingly recommends that the Legislature take all steps necessary to definitively end cash bail. These reforms should include, at a minimum: the codification of a presumption of pretrial release in all criminal cases; increased funding for non-law enforcement pretrial services agencies

to improve pretrial release support programs; and a statewide zero bail schedule.[17] If the Legislature chooses to implement a pretrial assessment tool or equivalent algorithm, such as in SB 10, special care must be taken to ensure that the tool does not perpetuate the same biases and disparities that have infected so many other parts of the criminal legal system.[18] Finally, the Legislature should also establish a framework for timely compensation of those held pretrial who were later acquitted and/or exonerated. The Legislature should also establish a methodology for apportioning responsibility for reimbursing those individuals who have been found to have been assessed inappropriate or excessive bail, whether through the fault of the investigating, arresting, or prosecuting agency or mishandling of the matter by the court system.

Current funding for school policing should be reallocated to school social workers, guidance counselors, psychologists, wellness centers, and therapeutic resources that support trauma-informed curriculum, mentoring programs, and school field trips to historically meaningful locales.

Enact Enforceable Legislation with Penalties that Dismantles the School to Prison Pipeline and Decriminalizes the Youth Justice System

Chapter 6, Separate and Unequal Education, details the ways in which African American students are disproportionately subject to exclusionary discipline in school, which in turn leads to higher risk of dropout and juvenile justice involvement. Moreover, African American students are more likely to attend schools with law enforcement on campus and greater security measures, and African American students are also more likely to be arrested than their white peers. Commonly known as the "school-to-prison pipeline," this dynamic has devastated the African American community by victimizing its youth. The Task Force accordingly recommends several measures to mitigate and ultimately end the school-to-prison pipeline, in addition to those recommended to address the harms discussed in Chapter 6 regarding school discipline.

School-Related Recommendations

The Task Force recommends eliminating law enforcement and probation officers from school campuses.[19] Current funding for school policing should be reallocated to school social workers, guidance counselors, psychologists, wellness centers, and therapeutic resources that support trauma-informed curriculum, mentoring programs, and school field trips to historically meaningful locales.[20] In the alternative, the Task Force recommends at least limiting and restricting the presence and activity of peace officers in California schools. Specifically, the proposed legislation would: (1) repeal California Education Code section 38000, subdivision (b), and eliminate school police departments; (2) prohibit the use of supplemental and concentration grant funding to finance peace officers operating as school police, school security, or school resource officers, which presently is permitted under California's local control funding formula under certain circumstances;[21] (3) require a memorandum of understanding, subject to public board approval, between school districts and law enforcement agencies that provide services to school campuses; (4) require training by the Commission on Peace Officer Standards and Training (POST) for all peace officers, with supplemental training for peace officers with substantial juvenile-specific duties, and require that the training be updated regularly, at least every three years, as the current training has not been updated for decades and best practices for juvenile justice changes rapidly; (5) require implicit bias training for all peace officers, with supplemental training for those with substantial juvenile-specific duties that takes into account juvenile behavioral and emotional development; and (6) require data collection and annual reviews tracking disparities in police encounters.

The Task Force also recommends that the Legislature require that any new law enforcement facilities, including but not limited to precincts, stations, or jails, be a specified, appropriate distance away from schools. Children should not have to walk past a police station, jailhouse, or other carceral institution on their way to school. Preexisting police precincts that are in close proximity to schools should be required to provide resources to help actively disrupt the school-to-prison pipeline.

Juvenile Justice Recommendations

The juvenile justice system imposes a closely related set of discriminatory harms against African American youth. As discussed in Chapter 6, Separate and Unequal Education, and in Chapter 11, An Unjust Legal System, the juvenile justice system disproportionately arrests and detains African American students as compared to other ethnic groups, and it fails to provide the kind of rehabilitation it purports to focus on. The Task Force accordingly recommends several reforms to the juvenile justice system.

First, the Task Force recommends establishing presumptive diversion for the vast majority of youth offenses. Underlying diversion is the recognition that most youth do not need court-based intervention. Although approaches vary, research suggests that diverting young people from justice systems as early as possible—prior to formal arrest and prosecution and thus without any court proceedings—is an effective and promising practice.[22] Where diversion practices exist, non-white youth have had disproportionately less access to such a pathway in lieu of justice involvement.[23]

Second, the Task Force recommends limiting juvenile probation terms and restricting formal supervision for youth. Probation can increase the likelihood that youth will be charged with probation violations, resulting in incarceration, often for minor transgressions.[24] Wardship probation, therefore, should be limited to six months as a default—with robust case planning driven by clearly identified goals and needs assessments—and any extension after six months should require the decision of a judge, with the need for any extensions required to be established by clear and convincing evidence. Currently, there are no restrictions on which youth may be formally supervised by probation.[25] As noted above, the system should divert as many youth as possible, and formal probation should be reserved for serious cases where youth are adjudicated of felony offenses. Lastly, the number and type of conditions or terms of probation should be limited, and the quality of supports and services should be improved.

Third, the Task Force recommends that the Legislature prohibit the application of strike enhancements for any juvenile adjudication (including retroactively), as was previously proposed in Assembly Bill No. 1127.[26] Juvenile court adjudications can be considered prior convictions under California's "Three Strikes law."[27] Youth sixteen and older can thus receive permanent "strikes" on their adult records if adjudicated for specified felonies.[28] A wide range of crimes are "strike-able" offenses, including non-violent crimes such as residential burglary and certain drug or gang-related crimes.[29] The behavior underlying many of these strike charges is often deeply rooted in normal adolescent development.[30]

Fourth, the Task Force recommends that the Legislature end all adult prosecution of youth. Youth in criminal court face adult penalties, including lengthy state prison terms and all of the collateral, lifelong effects of an adult record.[31] Transferring a youth to the adult system has another irrevocable effect: Youth miss opportunities for age-appropriate treatment, education, and developmentally important activities.[32] Moreover, Black youth are significantly more likely than white youth to be prosecuted in adult court.[33]

Amend the Penal Code to Clarify and Confirm Decriminalization of Transit and Other Public Disorder Offenses

Transit mobility laws perpetuate vestiges of slavery to the extent that they criminalize poverty and race, limit economic opportunity, and lead to the displacement of African Americans. Several recent laws were designed to decriminalize fare evasion and other low-level transit violations.[34] However, the Task Force is informed that the transit departments, their law enforcement partners, and the courts are still criminally citing people for fare evasion because they interpret the law to allow for continued criminal prosecution.[35] Accordingly, the Task Force recommends that the Legislature amend these decriminalization statutes to make clear to relevant agencies, law enforcement, and the courts that people must not receive criminal citations for transit violations (e.g., replace any "may" language with "must"). The Legislature should also afford victims a private right of action to seek compensation for unlawful arrests and/or prosecutions for fare evasion and other low-level transit violations.

Amend the Penal Code to Shift Public Disorder Infractions and Low-Level Crimes Outside of Law Enforcement Jurisdiction

A signification proportion of law enforcement contact with the public relates to low-level, non-violent offenses. Thus, for example, law enforcement is frequently tasked with enforcing public disorder offenses, such as illegal camping, public intoxication, disorderly conduct, minor trespass, and public urination.[36] Although the subjects of these contacts are often experiencing homelessness, a mental health crisis, or both, the responding officers typically possess neither training nor expertise in working with these vulnerable populations.[37] This disconnect often results in the use of excessive and sometimes fatal force that falls disproportionately on Black individuals.[38]

Given the devastating impacts of this kind of over-policing, the Task Force recommends that the Legislature prohibit law enforcement from criminally enforcing public disorder infractions and other low-level crimes. Instead, a public health and safety institution, without criminal arrest or prosecution powers, would enforce prohibitions such as sleeping on the sidewalk, fare evasion, and similar transit-related or other public disorder violations that criminalize poverty. People arrested or criminally prosecuted for these administrative violations should be granted a private right of action to sue for damages or should automatically receive a damages payout. Relatedly, the Task Force recommends that the Legislature establish a compensation scheme for those

previously convicted of loitering with intent to commit prostitution, given that the Legislature has already repealed the criminal prohibitions against such conduct.[39]

Prohibit Pretextual Traffic and Pedestrian Stops, Probation Inquiries, and Consent-Only Searches

Traffic stops are one of the most frequent means of law enforcement contact with the public.[40] Given the myriad potential traffic violations, officers have broad discretion over whether to enforce the countless minor violations they may observe each day. And when officers decide to conduct a traffic stop, it can often be pretextual, meaning that while the stop is ostensibly to address a minor traffic infraction, in reality it is being used by the officer as a means to conduct a comprehensive investigation and search.[41] Unsurprisingly, pretext stops are disproportionally used against African American drivers, with sometimes fatal consequences.[42] In recognition of this concerning practice, the Legislature passed the Racial and Identity Profiling Act (RIPA) in 2015.[43] Under RIPA, all California law enforcement agencies are required to collect and report data regarding all stops and detentions, as well as the outcome of those contacts (e.g., searches and the outcome of searches).[44] The legislation also established the RIPA Board, which is tasked with analyzing and publishing the reported data, and making recommendations to address its findings.

Since its inception, the RIPA Board has consistently found "trends in disparities for all aspects of law enforcement stops, from the reason for stop to actions taken during stop to results of stop."[45] For example, in its most recent report, the Board found that Black individuals represented a higher proportion of stopped individuals than their proportion of the population,[46] and that Black individuals were also more likely to have forced used against them than white individuals.[47] Moreover, stopped individuals perceived to be Black were searched at more than two times those perceived to be white, and Black youth were searched at nearly six times the rate of white youth.[48] Yet for searches conducted pursuant to consent, officers were least likely to find contraband during searches of Black individuals as compared to white.[49]

These RIPA data and conclusions—which are consistent with national data[50]—demonstrate the racially biased rate of pretext stops. Yet there is typically no Fourth Amendment remedy for an individual whose stop was pretextual, even if they can prove that they were stopped solely due to their race. Indeed, in *Whren v. United States* (1966) 517 U.S. 806, the United States Supreme Court held that an officer's subjective intentions, even if racist, are irrelevant to an asserted Fourth Amendment violation, outside the context of an inventory search or administrative inspection.[51] The Court stated that the Constitution prohibits selective enforcement of the law based upon race, but the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment.[52] However, equal protection challenges to traffic stops are especially difficult to prove, largely because of the leeway that *Whren* and traffic laws afford police.[53]

In its 2023 Report, the RIPA Board called on the Legislature to take steps to eliminate pretext stops.[54] Specifically, the Board encouraged the Legislature, law enforcement agencies, and local district attorneys to "limit enforcement of traffic laws and minor offenses that pose a low risk to public safety and show significant disparities in the rate of enforcement."[55] It also proposed that armed law enforcement only conduct traffic stops when there is a public safety concern, and to more generally shift traffic enforcement out of the law enforcement purview.[56] The California Committee on Revision of the Penal Code issued a similar set of recommendations in 2022, and it specifically recommend that law enforcement be prohibited from stopping drivers for technical, non-safety related traffic offenses.[57] Outside of California, several localities, and at least one state, have enacted reforms to curtail or prohibit pretext stops.[58]

The Task Force joins in the reform movement against pretext stops, and recommends that the Legislature prohibit law enforcement traffic stops for low-level infractions such as expired registration, lighting equipment issues, air fresheners, and tinted windows. Enforcement of these types of offenses could be achieved through other means, such as mailed citations or warnings, or through other entities, such as unarmed traffic enforcement officers. The Legislature should also consider restricting the actions an officer can take during a permissible traffic stop, such as precluding the officer from inquiring as to probation or parole status or requesting (absent probable cause) permission to search the vehicle. Finally, fines and fees associated with the relevant traffic infractions should be eliminated.

Mandate Policies and Training on Bias-Free Policing

Existing law prohibits a peace officer from engaging in racial or identity profiling,[59] but law enforcement agencies (LEAs) are not required to have any policy that specifically addresses bias or prohibits bias-based policing. Peace officers, therefore, may lack guidance on how to interact with the public in a neutral and fair manner and how to assess whether a call for service is rooted in the bias of the caller against another person (i.e., bias-by-proxy). Indeed, a recent report from the Auditor of the State of California found that officers from five separate law enforcement agencies had exhibited biased conduct either while on duty and/or in social media posts.[60] Finally, law enforcement bias extends not only to perceived suspects, but also to African American victims, particularly women and girls. As discussed in Chapter 8, Pathologizing African American Families, African American women are often hesitant to report abuse due to distrust of law enforcement, and that distrust is justified given that government actors and the judicial system have unfairly disregarded and stereotyped them.

The Task Force accordingly recommends that the Legislature enact legislation to require LEAs to maintain a publicly-posted policy that: (1) prohibits bias-based policing; (2) provides guidance on how to interact with community members in a fair and unbiased manner; and (3) explains how to respond to calls for service that are based on the bias of the caller. The Task Force also recommends that LEAs be required to collect and analyze data to understand and correct for systemic bias towards both suspects and victims. LEAs would also be required to provide academy training and continuing training on bias-free policing, including training on implicit bias, as has been previously proposed in Assembly Bill No. 243.[61] Finally, the Task Force also recommends that the Legislature enact workplace protections for counter-bias cultural humility trainers, who are often employees of agencies and may be ostracized and experience retaliation for their role in implementing trainings such as those required by Assembly Bill Nos. 241 and 242.[62]

A recent report from the Auditor of the State of California found that officers from five separate law enforcement agencies had exhibited biased conduct either while on duty and/or in social media posts.

Enact Legislation that Requires the Department of Justice to Promulgate Model Law Enforcement Policies Designed to Prevent Racial Disparities in Policing

There are no uniform and comprehensive model policies for countering racial bias or reducing racial disparities, and many LEAs have adopted standardized policies developed by private entities, which do not always align with best practices. Model policies on these issues would ensure uniformity and would reduce instances of officer misconduct and excessive force. Accordingly, the Task Force recommends that the Legislature enact legislation to require the California Department of Justice to promulgate model policies and training materials designed to counter racial bias and reduce racial disparities in law enforcement contacts and uses of force. The policies should cover, among other topics: (1) permissible use of force, as well as use-of-force training, reporting and investigation; (2) citizen complaints; (3) bias prevention; (4) stops and searches; (5) interactions with vulnerable populations; (6) community engagement and transparency; and (7) recruitment, hiring, and retention. LEAs would be required to adopt these model policies or their equivalents, and implement training for sworn and non-sworn employees, as well as management and leadership at all levels.

Repeal Three Strikes Sentencing

Three Strikes sentencing[63] has been one of the most prominent drivers of mass incarceration in California over the past three decades. Enacted in 1994 through Proposition 184 and Assembly Bill No. 971,[64] the Three Strikes Law imposed, among other enhancements, a life sentence for anyone convicted of a felony who had previously been convicted of two or more violent or serious felonies. As initially enacted, the Three Strikes Law led to life terms for many individuals whose third strike was non-violent, such as stealing loose change from a parked car.[65] The Three Strikes Law can also enhance sentences for individuals with just one strike because a single prior strike doubles the maximum punishment for any newly charged felony.[66]

In 2012, California voters approved Proposition 36, the Three Strikes Reform Act. Proposition 36 eliminated life sentences for non-serious, non-violent crimes, and it also established a procedure for individuals serving life sentences to petition the court for resentencing. Proposition 36 did not alter the doubling impact of a prior strike, nor did it require that the second felony be serious or violent.

Several other remaining features of the law reflect its expansive scope. For example, there is no limit on how old a strike can be,[67] though many other states have five or ten year "washout" periods.[68] Juvenile convictions can also count as strikes for 16 or 17 year olds,[69] making California the only state in the nation that allows for strikes against children.[70]

Despite Proposition 36, Three Strikes continues to heavily impact the length of prison terms in California. As of 2021, more than 30,000 people were serving prison terms lengthened by Three Strikes, including more than 7,400 whose current conviction is neither serious nor violent.[71] Indeed, nearly 65 percent of admissions to prison with a double-sentence enhancement are for non-violent, non-serious felonies.[72] Although both prosecutors and judges can exercise discretion, in certain circumstances, to avoid application of strike-enhanced sentences, this discretion has led to significant disparities across counties (and likely within a given county among different judges).[73] For example, while nearly 40 percent of individuals sentenced in Tuolumne and Placer counties were sentenced under the Three Strikes Law, at least six California counties impose strike-enhanced sentences less than 20 percent of the time.[74]

Three Strikes sentencing also disproportionately impacts African Americans. Specifically, 37 percent of those sentenced under Three Strikes are Black, although Black individuals comprise only five percent of California.[75] Black individuals sentenced under Three Strikes are also overrepresented relative to their share of the prison population,[76] meaning that Three Strikes effectively amplifies preexisting disparities in the criminal legal system. The statewide racial disparities are also present at the county level in that certain counties impose Three Strikes sentences in a more racially disparate manner than others.[77] In parsing these data, the California Committee on Revision of the Penal Code identified a "disturbing trend:" "when the criminal system has the option to punish more harshly, it does so disproportionately against people of color."[78]

Proponents of Three Strikes laws typically claim that they reduce crime through both general deterrence and removal of the offending individual from society. The data, however, does not support these claims. Although crime rates fell in the years after Three Strikes was enacted, studies have found that rates had already been declining nationally for several years prior to enactment.[79] Among individuals released early through resentencing after the passage of Proposition 36, the recidivism rate stands at less than two percent—well below state and national averages.[80]

Many states have reformed their Three Strikes laws to mitigate their harsh impacts.[81] At the federal level, the First Step Act amended the federal Three Strikes law to reduce the maximum punishment from life in prison to 25 years.[82] In California, recent efforts to repeal Three Strikes by voter initiative have fallen short,[83] and so the Task Force now recommends that the Legislature take all necessary steps to repeal the Three Strikes Law. Because of the tens of thousands of individuals currently incarcerated as a result of Three Strikes sentences, the Task Force recommends that the repeal be made retroactive and that it allow for currently-imprisoned individuals to petition the court for resentencing.

Strengthen and Expand the Racial Justice Act

The Racial Justice Act—in particular, its prohibition against racial disparities in charging, conviction, and sentencing decisions—is California's direct response to the U.S. Supreme Court's decision in *McCleskey v. Kemp* (1987) 481 U.S. 279.[84] The Court in *McCleskey* held that evidence of racial disparities across death penalty decisions does not suffice to demonstrate an equal protection violation.[85] The accused person "must prove that the decisionmakers in *his* case acted with discriminatory purpose."[86] As most prosecution decisions take place behind closed doors, relatively few openly share racist views, and prosecutors and other court actors often lack awareness of their own biases, the *McCleskey* decision erected a nearly insurmountable hurdle for the vast majority of challenges to racial disparities in the criminal legal system.[87]

In *McCleskey*, the defense team had presented the seminal "Baldus study,"[88] which, after controlling for more than 200 non-racial factors impacting sentencing,[89] found significant racial disparities in the State of Georgia's application of the death penalty, based on the race of the person accused of the crime, the race of the victim, and the combination of the two.[90] The Baldus study showed that a Black person accused of killing a white person was

4.3 times more likely to be sentenced to death than was an individual who was accused of killing a Black victim.[91] Subsequent studies of various jurisdictions have shown even greater disparities than were found by Professor Baldus and his colleagues.[92]

The *McCleskey* majority did not dispute the Baldus study findings,[93] and observed that racial "disparities in sentencing are an inevitable part of our criminal justice system,"[94] and expressed the concern that, "taken to its logical conclusion," a claim challenging such disparities "throws into serious question the principles that underlie our entire criminal justice system."[95] Justice Brennan, in dissent, observed that this statement, on its face, "suggest[ed] a fear of too much justice."[96]

In 2020, California's Legislature declared that it would no longer "fear . . . too much justice." It enacted the California Racial Justice Act of 2020 (RJA) and thereby introduced a potentially powerful new tool for eradicating both implicit and explicit bias in California's criminal justice system. The RJA directs that "[t]he state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin."[97] Rejecting the *McCleskey* decision, the RJA prohibits race disparities in charging decisions, convictions, and sentencing.[98] The RJA initially applied only prospectively to cases in which judgment had not been entered prior to January 1, 2021, but the Racial Justice Act for All subsequently made the RJA retroactive, thus opening the door to challenging prior convictions and sentences attributable to racial bias.[99]

The RJA offers the potential for data-driven solutions to those involved in our unjust legal system. But data-driven solutions require data. As discussed in Chapter 31, data collection practices on the part of prosecuting offices and courts across California are inconsistent. Uneven, incomplete data collection and barriers to accessing data undermine the RJA and effectively deny the promise of protection from bias that the Legislature intended the statute to provide.

In order to ensure that the RJA has the greatest possible effect in countering the legacy of institutional racism and implicit bias in our criminal justice system, the Task Force recommends that the Legislature take the following concrete actions to strengthen the RJA and ensure that litigants can vindicate their rights under the statute.

Data Collection

The starting point is data. Comprehensive, standardized collection of data is needed for the identification, presentation, and evaluation of RJA claims, including for those with older convictions. Recognizing the centrality of data, the Legislature enacted Assembly Bill No. 2418 (AB 2418),[100] the Justice Data Accountability and Transparency Act, mandating that agencies collect and transmit specified data, including data on the race of accused persons and victims, to the Department of Justice. However, AB 2418 included a funding contingency, and the law has not been funded to date.

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As part of its assessment of RJA-relevant data collection practices across the state, the Task Force requested that the California Department of Justice Research Center survey all 58 California Superior Courts and District Attorney Offices, as well as a select group of 11 of the largest City Attorney offices, regarding what data elements their agencies regularly collect when dealing with criminal cases. The 126 responding criminal justice agencies and courts completed an online questionnaire pertaining to data collected and maintained by their agency, with a focus on what racial data the agencies hold as well as data on factors that may involve prosecutorial or judicial discretion.

In reviewing the data collected in this survey, the Task Force found that there appears to be a large amount of discretion, and likewise variability, in what data elements are collected across California District Attorneys Offices, Superior Courts, and select City Attorney Offices, and between counties. The Task Force concludes that this unevenness in data is a result of the absence of requirements like those set forth in AB 2418. This lack of consistency and absence of data on key variables could present substantial challenges to presenting and evaluating claims of racial discrimination in the criminal justice system, and could increase the difficulty of sustaining claims of RJA violations. And individuals will also face more challenges in some California counties with less comprehensive data collection and reporting practices than others.

The Task Force urges the Legislature to fully fund AB 2418 and to provide additional funding as needed to ensure that all RJA-relevant data is collected and maintained, extracted as needed from case files, and made available to the public. AB 2418 provides a roadmap for data collection and will be a critical step forward, but monitoring will be needed, including to determine if there is a need to expand the scope of data collected. The Legislature must also ensure that discretionary decision-making (such as the decision to forego charges, offer diversion or a lesser charge, or threaten an enhancement) is documented, with reasons given when discretion is exercised or leveraged, and that these decisions are tracked so that case-to-case comparisons can be made.[101]

Linking RJA and RIPA Data

In connection with data collection and tracking, the Task Force additionally recommends that data collection systems be revised so that prosecutorial data collected under the RJA may be linked back to corresponding initiating law enforcement contact records collected under the Racial and Identity Profiling Act. This will allow necessary transparency and the ability to follow the domino effect of bias throughout the criminal law enforcement and adjudication systems.

Require Prosecutors to Prove Charging Decisions and Sentencing Recommendations Do Not Violate the RJA

The RJA places the onus on the government not to charge, convict, or sentence on the basis of race—but the practical burden is left to the individual. The Task Force recommends that the Legislature amend the RJA to require prosecutors to demonstrate at the outset that their charging decisions and sentencing recommendations do not violate the RJA. The Legislature should specify that prosecutors have an affirmative obligation to turn over evidence of relevant potential disparities. The Task Force recommends that prosecutors be required to disclose all RJA-relevant materials immediately upon request of a defendant or affirmatively by the date of arraignment. The Task Force recommends that courts be required to provide an advisement of rights under the RJA and require that prosecutors disclose their violations of the RJA and any instances of having withheld RJA-relevant data. The Task Force further recommends that the Legislature fund the development and maintenance of accessible databases that will track information statewide about prosecutor misconduct or any other findings relevant to the RJA.

Codify Penalties for RJA Discovery Violations

Where prosecutors violate the RJA, consequences must follow. The Task Force thus recommends that the Legislature codify penalties for any individual prosecutor that commits discovery violations related to RJA requests. Available penalties should include adverse inference jury instructions and case dismissal. Additionally, offices that routinely fail to collect or disclose RJA data should also be subject to penalties, including but not limited to financial sanctions and, where appropriate, removal of authority to prosecute implicated cases.

The RJA places the onus on the government not to charge, convict, or sentence on the basis of race—but the practical burden is left to the individual. The Task Force recommends that the Legislature amend the RJA to require prosecutors to demonstrate at the outset that their charging decisions and sentencing recommendations do not violate the RJA.

Courts, too, are bound by the Racial Justice Act. Steps must be taken to ensure that there is transparency, accountability, and fairness on the part of judges. In addition to fulsome RJA-relevant data collection regarding jury verdicts and judicial decision-making, the Task Force recommends that the Legislature ensure that litigants have remedies that include cause strikes for circumstances in which courts fail or refuse to ensure compliance with the RJA.

Establish RJA Enforcement Body

Oversight and enforcement are critical to fulsome RJA application. The Task Force accordingly recommends that the Legislature establish and fully fund a Racial Justice Act Commission or similar independent body with enforcement authority and responsibility to track, monitor, and analyze data generated by the RJA process. The Commission could be created as an arm of the California American Freedman Affairs Agency or as an independent advisory body similar to the RIPA Board. Its responsibilities would include, at a minimum:

- Establishing key performance indicators and other quality control metrics to ensure compliance by prosecutor's offices and courts;
- Analyzing data and publishing annual reports on prosecutorial bias, bias in convictions, and bias in sentencing;

- Collecting and analyzing data and publishing reports on bias and disparities in all facets of charging, conviction, and sentencing decisions, on the part of prosecutors, courts, and, where applicable, juries;

- Establishing a federal nexus to ensure that California data on prosecutorial bias and criminal legal racial profiling is uploaded and synced to national racial profiling databases.

Fund RJA Advocacy and Compliance Monitoring

Enhanced capacity across the state will be critical to RJA implementation. Toward this end, the Task Force recommends that the Legislature dedicate funding to provide grants, technical assistance, data analysis, and other resources to public defenders, appointed counsel, criminal defense bar support centers, watchdog organizations and community-based organizations to build expertise and capacity for RJA advocacy and compliance monitoring.

Require Agencies to Review Prior Convictions for RJA Violations

Those who suffer the consequences of a biased legal system should not have to shoulder further burden. The Task Force recommends that the Legislature require state and local agencies to affirmatively review prior convictions for potential RJA violations so that the onus does not rest with those who have endured the consequences of racially and ethnically disparate charging and sentencing decisions. To achieve this, the Legislature should mandate and fund post-conviction justice units at the state and local level and require these units to annually report to the California Department of Justice.[102]

The Task Force accordingly recommends that the Legislature establish a compensation scheme for successful RJA petitioners. Under this scheme, a successful RJA claim would trigger immediate compensation.

Compensate Successful RJA Petitioners

Compensation is necessary for both accountability and repair. The Task Force accordingly recommends that the Legislature establish a compensation scheme for successful RJA petitioners. Under this scheme, a successful RJA claim would trigger immediate compensation. The scheme would set forth a schedule of minimum monetary awards (that is reviewed and/or updated every two years) that are automatically available, but would not preclude litigation to recover individualized damages beyond the minimum amount. There should be no cap on the amount of damages that could be recovered. This RJA compensation scheme could be modeled on Penal Code section 4900 et seq., but not limited by its provisions. As a related recommendation, there should be statewide tracking of successful RJA claims to inform further legislation in this area.

Clarify that RJA Challenges May Be Raised in Pending Matter and Original Proceeding

The Task Force has recommended an end to the Three Strikes law. To the extent it remains in effect, the Task Force recommends that the Legislature clarify that RJA challenges to prior strikes may be raised in a pending matter as well as in the original proceeding.

Apply the RJA to Parole Proceedings

While the RJA applies across a broad range of prosecutorial and court decisions, it does not clearly apply to parole decisions. The Task Force recommends that the Legislature amend the RJA so that it also applies to parole proceedings to ensure that racial bias is not infecting such hearings.

Require Implicit Bias Training in the Criminal Process

Finally, although the RJA is largely geared towards identifying and remedying racist and biased outcomes in the criminal justice system, the Legislature should also work to *prevent* such outcomes to begin with. Accordingly, the Task Force recommends that the Legislature require that all California prosecutors, criminal defense attorneys, and judges complete periodic implicit bias training that specifically addresses implicit bias in the criminal process.[103] Such legislation would build off of Assembly Bill No. 242,[104] which requires generalized implicit bias training for all court staff that interact with the public and for all members of the California bar.

Assess and Remedy Racially Biased Treatment of African American Adults and Juveniles in Custody in County Jails, State Prisons, Juvenile Halls, and Youth Camps

California's prison and jail populations are disproportionately African American.[105] The compounding negative effects of incarceration on the African American community are well-documented, but impacted individuals may face additional biases—both explicit and implicit—while incarcerated.[106] This discrimination could exist, for

example, in the disciplinary system, credit awards, educational opportunities, physical and mental health, and the loss of parental rights, which would exacerbate the substantial harms imposed by incarceration, jeopardize reentry success, and further destabilize African American communities.[107] To date, however, there has been no systematic assessment of the disparate impact of California prison and jail policies and practices.

The Task Force recommends that the Legislature request that the State Auditor conduct a comprehensive audit of the policies and practices of the California Department of Corrections and Rehabilitation regarding racial disparities in: access to education programming; in-custody work opportunities that contribute to reduction in time served; retaliatory practices in response to filing of grievances or voicing concerns, including those related to racial disparities; in-custody deaths; loss of parental rights (e.g., initiated by dependency court ordered hearings under Welfare & Institutions Code section 366.26); and access, or lack thereof, to quality psychiatric and psychological services. The audit should focus on determining whether racial disparities exist and their extent. Should the results of the audit demonstrate the existence of racial disparities, the Legislature should require that the California Department of Corrections and Rehabilitation collect, maintain, and publish data pertaining to racial disparities, and be subject to oversight from an independent task force until these racial disparities have been eliminated. Similar audits and/or data collection requirements should be imposed for county jail and juvenile inmates.

In California, the prison population has steadily declined since approximately 2010, but there has not been a commensurate closure of prisons.

The Task Force further recommends that the Legislature take steps to eliminate and prohibit any negative disparities experienced by African Americans and do so without requiring proof of deliberate intent, in recognition of the impact of implicit bias. Through the Racial and Identity Profiling Act and the Racial Justice Act, California has taken steps to address how discrimination and bias feed African Americans into the criminal justice system and subject them to more serious charges and convictions as well as harsher sentences. Protection from bias should not end at the jailhouse door. The Legislature should extend protection from racial disparities to carceral settings like jails and prisons.

Accelerate Scheduled Closures of Identified California State Prisons and Close Ten California State Prisons Over the Next Five Years, with Financial Savings Re-Directed to the California American Freedmen Affairs Agency

The mass incarceration of African Americans has myriad causes, many of which are outlined in Chapter 11, Unjust Legal System. One of those root causes is the prison industrial complex, through which the overlapping interests of the government and various prison-related industries lead to over-criminalization and incarceration.[108] This dynamic can lead to mounting prison populations that are due *not* to increased crime, but instead due to profit and/or other improper motives such as a perceived need to fill empty prison beds.[109] In California, the prison population has steadily declined since approximately 2010,[110] but there has not been a commensurate closure of prisons. Although Governor Gavin Newsom has directed the closure of some prisons, some of these closures are not scheduled to occur until 2025.[111] Moreover, the Legislative Analyst's Office recently determined that additional prisons could be closed without exceeding the federal-court ordered[112] prison population limit,[113] and some advocates have argued that more prisons could be closed by 2025 than either the Governor or the Legislative Analyst Office estimate.[114] These closures would save the state billions of dollars.

Given the persistence of harmful and wasteful prisons in California, the Task Force recommends the closure of ten California prisons over the next five years. The Task Force additionally recommends that any currently planned closures, such as the California Correctional Center, the Chuckawalla Valley State Prison, and the California City Correctional Facility[115] be accelerated. Finally, all funds saved from these closures should be redirected to support the programs of California American Freedmen Affairs Agency, and the facilities themselves repurposed as appropriate to support African Americans, with specific benefits flowing to those who are descendants of a person enslaved in the United States.

Endnotes

[1] Cohn et al., *Unlocking The Bar: Expanding Access to the Legal Profession for People with Criminal Records in California* (July 2019) Stanford Law School (as of May 18, 2023).

[2] *Id.* at p. 5.

[3] *After Cash Bail: A Framework for Reimagining Pretrial Justice* (Jan. 14, 2020) The Bail Project (as of May 18, 2023).

[4] *Ibid.*

[5] Wiltz, *Locked Up: Is Cash Bail on the Way Out?* (Mar. 1, 2017) Stateline (as of May 18, 2023).

[6] Sawyer, *How Race Impacts Who is Detained Pretrial* (Oct. 9, 2019) Prison Policy Initiative (as of May 18, 2023).

[7] *Ibid.*

[8] Bryan, et al., *The Price for Freedom: Bail in the City of L.A.* (Dec. 2017) UCLA Bunche Center (as of May 18, 2023).

[9] Sawyer, *How Race Impacts Who Is Detained, supra.*

[10] Sen. Bill No. 10 (2017-2018 Reg. Sess.).

[11] *Statement of Vote: General Election, November 3, 2020* California Secretary of State Alex Padilla, p. 14 (as of May 18, 2023).

[12] *In re Humphrey* (2021) 11 Cal.5th 135, 151-152.

[13] *Id.* at pp. 152, 154.

[14] See Virani et al., *Coming up Short: The Unrealized Promise of In re Humphrey* (Oct. 2022) U.C.L.A. Law Bail Practicum (as of May 18, 2023).

[15] *Id.* at p. 3.

[16] *2022 Annual Report and Recommendations* (Dec. 2022) California Committee on Revision of the Penal Code, pp. 64-73 (as of May 18, 2023).

[17] See generally Virani et al., *Coming up Short, supra*, at pp. 36-41.

[18] See, e.g., Callahan, *Algorithms Were Supposed to Reduce Bias in Criminal Justice—Do They?* (Feb. 23, 2023) The Brink (as of May 18, 2023).

[19] See *2023 Annual Report* (Jan. 1, 2023) Racial and Identity Profiling Advisory Board, p. 107 (as of May 31, 2023) ("Racial disparities exist among youth contacts with police, including differences in the frequency of contact, the type of contact (*i.e.*, personal or vicarious), and actions taken as a result of the contact."); *id.* at p. 131 (noting California data showing that Black students were referred to law enforcement four times more frequently than white students).

[20] See *2023 Annual Report*, *supra*, at p. 132 (discussing California Department of Education's analysis regarding unmet mental health needs of California students).

[21] For information on the local control funding formula, see Cal. Dept. of Ed., *Local Control Funding Formula* (as of May 18, 2023).

[22] See, e.g., *California Commits Nearly $60 Million To Divert Youth Away From Jails, Toward Supports* (Mar. 31, 2022) National Center for Youth Law (as of Mar. 15, 2023).

[23] See *2023 Annual Report*, *supra*, at p. 108 (noting that youth of color are less likely to be diverted than white youth.).

[24] *Youth Probation in California: A Legal Map* (Aug. 2020) Youth Law Center, p. 2 (as of May 30, 2023).

[25] *Ibid.*

[26] Assem. Bill No. 1127 (2021-2022 Reg. Sess.).

[27] Davis, *California Lawmaker Adding to Growing Calls for an End to 'Three Strikes' Laws for Teens* (Jan. 20, 2023) The Imprint (as of May 25, 2023).

[28] *Ibid.*

[29] See Pen. Code, §§ 1192.7, subd. (c), 667.5, subd. (c); Welf. & Inst. Code, § 707, subd. (b).

[30] See, e.g., *Adolescent Brain Development*, Coalition for Juvenile Justice (as of May 18, 2023) (noting that "[a]dolescents are more likely to be influenced by peers, engage in risky and impulsive behaviors, experience mood swings, or have reactions that are stronger or weaker than a situation warrants.").

[31] Ridolfi et al., *The Prosecution of Youth as Adults* (2016) (as of Jan. 17, 2023).

[32] *Id.* at p. 2.

[33] *Id.* at p. 11; see also Welf. & Inst. Code, § 707.

[34] See Sen. Bill No. 882 (2015-2016 Reg. Sess.); see also Sen. Bill No. 1320 (2009-2010 Reg. Sess.).

[35] See also Campuzano-Santamaria, *Reconsidering the Criminality of Fare Evasion: Implementation Practices in California* (June 2016) Western Center on Law and Poverty at pp. 14-15 (as of April 6, 2023).

[36] Subramanian and Arzy, *Rethinking How Law Enforcement Is Deployed* (Nov. 17, 2022) Brennan Center for Justice (as of May 18, 2023).

[37] *Ibid.*

[38] Burke, *Policing Mental Health: Recent Deaths Highlight Concerns Over Officer Response* (May 16, 2021) NBC News (as of May 18, 2023).

[39] The Legislature recently repealed provisions proscribing loitering with intent to commit prostitution, and it also authorized dismissals, sealing, and re-sentencing, as applicable. (See Sen. Bill No. 357 (2021-2022 Reg. Sess.)) However, the bill did not provide a mechanism for monetary relief for those charged or convicted under the statute.

[40] See, e.g., Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States* (July 2020) 4 Nature Human Behavior, p. 736 (as of Nov. 29, 2022).

[41] Egelko, *California Should Ban 'Pretext Stops' by Police, State Committee Says*, San Francisco Chronicle (Dec. 19, 2022) (as of May 25, 2023).

[42] See, e.g., *2022 Annual Report* (2022) California Racial Identity and Profiling Advisory Board, pp. 8, 141 (as of May 18, 2023).

[43] Sen. Bill No. 953 (2015-2016 Reg. Sess.).

[44] See Gov. Code, § 1252.5.

[45] See *2023 Annual Report*, *supra*, at p. 7.

[46] *Id.* at p. 8.

[47] *Id.* at p. 9.

[48] *Id.* at pp. 9-10.

[49] *Id.* at p. 12.

[50] Pierson, *A Large-Scale Analysis of Racial Disparities*, *supra*, at p. 736.

[51] *Whren v. United States* (1966) 517 U.S. 806, 813.

[52] *Ibid.*

[53] See, e.g., Gates, *The Long Road to Ending Pretextual Stops* (Nov. 4, 2020) Harv. C.R.-C.L. L. Rev. (as of May 31, 2023).

[54] *Annual Report, Recommendations and Best Practices 2023* (Jan. 1, 2023) Racial and Identity Profiling Advisory Board, p. 2 (as of April 11, 2023).

[55] *Ibid.*

[56] *Ibid.*

[57] See *Annual Report and Recommendations* (Dec. 2022) California Committee on Revision of the Penal Code (as of Jan. 11, 2023).

[58] See, e.g., Virginia Sen. Bill No. 5029 (2020 Special Sess. I); City of Philadelphia, Pennsylvania Bill No. 210636-A (2021); City of Pittsburgh, Pennsylvania Code of Ordinances § 503.17 (2021); Oregon Sen. Bill No. 1510 (81st Oregon Leg. Assem. - 2022 Reg. Sess.).

[59] Pen. Code, § 13519.4, subd. (f).

[60] Tilden, *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct* (April 2022) Auditor of the State of California, pp. 1-4 (as of March 16, 2023).

[61] Assem. Bill No. 243 (2019-2020 Reg. Sess.).

[62] Assem. Bill No. 241 (2019-2020 Reg. Sess.); Assem. Bill No. 242 (2019-2020 Reg. Sess.)

[63] Pen. Code, §§ 667, 667.5, 1170.12.

[64] Assem. Bill No. 971 (1994-1995 Reg. Sess.)

[65] *Three Strikes Basics*, Stanford Three Strikes Project (as of May 18, 2023).

[66] Bird et al., *Three Strikes in California* (Aug. 2022) California Policy Lab, p. 7 (as of May 18, 2023).

[67] Pen. Code, § 667, subd. (c)(3).

[68] See *Annual Report and Recommendations* (Dec. 2021) California Committee on Revision of the Penal Code, p. 41 (as of May 18, 2023).

[69] See Pen. Code, §§ 1192.7, subd. (c), 667.5, subd. (c); Welf. & Inst. Code, § 707, subd. (b).

[70] Chemerinsky et al., *Op-Ed: California's 'Three Strikes' Law Still Carries a Devastating Human and Financial Cost. End it Now* (Aug. 12, 2022) L.A. Times (as of April 12, 2023).

[71] See *Annual Report and Recommendations* (Dec. 2021) California Committee on Revision of the Penal Code, p. 48 (as of May 18, 2023).

[72] Bird et al., *Three Strikes in California*, *supra*, at p. 5.

[73] *Id.* at p. 10.

[74] See *Annual Report and Recommendations* (Dec. 2021) California Committee on Revision of the Penal Code, p. 44 (as of May 18, 2023) (noting that Colusa, Trinity, Humboldt, Calaveras, Sutter, and Contra Costa Counties imposed strike-enhanced sentences less than 20 percent of the time).

[75] See *id.* at p. 42; Johnson et al., *California's Population* (Jan. 2023) Public Police Institute of California, p. 2 (as of May 31, 2023).

[76] Bird et al., *Three Strikes in California*, *supra*, at p. 5.

[77] See *Annual Report and Recommendations* (Dec. 2021) California Committee on Revision of the Penal Code, p. 45 (as of May 18, 2023).

[78] See *id.* at p. 46.

[79] Bird et al., *Three Strikes in California*, *supra*, at p. 33.

[80] *Three Strikes Basics*, *supra*.

[81] See *Annual Report and Recommendations* (Dec. 2021) California Committee on Revision of the Penal Code, p. 48 (as of May 18, 2023).

[82] George, *What's Really in the First Step Act?* (Nov. 16, 2018) The Marshall Project (as of May 18, 2023).

[83] Thomas, *How California's Justice System Struck Out* (Sept. 20, 2022) The Progressive Magazine (as of May 25, 2023).

[84] See, e.g., *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 147-157 (discussing legal landscape and legislative findings underlying the Racial Justice Act); Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2; see also Assembly Member Ash Kalra, *AB 2542 - Racial Justice Act Fact Sheet* (Aug. 1, 2020) (as of May 16, 2023).

[85] *McCleskey v. Kemp* (1987) 481 U.S. 279.

[86] *Id.* at p. 292 (emphasis in original).

[87] See, e.g., Office of Governor Newsom, *Governor Newsom Signs Landmark Legislation to Advance Racial Justice and California's Fight Against Systemic Racism & Bias in Our Legal System* (Sept. 30, 2020) (as of May 18, 2023) ("The McCleskey decision has the functional effect of requiring that criminal defendants prove intentional discrimination when challenging racial bias in their legal process. This is a high standard and is almost impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate and targeted.").

[88] See Baldus et al., *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience* (1983) 74 J. Crim. L. & Criminology 661 (as of May 31, 2023).

[89] *Id.* at note 81; *see McCleskey*, *supra*, 481 U.S. 279 at pp. 325, 338 (dis. opn. of Brennan, J.) ("Professor Baldus and his colleagues have compiled data on almost 2,500 homicides committed during the period 1973–1979. They have taken into account the influence of 230 nonracial variables, using a multitude of data from the State itself.").

[90] *McCleskey, supra,* 481 U.S. 279 at pp. 286-287.

[91] *Id.* at p. 287.

[92] Phillips & Marceau, *Whom the State Kills* (July 29, 2020) 55 Harv. C.R.-C.L. L.Rev. 585, 587 (finding that "the overall

execution rate is a staggering seventeen times greater for defendants convicted of killing a white victim."); Pierce & Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides 1990–1999* (2005) 46 Santa Clara L.Rev. 1, 19–20 (as of May 31, 2023); Petersen, *Examining the Sources of Racial Bias in Potentially Capital Cases: A Case Study of Police and Prosecutorial Discretion* (2016) 7(1) Race & Justice 7, 23 (as of May 31, 2023); Liptak, *New Look at Death Sentences and Race* (Apr. 29, 2008) N.Y. Times (as of May 18, 2023); see also *Governor Gavin Newsom Orders a Halt to the Death Penalty in California* (Mar. 13, 2019) Office of Governor Gavin Newsom (noting 2005 study finding that "those convicted of killing whites were more than three times as likely to be sentenced to death as those convicted of killing blacks and more than four times as likely as those convicted of killing Latinos.").

[93] *McCleskey*, *supra*, 481 U.S. 279.

[94] *Id*. at pp. 312-313.

[95] *Id*. at pp. 314-315; *cf. id.* at p. 294 ("In its broadest form, McCleskey's claim of discrimination extends to every actor in the Georgia capital sentencing process, from the prosecutor who sought the death penalty and the jury that imposed the sentence, to the State itself that enacted the capital punishment statute and allows it to remain in effect despite its allegedly discriminatory application.").

[96] *McCleskey*, *supra*, 481 U.S. 279 at p. 339 (dis. opn. of Brennan, J.). See also Bedau, *Someday McCleskey Will Be Death Penalty's Dred Scott*, L.A. Times (May 1, 1987) (as of May 31, 2023) (setting forth legal historian prediction that the *McCleskey* decision "will be the death penalty's *Dred Scott*.").

[97] Pen. Code, § 745, subd. (a); Assem. Bill No. 2542 (2019-2020 Reg. Sess.).

[98] Pen. Code, § 745, subds. (a)(3), (a)(4).

[99] See Assem. Bill No. 2542 (2019-2020 Reg. Sess.); see also Assem. Bill 256 (2021-2022 Reg. Sess.).

[100] Assem. Bill No. 2418 (2021-2022 Reg. Sess.).

[101] As set forth in Chapter 31, Racial Justice Act Survey Report, Racial Justice Act-relevant data collection practices vary significantly across the state. Lack of access to critical data represents a limitation to the efficacy of the Racial Justice Act's implementation.

[102] The Attorney General's Office has such a unit. (See *Attorney General Bonta Establishes First-Ever Post-Conviction Justice Unit within the California Department of Justice* (Feb. 17, 2023) California Department of Justice, Rob Bonta, Attorney General (as of May 31, 2023).

[103] Kang et al., *Implicit Bias in the Courtroom* (2012) 59 UCLA L.Rev. 1124, 1139-42 (discussing potential impacts of implicit bias on prosecutor and defense counsel decision-making.).

[104] Assem. Bill No. 242 (2019-2020 Reg. Sess.).

[105] See, e.g., *Incarceration Trends in California* (Dec. 2019) Vera Inst. of J. (as of May 18, 2023).

[106] See, e.g., *Laws Mandating Data Collection Reveal Discrimination* (Feb. 2020) Equal J. Initiative (as of April 5, 2023) (noting that Black inmates in Minnesota were sentenced to solitary confinement at disproportionately higher rates than white inmates.).

[107] Tilden, *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct* (April 2022) Auditor of the State of California (as of April 5, 2023) (finding that California Department of Corrections and Rehabilitation, among other law enforcement agencies, had failed to address biased conduct among correctional officers.).

[108] *What is the Prison Industrial Complex?* (2023) Tufts Univ. Prison Divestment (as of May 18, 2023).

[109] *Ibid.*

[110] Graves, *Racial Disparities in California's State Prisons Remain Large Despite Justice System Reforms* (June 2021) Cal. Budget & Policy Center, p. 6 (as of May 18, 2023).

[111] Duara, *Gavin Newsom Moved to Close 4 California Prisons. How Many More Can He Shut?* (Feb. 23, 2023) Cal Matters (as of March 16, 2023).

[112] In *Brown v. Plata* (2011) 563 U.S. 493, the Supreme Court held that a court-ordered population limit was necessary to remedy a violation of incarcerated persons' Eighth Amendment rights.

[113] Petek et al., *The 2023-24 Budget: The California Department of Corrections and Rehabilitation* (Feb. 2023) Legislative Analyst's Office, p. 6 (as of March 16, 2023).

[114] Howard et al., *The People's Plan for Prison Closure* (2023) Californians United for a Responsible Budget, p. 4 (as of March 16, 2023).

[115] *Reduction/Closure Information* (2023) Cal. Dept. of Corrections and Rehabilitation (as of Jan. 24, 2023); Sandrosky, *Prison Population Falls but Spending Still Up in Newsom Budget* (Jan. 23, 2023) Capitol Weekly (as of Jan. 24, 2023).

CHAPTER 29 — POLICIES ADDRESSING Mental and Physical Harm and Neglect

COURTESY OF PETER GRIFFITH VIA GETTY IMAGES

I. Policy Recommendations

This chapter details policy proposals to address harms set forth in Chapter 12, Mental and Physical Harm and Neglect.

- Address Health Inequities Among African American Californians by Funding the California Health Equity and Racial Justice Fund
- Improve Health Insurance Coverage
- Evaluate the Efficacy of Health Care Laws, Including Recent Enactments
- Address Anti-Black Discrimination in Health Care
- Mandate Standardized Data Collection
- Provide Medical Social Workers/Health Care Advocates
- Improve Diversity Among Clinical Trial Participants
- Remedy the Higher Rates of Injury and Death Among African American Mothers and Infants
- Fund Community Wellness Centers in African American Communities (See Chapter 20 for the text of this recommendation.)
- Fund Research to Study the Mental Health Issues Within California's African American Youth Population, and Address Rising Suicide Rates Among African American Youth (See Chapter 20 for the text of this recommendation.)
- Meet the Health Needs of African American Elders
- Remedy Disparities in Oral Health Care
- Address Disparities and Discrimination Associated with Substance Use Recovery Services (See Chapter 25 for the text of this recommendation.)
- Fix Racially Biased Algorithms and Medical Artificial Intelligence in Health Care
- Fund and Expand the UC PRIME-LEAD-ABC Program to be Available at All UC Medical Campuses

Woman shopping at a farmer's market.

- Create and Fund Equivalents to the UC-PRIME-LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists
- Permanently Fund the California Medicine Scholars Program and Create and Fund Equivalent Pathway Programs for Students in the CSU and UC Systems
- Review and Prevent Racially Biased Disciplinary Practices by the Medical Board of California
- Address Food Injustice
- Increase Greenspace Access and Recreation Opportunities in African American Communities (See Chapter 24 for the text of this recommendation.)
- Test for and Eliminate Toxicity in Descendant Communities (See Chapter 24 for the text of this recommendation.)
- Increase Trees in Redlined and Descendant Communities (See Chapter 24 for the text of this recommendation.)
- Develop Climate Resilience Hubs in Redlined and Descendant Communities (See Chapter 24 for the text of this recommendation.)
- Remove Lead in Drinking Water (See Chapter 24 for the text of this recommendation.)
- Prevent Highway Expansion and Mitigate Transportation Pollution (See Chapter 24 for the text of this recommendation.)

Address Health Inequities Among African American Californians by Funding the California Health Equity and Racial Justice Fund

As set forth in Chapter 12, Mental and Physical Harm and Neglect, due to discrimination, disempowerment, and neglect of African American patients by healthcare institutions, African American communities have suffered major gaps in healthcare delivery.[1] The impact can be seen in virtually every aspect of physical and mental health outcomes. "African Americans have higher rates of morbidity and mortality than white Americans for almost all health outcomes in the United States, an inequality that increases with age."[2] This is connected to African Americans suffering from weathering, or "constant stress from chronic exposure to social and economic disadvantage, which leads to accelerated decline in physical health."[3] Unequal health outcomes "cannot be explained away by factors like age, income, or education level"—through implicit biases and racism, the health care system treats Black Californians differently.[4]

Numerous articles and studies have documented the necessity of remedying the poor health outcomes among African Americans through reparations.[5] Social determinants of health—such as household income, neighborhood wealth, education, and health insurance—explain about half of racial health disparities in life expectancy.[6] One report focused on social determinants of health observed that "studies suggest that health behaviors, such as smoking, diet, and exercise, and social and economic factors are the primary drivers of health outcomes," and, thus, addressing social determinants of health is important "for reducing health disparities that are often rooted in social and economic disadvantages."[7] But social determinants of health can be improved. An American Public Health Association report has found that community-based organizations "amplify community concerns and, in coordination with public health departments, contribute to more effective policy solutions."[8]

Unequal health outcomes "cannot be explained away by factors like age, income, or education level"—through implicit biases and racism, the health care system treats Black Californians differently.

The Task Force recommends authorization and ongoing funding for the proposed California Health Equity and Racial Justice Fund[9] within the California Department of Public Health's Office of Health Equity. The Office of Health Equity would administer an annual $115 million grant program, with appropriate year-to-year increases, to address health disparities focusing on social determinants of health. Clinics and community-based organizations (CBOs) could apply for grants, either separately or in collaboration. Applicants would be required to demonstrate how funding would be used to ameliorate existing or emerging health disparities and include metrics for success. Local health jurisdictions would be encouraged to work with grant recipients to serve as trusted community partners to extend public health messages and interventions to underserved and difficult-to-reach communities. This recommendation incorporates a provision from Assembly Bill (AB) 1038[10] to authorize a California Health Equity and Racial Justice Fund Oversight and Accountability Committee to monitor the distribution, implementation, and impact

of local and regional grants funded by the California Health Equity and Racial Justice Fund.

Nearly 200 nonprofit advocacy and provider organizations have urged that funding be prioritized for the California Health Equity and Racial Justice Fund, which also has the support of members of the California State Legislature.[11] Health clinics, tribal organizations, and other community groups contend that funding in the form of state grants from the Health Equity and Racial Justice Fund will benefit the communities that need the most help.[12] The Task Force agrees and urges that the Fund be established and resourced, with a specific focus and mandate to include addressing health disparities suffered by African Americans, with special consideration for descendants.

Improve Health Insurance Coverage

The California Health Care Foundation reports that, although Black Californians have higher health insurance coverage rates than the state average, "structural barriers in the health care system prevent them from achieving the health they actively seek."[13] Moreover, a disproportionately high percentage of African American Californians rely on Medi-Cal. Medi-Cal provided coverage for 28 percent of Black Californians in 2019 (compared to 10 percent of white Californians).[14] Adults enrolled in Medi-Cal were more than twice as likely to report difficulty finding a provider that accepted their insurance as compared to those with employer-based insurance or Medicare, and this was the case for both primary and specialty care.[15] At least some experts have identified low reimbursement rates for providers who accept Medi-Cal as a racial justice issue.[16]

The Task Force recommends closing the health coverage gaps through the adoption of a comprehensive universal single-payer health care coverage and health care cost control system for the benefit of all African Americans in California, with special consideration for those who are descendants. For the many African Americans in California who remain on Medi-Cal, the Task Force also recommends increases to the Medi-Cal reimbursement rates to achieve parity with the reimbursement rates of private insurance.

Experts have identified low reimbursement rates for providers who accept Medi-Cal as a racial justice issue.

Evaluate the Efficacy of Health Care Laws, Including Recent Enactments

As established in Chapter 12, Mental and Physical Harm and Neglect, health care systems and institutions have systematically discriminated against and provided substandard care to African Americans, resulting in grave health disparities.[17] Over the 2021-2022 Regular Session of the California State Legislature, a variety of bills were introduced in an effort to improve access to health care.[18] Some of the measures that were adopted included: Senate Bill (SB) 838, to further the efforts of the California Health and Human Services Agency to create a California-branded label for generic drugs to increase patient access to affordable drugs and lower health care costs; SB 644, requiring the Employment Development Department to share information with Covered California for outreach to persons applying for or losing unemployment benefits to enroll them in Covered California or Medi-Cal; and SB 1019, requiring Medi-Cal plans to conduct annual outreach and education to members and primary care physicians regarding the plan's mental health benefits.[19]

Further, Governor Newsom's 2022-2023 budget included a notable increase in spending on health programs, many of which were aimed at remedying issues of cost.[20] Among other aspects, the budget included trailer legislation to formally establish the Office of Health Care Affordability within the Department of Health Care Access and Information.[21]

However, despite persistent health inequality, there is currently no office within the California Health and Human Services Agency (the parent agency to the California Department of Health Care Services, California Department of Public Health, and a number of other health-related agencies) that is specifically tasked with evaluating whether recent efforts have improved health disparities among African Americans.

To address entrenched health disparities, the Task Force recommends mandating that the California Department of Public Health's Office of Health Equity conduct an annual review of California health care laws and policies, evaluate their effect on reducing health disparities among African Americans, and publish its findings and recommendations to the California State Legislature. These recommendations should explicitly include how to design and implement consequences for health care providers who do not address and reduce identified treatment disparities. This measure would include funding on an annual basis to hire permanent staff dedicated to these efforts, based on the Office of Health Equity's assessment of the level of staffing needed. This proposal builds on Senate Concurrent Resolution No. 17, which was chaptered on April 30, 2021, and states that "the Legislature

declares racism to be a public health crisis and will actively participate in the dismantling of racism . . ."[22]

Address Anti-Black Discrimination in Health Care

Racial disparities in Black health outcomes are a result of historical racial inequality, discriminatory health policy, and persistent racial discrimination across different aspects of life in the United States.[23] African Americans receive fewer procedures and poorer-quality medical care across almost every type of diagnostic and treatment intervention than do white Americans.[24] As stated previously, African Americans have higher rates of morbidity and mortality than white Americans in almost all health outcomes, and this inequality only increases with age.[25] Fortunately, evidence suggests that these trends and health harms arising out of implicit and explicit bias may be remedied through concerted effort.[26]

African Americans receive fewer procedures and poorer-quality medical care across almost every type of diagnostic and treatment intervention than do white Americans.

Relatedly, the Association of American Medical Colleges (the administrator of the Medical College Admission Test (MCAT)) has expressed interest in testing students on situations that involve implicit bias.[27]

To address discrimination against African Americans in health care, the Task Force recommends the Legislature add the completion of an evidence-based anti-bias training and an assessment based on such training to the graduation requirements of all medical schools and any other medical care provider programs in California receiving state funding and not already covered, including mental health professional programs (psychologists, Ph.D., or Psy.D.), masters-level programs in psychology or therapy (for counselors, clinicians, and therapists), and programs for clinical social workers.

Mandate Standardized Data Collection

Dr. Mary T. Bassett, the New York State Health Commissioner and Professor of the Practice of Health and Human Rights at the Harvard T.H. Chan School of Public Health, writes that "[l]ong-standing racist government policies—from housing to health care, employment to a flawed legal system—that have systematically deprived Black Americans of equal rights, opportunities, wealth, and resources" account for the reasons Black Americans have poorer health and lower life expectancy.[28] In addition to acknowledging medicine and public health's role in perpetuating racism and participating in local, state, and national conversations around reparations, Dr. Bassett advocates for using health outcomes captured in public health data as a key measure of equity.[29] She notes that "[s]uccessful reparations means eliminating racial health disparities" and that "[u]ntil racism no longer drives negative effects on the health and length of a Black person's life, equity remains theoretical."[30] A number of experts in the field also recommend improved data collection in order to advance equity in health care and health outcomes.[31]

The Task Force recommends the creation of statewide standards for data collection and reporting of demographic and social needs data in order to reduce health disparities and address social drivers and determinants of health.[32] This proposal could build off of Senate Bill (SB) 1033, which would have required the California Department of Managed Health Care to develop and adopt regulations establishing demographic data collection standards and require health care service plans and health insurers to assess "the individual cultural, linguistic, and health-related social needs of enrollees and insureds for the purpose of identifying and addressing health disparities, improving health care quality and outcomes, and addressing population health."[33]

Provide Medical Social Workers/Health Care Advocates

A study completed by the California Health Care Foundation revealed the majority of Black Californians devote "a great deal/quite a bit of effort to their health" and agree on many suggestions to address racism in health care.[34] Black Californians agree that one way to remedy racism in health care is to expand community-based resources.[35] Specifically, 84 percent of respondents believe it is extremely important or very important to expand community-based education on how to navigate the healthcare system and advocate for high quality care.[36] And 77 percent of respondents believe it is extremely important or very important to expand the number of Black community health advocates and/or medical chaperones available to patients.[37]

The Task Force recommends the Legislature provide funding to ensure that medical social workers/health care advocates are available to serve as advocates, chaperones, and third party observers when requested to

address African Americans' concerns and experiences of bias and other disparate treatment in the delivery of medical care and mental and behavioral health services. These medical social workers and health care advocates would be required to undergo implicit bias training and demonstrate cultural congruence with the community to be served.[38] They preferably would be situated within trusted community-based organizations, which may be achieved through a state-funded grant-making program.

Improve Diversity Among Clinical Trial Participants

Among clinical trial participants in the United States, African American patients comprise only five percent while white patients comprise the vast majority.[39] Explanations for these statistics include historical exploitation and racism—atrocities such as the Tuskegee Syphilis Study used unethical research practices and caused unnecessary harm, deception, and biomedical exploitation of African Americans.[40]

Clyde Yancy, MD, vice dean for diversity and inclusion at Northwestern University Feinberg School of Medicine, has noted that not all humans are the same physiologically, and factors such as age, illnesses, and genetic ancestry may result in drugs being metabolized differently or responding to devices differently.[41] When trial participation is not reflective of the general population, pharmaceutical companies and medical professionals do not know how various drugs will work in different populations.[42] For example, albuterol, a drug used to treat asthma, was found to have decreased effectiveness in African American children.[43] Dr. Yancy has stated that clinical trial study designs should be intentional from the very beginning about being inclusive, especially when members of a certain group might benefit from being studied due to a prevalence of a disease in their group.[44] Dr. Yancy also noted that governments should issue requirements for recruitment targets and provide incentives such as rewarding those who succeed with more funds or grant opportunities.[45]

Researchers have begun to institute changes to remedy lack of inclusion and representation in clinical trials, such as "bringing trial procedures closer to where participants live, diversifying the staff who recruit people for the studies, and designing trials to directly target underrepresented groups."[46] A primary barrier to participation is getting to the central site for "assessments, administration of therapies, tests to monitor results, and medications to take home"; these locations can involve several hours per trip and paying for transportation and food.[47] To remove this barrier, some of the procedures can be carried out at medical offices and clinics in communities where African Americans live.[48]

Dr. Airín D. Martínez, assistant professor in Health Policy and Management at the University of Massachusetts-Amherst, has noted that there are a lack of principal investigators from marginalized racial or ethnic groups, which may also be a factor in the underrepresentation of African Americans in clinical trials.[49] She has emphasized that representation on the side of scientists as much as on the side of research participants matters, as they "bring different perspectives to the research informed by both [their] scientific training and [their] lived experiences."[50]

Another barrier to participation is not seeing African Americans among recruiters and the staff who are explaining the trial.[51] The CARE Research Center, which runs trials and consults on increasing diversity in trials, advises researchers to diversify the staff working on studies, especially those who interact most with possible participants.[52] Other proposed solutions include: aiming for a proportion of African American participation similar to their proportion in disease incidence cases; providing financial support for study participants to cover indirect expenses such as time off from work, childcare, and transportation; requiring funding agencies to include race and ethnicity for assigning priority scores (as the final score typically determines grant funding and will lead to researchers actively trying to recruit African Americans); and targeting enrollment in a culturally sensitive manner.[53]

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A woman receives an injection during a clinical trial for a Covid - 19 vaccine. (c.2020)

To remedy this issue, the Task Force recommends funding competitive grants for clinical trials to subsidize participants' indirect costs (such as time off from work, transportation, and childcare), undertake and complete clinical trials in communities where African Americans

live, and hire staff demonstrating cultural congruence with the African American community to serve as recruiters and staff explaining clinical trials. The Task Force also recommends providing extra funding and other incentives for state-funded studies in which the principal investigators are African American.

Remedy the Higher Rates of Injury and Death Among African American Mothers and Infants

As established in Chapter 12, Mental and Physical Harm and Neglect:

> One of the most harmful legacies of slavery is the disproportionate maternal and infant death of African American women and children today due to lack of access to adequate reproductive healthcare. African American women experience disproportionate racial discrimination in access to and quality of prenatal care. Expecting and new African American mothers often find that their reports of painful symptoms are overlooked or minimized by medical practitioners. . . . African American women disproportionately experience adverse birth outcomes and adverse maternal health. Researchers have found evidence that this may be influenced by the uniquely high level of racism-induced stress experienced by African American women . . . .[54]

African American mothers in California are substantially more likely than white mothers to suffer severe health complications during their pregnancy, give birth prematurely, die in childbirth, and lose their babies.[55] The pregnancy-related mortality ratio for Black women during 2014 to 2016 was four to six times greater than the mortality ratio for any other ethnic group.[56] "Over the past decade, Black babies died at almost five times the rate of white babies in San Francisco."[57] Further, Black women in California disproportionately experience unfair treatment, harsh language, and rough handling during their hospital stay, compared to white mothers.[58]

Further, according to a recent study at the University of Texas at San Antonio: "During and after pregnancy, Black women . . . faced heightened odds of death that were almost double those of white women, along with a risk of dying specifically from pregnancy complications that was 2.8 times that of white women. . . . But more than any other racial or ethnic group, Black women died as a result of homicide; they were five times more likely to be killed this way than white women."[59]

Another recent study published by the National Bureau of Economic Research found "[t]he richest Black mothers and their babies are twice as likely to die as the richest white mothers and their babies," suggesting that the racial gap in infant and maternal care is not just explained by differences in socioeconomic status, but rather that there is a structural problem.[60] The study further found that "babies born to the richest Black women (the top tenth of earners) tended to have more risk factors, including being born premature or underweight, than

From 2006-2014, compared to white infants, African American infants in San Francisco had a

5x HIGHER infant mortality rate

those born to the richest white mothers—and more than those born to the poorest white mothers."[61]With the support of doulas, women have been less likely to have C-sections and more likely to have healthier babies.[62] With regard to bias, as the University of California, San Francisco's California Preterm Birth Initiative has documented, "numerous studies have demonstrated that doulas can help reduce the impacts of racism on pregnant women of color by helping to provide culturally appropriate, patient-centered care."[63]

Despite the research showing its benefits, doula care has been under-utilized, often due to barriers like cost, coverage, and lack of information.[64] Having identified several barriers and implementation challenges related to Medicaid coverage for doula care, the Preterm Birth Initiative in partnership with the National Health Law Program offered a number of recommendations to bring about successful coverage of doula care, including: (1) setting a common set of criteria for doula qualification or credentialing for insurers to pay for doula services; (2) developing doula reimbursement rates based on the amount of one-on-one time spent with a patient; (3) streamlining and organizing payments for doula services; (4) pushing for doula services to be classified as preventive services; (5) increasing their flexibility to pay for doula services; and (6) allowing doulas to obtain payment directly from Medicaid. [65]

Building on steps the state has taken to advance coverage for doula care, the Task Force recommends the California Department of Health Care Services (DHCS) provide additional support for doula services (which is a covered

benefit, effective January 1, 2023)[66] to include: requiring DHCS to develop multiple payment and billing options for doula care, and to ensure specified payment and billing practices, including that any doula and community-based doula group be guaranteed payment within 30 days of submitting any claim for reimbursement;[67] requiring DHCS to establish a centralized registry listing any doula who is available to take on new clients in each county; requiring each Medi-Cal managed care health plan in every county to provide information in its materials, and specified notices, on identified topics related to doula care, including reproductive and sexual health, and to inform pregnant and postpartum enrollees and prenatal and postpartum enrollees at appointments about doula care, such as the availability of doula care and how to obtain a doula; requiring DHCS to convene a doula advisory board that would be responsible for deciding on a list of core competencies required for doulas authorized by DHCS to be reimbursed under the Medi-Cal program; requiring doulas to provide documentation that they have met the core competencies specified by the board as a prerequisite to being reimbursed under the Medi-Cal program; requiring DHCS to work with outside entities, such as foundations, to make trainings that meet the core competencies available at no cost to people who are from communities experiencing the highest burden of birth disparities in the state; and providing funding to DHCS for data collection, reporting, and analysis to evaluate maternal health outcomes resulting from having doula care as a covered preventive service under the Medi-Cal program.[68]

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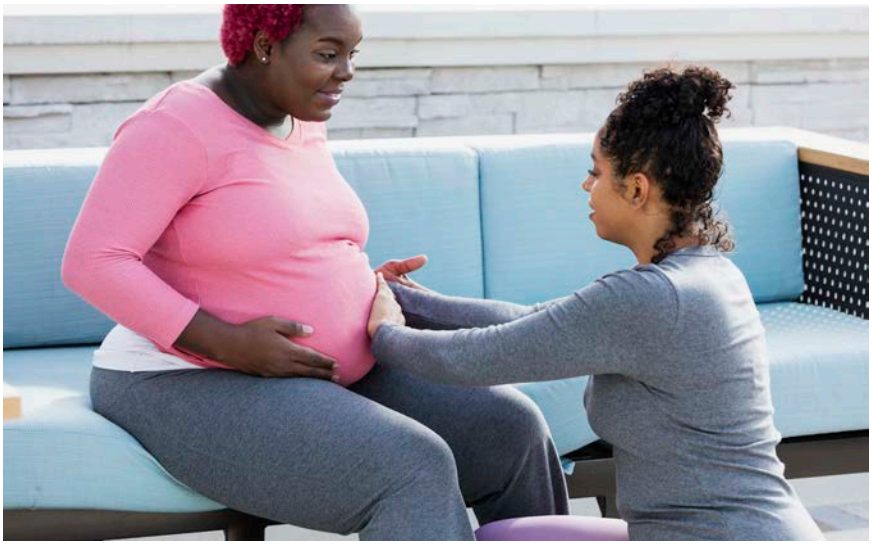

A pregnant African-American woman with her doula or birth support coach.

Relatedly, the Task Force recommends funding pipelines for African Americans, especially those who are descendants of an individual enslaved in the United States, who are interested in becoming doulas. This support should include full funding for credentialing. The Task Force also recommends fully funding care provided by doulas and midwives from conception to postpartum for African Americans, including free lactation education and education at every stage of pregnancy.

The Task Force further recommends the California Department of Public Health's Office of Health Equity or other appropriate entity conduct an annual review of California health care laws and policies (including the Medi-Cal expansion) related to improving health outcomes for the birthing population, including access to quality prenatal care. The review should evaluate the effect of these laws and policies on reducing health disparities among the African American birthing population and infants in California, and the findings and recommendations should be published to the California State Legislature. This measure would include funding on an annual basis to hire permanent staff dedicated to these efforts, based on the Office of Health Equity's assessment of the level of staffing needed.

The Task Force also recommends funding the Office of Health Equity to study all of the factors and causes that contribute to disparities in maternal and infant health outcomes among African Americans, including medical complications in pregnancy and childbirth, but also causes such as homicide and car accidents, and publish a report of findings and recommendations to the California State Legislature. This study shall include recommendations on how the state can remedy these disparities.

Finally, the Task Force recommends state funding to the California Department of Public Health to evaluate the effectiveness of the Black Infant Health Program[69] in reducing health disparities and mortality rates among African American infants and publish its findings and recommendations to the California State Legislature. These findings and recommendations shall include recommendations on a permanent source of funding for this program, recommendations on how the state can expand the program, and evidence-based recommendations on how the state can further care for all African American infants and work toward reducing health disparities and mortality rates.

Meet the Health Needs of African American Elders

While African American elders (60+) represent only six and one-half percent of California's older adult population, the State of California is home to one of the largest concentrations of African American elders in the nation.[70] As discussed in Chapter 12, Mental and Physical Harm and Neglect, African American elders face specific health challenges arising out of the systemic injustices endured by the community. Physicians widely hold racist beliefs that Black patients feel less pain or exaggerate their pain, leading to racial bias in pain treatment for chronic conditions.[71] African American elders are less likely to have their chronic illnesses sufficiently managed, are more likely to die from such conditions than white Americans, and have a shorter life expectancy than white Americans.[72]

Additionally, as discussed in Chapter 12, Mental and Physical Harm and Neglect, due to the low levels of employer-sponsored health coverage for African Americans and the expense of private insurance, African American elders are far more likely than white Americans to rely solely on the Medicare program, and lack of supplemental insurance exposes African American elders to higher out-of-pocket costs and delayed medical care.[73] Finally, as discussed in Chapter 7, Racism in Environment and Infrastructure, African American elders face disparity in access to high-speed internet access and technology, which the COVID-19 pandemic made a critical piece of the health delivery infrastructure.[74]

The Task Force recommends a series of measures aimed at ameliorating African American elders' experience of systemic disparity in the areas of management of pain and chronic conditions creating disability, end of life care, public benefits, and digital health access.

African American elders are less likely to have their chronic illnesses sufficiently managed, are more likely to die from such conditions than white Americans, and have a shorter life expectancy than white Americans.

Remedy the Mismanagement of Pain and Chronic Conditions Creating Disability

Due to the systemic injustices discussed in Chapter 12, Mental and Physical Harm and Neglect, elder African American adults are less likely to have their chronic illness sufficiently managed, are more likely to die from chronic illnesses that are well controlled in white Americans, and continue to suffer from poorer health care outcomes throughout their lifespan to end-of-life.[75] For example, risk of diabetes, heart disease, and stroke increase among Black adults as they age because of poor blood pressure control and poor diabetes prevention due to disparities in medical care.[76]

Moreover, younger African Americans are being diagnosed with chronic diseases normally seen in older populations, and thus African Americans often experience significant symptom burden and higher risk of complications as they age in comparison to their white counterparts because they have lived longer with chronic disease.[77] This can intensify the suffering African American elders experience towards the end-of-life.[78]

Additionally, African American elders are at increased risk of being undertreated for pain. Their pain is under-assessed, and they are less likely to receive opioid and non-opioid-based medications.[79] Focus group research with Black elders underscored this point: "We say we're in pain. But they might not even check it, because they assume we can tolerate pain more than other people," said one Black adult.[80]

Black elders also have persistently higher rates of disability relative to white adults.[81] While about 28 percent of all older Americans say they are hindered by one or more age-related difficulties, such as diminished mobility, vision, hearing, motor skills, and cognitive skill, more than 38 percent of Black elders report impairments to daily living activities.[82] "Black adults may be less likely to have accessible home environments. For example, a decline in the share of white adults who have trouble bathing may reflect better physical function *or* an increase in the availability of walk-in showers in white households."[83]

Recommendations set forth in this chapter that are directed at remedying health inequities among African American Californians more generally will also help remedy the specific disparities faced by African American elders. In addition to those important recommendations, the Task Force urges that, as part of the Legislature's authorization and ongoing funding for the California Health Equity and Racial Justice Fund within the California Department of Public Health's Office of Health Equity, there should be a specific focus on initiatives to remedy the disparities faced by African American elders, with special consideration for African American elders who are descendants of persons enslaved in the United States. Specifically, the Task Force recommends that the Legislature (1) focus on

increased accessibility to medications and treatments for heart attack, stroke, and diabetes among African American elders, which may reduce the severity of disablement; and (2) focus on providing greater access to assistive devices (such as walkers and wheelchairs) and changes to living environments (such as grab bars and ramps), which may contribute to better physical function among African American elders.[84]

Additionally, in order to better track, understand, and respond to these disparities in the future, the Task Forces recommends that the Legislature instruct and fund the California Department on Aging to partner and contract with African American led and serving community-based organizations and on the-ground grassroots organizations to develop a web-based semiannual State of the State of Older African American Adults in California report.

Remedy the Disparity in Use of and Satisfaction with End of Life Care

African American elders face disparities in the use of and satisfaction with End of Life (EOL) services and care. The objective of EOL care is to provide "goal-concordant" care based on what the patient and family value and want.[85] Despite care that is not goal-concordant being considered as a "medical error," studies have shown that African American elders have a higher rate of "non-goal-concordant care" than white Americans.[86] Some of this may arise out of the fact that EOL care can frequently dismiss and disregard certain types of belief systems, such as the hope for a miracle and the belief in God as the final arbiter.[87] African American elders deserve care that is equitable and preserves the life that their loved one has lived and acknowledges their faith and beliefs.

Inferior care results in African American elders being less likely to utilize EOL services compared to white Americans. Specifically, African American elders have advance care planning completion rates that are substantially lower than white Americans, and they are more likely to pursue informal EOL planning.[88] Yet, even when Black elders have their preferences recorded, they are less likely than white Americans to have their preferences upheld by clinicians in hospitals.[89] Moreover, African American elders are less likely to use hospice services at the end of life, and are more likely to experience difficult disruptions in care due to being hospitalized.[90]

In order to remedy these disparities in EOL and hospice care, the Task Force recommends the Legislature fund an increase in culturally responsive end-of-life programs and community-based participatory research to improve such programs. Historically, EOL care has been rooted in white middle-class cultural and religious values, with a different frame of reference, value system, and life experience than most African American elders. Considering patients' and families' cultures is essential in all aspects of palliative care.[91]

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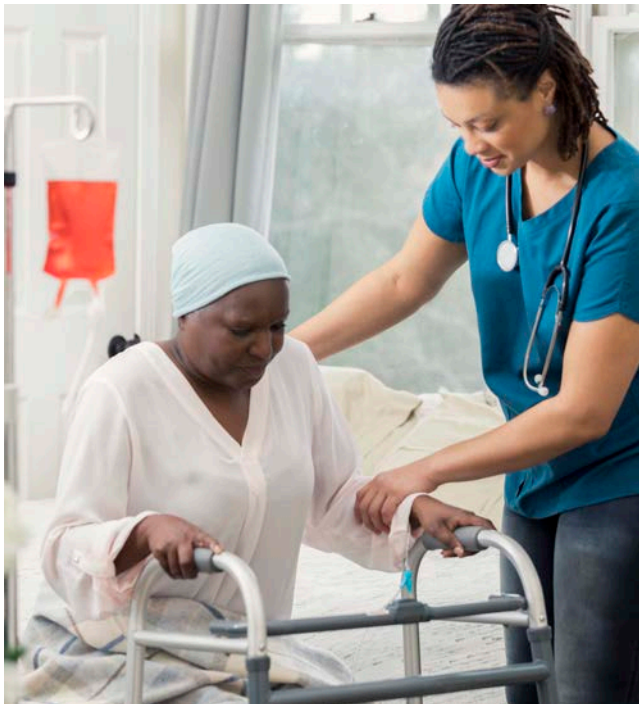


Home healthcare nurse helps a female cancer patient get out of bed by using a walker.

Funding to increasing culturally responsive end-of-life programs should include the involvement of healthcare workers from diverse backgrounds to help create advance directives that address the concerns and needs of African American elders.[92] With improved culturally relevant communication, patients and families are more likely to receive useful information about their diagnosis more easily. Future work should be directed at training providers in having discussions that incorporate patient beliefs. Trainings should be based on African American community recommendations in an attempt to move towards health equity.[93]

Remedy the Harms from Disparity in Insurance and Senior Benefits

Black elders are less likely than their white peers to have private insurance and more likely to rely on Medicaid (the government insurance program for those with low income) or Medicare (the government insurance program for those 65-and-older or permanently disabled) as their only health insurance.[94] Specifically, where 46 percent of all older adults were covered by both private insurance and Medicare, only 32 percent of Black elders had both private insurance coverage and Medicare.[95] Compared to white Americans, nearly twice as many Black elders relied on both Medicare and Medicaid.[96]

The higher reliance on government health insurance programs among Black elders reflects the unaffordability of healthcare due to pervasive income disparities. For example, the median income for Black Medicare enrollees is $17,350, compared to $30,050 for white enrollees; and nearly one-fourth of Black elders have no supplemental coverage to help defray the cost of inpatient care covered by Medicare Part A or its $1,400 deductible; in comparison, only 16 percent of white Medicare recipients have no supplemental coverage.[97]

Compared to white Americans, African American elders are

2x MORE LIKELY **to rely on both Medicare and Medicaid**

Black elders who are beneficiaries of Medicare are also more likely than their white peers to receive care in emergency rooms and nursing homes and report fewer doctor's office visits.[98] Moreover, "research shows that older Black . . . Medicare enrollees commonly experience racism when seeking care, report communication challenges with their providers, and have difficulty affording and accessing regular care."[99] For example, 37 percent of Black Medicare recipients describe their health as fair or poor, compared to 24 percent of white recipients, and 39 percent of Black Medicare recipients have one or more disabilities.[100]

"While they compose 9 percent of the 65-and-older population, Black elders make up more than 14 percent of residents in nursing homes, even though the cost is significantly more than that for an assisted living facility."[101] "However, most if not all expenses in assisted living facilities are paid by the tenant, while most Black nursing home residents rely on Medicaid to cover the costs . . . ."[102] Whereas 70 percent of older white adults have annual incomes of $30,000 or more—with 40 percent receiving $60,000 or more—65 percent of Black elders receive less than $30,000 a year.[103] Additionally, Black elders are more likely to reside in nursing homes with low ratings and a history of citations for violations of health and safety standards—forty percent of Black nursing home residents live in lower-tier facilities, compared to 9 percent of white residents.[104] "According to the Nursing Home Abuse Center, African American residents are three times more likely to be physically, emotionally, sexually, and/or financially abused than are white residents."[105]

Finally, social security benefits are based on the person's earnings and are thus also lower on average for Black elders, with the typical older Black family receiving annual benefits approximately 24 percent lower than white families.[106]

In order to remedy the disparities in insurance and quality of healthcare provision, the Task Force recommends the Legislature create a fund to support and ensure that African American seniors in California have an annual income that is tied to the Elder Index in their respective county.[107] This would help ameliorate the disparities in social security benefits and the hardships that come from lack of private insurance and the ability to supplement care through Medicare and Medicaid. The recommendation earlier in this chapter regarding adoption of a comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all African American residents of California or for resident descendants would also help remedy the disparities described here.

In order to remedy the disparate treatment African American elders receive in nursing home facilities, the Task Force recommends the Legislature require the Long-Term Care Ombudsman Program to incorporate and require racial bias training for Ombudsman representatives and care providers; create a racial justice unit to investigate bias claims; and fund research into specific ways to increase the wellness of African American elders in long term care facilities in California.

Close the Digital Health Access Divide for African American Elders

As the COVID-19 pandemic brought into clear focus, a fast and secure internet connection is no longer a luxury—it has become central to accessing health services, safety information, and necessary provisions. Yet there is a marked disparity in African American elders' access to high speed internet. Only 30 percent of Black elders have broadband access at their homes, compared to 51 percent of white older adults.[108] And Black elders are one-fifth as likely to own a computer compared to older white adults, while Black elders who receive Medicaid assistance are half as likely to own a computer.[109]

Moreover, even for those African American elders with computers and high speed internet, many still struggle to navigate this technology. "Telehealth visits, online grocery shopping, COVID vaccine signups, and more are all made more difficult because of a lack of proper technology literacy."[110]

To facilitate needed access to telehealth, caregiving supports, and emergency services, the Task Force recommends that the Legislature ensure that all African American elders, especially those who are descendants of a person enslaved in the United States, have personal access to low-or-no cost, high speed, broadband internet services. Additionally, the Task Force recommends the Legislature ensure funding for programs that address the ancillary technology access issues, including internet education training, grants to purchase computers for low-income seniors, and virtual technical services.

Remedy Disparities in Oral Health Care

Oral health is closely linked to chronic diseases such as stroke, heart disease, and diabetes.[111] According to the U.S. Centers for Disease Control and Prevention (CDC), most dental diseases are preventable, yet children still suffer from dental disease due to inadequate home care and lack of access to dental services.[112] Poor oral health has been linked "to decreased school performance, poor social relationships and less success later in life."[113]

As in other areas of health, African Americans disproportionately suffer these harms. Recent data confirm that "there are persistent and significant disparities in [tooth decay] experience and untreated [tooth decay] between non-Hispanic Black and non-Hispanic [w]hite populations."[114] The data also show that there are significant racial disparities in the prevalence of periodontal disease, severe periodontitis, and tooth loss, as well as oral and oropharyngeal cancer survival rates.[115] Studies have also found that structural racism contributes to oral health disparities.[116] For example, studies have found that: Black populations have poorer access to preventive services; dentists' treatment decisions are affected by implicit bias; treatment recommendations favored extractions versus root canal treatments for Black patients; and there is a substantial underrepresentation of Black dentists in the dental profession and workforce.[117] The findings of these studies dovetail with what experts have identified as barriers to oral health care for African Americans: (1) a shortage of Black dentists; (2) a shortage of Black dental students; (3) a lack of dentists in communities of color; (4) implicit bias among dental care providers; and (5) affordability and access to insurance coverage.[118] Another study confirms that insurance coverage, treatment costs, and access to care influence oral health disparities among African American men.[119]

Four solutions to improve oral health care emerged from a recent survey of African American seniors. These solutions include: (1) better oral health education, starting at a younger age; (2) free or at least affordable (reduced cost) dental care and vouchers for dental work; (3) provision of onsite community dental services; and (4) navigators to help educate community members about insurance payment options and available low-cost providers.[120] Survey respondents also suggested incorporating more dental education in schools through pamphlets for kids and parents and having dental professionals visit senior centers to provide services and education.[121]

Additionally, the CDC has identified that school sealant programs are effective in preventing cavities in millions of children.[122] Specifically, school sealant programs involve providing pit and fissure sealants to children aged 6 to 11 or in grades 1 through 5; the programs also include licensed dental professionals screening children for oral disease and checking whether they already have sealants.[123] This is done via signed permission slips from parents and guardians for dental sealants to be applied, typically at no cost.[124] The CDC noted that states can assist by: (1) "Targeting school-based sealant programs to the areas of greatest need;" (2) "Tracking the number of schools and children participating in sealant programs;" (3) "Implementing policies that deliver school-based sealant programs in the most cost-effective manner;" and (4) "Helping schools connect to Medicaid and the Children's Health Insurance Program (CHIP), local health department clinics, community health centers, and dental providers in the community to encourage more use of sealants and reimbursement of services."[125]

The data also show that there are significant racial disparities in the prevalence of periodontal disease, severe periodontitis, and tooth loss, as well as oral and oropharyngeal cancer survival rates.

The Task Force recommends that the Legislature establish and fund a program like UC PRIME[126] for University of California and California State University dental programs to be focused on working with, and providing oral health care in, African American communities.

The Task Force also recommends that the Legislature add the completion of an anti-bias training and an assessment based on such training to the graduation requirements of all dental schools in California receiving

state funding and to the requirements for licensure by the Dental Board of California for licensed dentists and registered dental assistants.

The Task Force recommends, in conjunction with its recommendation to establish and fund community wellness centers in African American communities to deliver services in a manner that is culturally congruent with African American culture, that the health care advocates staffing these centers also help their clients navigate insurance payment options and find low-cost providers.

The Task Force also recommends that the Legislature implement school sealant programs in California elementary schools, which will also include oral health education.

Finally, the Task Force recommends that the Legislature fund oral health care to underserved populations in the African American community, including seniors, by authorizing state funding for mobile dental clinics, preferably within trusted community-based organizations, which may be achieved through a state-funded grant-making program.[127]

Fix Racially Biased Algorithms and Medical Artificial Intelligence in Health Care

Researchers have established that there is evidence of significant racial bias in a widely-used commercial algorithm developed by health services company Optum to guide decisions in the United States health care system.[128] Specifically, researchers noted that bias occurs in this algorithm because it used health costs as a proxy for health needs.[129] Because less money is spent on Black patients who have the same level of needs as white patients, the algorithm incorrectly assumes that Black patients are healthier than equally sick white patients.[130] Accordingly, Black patients had to be much sicker than white patients in order to be recommended for the same care.[131] Optum has replicated the study with the same researchers and saw an 84 percent reduction in bias with a new algorithm that uses health prediction in conjunction with cost.[132]

Despite this change, racial bias has been found in other medical technology. An ACLU paper provides four examples of racial bias in medical artificial intelligence (AI), medical devices, and algorithmic decision-making tools, which include:

1. An AI tool meant to decide how to best distribute the limited resource of extra care to new mothers at risk of postpartum depression was found to show racial bias—directing care away from Black mothers and favoring White mothers[;]

2. A widely used clinical algorithm indicating kidney health is adjusted based on whether a patient is Black, and systematically indicates Black patients are healthier than they may actually be; in fact, an October 2020 study found that without this explicit race-based adjustment, nearly a third of Black patients would be reclassified as having more severe kidney disease. (Only in September 2021, after increased pressure from lawmakers and advocates, was the algorithm updated to remove the use of race. Still, recent reports suggest the old algorithm is still being used by federal courts to make determinations about health-based early prison release despite litigation indicating that it functions in a clearly biased way.)[;]

3. A recent meta-analysis found the vast majority of machine learning (ML) studies in dermatology did not include information on different skin tones as part of algorithm development. As a result, the validity of model results varied based on skin tone, with some models performing worse on darker skin[; and]

4. A 2020 study on pulse oximeters, a medical device used especially in the COVID-19 pandemic to monitor patients' oxygen levels, detailed that the devices are less accurate among patients with darker skin and could even increase risk of adverse health outcomes for those patients. In fact, a 2022 retrospective study confirmed that patients of color, likely due to this known bias, received less supplemental oxygen than White patients, contributing to their morbidity. While this is a hardware issue, it shows an existing bias associated with patient[s'] skin color in medical devices[;] instances like this are alarming considering that this issue was arguably more predictable than issues that may arise from the use of AI as a medical device.[133]

Bias in commercial algorithms can have harmful effects on African American patients at all points in the health care process, from the triaging of illness to the quality of care received.[134] These algorithms "also lack data diversity, whether by race, sex, or other factors," and the lack of data diversity "diminishes the generalizability of these studies and potentially of the tools developed using the data."[135] As the ACLU paper notes, there is no single agency regulating AI tools and clinical algorithms that are in use today, but "[i]nstead, a patchwork of regulatory powers has led to gaps and permitted the continued use of potentially harmful technologies without sufficient oversight."[136]

Experts such as Ashish Jha, previously the director of the Harvard Global Health Institute, believe that bias in algorithms is far easier to eradicate than human bias. Jha noted: "Algorithms that are built well with these issues

taken into account can help doctors overcome subtle unconscious biases they may have . . . Data and algorithms have a lot of potential to do good, but what this study reminds us of is that if you don't do it right, you have a lot of potential to do harm."[137]

Based on the foregoing and the recommendations listed in the ACLU paper, [138] the Task Force recommends that the Legislature provide state funding to the California Department of Public Health, a University of California or California State University center or department, or another appropriate entity to study the potential for harmful biases in commercial algorithms and AI-enabled medical devices, and "evidence-based research into the use of devices and tools that recommend adjusting patients' treatment or medication based on broad racial categories in the absence of information on genetics or socio-cultural risk factors."[139] This study should also include recommendations on how best to regulate commercial algorithms and medical artificial intelligence tools in California.

The Task Force also recommends that the Legislature require the California Department of Public Health to issue guidance to hospitals and other medical systems to ensure that commercial algorithms and AI-enabled medical devices "are not used for clinical applications without FDA approval or clearance, are not used on patient populations they were not intended for, and that cleared tools are not used outside of their intended use cases . . . ."[140]

"Algorithms that are built well with these [bias] issues taken into account can help doctors overcome subtle unconscious biases they may have . . . Data and algorithms have a lot of potential to do good, but . . . if you don't do it right, you have a lot of potential to do harm."

The Task Force further recommends that the Legislature authorize the California Department of Public Health "to make and maintain a public list of software as a medical device (SaMD) products and provide demographic information about the subjects in which the devices were calibrated or trained."[141]

Finally, the Task Force recommends that the Legislature allocate positions and funding to the California Department of Justice to pursue claims against algorithm and AI-enabled medical device manufacturers if these products have a disparate impact when providers use it according to manufacturers' instructions or if the products misleadingly promise fairness.

Fund and Expand the UC PRIME-LEAD-ABC Program to be Available at All UC Medical Campuses

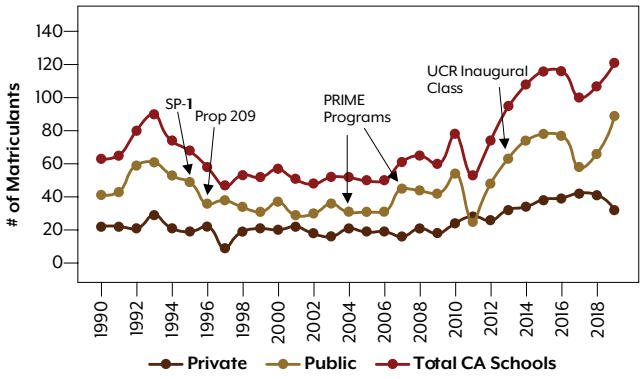
African American physicians and patients have experienced historic and ongoing discrimination in all aspects of the health care system.[142] After the end of the Civil War, federal, state, and local governments continued to deny African Americans adequate health care through numerous policies, including through the Hill-Burton Act, which funded the creation of the modern hospital infrastructure by funding segregated hospitals, including many throughout California.[143] Even after the end of formal segregation policies, the government failed to address their lasting, discriminatory effects—for instance, one news report suggests that Black resident physicians are disproportionately dismissed and reprimanded for transgressions that go unpunished for white resident physicians,[144] and a number of Black physicians in California have brought lawsuits alleging that hospital systems in the State have enacted "pervasive hostility against Black professionals and medical students."[145] This discrimination against Black physicians has, in turn, reinforced discriminatory denial of adequate care for Black patients. While Black Californians make up approximately six percent of the state's population, only three percent of active patient care physicians in California are Black.[146] And a 2021-2022 study found that nearly one in three African Americans in California have been treated unfairly by a health provider because of their race or ethnicity.[147]

To address inequities in health care and increase the number of African American physicians serving African American communities, with special consideration for descendants, the Task Force recommends that the Legislature provide funding to allow the University of California permanently expand the UC PRIME-LEAD-ABC program—which includes a specialized curriculum, training experiences, and dedicated faculty mentorship to train and recruit physicians to serve in the programmatically-defined predominantly African, Black, or Caribbean (ABC) communities—to be available on all UC medical campuses.[148] To the extent that the UC PRIME-LEAD-ABC program does not currently give special consideration to those who are descendants of individuals enslaved in the United States, the Task Force recommends the Legislature fund a special program to

allow the University of California create an equivalent pathway program specifically for this group. And the Task Force recommends that the Legislature include funding for the UC PRIME-LEAD-ABC programs to expand their mentorship and support services to include comprehensive mental health support, especially regarding racial stress and trauma, and that such mental health support services continue to be provided to participants after they complete the UC-PRIME-LEAD-ABC program.[149]

Surveying existing literature on the effects of the UC PRIME programs, one 2022 report found that the UC PRIME programs added significant numbers of African Americans to the UC system's medical schools.[150] From 1990 to 2019, the annual number of African American medical students in California rose from 63 to 121 students, with "[p]ublic medical schools account[ing] for most of this increase."[151] Additionally, care by African American physicians can address the discriminatory treatment that African American patients might otherwise receive when seeking healthcare.[152]

Proportion of African American matriculants to public and private California medical schools (1990 – 2019)



In addition to increasing the number of African American medical professionals serving African American communities, the Legislature should: (1) fund grants providing scholarships or loan forgiveness to African American medical students, physician assistants, and nurse practitioners who commit to serving African American communities; and (2) fund grants providing scholarships or loan forgiveness to medical students, physician assistants, and nurse practitioners who are descendants and who commit to serving predominantly African American communities. To the extent that the Legislature implements a loan forgiveness program, eligibility for loan forgiveness programs should, at minimum, include African American medical professionals serving African American communities through community-based organizations.

Create and Fund Equivalents to the UC-PRIME-LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists

As described in Chapter 12, Mental and Physical Harm and Neglect, the historic and ongoing discriminatory health harms to descendants include inadequate access to mental healthcare—a harm compounded by the stress and trauma of ongoing racial discrimination experienced by African Americans in California, including descendants.[153] To address unequal access to mental healthcare services, the Task Force recommends that the Legislature create and fund equivalents to the UC PRIME-LEAD-ABC programs for recruiting and training psychologists (Ph.D. and Psy.D. programs) and licensed professional counselors and therapists (master's programs) committed to serving predominantly African American communities, with special consideration for descendants. The Task Force also recommends that funding for these program include comprehensive mental health support, especially regarding racial stress and trauma, and that program participants continue to receive such mental health support services after students complete their program.[154]

Due to ongoing disparities and discrimination in mental health care, experts have called for the state to expand funding for educational capacity, stipends, and scholarships to strengthen the size, distribution, and diversity of the mental health and behavioral health workforce.[155] As noted above, the UC PRIME programs present successful models for programs that both recruit and mentor African American medical professionals while also increasing the number of medical professionals dedicated to serving predominantly African American communities.[156] While the State of California has enacted various measures to increase the overall supply of mental health professionals, these prior policies do not appear to involve any targeted effort to increase the number of African American or other professionals serving African American communities specifically.[157]

In addition to increasing the number of African American mental health professionals serving predominantly African American communities, the Legislature should: (1) fund grants providing scholarships or loan forgiveness to African American mental health professionals who commit to serving predominantly African American communities; and (2) fund grants providing scholarships or loan forgiveness to mental health professionals who are descendants and who commit to serving predominantly African American communities. To the extent that the Legislature implements a loan forgiveness program, eligibility for loan forgiveness programs should, at minimum, include African American mental

health professionals serving African American communities through community-based organizations.

Permanently Fund the California Medicine Scholars Program and Create and Fund Equivalent Pathway Programs for Students in the CSU and UC Systems

Historic and ongoing discrimination against African Americans in California has produced a myriad of barriers throughout the pathway to becoming a healthcare provider, including financial barriers; lack of access to mentorship; lack of access to academic advising; and a dearth of opportunities to participate in academic and summer enrichment programs relating to science, technology, or medicine.[158]

To remedy the discrimination that has excluded African Americans in California from the field of medicine and denied African Americans in California equal and adequate healthcare,[159] the Task Force also recommends that the Legislature permanently fund the pathway initiatives in the California Medicine Scholars program and create an equivalent pathway program for students in the CSU and UC systems. The California Medicine Scholars Program (CMSP) was created to connect community college students to medical schools, clinics, and medical practitioners to promote pathways for underrepresented college students to enter the field of medicine.[160] Students from an eligible community college can apply to the program, which partners them with a medical school in one of four nearby geographic regions.[161] The program then provides mentorship by medical practitioners, academic advising, enhanced curriculum, and priority enrollment to that student when the student applies to that particular medical school.[162]

Several studies over the last four decades have found that participation in pathway programs improves the odds of medical school matriculation among students, including African American students from excluded backgrounds.[163]

In addition, the Legislature should expand or create pathway programs like the CMSP to: (1) create similar pathway programs for high school students; and (2) create pathway programs for other medical professions, such as physician assistants and nurse practitioners.[164] Because "literature that describes or evaluates nursing pathway programs" or pathways to other health care professions "is scarce,"[165] if the Legislature expands the creation or funding of pathway programs to include other medical professions, such as nurses and physician assistants, the Task Force further recommends that the Legislature fund an accompanying study of such pilot programs to ensure that the programs are equally effective in improving recruitment and retention of African Americans in other medical professions.

COURTESY OF PIXELCATCHERS VIA GETTY IMAGES

Nurse talks to doctor in corridor.

Review and Prevent Racially Biased Disciplinary Practices by the Medical Board of California

A report by the California State Library Research Bureau—reviewing California Medical Board data from 2003 to 2013—found that African American physicians in California were more likely to be the subject of complaints, and the Board was more likely to investigate a complaint brought against an African American physician than a white physician.[166] To remedy discrimination in physician discipline, the Task Force recommends legislation to review and prevent racially biased disciplinary practices by the California Medical Board (Board) in its investigatory and disciplinary proceedings by implementing the following:

1. Requiring the Board to permanently staff and train its Disciplinary Demographic Task Force, which finds training opportunities to eliminate implicit bias and reviews the Board's processes for such bias.[167]

2. Requiring the Board to undergo implicit bias training.

3. Requiring an annual, third-party review of the Board's investigatory and disciplinary records to determine racial disparities in its investigatory or disciplinary practices.

4. In the event that an annual review uncovers racial disparities in the Board's investigatory or disciplinary practices, requiring the Board to enact any other measures necessary to directly remedy any discriminatory actions taken by the Board (for example, reinstating a license if the suspension process was affected by racial animus).

Address Food Injustice

Black households disproportionately experience food insecurity.[168] As discussed in Chapter 12, Mental and Physical Harm and Neglect, predominantly African American communities also disproportionately experience highly limited access to affordable, nutritious food, and are often inundated with unhealthy options like sugary drinks and processed or fast food.[169] High densities of liquor stores and tobacco shops in these communities also pose a public health concern because of their link with violent crime.[170] The resulting health harms are stark.[171] Redlining, bolstered by other government and government-enabled discrimination, is a central cause of this food injustice.[172]

In order to remedy these harms, and to improve access to affordable, nutritious food, the Task Force recommends a slate of measures including: improving supermarket and grocery store access in African American communities; increasing the number of farmers markets and community gardens in these communities; supporting healthy food retailing and limiting liquor and tobacco stores; and funding descendants and trusted community-based organizations to launch and sustain urban agriculture ventures, grocery stores and cooperatives, farmers markets, mobile food vending operations, and related infrastructure needed to bring food justice to African American communities, with special consideration for African Americans who are descendants of persons enslaved in the United States.

Improve Supermarket Access

One of the harms facing African American communities in California is the lack of access to grocery stores and supermarkets.[173] White neighborhoods on average have four times as many supermarkets as predominantly African American neighborhoods, and grocery stores in African American communities typically are smaller and have less selection.[174] There are a number of approaches the Task Force recommends to begin remediating this harm.

First, to ensure a coordinated and continued response to these harms, the Task Force recommends that the Legislature continue to fund the California Healthy Food Financing Initiative Council, which is tasked with expanding food access by developing financing options, partnering with state, local, nonprofit, and philanthropic programs, and providing updates to the Legislature.[175] The Healthy Food Financing Initiative Council has supported regional food hubs in locations like hospitals, schools, and corner stores, where buyers can purchase local food at reasonable prices and with reduce transaction costs. The Council also assists food hubs to develop capital funds and conduct outreach to farmers. The Council has also aimed to increase new grocery stores in underserved areas, to increase access to healthy foods, lower food costs by facilitating access to funds and grants, and encourage local governments to speed approvals and permits. An additional aim has been to increase healthy food sold at current stores by assisting stores with access to funds and connecting them with technical assistance with sourcing, storage, store design, and marketing assistance.[176] In addition to recommending the continuation of the Council's funding, the Task Force recommends that the Legislature amend the Council's mission to include an explicit provision for a committee focused on the needs of the African American community.

Second, the Task Force recommends that the Legislature provide economic or other incentives to support the development of supermarkets in African American communities that lack adequate access.[177] These incentives may include tax breaks and grants to support non-profit grocery cooperatives.

Third, to improve the development process for such stores, the Legislature should also facilitate the adoption of zoning laws to support the siting of supermarkets in underserved African American communities.[178] In conjunction with the above, the Task Force also recommends that the Legislature study the continuing impacts of restrictive zoning laws and the California Environmental Quality Act (CEQA) process on the development of new grocery outlets in underserved African American communities for the purpose of identifying and adopting additional measures needed to remove remaining barriers to siting grocery stores in these communities.

Fourth, in order to remedy the harms from abrupt disruptions in access to food, the Task Force recommends that the Legislature consider requiring advance notifications to the affected community, employees, and other stakeholders, prior to the closure of a grocery store in underserved or at-risk African American communities.[179] Such notice should be meaningful and adequate for the circumstances and include informing the California Department of Social Services and local entities of a planned closure, and should also include the identification of the three nearest grocery establishments that provide comparable service. The Legislature should also consider requiring county human services departments to provide grocery establishments that have announced a closure with information about public social services for which employees may be eligible.

Additionally, cities should be required to monitor grocery store closures to assess potential trends.[180]

Fifth, to the extent that regulations and contracting provisions are at fault for the lack of grocery stores in African American communities, the Task Force recommends that the Legislature prohibit covenants and lease provisions that prevent the operation of grocery stores in these communities.[181]

Finally, as discussed in Chapter 7, Racism in Environment and Infrastructure, African American communities often have fewer and worse public transit options.[182] In order to remedy this harm, the Task Force recommends that the Legislature tie a portion of funding for local governments to the planning and implementation of public transportation routes and schedules that maximize access to supermarkets in African American communities.[183]

Support and Expand Farmers Markets and Community Gardens

As discussed in Chapter 12, Mental and Physical Harm and Neglect, African Americans in Californian are more likely to live in areas without access to full-service grocery stores and areas in which residents have few or no convenient means of securing affordable, healthy foods like fresh fruits and vegetables.[184] In addition to increasing access to full-service grocery stores, increasing access to farmers markets and community gardens can help remedy the harms faced by African American communities. Thus, the Task Force recommends the following actions in order to increase access to farmers markets and community gardens offering organic and whole foods in African American communities, formerly redlined neighborhoods, and other neighborhoods that are home to African American families lacking adequate access.[185]

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Man gathering vegetables in community garden.

First, with regards to farmers markets, the Task Force recommends that the Legislature use requirements for zoning laws and land use policies to create and encourage localities to create new space for farmers markets in African American communities.[186] Additionally, the Task Force recommends the Legislature provide government subsidies or create public-private partnerships to develop new farmers markets in these areas, and provide financial support for the marketing of such markets to the community.[187] Moreover, given the transit issues discussed in Chapter 7, Racism in Environment and Infrastructure, and to ensure access to such markets, the Task Force recommends that the Legislature provide financial support for transportation to farmers markets and increase incentives for local transit agencies to ensure their routes include access to farmers markets from African American communities.[188] Finally, given the economic hardships discussed in Chapter 13, The Wealth Gap, the Task Force recommends the Legislature continue to encourage and, where possible, require farmers markets to accept electronic benefits from food assistance programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and Supplemental Nutrition Assistance Program (SNAP).[189]

Second, given the potential of community gardens and urban farming to help remedy the food access issues described above and to help furnish fresh produce to African American communities, the Task Force recommends that the Legislature promote community gardens and urban gardens in these communities through zoning policy and grants or other financial support, in addition to encouraging local municipalities to change zoning policies to promote such spaces.[190]

Third, the Task Force recommends that the Legislature increase farm-to-school and farm-to-institution programs in African American communities, and develop government procurement processes that specifically support local African American farmers in regards to these programs.[191]

Enhance Healthy Food Retailing and Curtail the Proliferation of Unhealthy Food Retailing

As discussed in Chapter 12, Mental and Physical Harm and Neglect, African American communities have an overconcentration of liquor stores and tobacco stores, which are correlated with health problems for African Americans.[192] Moreover, African American communities are specifically targeted by marketing agencies for sugar-sweetened beverages. For example, Black children and teens see more than twice as many ads for certain sugar drinks than their white peers, and lower-income Black neighborhoods have disproportionately more sugary drink ads on billboards, bus benches, sidewalk signs, murals, and store window posters.[193] And sugar has had disproportionate negative consequences for African Americans, as it is linked to diabetes and hypertension.[194] To remedy these harms, the Task Force recommends proposals aimed at limiting certain stores in African American communities; encouraging more fresh produce and other health foods at existing stores; and encouraging the increase of other informal methods of healthy food delivery in these communities.

First, the Task Force recommends that the Legislature enact standards that will lead to local zoning restrictions limiting the number of liquor stores and tobacco shops per neighborhood in African American communities.[195] In conjunction with this, the Task Force recommends that the Legislature support or require the enactment of zoning laws that create buffer zones restricting liquor stores and tobacco shops around schools and recreation areas in these communities.[196]

Second, the Task Force recommends that the Legislature offer financial incentives (such as reduced taxes and fees) to encourage small store owners in African American communities to offer fresh produce and healthier foods.[197] In conjunction with this, the Task Force recommends that the Legislature incentivize restaurants in African American communities to reformulate menu items to provide healthier options.[198]

Third, in order to increase the availability of fresh produce and counter the prevalence of sugary beverages, the Task Force recommends that the Legislature enact legislation to facilitate the provision of permits and incentives to healthy mobile vending carts in African American communities.[199] To help to effectuate a healthy food environment, the Task Force also proposes that the Legislature require the California Healthy Food Financing Initiative Council to assess further opportunities for innovations and partnerships to increase access to affordable, nutritious food and to reduce the saturation of liquor stores and tobacco shops in African American communities. As part of this work, the Task Force recommends that the Legislature require the Council to support the development and ongoing work of local Food Policy Councils (which bring together stakeholders to assess how food systems operate at the local level and formulate recommendations for improvements) in formerly redlined communities and predominantly African American communities with limited access to affordable healthy food.[200]

Additionally, the Task Force recommends that the Legislature amend the Food and Agricultural Code to establish legislative findings and declarations regarding the importance of reasonable access to nutritious food for African American communities as a measure to support other efforts going forward. Finally, the Task Force recommends that the Legislature fund community education in African American communities regarding nutrition, health, and resources available to access affordable, nutritious food.

Bringing Nutrition and Economic Opportunity to Communities

As discussed in Chapter 12, Mental and Physical Harm and Neglect, African American communities suffer specific harms in relation to food injustice. Moreover, as discussed in Chapter 10, Stolen Labor and Hindered Opportunity, African Americans have suffered economic harms and been denied fair wages and labor opportunities. In order to address both these areas of harm, the Task Force recommends that the Legislature create and fund a program of grants, low-interest loans, and technical assistance (as needed) for trusted community-based organizations in historically African American communities, formerly redlined neighborhoods, or similar neighborhoods which are home to African Americans who lack adequate and equitable access to affordable, nutritious food options. These grants and low-interest loans would be used to support the creation and ongoing growth and stability of urban agriculture ventures, grocery stores and cooperatives, farmers markets, mobile food vendors, and related infrastructure needed to bring about food justice and stimulate pipelines for healthy, whole foods. While focused on increasing access to nutrition and improved health outcomes, this program of grants and low-interest loans would bring added economic development and employment opportunities and provide some measure of redress for the long history of discrimination against African American farmers and small business owners, especially those who are descendants of an individual enslaved in the United States, in communities that continue to suffer the consequences of redlining and other forms of discrimination.[201]

Endnotes

[1] Chapter 12, Mental and Physical Harm and Neglect.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*; *Advancing Black Health Equity*, California Health Care Foundation (as of May 15, 2023); see also Cummings, *Listening to Black Californians: How the Health Care System Undermines Their Pursuit of Good Health* (Oct. 4, 2022) California Health Care Foundation (as of May 15, 2023).

[5] See, e.g., Note, *Remedying the Health Implications of Structural Racism through Reparations* (2022) 90 Geo. Wash. L. Rev. 1018 (as of May 15, 2023); Richardson, et al., *Reparations for Black American Descendants of Persons Enslaved in the U.S. and Their Potential Impact on SARS-CoV-2 Transmission* (May 2021) Social Science and Medicine (as of May 15, 2023); Bassett and Galea, *Reparations as a Public Health Priority—A Strategy for Ending Black-White Health Disparities* (Nov. 26, 2020) 383 N. Engl. J. Med. 2101, 2102 (as of May 15, 2023); Bassett, *Reparations Will Save Black Lives* (Sept. 30, 2022) Harvard Public Health (as of May 15, 2023); Morgan and Reid, *On Answering the Call to Action for COVID-19: Continuing a Bold Legacy of Health Advocacy* (Jun. 5, 2020) 112(3) J. Nat'l Med. Assoc. 324 (as of May 15, 2023).

[6] Glenn, *Social Determinants of Health Are Important Contributors to Mortality Disparities in U.S., Study Finds* (Aug. 11, 2022) Johns Hopkins Medicine (as of Feb. 15, 2023).

[7] Artiga and Hinton, *Beyond Health Care: The Role of Social Determinants in Promoting Health and Health Equity* (May 10, 2018) Kaiser Family Foundation (as of Jan. 20, 2023).

[8] Bedayn, *Community Groups Renew Push for Health Equity and Racial Justice Fund*, Cal Matters (Feb. 9, 2022) (as of Jan. 20, 2023).

[9] The Legislature included the Health Equity and Racial Justice Fund in their version of the 2021-2022 state budget as a part of a larger public health package intended to reduce racial disparities. (Bedayn, *Community Groups, supra*.) However, Governor Newsom's final 2021-2022 budget left out this Fund. (*Ibid.*) The California Senate and Assembly proposed $75 million in ongoing annual funding for the Fund, but again Governor Newsom ultimately declined to include it in the 2022-2023 budget. (Evans, *Community Groups Criticize Newsom for Omitting Health Equity Funds*, Los Angeles Times (Jul. 7, 2022) (as of Apr. 11, 2023).)

[10] AB 1038 was introduced in the 2021-2022 Regular Session of the Legislature, but ultimately was not chaptered into law.

[11] *We Are All Public Health* (March 25, 2022) California Health Equity and Racial Justice Fund (as of Jan. 20, 2023); *Health Equity & Racial Justice Advocates Outraged at Lack of Funding for Communities to Address Disparities* (Jun. 28, 2022) Public Health Institute (as of Jan. 20, 2023).

[12] Bedayn, *Community Groups*, *supra*.

[13] *Advancing Black Health Equity*, California Health Care Foundation.

[14] See Finocchio et al., *California Health Care Almanac: Medi-Cal Facts and Figures: Essential Source of Coverage for Millions* (Aug. 18, 2021) California Health Care Foundation at p. 5 (as of Jan. 20, 2023).

[15] *Id.* at p. 54.

[16] See Ford and Michener, *Medicaid Reimbursement Rates are a Racial Justice Issue* (Jun. 16, 2022) The Commonwealth Fund (as of Jan. 20, 2023).

[17] See generally, Chapter 12, Mental and Physical Harm and Neglect.

[18] For a list of some of the bills passed by the California State Legislature in the 2021-2022 Session impacting access to health care for low-income Californians, see *Health Care Legislation Affecting Low-Income Consumers as of September 13, 2022*, Western Center on Law and Poverty (as of May 15, 2023).

[19] *Ibid.*

[20] California State Budget (2022-23) pp. 5–6 (as of May 22, 2023).

[21] *Ibid.*

[22] Sen. Conc. Res. No. 17 (2021-2022 Reg. Sess.) as chaptered Apr. 30, 2021. Relatedly, Senate Bill 17 was introduced in 2020, which would have declared racism a public health crisis and would have established the state's first Racial Equity Commission. The bill did not pass, but Governor Newsom established a Racial Equity Commission in September 2022 by executive order. (See Press Release, *Governor Newsom Strengthens State's Commitment to a California For All* (Sept. 13, 2022) Officer of Governor Gavin Newsom (as of May 15, 2023).)

[23] See Chapter 12, Mental and Physical Harm and Neglect; Thomas et al., *Health Disparities by Race and Ethnicity in California: Pattern of Inequity* (Oct. 2021) Cal. Health Care Foundation, p. 2 (as of Jan. 20, 2023); Smedley et al., *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* (2003) Institute of Medicine (as of Jan. 20, 2023).

[24] *Ibid.*

[25] Forde et al., *The Weathering Hypothesis as an Explanation for Racial Disparities in Health: A Systematic Review* (2013) 7 Sociology Compass 630, 630–643.

[26] Matthew, *Just Medicine: A Cure for Racial Inequality in American Health Care* (2018) pp. 155–158, citing evidence.

[27] *Id.* at p. 176.

[28] Bassett, *Reparations Will Save Black Lives*, *supra*.

[29] *Ibid.*

[30] *Ibid.*

[31] Rowen et al., *How to Improve Race, Ethnicity, and Language Data and Disparities Interventions* (Sept. 14, 2022) Health Affairs (as of Jan. 20, 2023); Vega Perez et al., *Improving Patient Race and Ethnicity Data Capture to Address Health Disparities* (Jan. 2022) Cureus Journal of Medical Science (as of Jan. 20, 2023);

Inventory of Resources for Standardized Demographic and Language Data Collection (March 2022) Centers for Medicare and Medicaid Services (as of Jan. 20, 2023); Haley et al., *Collection of Race and Ethnicity Data for Use by Health Plans to Advance Health Equity* (July 20, 2022) Urban Institute (as of Jan. 20, 2023); James et al., *Modernizing Race and Ethnicity Data in our Federal Health Programs* (Oct. 26, 2021) The Commonwealth Fund (as of Jan. 20, 2023); *Race, Ethnicity, and Language Data: Standardization for Health Care Quality Improvement*, Agency for Healthcare Research and Quality (as of Jan. 20, 2023).

[32] California Needs Standards for Demographic and Social Needs Data to Reduce Disparities and Advance Health Equity (as of Jan. 20, 2023) California Pan-Ethnic Health Network.

[33] Sen. Bill No. 1033 (2021-2022 Reg. Sess.).

[34] Cummings, *Listening to Black Californians: How the Health Care System Undermines Their Pursuit of Good Health* (Oct. 4, 2022) California Health Care Foundation (as of Jan. 20, 2023).

[35] *Ibid.*

[36] *Ibid.*

[37] *Ibid.*

[38] Cultural congruence is "mutual humility and respect between provider and client," which "gives a framework for the provider and client to be able to negotiate a treatment plan . . . ." (Notgarnie, *Cultural Congruence* (Jul. 31, 2007) RDH (as of Apr. 11, 2023).) "Culturally congruent practice . . . is in agreement with the preferred cultural values, beliefs, worldview, and practices of the healthcare consumer and other stakeholders." (Marion, et al., *Implementing the New ANA Standard 8: Culturally Congruent Practice* (Nov. 18, 2016) 22 Online Journal of Issues in Nursing 1 (as of Apr. 11, 2023).)

[39] Boyle, *Clinical Trials Seek to Fix Their Lack of Racial Mix* (Aug. 20, 2021) Association of American Medical Colleges (as of Feb. 9, 2023)..

[40] Huzar, *Only 43% of Clinical Trials Report Race and Ethnicity — What can be done?* (Apr. 21, 2022) Medical News Today (as of Feb. 9, 2023).

[41] Boyle, *Clinical Trials*, *supra*; see also Langreth & Campbell, *Alzheimer's Trials Exclude Black Patients at 'Astonishing' Rate* (Apr. 19, 2022) Bloomberg (as of Feb. 9, 2023) [noting that Stephanie Monroe, executive director of African Americans Against Alzheimer's stated: "Drugs will work differently in different populations."].

[42] Meadows-Fernandez, *Black Participants Are Sorely Absent from Medical Research* (Dec. 7, 2018) Leaps.org (as of Feb. 9, 2023).

[43] *Ibid.*

[44] Boyle, *Clinical Trials*, *supra*.

[45] *Ibid.*

[46] *Ibid*.

[47] *Ibid.*; see also Awidi & Al Hadidi, *Participation of Black Americans in Cancer Clinical Trials: Current Challenges and Proposed Solutions* (May 11, 2021) JCO Oncology Practice (as of Feb. 9, 2023) [noting that "[c]overing indirect expenses like time off from work, childcare, and transportation would theoretically improve access and participation in clinical trials especially for lower-income patients"].

[48] Boyle, *Clinical Trial*, *supra*.

[49] Huzar, *Only 43% of Clinical Trials Report Race and Ethnicity*, *supra*.

[50] *Ibid.*

[51] Boyle, *Clinical Trials*, *supra*.

[52] *Ibid.*

[53] Awidi & Al Hadidi, *Participation of Black Americans in Cancer Clinical Trials*, *supra*.

[54] Chapter 12, Mental and Physical Harm and Neglect.

[55] *Ibid.*; Owens & Fett, *Black Maternal and Infant Health: Historical Legacies of Slavery* (2019) 109 Am. J. of Pub. Health 1342; see also Butler, *California Black Health Network Perspectives: The State of Black Maternal Health in California* (Nov. 2021) California Black Health Network, pp. 4-5 (as of Jan. 20, 2023).

[56] Maternal, Child and Adolescent Health Division, *California Pregnancy Mortality Surveillance System: California Pregnancy-Related Deaths, 2008-2016* (2021) Cal. Dep't of Pub. Health, p. 7 (as of Jan. 20, 2023).

[57] Chapter 12, Mental and Physical Harm and Neglect.

[58] *Ibid.*; Sakala et al., *Listening to Mothers in California: A Population-Based Survey of Women's Childbearing Experiences* (Sept. 2018) National Partnership for Women & Families, pp. 64, 66 (as of Jan. 20, 2023).

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[62] Chapter 12, Mental and Physical Harm and Neglect.

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[64] Safon et al., *Doula Care Saves Lives, Improves Equity, And Empowers Mothers. State Medicaid Programs Should Pay For It* (May 26, 2032) Health Affairs (as of Apr. 30, 2023).

[65] Chen, *Routes to Success for Medicaid Coverage of Doula Care* (Dec. 11, 2018) California Preterm Birth Initiative, University of California, San Francisco & National Health Law Program, pp. 10, 11, 12, 18, 19 (as of Jan. 20, 2023).

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also would have required DHCS to provide a number of doula supports.

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[79] *Id.* at 158; Robinson-Lane, *Culturally Responsive Pain Management for Black Older Adults* (Mar. 7, 2017) Journal of Gerontology Nurs. pp. 1-8 (as of Mar. 17, 2023).

[80] Horstman et al., *What an Ideal Health Care System Might Look Like: Perspectives from Older Black and Latinx Adults* (Jul. 2022) The Commonwealth Fund (as of Mar. 16, 2023).

[81] Scommegna and Mather, *Key Factors*, *supra*, at p. 5.

[82] *Black and Aging in America* (2021) National Caucus and Center on Black Aging, p. 17 (as of Mar. 16, 2023).

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[84] *Ibid.*

[85] Aaron et al., *Disparities and Racism Experienced Among Older African Americans*, *supra*, at p. 159.

[86] *Ibid.*

[87] *Ibid.*

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[91] *Id.* at p. 160.

[92] *Id.* at p. 161.

[93] *Ibid.*

[94] Scommegna and Mather, *Key Factors*, *supra*, at p. 10.

[95] Black and Aging in America, *supra*, at pp. 7-8.

[96] *Ibid.*

[97] Noel-Miller, *COVID-19: Many Older Blacks and Hispanics with Medicare More Likely to Face Out-of-Pocket Hospital Bill* (May 18, 2020) AARP (as of Mar. 16, 2023)

[98] Scommegna and Mather, *Key Factors*, *supra*, at p. 10.

[99] Horstman et al., *What an Ideal Health Care System Might Look Like*, *supra*.

[100] Black and Aging in America, *supra*, at pp. 7-8.

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[109] Black and Aging in America, *supra*, at p. 20.

[110] Jones, *Black Older Adults Are Being Left Behind*, *supra*.

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[112] Kim, *UCSF School of Dentistry to Offer Free Dental Care for Children* (Feb. 17, 2012) University of California San Francisco (as of Jan. 27, 2023).

[113] *Ibid.*

[114] National Institute of Dental and Craniofacial Research, *Oral Health in America: Advances and Challenges* (2021) U.S. Department of Health and Human Services, National Institutes of Health, at p. 1-11 (as of Jan. 27, 2023).

[115] *Id.* at pp. 1-11-1-12.

[116] *Id.* at p. 1-15.

[117] *Ibid.*

[118] Horace, *5 Barriers*, *supra* [citing studies].

[119] Akintobi, et al., *Assessing the Oral Health Needs of African American Men in Low-Income, Urban Communities* (2018) 12(2) Am. J. Men's Health 326, 335 (as of Jan. 27, 2023).

[120] Kohli, et al., *Barriers and Facilitators of Dental Care in African-American Seniors: A Qualitative Study of Consumers' Perspective* (Mar. 18, 2020) 11(1) J. Adv. Oral. Res. 23-33 (as of Jan. 27, 2023).

[121] *Ibid.*

[122] School Sealant Programs, Oral Health, Centers for Disease Control and Prevention (as of Jan. 27, 2023).

[123] *Ibid.*

[124] *Ibid.*

[125] *Ibid.*

[126] As explained elsewhere in this chapter, University of California's Programs in Medical Education, or UC PRIME, is a formal, innovative training program at University of California medical schools that is focused on training medical professionals to meet the needs of underserved populations in rural and urban California. (Programs in Medical Education (PRIME), UC Health, University of California Office of the President.)

[127] This could include, for example, mobile dental clinics like the Community Mobile Dental Clinics at Herman Ostrow School of Dentistry at the University of Southern California. (Mobile Dental Clinics, Herman Ostrow School of Dentistry at University of Southern California (as of Jan. 27, 2023).)

[128] Obermeyer et al., *Dissecting Racial Bias in an Algorithm Used to Manage the Health of Populations* (Oct. 25, 2019) 336 Science 447 (as of Feb. 6, 2023); Gawronski, *Racial Bias Found in Widely Used Health Care Algorithm*, NBC News (Nov. 6, 2019) (as of Feb. 8, 2023).

[129] Obermeyer, *Dissecting Racial Bias*, *supra*.

[130] *Ibid.*

[131] Grant, *Algorithms Are Making Decisions About Health Care, Which May Only Worsen Medical Racism* (Oct. 3, 2022) ACLU (as of Feb. 6, 2023).

[132] Gawronski, *Racial Bias Found*, *supra*.

[133] Grant, *ACLU White Paper: AI in Health Care May Worsen Medical Racism* (as of Feb. 8, 2023) ACLU, pp. 1-2.

[134] Christensen et al., *Medical Algorithms Are Failing Communities of Color* (Sept. 9, 2021) Health Affairs (as of Feb. 8, 2023); Waddell, *Medical Algorithms Have a Race Problem* (Sept. 18, 2020) Consumer Reports (as of Feb. 8, 2023).

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[136] Grant, *ACLU White Paper*, *supra*, at p. 5.

[137] Gawronski, *Racial Bias Found*, *supra*.

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[139] *Id.* at p. 9.

[140] *Ibid.*

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[142] See generally Chapter 12, Mental and Physical Harm and Neglect.

[143] See, e.g., Largent, *Public Health, Racism, and the Lasting Impact of Hospital Segregation* (2018) 133 Pub. Health Reps. 715, 715 (as of May 18, 2023); U.S. Dept. of Health, Education and Welfare, Hill-Burton Progress Report (1972) p. 72.

[144] McFarling, *'It was Stolen from Me': Black Doctors are Forced Out of Training Programs at Far Higher Rates than White Residents* (June 20, 2022) STAT (as of Mar. 15, 2023).

[145] Grubbs, *Perspective: Racism in Academic Medicine Is Hindering Progress Toward Health Equity* (Feb. 17, 2023) Cal. Health Care Foundation (as of Mar. 15, 2023).

[146] Compare Cal. Health Care Foundation, *California Physicians* (Mar. 2021) (as of Nov. 28, 2022) with U.S. Census Bureau, *Race* (2020) (as of Nov. 28, 2022).

[147] See Cummings, *Listening to Black Californians: How the Health Care System Undermines Their Pursuit of Good Health* (Oct. 4, 2022) Cal. Health Care Foundation (as of May 19, 2023).

[148] See University of Cal., Office of the President, *UC Programs in Medical Education* (UC PRIME) (as of Nov. 28, 2022).

[149] Such support is especially crucial given the racial discrimination experienced by African American physicians, which compounds the tremendous stress borne by physicians generally, especially during the COVID-19 pandemic. (See American Medical Assn., *Summary Report: Experiences of Racially and Ethnically Minoritized and Marginalized Physicians in the U.S. During the COVID-19 Pandemic* (2021) (as of Feb. 10, 2023); Serafini et al., *Racism as Experienced by Physicians of Color in the Health Care Setting* (2020) 52 Family Medicine 282, 282-287; see also Berg, *Half of Health Workers Report Burnout Amid COVID-19* (Jul. 20, 2021) American Medical Assn. (as of Feb. 10, 2023) [noting that African American healthcare workers, generally, experienced especially high stress levels during the pandemic].)

[150] See generally Johnson et al., *University of California Programs in Medical Education* (Sept. 2022) Mathematica (as of May 18, 2023).

[151] Pfeffinger et al., *Recovery with Limited Progress: Impact of California Proposition 209 on Racial/Ethnic Diversity of California Medical School Matriculants, 1990 to 2019* (Dec. 2020) Healthforce Center at UCSF, pp. 9-10 (see also figures 6 and 7, which chart the change in African American medical students each year, including when UC PRIME programs were created) (as of Nov. 14, 2022).

[152] See Huerto, *Minority Patients Benefit From Having Minority Doctors, But That's a Hard Match to Make* (Mar. 31, 2020) Univ. of Mich. Health Lab (as of Nov. 28, 2022); Williams et al., *Racism and Health: Evidence and Needed Research* (2019) 40 Annual Rev. of Pub. Health 105 (as of Mar. 16, 2022).

[153] See Chapter 12, Mental and Physical Harm and Neglect.

[154] Such support is especially crucial given the burdens of racial discrimination borne by African American mental health professionals, which contributes to burnout and the lack of African American mental health providers for the African American community, more

generally. (See Shell et al., *Investigating Race-related Stress, Burnout, and Secondary Traumatic Stress for Black Mental Health Therapists* (2021) 47 J. of Black Psych. 669, 669 (as of May 18, 2023).)

[155] Cal. Future Health Workforce Commission, *Meeting the Demand for Health* (Feb. 2019) p. 30 (as of May 18, 2023).

[156] See generally Johnson et al., *University of California Programs*, *supra*.

[157] See, e.g., Welfare and Institutions Code § 5822; Cal Stat. 2021, ch. 440; Cuevas, *AB 462 – Assemblywoman Wendy Carrillo's Bill to Expand the Pipeline of Mental Health Professionals – Reaches Governor Newsom's Desk* (Sept. 7, 2021) Wendy Carrillo, Assemblywoman, District 52 (as of Nov. 29, 2022); Cal. Health Care Foundation, *New University of California Program Will Double Pipeline of Specialized Mental Health Providers in Response to Growing Crisis* (Jan. 29, 2020) (as of Nov. 29, 2022).

[158] See generally Taylor et al., *Improving and Expanding Programs to Support a Diverse Health Care Workforce* (May 2022) Urban Institute (as of Nov. 28, 2022).

[159] See generally See Chapter 12, Mental and Physical Harm and Neglect, at pp. 406-436.

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[161] *Ibid.*

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[164] See Cal. Future Health Workforce Commission, *supra*, at pp. 7-8.

[165] Taylor et al., *Improving and Expanding Program*, *supra*, at pp. 54-55.

[166] Rogers et al., *Demographics of Disciplinary Action by the Medical Board of California (2003-2013)* (2017) Cal. State Library, pp. 12-15 (as of Nov. 14, 2022).

[167] Medical Bd. of Cal., *Committees, Panels, and Task Forces* (as of Nov. 29, 2022).

[168] See, e.g., United States Department of Agriculture Economic Research Service, *Key Statistics & Graphics* (as of Jan. 19, 2023); Healthy People 2030, *Food Insecurity*, U.S. Dep't of Health and Human Services (as of Jan. 19, 2023).

[169] See Chapter 12, Mental and Physical Harm and Neglect, at pp. 433, 435; see also, e.g., LaVeist & Wallace, Jr., *Health Risk and Inequitable Distribution of Liquor Stores in African American Neighborhoods* (2000) 51 Social Science & Medicine 613; Bower et al., *The Intersection of Neighborhood Racial Segregation, Poverty, and Urbanicity and its Impact on Food Store Availability in the United States* (Jan. 2014) 58 Preventative Medicine, pp. 33-39 (as of May 19, 2023); Cooksey-Stowers et al., *Racial Differences in Perceived Food Swamp and Food Desert Exposure and Disparities in Self-Reported Dietary Habits* (Oct. 2020) 17 Internat. J. Environmental Research Public Health 19, p. 7143 (as of May 19, 2023); Morland et al., *Neighborhood Characteristics Associated with the Location of Food Stores and Food Service Places* (Jan. 2002) 22 American J. of Preventive Medicine 1, pp. 23-29 (as of May 19, 2023); Annie E. Casey Foundation, *Food Deserts in the United States* (Feb. 13, 2021) (as of May 19, 2023); Cal. Dept. of Food and Agriculture, *Improving Food Access in California: Report to the California Legislature*, p. 6 (2012) (as of May 19, 2023).

[170] Subica et al., *The Geography of Crime and Violence Surrounding Tobacco Shops, Medical Marijuana Dispensaries, and Off-sale Alcohol Outlets in a Large, Urban Low Income Community of Color* (2018) 108 Preventative Medicine 8, p. 8-15 (as of May 19, 2023).

[171] See, e.g., Cooksey-Stowers et al., *Racial Differences*, *supra*, at p. 7143; Univ. of Conn. Rudd Center on Food Policy and Health, *Food Security* (as of Jan. 16, 2023); Choucair, *Healthy New Food Carts: One Step Closer to Eliminating Food Deserts* (2014) Chicago Medical Society (as of Jan. 19, 2023); Gundersen & Ziliak, *Food Insecurity and Health Outcomes* (Nov. 2015) 34 Health Affairs 11 (as of May 19, 2023); American Diabetes Assn., *Food Insecurity and Diabetes* (as of Jan. 16, 2023); American Diabetes Assn., *The Burden of Diabetes in California* (Oct. 2021) (as of Jan. 16, 2023); Subica et al., *The Geography of Crime and Violence*, *supra*, at p. 15..

[172] See, e.g., Mukherjee, *Redlining's Legacy: Food Deserts, Insecurity, and Health* (Sept. 28, 2020) Morning Sign Out at UCI (as of May 19, 2023); Eisenhauer, *In Poor Health: Supermarket Redlining and Urban Nutrition* (2001) 53 GeoJournal 125, pp. 125-133 (as of May 19, 2023).

[173] See Chapter 12, Mental and Physical Harm and Neglect, at pp. 433, 435; see also Dutko et al., *Characteristics and Influential Factors of Food Deserts* (2012) U.S. Dept. of Agriculture, pp. 3, 11 (as of Mar. 23, 2023); Mitchell, *Liquor Stores, Dispensaries and Smoke Shops: Our Neighborhood is Killing Us* (Dec. 8, 2020) KCET (as of Mar. 23, 2023).

[174] Morland et al., *Neighborhood Characteristics Associated with the Location of Food Stores and Food Service Places* (Jan. 2002) 22(1) American Journal of Preventive Medicine, p. 23-29 (as of May 19, 2023).

[175] Assem. Bill No. 581 (2011-2012 Reg. Sess.); California State Treasurer, *California Healthy Food Financing Initiative Council* (as of May 19, 2023).

[176] Assem. Bill No. 2635 (2016-2017 Reg. Sess.).

[177] Harvard Univ. T.H. Chan School of Public Health, *Improving Food in the Neighborhood* (as of May 19, 2023) [citing experts' recommendations].

[178] *Ibid.*

[179] See, e.g., Assem. Bill No. 889 (2021-2022 Reg. Sess.).

[180] See, e.g., Assem. Bill No. 889 (2021-2022 Reg. Sess.).

[181] Food Empowerment Project, *Shame on Safeway and Albertsons: Blocking Access to Healthy Food* (as of Jan. 24, 2023).

[182] California Task Force to Study and Develop Reparation Proposals for African Americans (Dec. 7, 2021), Testimony of Bruce Appleyard, https://oag.ca.gov/system/files/media/task-force-materials-p3-120721-120821.pdf (as of Mar. 23, 2023); Austin, *To Move is to Thrive: Public Transit and Economic Opportunity for People of Color* (Nov. 15, 2017) Demos (as of Mar. 23, 2023).

[183] See Improving Food in the Neighborhood, *supra* [citing experts' recommendations].

[184] See, e.g., Dutko et al., *Characteristics and Influential Factors of Food Deserts*, *supra*, at pp. 3, 11.

[185] See *Improving Food in the Neighborhood*, *supra* [citing experts' recommendations].

[186] *Ibid.*

[187] *Ibid.*

[188] *Ibid.*

[189] *Ibid.*

[190] *Ibid.*

[191] *Ibid.*

[192] LaVeist & Wallace, Jr., *Health Risk and Inequitable Distribution of Liquor Stores in African American Neighborhoods* (Aug. 15, 2000) 51 Social Science & Medicine 613; DiSantis et al., *Sensitizing Black Adult and Youth Consumers to Targeted Food Marketing Tactics in their Environments* (Nov. 2017) 14 International J. of Environmental Research and Pub. Health 1316 (as of May 19, 2023).

[193] Fleming-Milici et al., *Examples of Social Media Campaigns Targeted to Teens and Hispanic and Black Youth* (2020) Univ. of Conn. Rudd Center for Food Policy & Obesity (as of Mar. 23, 2023); Lucan et al., *Unhealthful Food-and-Beverage Advertising in Subway Stations: Targeted Marketing, Vulnerable Groups, Dietary Intake, and Poor Health* (2017) 94 J. Urban Health 220 (as of May 19, 2023).

[194] Lucan et al., *Unhealthful Food-and-Beverage Advertising*, *supra*, at p. 220.

[195] *Ibid.*

[196] *Ibid.*

[197] *Ibid.*

[198] *Ibid.* For examples of incentives and supports that encourage small retailers to offer healthier options such as fresh produce, see Laurison, *Incentives for Change: Rewarding Healthy Improvements to Small Food Stores* (2014) ChangeLab Solutions (as of May 19, 2023).

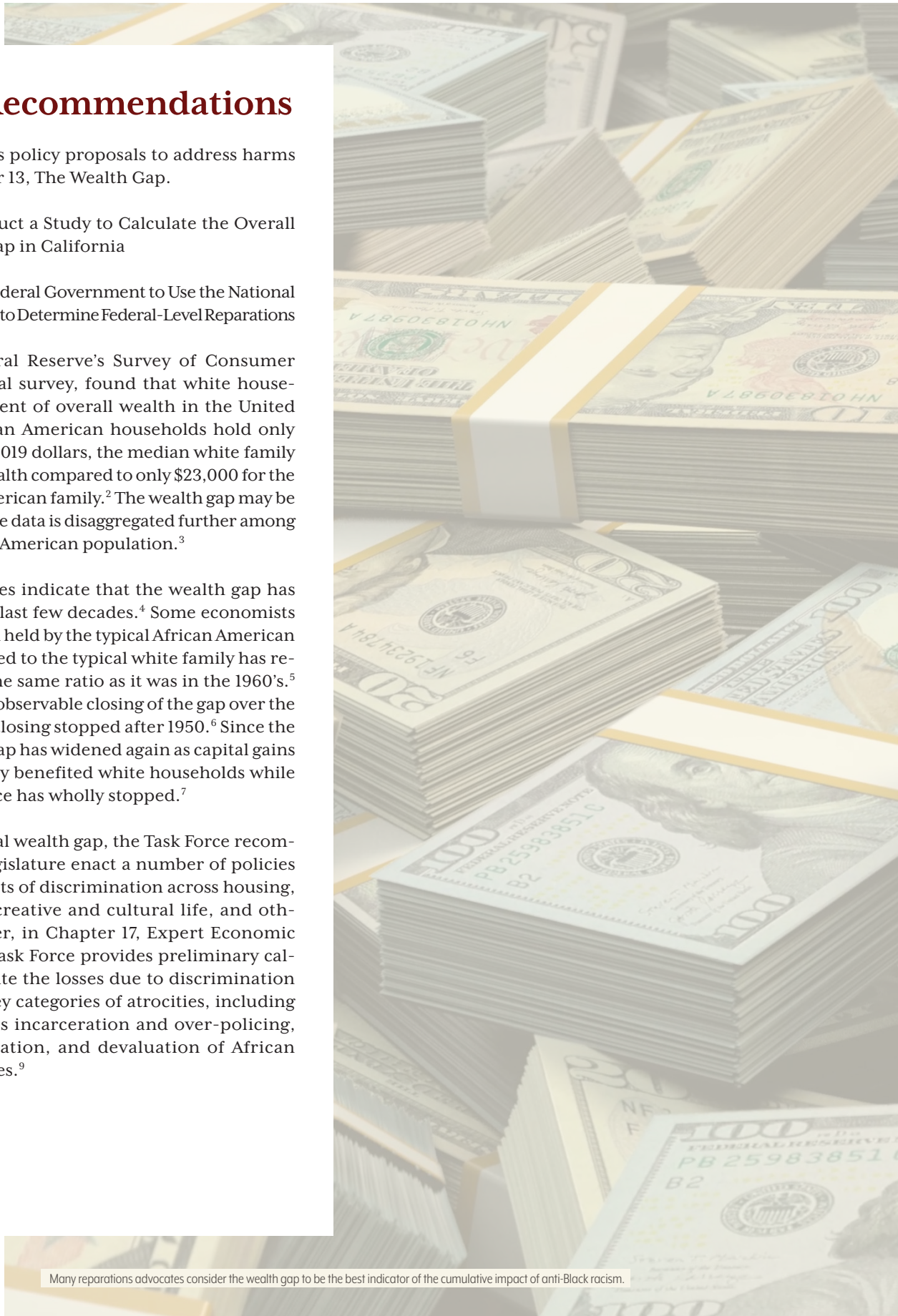
[199] See *Improving Food in the Neighborhood*, *supra* [citing experts' recommendations].

[200] E.g., Food Policy Networks, *About Us* (as of Jan. 19, 2023).

[201] See, e.g., Aminetzah et al., *Black Farmers in the US: The Opportunity for Addressing Racial Disparities in Farming* (Nov. 10, 2021) McKinsey & Co. (as of May 19, 2023).

CHAPTER 30 — POLICIES ADDRESSING The Wealth Gap

COURTESY OF MIRZA KADIC VIA GETTY IMAGES



I. Policy Recommendations

This chapter details policy proposals to address harms set forth in Chapter 13, The Wealth Gap.

- Fund and Conduct a Study to Calculate the Overall Racial Wealth Gap in California
- Encourage the Federal Government to Use the National Racial Wealth Gap to Determine Federal-Level Reparations

In 2019, the Federal Reserve's Survey of Consumer Finances, a national survey, found that white households hold 87 percent of overall wealth in the United States, while African American households hold only three percent.[1] In 2019 dollars, the median white family held $184,000 in wealth compared to only $23,000 for the median African American family.[2] The wealth gap may be even starker once the data is disaggregated further among the general African American population.[3]

In fact, some figures indicate that the wealth gap has worsened over the last few decades.[4] Some economists note that the wealth held by the typical African American household compared to the typical white family has remained at nearly the same ratio as it was in the 1960's.[5] While there was an observable closing of the gap over the last 150 years, that closing stopped after 1950.[6] Since the 1980's, the wealth gap has widened again as capital gains have predominantly benefited white households while income convergence has wholly stopped.[7]

To address the racial wealth gap, the Task Force recommends that the Legislature enact a number of policies to address the effects of discrimination across housing, education, labor, creative and cultural life, and other areas.[8] Moreover, in Chapter 17, Expert Economic Calculations, the Task Force provides preliminary calculations to estimate the losses due to discrimination based on several key categories of atrocities, including health harms, mass incarceration and over-policing, housing discrimination, and devaluation of African American businesses.[9]

Many reparations advocates consider the wealth gap to be the best indicator of the cumulative impact of anti-Black racism.

In providing the preliminary estimates of losses in Chapter 17, the Task Force focused on particular areas appropriate to fulfill the statutory mandate of AB 3121 and enable a more detailed and comprehensive response to the particular harms experienced by African Americans in California.[10] However, further analysis of the overall racial wealth gap would give the Legislature further information to consider in its ultimate calculation of reparations, and enable data-driven analysis of whether remedial measures are effectively redressing that gap. Therefore, the Task Force recommends that the Legislature fund and construct an economic study to calculate the overall racial wealth gap in California.

A true accounting [of the racial wealth gap] must consider discrimination in lending, employment, property, commercial practices, and policies restricting African American individuals, communities, and enterprises.

Many reparations advocates consider the wealth gap to be the best indicator of the cumulative impact of anti-Black racism, from enslavement through legal segregation to contemporary discrimination and disparities.[11] The racial wealth gap represents the total cost of the injuries to African Americans and benefits to white Americans caused by this nation's longstanding policies of discrimination.[12] As such, the wealth gap serves as one of the most direct means of accounting for the value owed as African American reparations.[13] But as of the date of this report's publication, no study or report has provided a definitive figure calculating the overall racial wealth gap in California.[14]

To measure the full extent of the racial wealth gap, a calculation must consider more than gaps in racial income. A true accounting must consider discrimination in lending, employment, property, commercial practices, and policies restricting African American individuals, communities, and enterprises. Such analysis must also include how those practices and policies in those same areas simultaneously privileged white individuals, communities, and enterprises. Some of the key data that might be used to calculate the effects of this discrimination and to determine the overall racial wealth gap, include "racial differences in home equity, financial assets, and income, all of which are necessary for economic security and facilitate the accumulation of wealth over time."[15] Such a calculation must also consider differences in the amounts and types of household debt held.

Further, the Task Force recommends that the State of California encourage the use of the national racial wealth gap in the determination of the federal-level reparations urged by the Task Force.[16] Due to the scale of federal recommendations, the racial wealth gap would be a more appropriate measurement of harms due to discrimination at the federal level.[17]

Endnotes

[1] Aladangady and Forde, Wealth Inequality and the Racial Wealth Gap (Oct. 22, 2021) Bd. of Governors of the Federal Reserve System (as of May 19, 2023).

[2] Kent and Ricketts, Wealth Gaps between White, Black, and Hispanic Families in 2019 (Jan. 5, 2021) Federal Reserve Bank of St. Louis (as of May 19, 2023).

[3] It should be noted that while the median is a useful measure for calculating typical differences in wealth between African Americans and white Americans, it leaves out significant outlier values, which would represent African Americans impacted by significant economic disparities, and white Americans who benefit from economic advantage. Therefore, the mean, or average, is the most appropriate measure for calculating the sum required to eliminate the racial wealth gap. However, because the Federal Reserve data cited is based on median data, this report relies on that data to illustrate the problem. (See *ibid.*)

[4] See Derenoncourt et al., Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860-2020 (June 2022) Opportunity & Inclusive Growth Institute, pp. 1-3 (as of May 19, 2023).

[5] Long and Van Dam, *The Black-White Economic Divide is as Wide as It was in 1968*, Wash. Post (June 4, 2020) (as of May 19, 2023).

[6] Wealth of Two Nations: The U.S. Racial Wealth Gap, *supra*, at pp. 2-3.

[7] *Id.* at p. 3.

[8] Chapters 18-29.

[9] Chapter 17, Expert Economic Calculations.

[10] See generally, *ibid.*

[11] See, e.g., Darity and Mullen, From Here to Equality: Reparations For Black Americans In The Twenty-First Century (2020), pp. 31, 263-264.

[12] See *id.* at pp. 31, 47.

[13] *Id.* at pp. 31, 263-264.

[14] We know what the racial *income* gap is in California, which itself is concerning and an indicator that the wealth gap in California is significant. African American families in California earn $0.60 for every dollar that white families earn. (Thorman et al., *Income Inequality in California* (March 2023) Pub. Policy Institute of Cal. (as of May 19, 2023).) Moreover, the geographic disparities of wealth in the state show that 20 percent of all net worth is concentrated in the 30 wealthiest zip codes, home to just 2 percent of Californians. (*Ibid.*)

[15] Harris and Wertz, Racial Differences in Economic Security: The Racial Wealth Gap (September 15, 2022) U.S. Dept. of Treasury (as of May 19, 2023).

[16] See Chapter 18, Introduction and General Structural Recommendations.

[17] See From Here to Equality, *supra*, at pp. 31, 263-264.

PART VI

MEASURING THE BASELINE FOR RACIAL JUSTICE IMPLEMENTATION

CHAPTER 31 California Prosecutorial & Judicial Race Data Survey

COURTESY OF ISTOCK/GETTY IMAGES PLUS

I. Executive Summary

Assembly Bill No. 2542, the California Racial Justice Act of 2020 (Act or RJA), codified in Section 745 of the state's Penal Code, prohibits the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity, or national origin.[1] The Act allows an accused person to seek dismissal of pending charges, or vacatur of a conviction or sentence, through a claim alleging that a charge, conviction, or sentence was tainted by racial bias. The Act originally applied prospectively to cases in which judgment had not been entered prior to January 1, 2021. However, AB 256, the Racial Justice Act for All, enacted in 2022, extended the Act's protections to apply retroactively to most cases in which judgment was entered before January 1, 2021.[2]

The Racial Justice Act offers different pathways to demonstrating a violation. Some involve showing overt bias or animus, such as use of discriminatory language by a courtroom actor. Others allow for claims that arise from implicit bias. A central purpose of the Act was to respond to *McCleskey v. Kemp* (1987) 481 U.S. 279, in which a slim majority of the U.S. Supreme Court accepted racial disparities as "an inevitable part of our criminal justice system" and held that these disparities generally do not violate the Constitution in the absence of proof of discriminatory intent.[3] With the Racial Justice Act, California rejected the acceptance of racial disparities and sought to begin the process of reforming our unjust legal system. Under the Act, the law is violated when an accused person has been charged with or convicted of a more serious offense than similarly situated persons of other races, ethnicities, or national origins who commit similar offenses, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the accused person's race, ethnicity, or national origin. The Act similarly forbids sentencing disparities arising from race, ethnicity, or nationality, including that of victims.

Racial Justice Act violations can occur at a number of different decision points, including the decision regarding which charges to bring, the convictions obtained, and in sentencing. Where claims of violations involve comparisons to the treatment of others, information about an accused individual's race, the race of the complainant or victim, and information about race, decisions, and

Filling out a survey online

outcomes in comparable cases can be critical to establishing a prima facie case that a violation has occurred. A lack of data on race in comparable cases can severely limit the ability of an accused or convicted person to support claims of racial bias. The same is true when agencies do not track or share data on key decisions made by the prosecutor, judge, or jury in comparable cases. This lack of critical information impedes implementation and diminishes the efficacy of the Racial Justice Act. Without access to data, the promise of the Act has the potential to ring hollow for many. Gauging the availability of RJA-relevant data is thus critical to understanding the landscape for potential claims that may be raised under the Act.

In order to assess the state of RJA-relevant data collection practices, the AB 3121 Reparations Task Force requested that the California Department of Justice Research Center (DOJRC) survey all 58 California Superior Courts and District Attorney offices, as well as a select group of 11 of the largest City Attorney offices regarding what data elements their agencies regularly collect when dealing with criminal cases. The 126 responding criminal justice agencies and courts completed an online questionnaire pertaining to data collected and maintained by their agency, with a focus on what racial data the agencies hold as well as data on factors that may involve prosecutorial or judicial discretion. This report describes and summarizes the findings. Notably, the DOJRC conducted the survey prior to the retroactive application of the Act and prior to implementation of Assembly Bill No. 2418 (AB 2418), the Justice Data Accountability and Transparency Act.[4] The latter statute sought to mandate that agencies collect and transmit specified data, including data on the race of accused persons and victims, to the Department of Justice. These data collection and transmission requirements were set to commence in 2027. However, AB 2418 conditioned the operation of its provisions upon an adequate appropriation by the Legislature. As of the time of this Report's issuance, there has not been an appropriation to this effect. As set forth in Chapter 28, the Task Force's recommendations to the Legislature include full funding of AB 2418 and any further data collection, extraction, analysis, and dissemination that is needed for the Racial Justice Act to be implemented and applied without limitation. An unfunded or otherwise unfulfilled mandate will gravely undermine the law and risk the persistence of unacceptable racial bias in the criminal legal system.

Overall, in the absence of requirements like those set forth in AB 2418, there appears to be a large amount of discretion, and likewise variability, in what data elements are collected across California District Attorney (DA) offices, Superior Courts, and select City Attorney offices and between counties. This lack of consistency and absence of data on key variables could present substantial challenges to presenting and evaluating claims of racial discrimination in the criminal justice system, and could increase the difficulty of sustaining claims of Racial Justice Act violations in some California counties more than others.

Several key takeaways are highlighted below:

1. **Case Management Systems:** Whether an office uses an electronic case management system can impact the ease with which records are extracted for evaluation. Almost all responding agencies (122 of 126; 97%) reported using a case management system (CMS) operated by a software program (119; 98%) with information retrievable via electronic query (114; 95%). Most Superior Courts (51; 88%), DA offices (37; 67%), and City Attorney offices (7; 78%) reported that their CMS began recording pertinent information during or before 2015. However, as noted below, a number of responding agencies reported that several key data points are recorded in case or court files, but not stored in the agency's CMS.

2. **Demographics of Accused Individual:** If an office does not collect data on the race of accused individuals, then the lack of this data may severely limit the presentment and evaluation of claims and mask potential racial disparities. According to responding agencies, information related to the race of accused individuals is recorded in 97% of California counties (by Superior Courts [45; 78%], DA offices [46; 81%], or both). Neither Glenn nor Sacramento County Agencies reported collecting data on the race of accused individuals, which could present especially heightened challenges for Racial Justice Act violation claims in these counties. The accused individual's gender/sex is recorded by 98% of California counties, date of birth is recorded by 97% of California counties, and residence zip code is recorded by 93% of California counties.

3. **Demographics of Victim:** The race of the complainant or victim is an important variable when investigating claims that charges, sentences, or convictions were influenced not only by the accused individual's race, but

also by the victim's race or the interplay between the two. Victim race data is collected by responding agencies in 74% of California counties (48). Victim demographic data, when collected, was largely collected by District Attorney offices, with 75% or more of responding DA offices reporting the collection of victim race, gender, age, and residential zip code, compared to 16% or fewer of responding Superior Courts.

4. **Arrests and Judicial Matters Data:** The decision to prosecute, charging decisions, and release decisions may be influenced by the law enforcement charges (i.e., the charges specified by the law enforcement agency referring the accused individual) as well as the accused individual's prior criminal record. Agencies from 95% of California counties record law enforcement charges. For arrests, a vast majority of responding agencies record the date of arrest (88%), the arresting agency numbers (85%), and the law enforcement agency charges (80%). For matters, all agencies record the accused individual's name (100%) and nearly all record the corresponding court case number (98%). Over half of responding agencies (>50%) record prior criminal information (i.e., charges, convictions, and matters).

5. **Release on Own Recognizance, Bail, and Custody Data:** In order to determine whether there was racial bias in decisions to release an accused individual on their own recognizance, set bail, or hold someone without bail, data related to these decisions would need to be collected. Sixty-one percent (61%) of responding agencies record whether the court agreed to an own recognizance (OR) release and 72% reported recording whether the OR release was granted during the accused individual's arraignment or bail hearing. In total, there were six counties (10%) in which no agency reported collecting this data.

   Ninety-three percent (93%) of Superior Courts and 49% of District Attorney offices reported recording whether bail was set, denied, or OR release granted. If bail was set, 90% of Superior Courts and 53% of District Attorney offices recorded the amount imposed. Humboldt, Merced, and Placer County Superior Courts and 30% of District Attorney offices reported not recording any data on the bail-related information requested.

   Fifty-four (54) counties (93%) collect data on whether a person was held in custody pre-plea. Most Superior Courts reported whether the accused individual was in custody pre-trial (83%) and pre-plea (84%). In comparison, just over one-half (51%) of DA offices reported recording this information. About one-half of Superior Courts (52%) recorded whether or not detention orders were sought for the accused individual, compared to 25% of DA offices.

6. **Diversion Data:** Diversion programs allow some defendants to choose to complete treatment or education courses instead of serving jail time. Information on whether a diversion program was offered, when, and if it was accepted may be needed to investigate claims of racial bias in diversion program offers and sentencing more generally. Forty-one (41) California counties (71%) collect information on whether a diversion program was offered and 52 counties (90%) collect data on whether a diversion program was accepted.

   Approximately one-half of responding agencies reported collecting data on whether a diversion program was offered, driven by the large proportion of City Attorney offices that collect this information (82%). A greater percentage of Superior Courts reported recording diversion acceptance-related information than DA offices. The most frequently recorded information by Superior Courts included whether diversion was completed (97%), whether diversion included prison, jail, or probation (86%), and the plea entered (79%).

7. **Decision to Prosecute Data:** Decisions to prosecute are made by the District or City Attorney's Office. To substantiate claims of racial bias in prosecution decisions, information on and justifications for charging or declining to charge may be important. Ninety-one percent (91%) of DA offices recorded prosecutorial declination information pertaining to the charges, and 93% record the name of the person(s) who declined to prosecute. Thirty-two percent (32%) of DA offices reported not recording reasons related to declining to prosecute. For City Attorney offices, 82% recorded the charges and 91% recorded the name of the person who declined to prosecute.

   Sixty-four percent (64%) of responding City Attorney offices reported recording information on injuries to persons, financial losses, status of victim, and prior criminal history of the accused individual in decisions to

prosecute, and 55% reported collecting this data in considering the level or severity of charges to file. Twenty-five DA offices (44%) reported not collecting any of these variables in their case management system but noted that this information is available in case/file notes and police reports.

8. **Plea Offer Data:** A plea offer, a reduced charge or sentence, can be made to resolve a case rather than taking a case to trial or going to verdict. To investigate claims of racial bias in plea offers, data on whether a plea offer was made, by whom, if there was a counteroffer, what the offer was, or if it was accepted may be crucial. Over 55% of DA offices reported recording most of the information related to plea offers extended, though just under one-half reported recording whether a plea offer was made by the court (47%) and whether there was a counteroffer (44%). Fewer Superior Courts reported recording this information compared to District Attorney Offices. Several DA offices stated that this information is available in case/file notes, not in the CMS. Several Superior Courts reported that this information is contained in court minutes or a plea form (not in the CMS).

   Nearly all (98%) Superior Courts reported recording information about plea offers accepted by accused individuals and the sentence in exchange for the plea offer. In comparison, 82% of DA offices recorded each count related to the plea offer and 75% recorded the sentence in exchange.

9. **Prosecution Outcome Data:** All Superior Courts reported recording this information for five of the options listed. A smaller percentage of Superior Courts reported recording information related to collateral consequences (88%), imposition (83%), and dismissal (79%) of special circumstances, and imposition (86%) and dismissal (91%) of enhancements.

Responses to the DOJRC's survey are set forth in further detail in the pages that follow. While the survey illuminated a range of data collection practices and variations across the state, as with any survey, it is important to note the limits of the survey and the conclusions that can be drawn from responses. DOJRC's distillation of questionnaire responses relies on self-reporting by the surveyed offices and courts. Importantly, the survey methods and results also do not differentiate between data collected by CMS, through hard copy, or by other means, nor do they speak to issues such as the completeness or accuracy of the data collected across offices. The survey has been an important first step in assessing the state's readiness to implement the Racial Justice Act, but additional research will be needed for deeper analysis.

Questions that remain unanswered by the DOJRC's survey will be critical to assess going forward. Where RJA-relevant data is not recorded at all or is collected but without adequate attention to consistency, completeness, and accuracy, claims of racial disparities will be more difficult to raise and to evaluate. Concerns about Racial Justice Act enforcement will also arise where RJA-relevant data is recorded only in individual case files and is not entered into the CMS or otherwise readily retrievable. Where relevant data is not accessible, litigants, courts, and oversight bodies will face heightened barriers to fulfilling the Racial Just Act's mandate, and transparency and accountability will be compromised.

In view of the findings from the survey and in recognition of the challenge of ensuring full compliance with the Act, the Task Force has made a number of recommendations to the Legislature that are set forth in Chapter 28, Policies to Address an Unjust Legal System.

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Data Collection

In support of the AB 3121 California Reparations Task Force, and at the direction of the Subpoena Advisory Committee, the DOJRC designed and distributed an online questionnaire assessing the administrative practices regarding race data collection of three types of California entities involved in the criminal justice system: Superior Courts, county District Attorney (DA) Offices, and City Attorney Offices. For District Attorney Offices and Superior Courts, the goal was to contact District Attorneys and court executive officers and presiding judges for all 58 California counties. For City Attorneys, 11 prosecuting offices were selected by the subpoena advisory committee members: Anaheim, Burbank, Hawthorne, Inglewood, Long Beach, Los Angeles, Pasadena, Redondo Beach, San Diego, Santa Monica, and Torrance. Participant contact information was obtained from Reparations Task Force members, the Judicial Council of California, and online web sites/searches.

The online questionnaire link was distributed to all participants via email on May 4, 2022. For the first round of data collection, the questionnaire was available online for completion from May 4 through June 12, 2022. Participation reminder emails were sent on May 9, May 16, May 23, May 27, and June 3, 2022. For agencies that received an extension through June 12, participation reminders were sent on June 7 and June 10, 2022.

For the second round of data collection, the DOJRC worked with the California Department of Civil Rights Enforcement Section (CRES) to contact non-responders and encourage participation. Table 1 summarizes the total number of questionnaires distributed and a count of the response types: complete or incomplete; as well as the percentage of completed surveys. The data presented in this report represent responses received as of January 1, 2023.

All 58 CA Superior Courts and all 11 City Attorney Offices contacted completed the Questionnaire[5]. Fifty-seven (57) of the 58 CA County District Attorney Offices completed the Questionnaire. Solano County DA Office did not complete the questionnaire.

Table 1. Criminal Justice Agencies by Questionnaire Completion Status

	ALL POTENTIAL RESPONDENTS	BY AGENCY		
		City Attorney	District Attorney	Superior Court
Total Surveys Distributed	127	11	58	58
Complete	126	11	57	58
PERCENT COMPLETED	99%	100%	98%	100%
Incomplete	1	NA	1	NA

Results

This section summarizes and describes findings for 24 close-ended questions posed to participating agencies. Responses are presented along 6 content areas: (1) Case Management Use, (2) Demographics, (3) Arrest & Matter Information, (4) Own Recognizance, Custody, and Bail, (5) Diversion, and (6) Prosecutorial Decision Making & Outcomes.

All Respondents are responses collapsed across agency type. *"[Q#]"* presented in brackets in the tables directs the reader to the full question in Appendix A. See Appendix A for more detailed counts for each agency and question, and Appendix B for an overview of affirmative responses by agency. All maps presented in this report were created using paintmaps.com.

Throughout the report, results are presented at the county level (ex. 58 counties record data element X). It is important to note that, for the purposes of this report, a county is considered to have collected a data element if the county's Superior Court and/or District Attorney's Office reported collecting an element. Responses from City Attorney's Offices are not considered when referring to the county. For Solano County, only the Superior Court's data collection is considered as the District Attorney's Office did not complete the survey.

1. Case Management System Use

Case management systems are systems in which data on cases is recorded, stored, and analyzed. Whether an office uses an electronic case management system can impact the ease with which records are extracted for evaluation, which may, in turn, affect the difficulty of gathering information to substantiate a Racial Justice Act violation claim. As demonstrated in Table 2, almost all responding agencies (97%) reported that they use a case management system (CMS). Butte Superior Court selected "no" to using a CMS but clarified in open-text fields that they *do* use a CMS. Ergo, 100% of Superior Courts in California utilize a CMS. Kern County and Sierra County DA Offices and Hawthorne and Redondo Beach City Attorney Offices reported not using a CMS.

A majority of agencies who reported using a CMS (78%) also reported that they began recording data beginning 2015 or prior. For DA offices, an additional 7% reported that their CMS began recording data in 2016. Similarly, almost all agencies reported that their CMS uses a software program (98%), and that the CMS allows for electronic retrieval of information (96%).

Table 2. Case Management Use by Agency

AGENCY RESPONSE	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Use a case management system (CMS) [Q3]	100% (58/58)	96 % (55/57)	82% (9/11)	97% (122/126)
Began recording data 2015 or prior* [Q5]	88 % (51/58)	67% (37/55)	78% (7/9)	78% (95/122)
CMS uses software program* [Q7]	98% (57/58)	96% (53/55)	100% (9/9)	98% (119/122)
Info retrievable via electronic inquiry** [Q9]	95% (54/57)	96 % (51/53)	100% (9/9)	95% (114/119)

*Note: n = total number of participants. * = Denominator used to calculate % is based on the number of affirmative responses for "Use a case management system (CMS)." ** = Denominator used to calculate % is based on number of affirmative responses for "CMS uses software program."*

2. Demographic Data Collected

Accused Individuals' Demographics Data

If an office does not collect data on the race of accused individuals, this may severely limit the ability to evaluate claims and answer questions about potential racial bias in prosecutorial, judicial, and jury decision making. Respondents were asked if their office collected data on accused individuals' and victims' demographics, such as their race, sex/gender, and age. Table 3 below summarizes the demographic information recorded by California criminal justice agencies for the accused individual. A majority of agencies recorded the accused individual's race, gender/sex, date of birth (DOB), and residence zip code. A smaller percentage recorded information about the accused individual's ethnicity. Most open-ended responses for "other" included the accused individual's height, weight, hair, and eye color.

Figures 1 presents an overview of agencies by county who reported recording the accused individual's race. As demonstrated below, Glenn and Sacramento (highlighted in magenta) were the only two California counties for which no agency reported recording accused individuals' race. For Southern and Central California, race data for the accused individual was primarily recorded by both Superior Courts and County District Attorney offices (highlighted in green), or Superior Courts only (highlighted in orange). For Northern California, race data was recorded by a mix of Superior Courts, County DA offices (highlighted in blue), or both.

Overall, 98% of California counties (either Superior Courts, DA offices, or both) recorded the accused individual's gender/sex and date of birth (DOB; See Appendix B for affirmative responses by county). Criminal justice agencies in 54 counties (93%) reported recording the accused individual's zip code (see Figure 2). District Attorney Offices in Sacramento, Sierra, and Sonoma counties and Sacramento Superior Court reported that they do not record any of the demographic options presented.[6]

Table 3. Accused Individual Demographic Information Collected by Agency Type

ACCUSED INDIVIDUAL DEMOGRAPHICS [Q16]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Race	78% (45)	81% (46)	64% (7)	78% (98)
Gender/Sex	95% (55)	91 % (52)	91% (10)	93% (117)
DOB	97% (56)	95% (54)	91% (10)	95% (120)
Residence Zip Code	81% (47)	68% (39)	82 % (9)	75% (95)
Ethnicity	31% (18)	26 % (15)	27 % (3)	29% (36)
Other	31% (18)	11% (6)	18 % (2)	21% (26)
None of the above	2 % (1)	5 % (3)	9 % (1)	3 % (4)

Note: n =total number of participants. Counts are in parentheses.

Victims' Demographics Data

Criminal justice agencies were also asked about demographic data recorded pertaining to the victim. Victim race is an important variable when investigating claims that charges, sentencing, or other judicial decisions were influenced not only by the accused individual's race, but also by the victim's race or the interplay between the two. Overall, 41% of responding agencies representing 91% of California counties recorded victims race data (see Figure 3).

Table 4 below summarizes victim demographic information recorded by each type of agency. A larger proportion of DA offices recorded demographic information associated with the victim, compared to Superior Courts. Three-quarters (75%) of responding DA offices reported recording victim race and residence zip code, and 88% reported recording victim gender/sex and date of birth. A much smaller percentage recorded information

about the victim's ethnicity (28%). In contrast, 78% of Superior Courts reported not collecting any of the victim demographic information listed.

Fifty counties (86%) reported recording the victim's gender/sex and date of birth. Forty-three counties (74%) recorded the victim's zip code (see Figure 4). Twenty-six percent (26%) of counties (15) do not record the victim's ethnicity.

Table 4. Victim Demographic Information Collected by Agency Type

VICTIM DEMOGRAPHIC INFORMATION [Q25]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Race	5% (3)	75% (43)	55 % (6)	41% (52)
Gender/Sex	10% (6)	88% (50)	82 % (9)	52% (65)
DOB	12% (7)	88% (50)	82 % (9)	52% (66)
Residence Zip Code	16% (9)	75% (43)	73 % (8)	48% (60)
Ethnicity	3% (2)	28% (16)	18 % (2)	16% (20)
Other	9% (5)	7% (4)	9% (1)	8% (10)
None of the above	78% (45)	9% (5)	9% (1)	40% (51)

Note: n = total number of participants. Counts are shown in parentheses.

Figure 1. Accused Individual Race Data Recorded by County and Agency Type

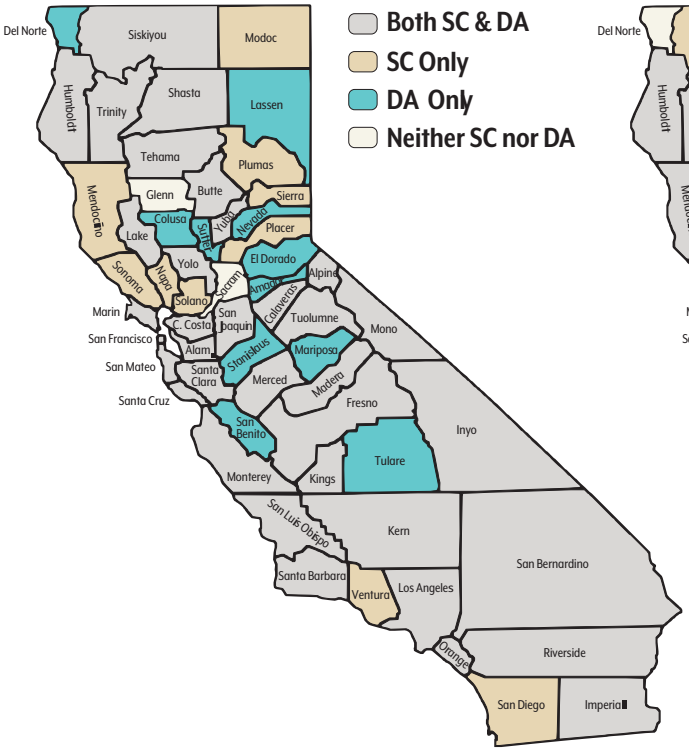


Figure 2. Accused Individual Residence Zip Code Data Recorded by County and Agency Type

Figure 3. Victim Race Data Recorded by County and Agency Type

Figure 4. Victim Residence Zip Code Data Recorded by County and Agency Type

3. Arrest & Judicial Matter Data Collected

Arrest Data

The decision to prosecute, the type of charges brought, and release decisions may be influenced by the law enforcement charges as well as the accused individual's prior criminal record. Respondents were asked whether they collected data on arrest and matter information, including law enforcement agency charges, and prior charges or convictions.

Tables 5 summarizes arrest information collected by California Superior Courts, District Attorney Offices, and responding City Attorney Offices. Three Superior Courts – Shasta, Sutter, and Yolo – and three DA offices – Alpine, Siskiyou, and Sonoma – reported that they do not record any of the options presented for arrests (See Figures 5 and 6).

Table 5. Arrest Information Collected by Agency Type

ARREST INFORMATION [Q13]	SUPERIOR COURTS N = 58	DISTRICT ATTORNEY N = 57	CITY ATTORNEY N = 11	ALL RESPONDENTS N = 126
Date of Arrest	90% (52)	84% (48)	100% (11)	88% (111)
Arresting Agency Numbers	81% (47)	89% (51)	82% (9)	85% (107)
LEA charges	72% (42)	88% (50)	82% (9)	80% (101)
Court/Office Arrest Record ID	47% (27)	44% (25)	36% (4)	44% (56)
Zip Code	12% (7)	35% (20)	55% (6)	26% (33)
Other	26% (15)	11% (6)	18% (2)	18% (23)
None of the Above	5% (3)	5% (3)	0% (0)	5% (6)

Note: n = total number of participants. Counts are shown in parentheses.

Judicial Matter Data

For judicial matters, all responding agencies (100%) record the accused individual's name and most record court case number (98%). Over half of all agencies record prior criminal charges (52%; Fig. 7), matters (51%), and convictions (52%; Fig. 8). No agencies reported collecting "none of the above" data on judicial matters. See Table 6 for a summary of judicial matter data collected by agency.

Table 6. Matter Information Collected by Agency Type

MATTER INFORMATION [Q11]	SUPERIOR COURTS N = 58	DISTRICT ATTORNEY N = 57	CITY ATTORNEY N = 11	ALL RESPONDENTS N = 126
Name	100% (58)	100% (57)	100% (11)	100% (126)
Court Case #	98% (57)	98% (56)	100% (11)	98% (124)
Office Case ID	66% (38)	91% (52)	73% (8)	78% (98)
Prior Criminal Conviction	47% (27)	54% (31)	73% (8)	52% (66)
Prior Criminal Charges	47% (27)	54% (31)	73% (8)	52% (66)
Prior Criminal Matters	41% (24)	56% (32)	73% (8)	51% (64)
Zip Code	9% (5)	47% (27)	45% (5)	29% (37)
Field Investigation / Interview	14% (8)	9% (5)	36% (4)	13% (17)

Figure 5. Arresting Agency Numbers Collected by County and Agency Type

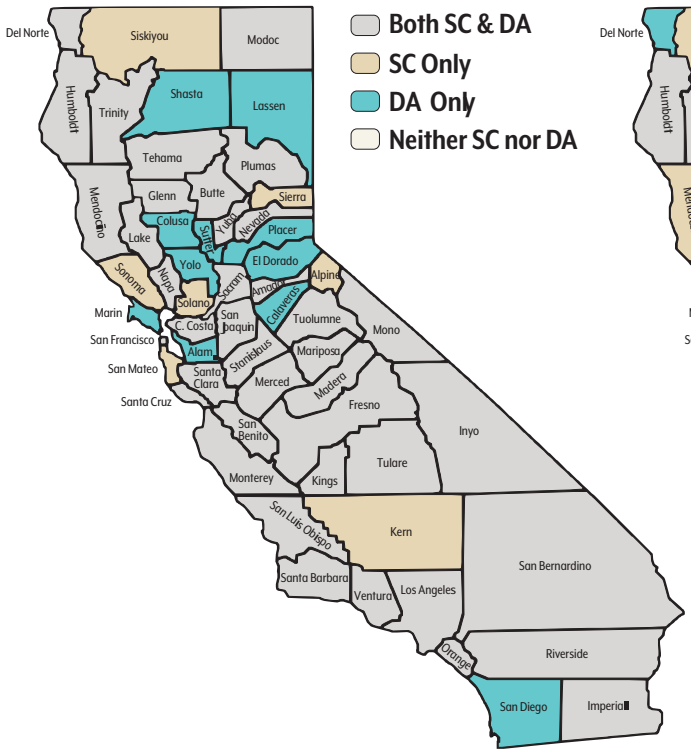


Figure 6. LEA Charges Data Collected by County and Agency Type

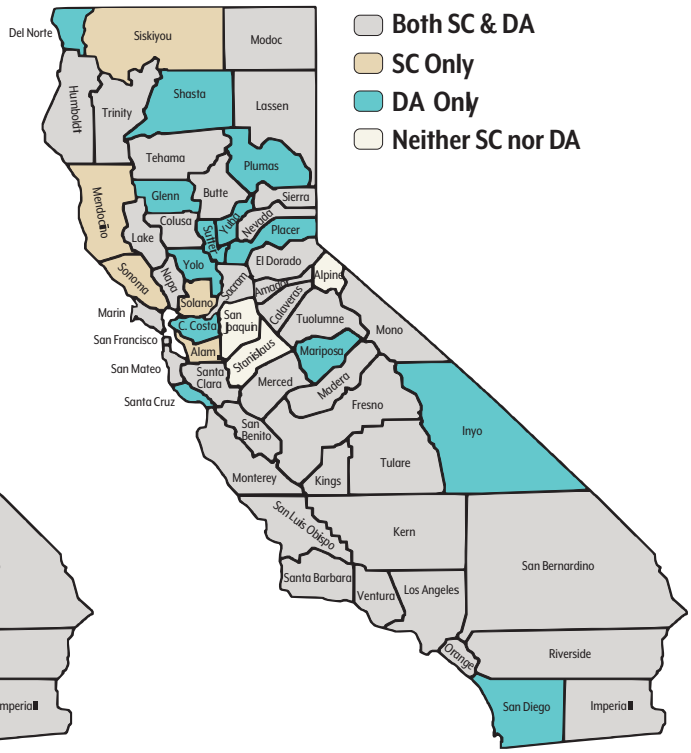


Figure 7. Prior Criminal Charges Data Collected by County and Agency Type

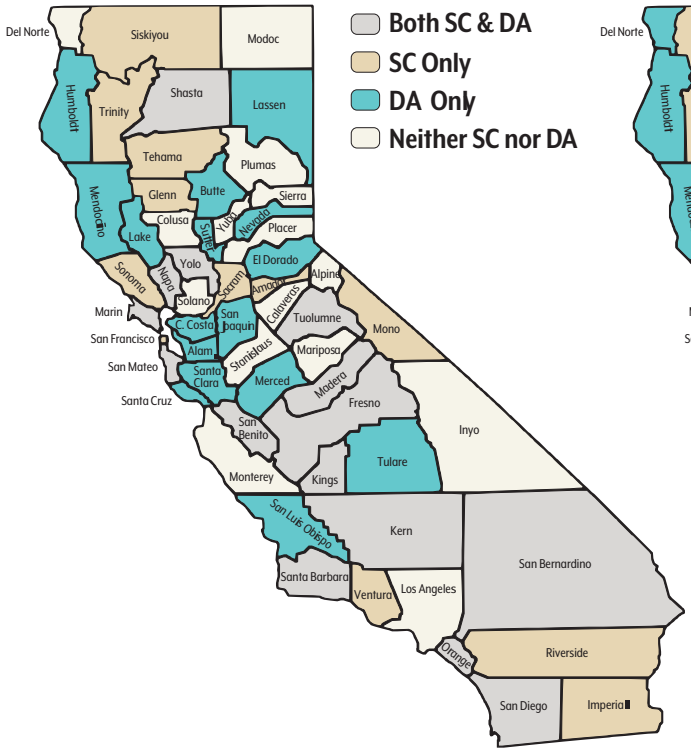
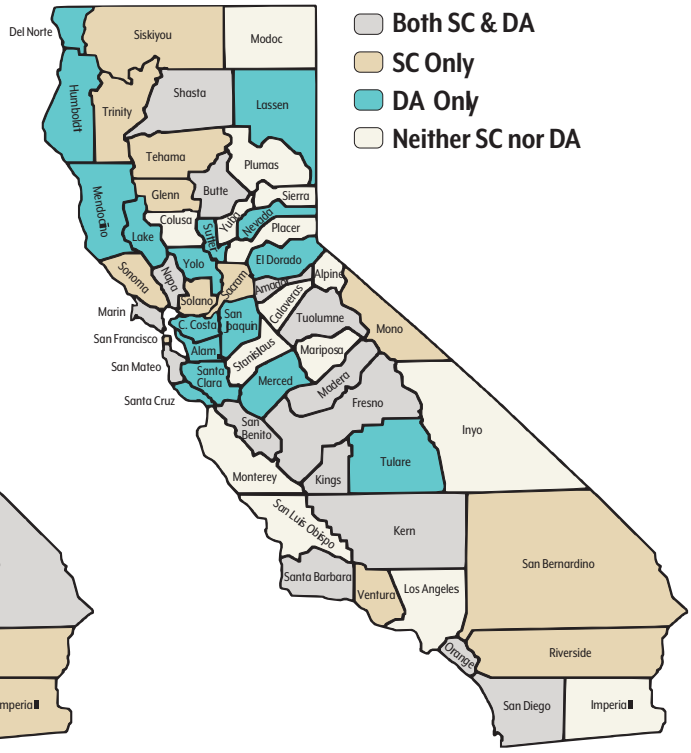


Figure 8. Prior Criminal Convictions Data Collected by County and Agency Type



4. Release and Custody Data Collected

Following an arrest and charge, accused individuals may be released on their own recognizance (OR) in which they are released from court custody without having to post bail, they may be released if they pay a cash bail, or they may remain in custody. In order to determine whether there was racial bias in decisions to release an accused individual on their own recognizance to await trial, require bail, or require custody, data on these decision points would need to be collected.

Released on Own Recognizance Data

Sixty-one percent (61%) of responding offices reported collecting data on agreement to OR release and 72% collect arraignment or bail hearing OR release data. Overall, a greater percentage of Superior Courts reported recording OR-related information than DA offices, however, several Superior Courts commented that OR-related information is captured in court proceeding minutes, not by the CMS. See Table 7 for a summary of OR-related information recorded by responding offices. Figures 9 and 10 summarize OR information recorded by DA Offices and Superior Courts by county.

Table 7. Own Recognizance Information Recorded by Agency Type

OWN RECOGNIZANCE RELEASE FOR ACCUSED [Q46]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Court/office agreed to OR release	84% (49)	39% (22)	55% (6)	61% (77)
Arraignment or bail hearing court OR release	93% (54)	51% (29)	73% (8)	72% (91)
Other	24% (14)	9% (5)	27% (3)	17% (22)
None of the above	3% (2)	46% (26)	18% (2)	24% (30)

Note: n = total number of participants. Counts are shown in parentheses.

Bail Data

As with OR information, a greater percentage of Superior Courts reported recording bail-related information than DA offices. The most frequently recorded bail information by Superior Courts included whether bail was set, denied, or OR release granted (93%), the amount of bail imposed (90%), whether the court imposed bail at an arraignment or bail hearing (88%), whether the Accused Individual appeared in custody, cited out, or bailed out (84%), and whether the Accused Individual bailed out of court-imposed bail (79%).

Superior Courts in Humboldt, Merced, and Placer counties reported "none of the above" for bail information. See Table 8 for counts and percentages of bail-related information recorded by City Attorney offices. Figure 11 and 12 summarize bail information recorded by DA Offices and Superior Courts by county.

Table 8. Bail Table Information Recorded by Agency Type

BAIL INFORMATION RECORDED [Q48]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
LEA set bail pre-filing	31% (18)	18% (10)	27% (3)	25% (31)
Amount set by LEA	38% (22)	18% (10)	27% (3)	28% (35)
Prosecutor requested at arraignment or bail hearing	71% (41)	39% (22)	73% (8)	56% (71)
Court-imposed at arraignment or bail hearing	88% (51)	46% (26)	55% (6)	66% (83)
Amount requested	40% (23)	32% (18)	64% (7)	38% (48)
Amount imposed	90% (52)	53% (30)	64% (7)	71% (89)
Prosecutor requested at or above bail schedule	52% (30)	25% (14)	45% (5)	39% (49)
Bail set, denied, or OR release granted	93% (54)	49% (28)	73% (8)	71% (90)
Appeared in custody, cited out, bailed out	84% (49)	49% (28)	55% (6)	66% (83)
Bailed out of court-imposed bail	79% (46)	32% (18)	45% (5)	55% (69)
Other	7% (4)	5% (3)	0% (0)	6% (7)
None of the above	5% (3)	30% (17)	18% (2)	17% (22)

Note: n = total number of participants. Counts are shown in parentheses.

Custody Data

Similar to OR and bail information, a greater percentage of Superior Courts reported recording custody-related information than DA offices. The most frequently recorded custody information for Superior Courts included whether the Accused Individual was in custody pre-trial (83%) and pre-plea (84%). About half of Superior Courts (52%) recorded whether or not detention orders were sought for the Accused Individual.

Superior Courts in Del Norte, Humboldt, Los Angeles, Merced, Nevada, and Placer counties reported "none of the above" for custody information. See Table 9 for counts and percentages of custody-related information recorded by responding agencies.

Table 9. Custody Information Recorded by Agency Type

CUSTODY INFORMATION RECORDED [Q50]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
In custody pre-trial	83% (48)	51% (29)	64% (7)	67% (84)
In custody pre-plea	84% (49)	51% (29)	55% (6)	67% (84)
Detention orders sought	52% (30)	25% (14)	45% (5)	39% (49)
Other	7% (4)	11% (6)	9% (1)	9% (11)
None of the above	10% (6)	42% (24)	27% (3)	26% (33)

Note: n = total number of participants. Counts are shown in parentheses.

Figure 9. Agreed to Release Own Recognizance (OR) Data by County and Agency

Figure 10. OR Released at Arraignment or Bail Hearing Data by County and Agency

Figure 11. In Custody Pre-Plea Data by County and Agency

Figure 12. Detention Orders Sought Data by County and Agency

5. Diversion Data Collected

Diversion programs allow some defendants to choose to complete treatment or education courses instead of serving jail time. Information on whether a diversion program was offered, when, and if it was accepted may be needed to investigate claims of racial bias in diversion program offers and sentencing more generally.

Diversion Offer Extended Data

The most frequently recorded information by Superior Courts was whether a diversion offer was accepted (79%) and the terms of the offer (78%). About one-half of DA offices reported recording this information along with whether a diversion offer was extended (56%), the date the diversion offer was extended (56%), and whether the diversion offer was extended pre- or post-plea (56%).

The least frequently recorded information was the reasons for the diversion offer for both DA offices (39%) and Superior Courts (38%). See Table 10 for counts and percentages of diversion-related information recorded by responding offices. See Figures 13 – 18 for an overview of responses by agency type and county.

Table 10. Information on Diversion Offers Extended to Accused Individuals

DIVERSION OFFERED [Q41]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Offer accepted	79% (46)	53% (30)	82% (9)	68% (85)
Terms	78% (45)	49% (28)	82% (9)	65% (82)
Pre- or post-plea	50% (29)	56% (32)	73% (8)	55% (69)
Date of offer	40% (23)	56% (32)	82% (9)	51% (64)
Diversion offered	40% (23)	56% (32)	82% (9)	51% (64)
Pre- or post-sentencing	40% (23)	35% (20)	73% (8)	41% (51)
Reasons for offer	38% (22)	39% (22)	73% (8)	41% (52)
None of the above	9% (5)	25% (14)	9% (1)	16% (20)
Other	3% (2)	9% (5)	27% (3)	8% (10)

Note: n = total number of participants. Counts are shown in parentheses.

Accepted Diversion Outcome Data

A greater percentage of Superior Courts reported recording diversion acceptance-related information than DA offices. The most frequently recorded information by Superior Courts included whether diversion was completed (97%), whether diversion included prison, jail, or probation (86%), and the plea entered (79%).

Del Norte and Santa Cruz Superior Courts reported that they do not record any information related to diversion offers accepted by the accused individual. See Figures 19 – 22 for an overview of responses by agency type and county. See Table 11 for counts and percentages of diversion-related information recorded by the agencies.

Table 11. Information Recorded for Diversion Offers Accepted by Accused Individuals

DIVERSION OFFERS ACCEPTED [Q43]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Diversion Completed	97% (56)	68% (39)	91% (10)	83% (105)
Prison / Jail / Probation Sentence	86% (50)	51% (29)	73% (8)	69% (87)
Plea Entered	79% (46)	58% (33)	82% (9)	70% (88)
Plea Withdrawal	76% (44)	44% (25)	73% (8)	61% (77)
In- or Out-patient	34% (20)	19% (11)	64% (7)	30% (38)
None of the Above	3% (2)	23% (13)	0% (0)	12% (15)
Other	5% (3)	5% (3)	18% (2)	6% (8)

Note: n = total number of participants. Counts are shown in parentheses.

Figure 13. Diversion Offered Data Recorded by County and Agency Type

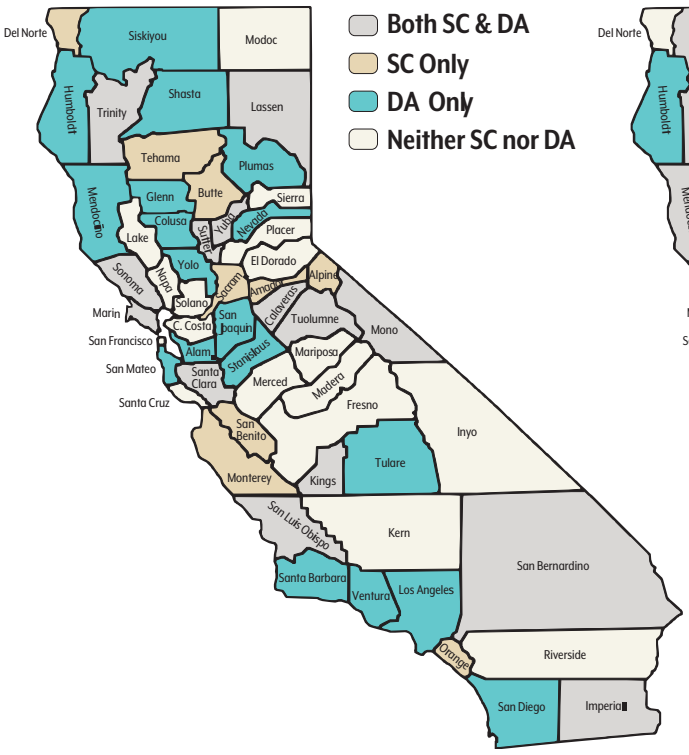


Figure 14. Diversion Pre- or Post-Plea Data Recorded by County and Agency Type

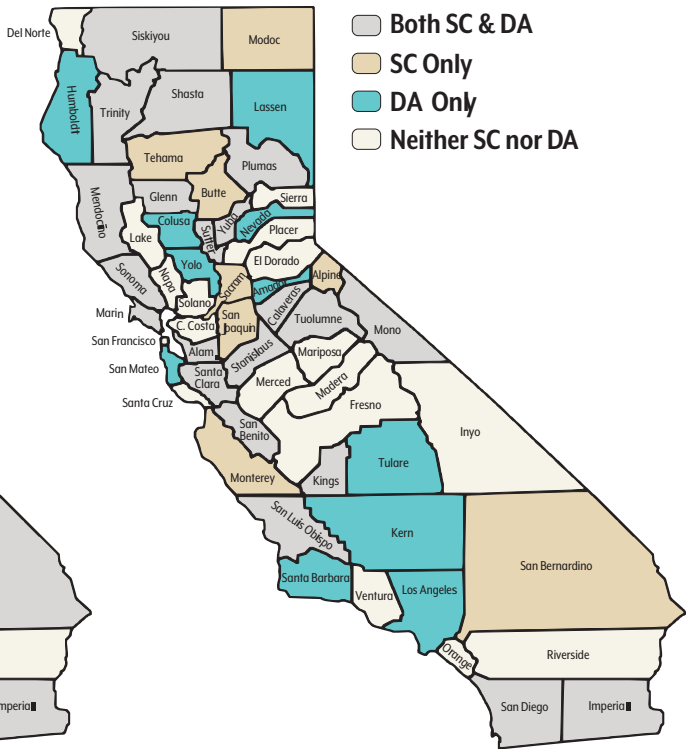


Figure 15. Diversion Offer was Pre/Post-Sentencing Data by County and Agency

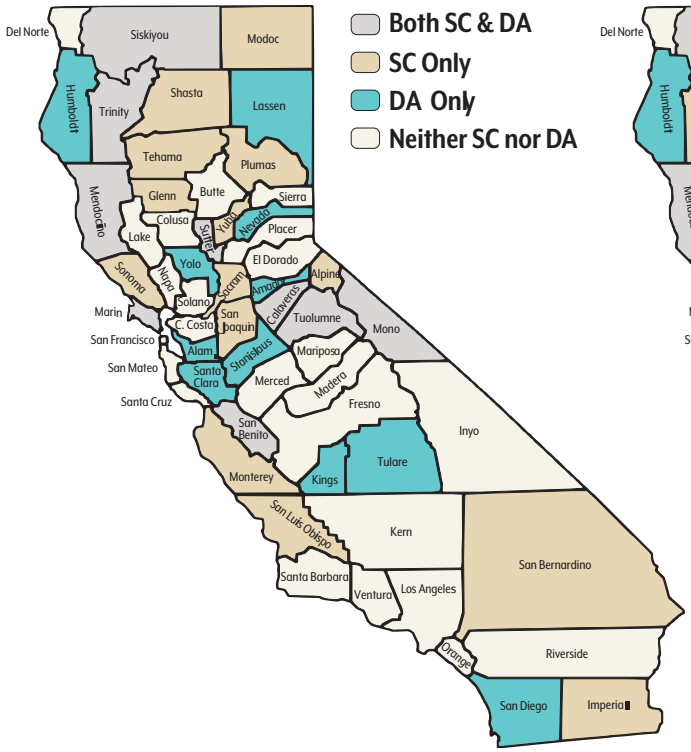


Figure 16. Diversion Offer was Accepted Data by County and Agency

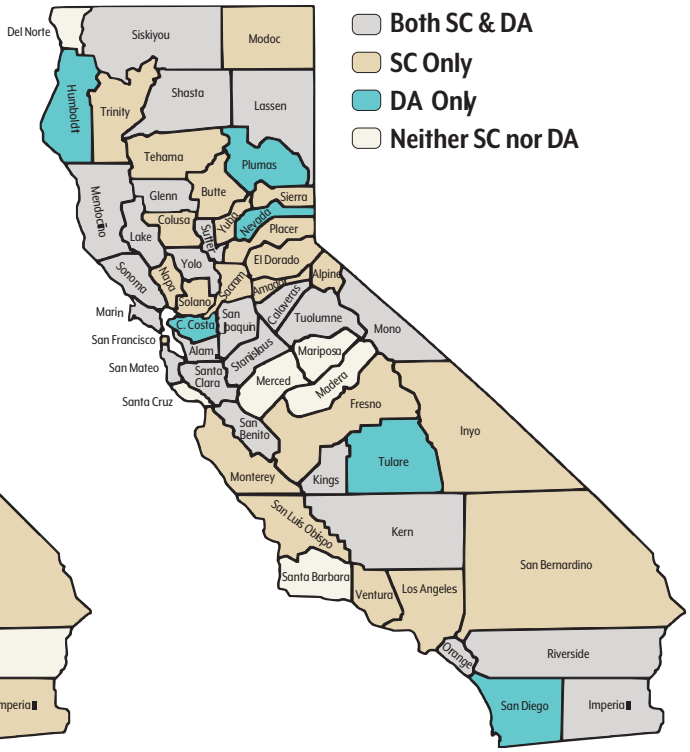


Figure 17. Reasons for Diversion Offer Data by County and Agency

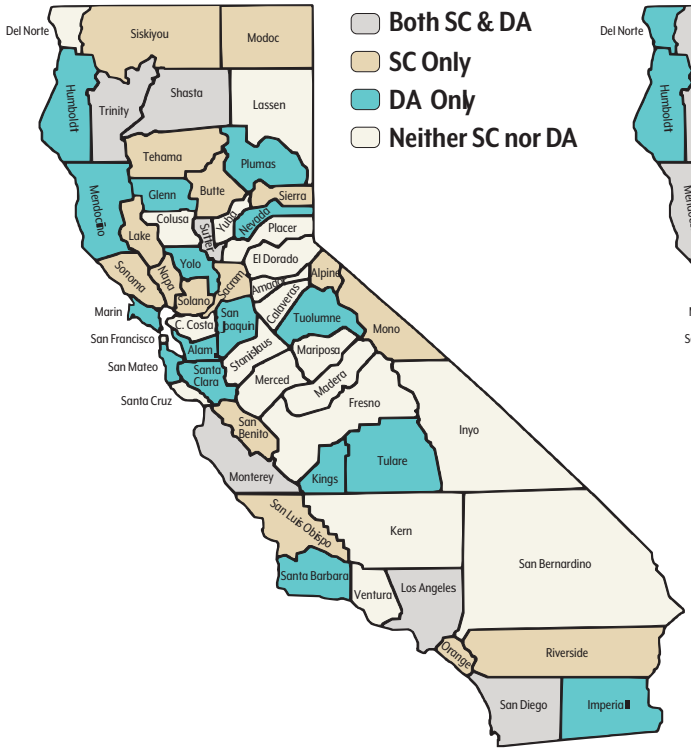


Figure 18. Terms of Diversion Data by County and Agency

Figure 19. Diversion Completed Data by County and Agency

Figure 20. Accused Individual Entered Plea when Diversion Began Data by County and Agency

Figure 21. Accused Individual Allowed to Withdraw Plea Upon Diversion Completion Data by County

Figure 22. Accused Individual was Sentenced to Prison/Jail or Probation Upon Diversion Completion Data by County and Agency

6. Prosecutorial Decision Making & Outcomes Data Collected

Decisions to prosecute are made by the District or City Attorney's Office. To substantiate claims of racial bias in prosecution decisions, information on declination to prosecute, reasons for the decision to decline or to prosecute, and the level of severity of the charges may be important.

Prosecutorial Declination Data

District and City Attorney Offices were asked to report information they recorded related to prosecutorial declination. Most prosecuting agencies reported recording information pertaining to the date of the decision, the name of the person who decided to decline to prosecute, and the charges involved. Fewer prosecuting agencies recorded decision makers' job titles. The Alpine County District Attorney's Office and the Hawthorne City Attorney's Office reported that they do not record any information related to decisions to decline to prosecute. Tables 12-15 summarize information related to decisions and reasons to decline to prosecute.

Table 12: Declination to Prosecute

INFORMATION REGARDING DECLINATION TO PROSECUTE [Q30]	DISTRICT ATTORNEY OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 68
Date of Decision	96% (55)	82% (9)	94% (64)
Decision Maker Name	93% (53)	91% (10)	93% (63)
Charges	91% (52)	82% (9)	90% (61)
Decision Maker Job Title	58% (33)	64% (7)	59% (40)
Other	14% (8)	36% (4)	18% (12)
None of the Above	2% (1)	9% (1)	3% (2)

Table 13 summarizes information related to reasons to decline to prosecute (Tables 16-17). The most frequently recorded information by City Attorney offices included information pertaining to the victim's cooperation (82%) and other mitigating factors (82%).

Table 13: Reasons for Declination to Prosecute

REASONS FOR DECLINATION TO PROSECUTE [Q32]	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 68
Victim's Cooperation	42% (24)	82% (9)	49% (33)
Other Mitigating Factors	28% (16)	82% (9)	37% (25)
Prior Criminal Record	23% (13)	55% (6)	28% (19)
Injuries to Persons	23% (13)	64% (7)	29% (20)
Police Misconduct	25% (14)	55% (6)	29% (20)
Financial Loss	19% (11)	55% (6)	25% (17)
Injuries to Accused Individual	19% (11)	64% (7)	26% (18)
Other	42% (24)	46% (5)	43% (29)
None of the Above	32% (18)	9% (1)	28% (19)

Table 14. City Attorney Reported Information for Declining to Prosecute

CITY	DATE OF DECISION TO DECLINE TO PROSECUTE	NAME OF THE PERSON WHO MADE THE DECISION(S) TO DECLINE TO PROSECUTE	JOB TITLE OF THE PERSON(S) WHO MADE THE DECISION TO DECLINE TO PROSECUTE	THE CHARGE(S) FOR WHICH THERE WAS A DECISION TO DECLINE TO PROSECUTE	OTHER	NONE OF THE ABOVE
Anaheim	✓	✓	✓	✓		
Burbank	✓	✓		✓	✓	
Hawthorne						✓
Inglewood	✓	✓	✓	✓		
Long Beach	✓	✓	✓	✓	✓	
Los Angeles		✓		✓	✓	
Pasadena	✓	✓	✓	✓		
Redondo Beach	✓	✓	✓	✓		
San Diego	✓	✓	✓	✓	✓	
Santa Monica	✓	✓		✓		
Torrance	✓	✓	✓			

Note: Checkmarks denote that the City Attorney Office for the corresponding county collect the variable

Table 15. County District Attorney Reported Information for Declining to Prosecute

COUNTY	DATE OF DECISION TO DECLINE TO PROSECUTE	NAME OF THE PERSON WHO MADE THE DECISION(S) TO DECLINE TO PROSECUTE	JOB TITLE OF THE PERSON(S) WHO MADE THE DECISION TO DECLINE TO PROSECUTE	THE CHARGE(S) FOR WHICH THERE WAS A DECISION TO DECLINE TO PROSECUTE	OTHER	NONE OF THE ABOVE
Alameda	✓	✓	✓	✓		
Alpine						✓
Amador	✓	✓	✓	✓		
Butte	✓	✓	✓	✓		
Calaveras	✓	✓		✓		
Colusa	✓			✓		

COUNTY	DATE OF DECISION TO DECLINE TO PROSECUTE	NAME OF THE PERSON WHO MADE THE DECISION(S) TO DECLINE TO PROSECUTE	JOB TITLE OF THE PERSON(S) WHO MADE THE DECISION TO DECLINE TO PROSECUTE	THE CHARGE(S) FOR WHICH THERE WAS A DECISION TO DECLINE TO PROSECUTE	OTHER	NONE OF THE ABOVE
Contra Costa	✓	✓	✓	✓		
Del Norte	✓	✓		✓		
El Dorado	✓	✓		✓		
Fresno	✓	✓		✓	✓	
Glenn	✓	✓	✓	✓	✓	
Humboldt	✓	✓	✓	✓		
Imperial	✓	✓				
Inyo	✓	✓	✓	✓		
Kern	✓	✓		✓		
Kings	✓	✓		✓		
Lake	✓	✓	✓	✓		
Lassen	✓	✓		✓		
Los Angeles	✓	✓	✓	✓		
Madera	✓	✓	✓	✓		
Marin	✓	✓	✓	✓		
Mariposa	✓			✓		
Mendocino	✓	✓	✓	✓		
Merced	✓	✓	✓	✓	✓	
Modoc	✓	✓	✓	✓		
Mono	✓	✓	✓	✓		
Monterey	✓	✓				
Napa	✓	✓	✓	✓	✓	
Nevada	✓	✓	✓	✓		
Orange	✓	✓		✓	✓	
Placer	✓	✓		✓		
Plumas	✓	✓	✓	✓		

COUNTY	DATE OF DECISION TO DECLINE TO PROSECUTE	NAME OF THE PERSON WHO MADE THE DECISION(S) TO DECLINE TO PROSECUTE	JOB TITLE OF THE PERSON(S) WHO MADE THE DECISION TO DECLINE TO PROSECUTE	THE CHARGE(S) FOR WHICH THERE WAS A DECISION TO DECLINE TO PROSECUTE	OTHER	NONE OF THE ABOVE
Riverside	✓	✓	✓	✓		
Sacramento	✓	✓	✓	✓		
San Benito	✓	✓		✓		
San Bernardino		✓		✓		
San Diego	✓	✓	✓	✓		
San Francisco	✓	✓		✓		
San Joaquin	✓	✓	✓	✓	✓	
San Luis Obispo	✓	✓		✓		
San Mateo	✓	✓	✓	✓		
Santa Barbara	✓	✓	✓	✓		
Santa Clara	✓	✓	✓	✓		
Santa Cruz	✓	✓		✓		
Shasta	✓	✓	✓	✓		
Sierra	✓					
Siskiyou	✓	✓		✓		
Sonoma	✓	✓		✓		
Stanislaus	✓	✓	✓	✓		
Sutter	✓	✓	✓	✓		
Tehama	✓	✓	✓	✓		
Trinity	✓	✓	✓		✓	
Tulare	✓	✓	✓	✓		
Tuolumne	✓	✓		✓		
Ventura	✓	✓	✓	✓		
Yolo	✓	✓	✓	✓	✓	
Yuba	✓	✓		✓		

Note: Checkmarks denote that the DA Office for the corresponding county collect the variable

Table 16. City Attorney Reported Reasons for Declining to Prosecute

CITY	POLICE MISCONDUCT	INJURIES TO PERSONS INVOLVED	INJURIES TO THE ACCUSED INDIVIDUAL	FINANCIAL LOSS TO PERSONS INVOLVED	PRIOR CRIMINAL RECORD OF THE ACCUSED INDIVIDUAL	VICTIM'S LEVEL OF COOPERATION IN PROSECUTING CASE	ANY OTHER MITIGATING FACTORS	OTHER	NONE OF THE ABOVE
Anaheim	✓	✓	✓	✓	✓	✓	✓		
Burbank					✓	✓	✓	✓	
Hawthorne									✓
Inglewood	✓	✓	✓			✓	✓	✓	
Long Beach								✓	
Los Angeles						✓	✓	✓	
Pasadena	✓	✓	✓	✓	✓	✓	✓		
Redondo Beach	✓	✓	✓	✓	✓	✓	✓	✓	
San Diego		✓	✓	✓	✓	✓	✓		
Santa Monica	✓	✓	✓	✓	✓	✓	✓		
Torrance	✓	✓	✓	✓		✓	✓		

Note: Checkmarks denote that the City Attorney Office for the corresponding county collect the variable

Table 17. County District Attorney Reported Reasons for Declining to Prosecute

COUNTY	POLICE MISCONDUCT	INJURIES TO PERSONS INVOLVED	INJURIES TO THE ACCUSED INDIVIDUAL	FINANCIAL LOSS TO PERSONS INVOLVED	PRIOR CRIMINAL RECORD OF THE ACCUSED INDIVIDUAL	VICTIM'S LEVEL OF COOPERATION IN PROSECUTING CASE	ANY OTHER MITIGATING FACTORS	OTHER	NONE OF THE ABOVE
Alameda						✓			
Alpine									✓
Amador									✓
Butte						✓		✓	
Calaveras						✓		✓	
Colusa									✓

COUNTY	POLICE MISCONDUCT	INJURIES TO PERSONS INVOLVED	INJURIES TO THE ACCUSED INDIVIDUAL	FINANCIAL LOSS TO PERSONS INVOLVED	PRIOR CRIMINAL RECORD OF THE ACCUSED INDIVIDUAL	VICTIM'S LEVEL OF COOPERATION IN PROSECUTING CASE	ANY OTHER MITIGATING FACTORS	OTHER	NONE OF THE ABOVE
Contra Costa								✓	
Del Norte	✓					✓	✓	✓	
El Dorado									✓
Fresno								✓	
Glenn	✓					✓	✓	✓	
Humboldt	✓	✓	✓	✓	✓	✓	✓		
Imperial		✓	✓			✓			
Inyo									✓
Kern								✓	
Kings									✓
Lake									✓
Lassen									✓
Los Angeles									✓
Madera								✓	
Marin		✓	✓	✓	✓	✓	✓	✓	
Mariposa								✓	
Mendocino						✓			
Merced								✓	
Modoc									✓
Mono									✓
Monterey								✓	
Napa	✓	✓	✓	✓	✓	✓	✓		
Nevada	✓	✓	✓	✓	✓	✓	✓	✓	
Orange								✓	
Placer									✓
Plumas									✓

COUNTY	POLICE MISCONDUCT	INJURIES TO PERSONS INVOLVED	INJURIES TO THE ACCUSED INDIVIDUAL	FINANCIAL LOSS TO PERSONS INVOLVED	PRIOR CRIMINAL RECORD OF THE ACCUSED INDIVIDUAL	VICTIM'S LEVEL OF COOPERATION IN PROSECUTING CASE	ANY OTHER MITIGATING FACTORS	OTHER	NONE OF THE ABOVE
Riverside								✓	
Sacramento								✓	
San Benito								✓	
San Bernardino									✓
San Diego	✓	✓	✓	✓	✓	✓	✓		
San Francisco								✓	
San Joaquin	✓				✓	✓	✓		
San Luis Obispo							✓	✓	
San Mateo									✓
Santa Barbara								✓	
Santa Clara	✓	✓	✓	✓	✓	✓	✓	✓	✓
Santa Cruz								✓	
Shasta	✓					✓	✓		
Sierra		✓		✓		✓			
Siskiyou								✓	
Sonoma	✓	✓	✓	✓	✓	✓	✓		
Stanislaus						✓			
Sutter	✓	✓	✓	✓	✓	✓	✓		
Tehama						✓			
Trinity	✓	✓			✓	✓			
Tulare					✓	✓	✓		
Tuolumne	✓	✓	✓	✓	✓	✓	✓		
Ventura									✓
Yolo	✓	✓	✓	✓	✓	✓	✓	✓	
Yuba									✓

Note: Checkmarks denote that the DA Office for the corresponding county collect the variable.

Decision to Prosecute Data

Table 18 summarizes information related to deciding charges to file against accused individuals. A much greater percentage of City Attorney offices reported recording this information than DA offices. Nearly two-thirds (64%) of City Attorney offices reported recording all information pertaining to deciding charges to file. Less than one-half of DA offices reported recording this information. Twenty-five DA offices (44%) selected "none of the above." Several DA offices stated that this information is available in case/file notes and police reports, not in the CMS.

Table 18: Charges to File by Agency Type

CHARGES TO FILE [Q35]	DISTRICT ATTORNEY OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N =68
Conduct or Status Enhancements	49% (28)	64% (7)	51% (35)
Injuries	42% (24)	64% (7)	46% (31)
Prior criminal history	44% (25)	64% (7)	47% (32)
Victim Status	37% (21)	64% (7)	41% (28)
Financial loss	44% (25)	64% (7)	47% (32)
Victim's cooperation	35% (20)	64% (7)	40% (27)
None of the above	44% (25)	27% (3)	41% (28)
Other	9% (5)	9% (1)	9% (6)

Note: n = total number of participants. Counts are shown in parentheses.

Table 19 summarizes information related to considerations in deciding the level/severity of charges to file against Accused Individuals. A much greater percentage of City Attorney offices reported recording this information than DA offices. Across the board, more than half (55%) of City Attorney offices reported recording all information pertaining to considerations in deciding the level/severity of charges to file. Less than one-half of DA offices reported recording this information. Twenty-eight DA offices (49%) selected "none of the above." As with the prior question, several DA offices stated that this information is available in case/file notes, not in the CMS. See Tables 20 and 21 for an overview of affirmative responses by prosecuting offices.

Table 19: Level or Severity of Charges Filed by Agency Type

LEVEL/SEVERITY OF CHARGES TO FILE [Q38]	DISTRICT ATTORNEY OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N =68
Conduct or Status Enhancements	47% (27)	55% (6)	49% (33)
Injuries	44% (25)	55% (6)	46% (31)
Prior criminal history	42% (24)	55% (6)	44% (30)
Victim Status	40% (23)	55% (6)	43% (29)
Financial loss	40% (23)	55% (6)	43% (29)
Victim's cooperation	30% (17)	45% (5)	32% (22)
None of the above	49% (28)	36% (4)	47% (32)
Other	5% (3)	18% (2)	7% (5)

Note: n = total number of participants. Counts are shown in parentheses.

Table 20. City Attorney Information Related to Severity/Level of Charges

CITY	INJURIES TO PERSONS	FINANCIAL LOSS TO PERSONS	STATUS OF VICTIM	PRIOR CRIMINAL HISTORY OF ACCUSED INDIVIDUAL	VICTIM'S COOPERATION	ALLEGED CONDUCT OR STATUS ENHANCEMENTS	NONE OF THE ABOVE
Anaheim	✓	✓	✓	✓	✓	✓	
Burbank	✓	✓	✓	✓	✓	✓	
Hawthorne	✓	✓	✓	✓		✓	
Inglewood	✓	✓	✓	✓	✓	✓	
Long Beach							✓
Los Angeles							
Pasadena	✓	✓	✓	✓	✓	✓	
Redondo Beach							✓
San Diego	✓	✓	✓	✓	✓	✓	
Santa Monica							✓
Torrance							✓

Note: Checkmarks denote that the City Attorney Office for the corresponding county collect the variable

Table 21. District Attorney Information Related to Severity/Level of Charges

COUNTY	INJURIES TO PERSONS	FINANCIAL LOSS TO PERSONS	STATUS OF VICTIM	PRIOR CRIMINAL HISTORY OF ACCUSED INDIVIDUAL	VICTIM'S COOPERATION	ALLEGED CONDUCT OR STATUS ENHANCEMENTS	NONE OF THE ABOVE
Alameda	✓	✓	✓	✓		✓	
Alpine							✓
Amador							✓
Butte							✓
Calaveras							✓
Colusa							✓
Contra Costa							✓
Del Norte							✓
El Dorado	✓	✓	✓	✓		✓	
Fresno							✓
Glenn	✓			✓		✓	
Humboldt	✓	✓	✓	✓	✓	✓	
Imperial	✓	✓	✓	✓	✓	✓	
Inyo							✓
Kern							✓
Kings							✓
Lake							✓
Lassen							✓
Los Angeles							✓
Madera							✓
Marin	✓	✓	✓	✓	✓	✓	
Mariposa							
Mendocino	✓	✓	✓	✓	✓	✓	
Merced							✓

COUNTY	INJURIES TO PERSONS	FINANCIAL LOSS TO PERSONS	STATUS OF VICTIM	PRIOR CRIMINAL HISTORY OF ACCUSED INDIVIDUAL	VICTIM'S COOPERATION	ALLEGED CONDUCT OR STATUS ENHANCEMENTS	NONE OF THE ABOVE
Modoc							✓
Mono							✓
Monterey	✓	✓	✓	✓		✓	
Napa	✓	✓	✓	✓	✓	✓	
Nevada	✓	✓	✓	✓	✓	✓	
Orange						✓	
Placer						✓	
Plumas							✓
Riverside							✓
Sacramento							✓
San Benito	✓	✓	✓	✓	✓	✓	
San Bernardino	✓	✓	✓	✓		✓	
San Diego	✓	✓	✓	✓	✓	✓	
San Francisco						✓	
San Joaquin	✓	✓	✓	✓	✓	✓	
San Luis Obispo	✓					✓	
San Mateo	✓	✓	✓	✓		✓	
Santa Barbara	✓	✓	✓	✓			
Santa Clara	✓	✓	✓	✓	✓	✓	
Santa Cruz							✓
Shasta	✓	✓	✓	✓	✓	✓	
Sierra							✓
Siskiyou							✓
Sonoma	✓	✓	✓	✓	✓	✓	
Stanislaus							✓

COUNTY	INJURIES TO PERSONS	FINANCIAL LOSS TO PERSONS	STATUS OF VICTIM	PRIOR CRIMINAL HISTORY OF ACCUSED INDIVIDUAL	VICTIM'S COOPERATION	ALLEGED CONDUCT OR STATUS ENHANCEMENTS	NONE OF THE ABOVE
Sutter	✓	✓	✓	✓	✓	✓	
Tehama							✓
Trinity	✓	✓	✓	✓	✓	✓	
Tulare	✓	✓	✓	✓	✓	✓	
Tuolumne	✓	✓	✓	✓	✓	✓	
Ventura							✓
Yolo	✓	✓	✓	✓	✓	✓	
Yuba							✓

Note: Checkmarks denote that the DA Office for the corresponding county collect the variable

Plea Offers Data

A plea offer of a reduced charge or sentence can be made to resolve a case before trial or before a verdict is reached. To investigate claims of racial bias in plea offers, data on whether a plea offer was made, by whom, if there was a counter offer, what the offer was, or if it was accepted may be crucial.

All agencies were asked to report information that is recorded relating to plea offers extended to and accepted by Accused Individuals. Table 22 summarizes information related to plea offers extended recorded by City Attorney offices, DA offices, and Superior Courts. Generally speaking, a greater proportion of DA offices reported recording this information than Superior Courts. Around three-fifths of DA offices reported recording most of the information related to plea offers extended, though just under one-half reported recording whether a plea offer was made by the court (47%) and whether there was a counter offer (44%). Fourteen DA offices (25%) and 17 Superior Courts (29%) indicated that they do not not record any of the options listed pertaining to plea offers extended to Accused Individuals. Several DA offices stated that this information is available in case/file notes, not in the CMS. Several Superior Courts reported that this information is contained in court minutes or a plea form (not in the CMS).

Table 22. Information Recorded for Plea Offers Extended to Accused Individuals by Agency Type

PLEA OFFERS EXTENDED [Q53]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Offer accepted	53% (31)	60% (34)	100% (11)	60% (76)
Sentence if accepted	50% (29)	65% (37)	82% (9)	60% (75)
Reduction to severity of charges	55% (32)	58% (33)	73% (8)	58% (73)
Counts, priors, enhancements dismissed	48% (28)	58% (33)	73% (8)	55% (69)
Counts, priors, enhancements admitted	45% (26)	61% (35)	73% (8)	55% (69)
Reduction to charging enhancements	48% (28)	56% (32)	64% (7)	53% (67)
Offered by prosecutor	31% (18)	65% (37)	100% (11)	52% (66)
Date	22% (13)	56% (32)	73% (8)	42% (53)
Made by court	24% (14)	47% (27)	64% (7)	38% (48)
Counteroffer	12% (7)	44% (25)	55% (6)	30% (38)
None of the above	29% (17)	25% (14)	0% (0)	25% (31)
Other	5% (3)	7% (4)	9% (1)	6% (8)

Note: n = total number of participants. Counts are shown in parentheses.

Table 23 summarizes information related to plea offers accepted recorded. A greater proportion of Superior Courts reported recording this information than DA offices, with almost all reporting recording each count related to the plea offer (98%) and the sentence in exchange for the plea offer (98%). Fifty-two Superior Courts (90%) reported recording the date the Accused Individual accepted a plea offer. A few Superior Courts indicated that this information is available in minute orders, not in the CMS. Del Norte Superior Court indicated that it does not record any of the options provided.

Table 23. Information Recorded for Plea Offers Accepted by Accused Individuals

PLEA OFFERS ACCEPTED [Q55]	SUPERIOR COURTS N = 58	DISTRICT ATTORNEY OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Each count	98% (57)	82% (47)	82% (9)	90% (113)
Sentence in exchange	98% (57)	75% (43)	91% (10)	87% (110)
Date	90% (52)	70% (40)	91% (10)	81% (102)
None of the above	2% (1)	14% (8)	9% (1)	8% (10)
Other	7% (4)	7% (4)	9% (1)	7% (9)

Note: n = total number of participants. Counts are shown in parentheses.

Prosecution Outcomes Data

All agencies were asked to report information recorded related to prosecutorial outcomes. Table 24 summarizes this information. In almost all cases, a greater proportion of Superior Courts reported recording information related to prosecutorial outcomes than DA offices. Additionally, 100% of Superior Courts reported recording this information for five domains. A smaller percentage of Superior Courts reported recording information related to collateral consequences (88%), imposition (83%) and dismissal (79%) of special circumstances, and imposition (86%) and dismissal (91%) of enhancements. Except for collateral consequences, the proportion of DA offices which collected each domain of prosecutorial outcomes came close to that of Superior Courts. See Tables 25 and 26 for an overview of select responses by City Attorney and DA offices.

Table 24. Prosecutorial Outcome Information Recorded by Agency Type

PROSECUTORIAL OUTCOMES [Q58]	SUPERIOR COURTS N = 58	DA OFFICES N = 57	CITY ATTORNEY OFFICES N = 11	ALL RESPONDENTS N = 126
Dismissal of charges	100% (58)	93% (53)	91% (10)	96% (121)
Charges of conviction	100% (58)	93% (53)	91% (10)	96% (121)
Probation	100% (58)	89% (51)	82% (9)	94% (118)
Prison/Jail sentence	100% (58)	88% (50)	82% (9)	93% (117)
Sentences	100% (58)	86% (49)	91% (10)	93% (117)
Dismissal of enhancements	91% (53)	84% (48)	64% (7)	86% (108)
Imposition of enhancements	86% (50)	81% (46)	73% (8)	83% (104)
Collateral consequences	88% (51)	53% (30)	82% (9)	71% (90)
Imposition of special circumstances	83% (48)	79% (45)	0% (0)	74% (93)
Dismissal of special circumstances	79% (46)	81% (46)	0% (0)	73% (92)
None of the above	0% (0)	4% (2)	0% (0)	2% (2)
Other	3% (2)	5% (3)	9% (1)	5% (6)

Note: n = total number of participants. Counts are shown in parentheses.

Table 25. City Attorney Prosecutorial Outcome Information

CITY	CHARGES OF CONVICTION	DISMISSAL OF CHARGES	SENTENCE	DISMISSAL OF ENHANCEMENTS	IMPOSITION OF ENHANCEMENTS	DISMISSAL OF SPECIAL CIRCUMSTANCES	IMPOSITION OF SPECIAL CIRCUMSTANCES	COLLATERAL CONSEQUENCES	PRISON/JAIL SENTENCE	PROBATION	NONE OF THE ABOVE
Anaheim	✓	✓	✓	✓	✓			✓	✓	✓	
Burbank	✓	✓	✓	✓	✓			✓	✓	✓	
Hawthorne	✓	✓	✓	✓	✓				✓	✓	
Inglewood	✓	✓	✓	✓	✓			✓	✓	✓	
Long Beach	✓	✓	✓		✓			✓			
Los Angeles			✓					✓	✓	✓	
Pasadena	✓	✓	✓	✓	✓			✓	✓	✓	
Redondo Beach	✓	✓	✓	✓	✓			✓	✓	✓	
San Diego	✓	✓	✓	✓	✓			✓	✓	✓	
Santa Monica	✓	✓	✓					✓	✓	✓	
Torrance	✓	✓									

Note: Checkmarks denote that the City Attorney Office for the corresponding county collect the variable

Table 26. County District Attorney Prosecutorial Outcome Information

COUNTY	CHARGES OF CONVICTION	DISMISSAL OF CHARGES	SENTENCE	DISMISSAL OF ENHANCEMENTS	IMPOSITION OF ENHANCEMENTS	DISMISSAL OF SPECIAL CIRCUMSTANCES	IMPOSITION OF SPECIAL CIRCUMSTANCES	COLLATERAL CONSEQUENCES	PRISON/JAIL SENTENCE	PROBATION	NONE OF THE ABOVE
Alameda	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Alpine											✓
Amador	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Butte	✓	✓		✓	✓	✓	✓		✓	✓	
Calaveras	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Colusa	✓	✓	✓	✓		✓			✓	✓	

COUNTY	CHARGES OF CONVICTION	DISMISSAL OF CHARGES	SENTENCE	DISMISSAL OF ENHANCEMENTS	IMPOSITION OF ENHANCEMENTS	DISMISSAL OF SPECIAL CIRCUMSTANCES	IMPOSITION OF SPECIAL CIRCUMSTANCES	COLLATERAL CONSEQUENCES	PRISON/JAIL SENTENCE	PROBATION	NONE OF THE ABOVE
Contra Costa	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Del Norte	✓	✓	✓	✓	✓			✓	✓	✓	
El Dorado	✓	✓	✓						✓	✓	
Fresno	✓	✓		✓	✓	✓	✓				
Glenn	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Humboldt	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Imperial	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Inyo	✓		✓	✓	✓	✓	✓		✓	✓	
Kern	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Kings	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Lake	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Lassen	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Los Angeles	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Madera											
Marin	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Mariposa	✓	✓	✓						✓	✓	
Mendocino	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Merced	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Modoc	✓	✓	✓	✓		✓	✓	✓	✓	✓	
Mono	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Monterey	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Napa	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Nevada	✓	✓	✓	✓	✓	✓	✓	✓		✓	
Orange	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Placer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Plumas	✓	✓	✓						✓	✓	

COUNTY	CHARGES OF CONVICTION	DISMISSAL OF CHARGES	SENTENCE	DISMISSAL OF ENHANCEMENTS	IMPOSITION OF ENHANCEMENTS	DISMISSAL OF SPECIAL CIRCUMSTANCES	IMPOSITION OF SPECIAL CIRCUMSTANCES	COLLATERAL CONSEQUENCES	PRISON/JAIL SENTENCE	PROBATION	NONE OF THE ABOVE
Riverside	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Sacramento	✓	✓		✓	✓	✓	✓				
San Benito	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
San Bernardino	✓	✓	✓						✓	✓	
San Diego	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
San Francisco		✓	✓						✓	✓	
San Joaquin	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
San Luis Obispo	✓	✓		✓	✓	✓	✓		✓	✓	
San Mateo	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Santa Barbara	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Santa Clara	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Santa Cruz	✓	✓		✓	✓						
Shasta	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Sierra	✓	✓	✓						✓	✓	
Siskiyou	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Sonoma	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Stanislaus	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Sutter	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Tehama	✓	✓	✓	✓	✓	✓	✓		✓	✓	
Trinity	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Tulare	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Tuolumne	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Ventura											✓
Yolo	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Yuba	✓	✓	✓	✓	✓	✓	✓		✓	✓	

Note: Checkmarks denote that the DA Office for the corresponding county collect the variable

Appendix A: Questionnaire & Frequencies

Below are the prompts to which the participants responded as well as tables summarizing the resulting counts where appropriate.

Introduction

Thank you for your cooperation in completing this survey.

California's Reparations Task Force was established pursuant to AB 3121 to study and develop reparations proposals for descendants of enslaved African Americans and to address the lingering negative effects of the institution of slavery and discrimination on living African Americans.

With respect to addressing the lingering effects of discrimination, the California Legislature has recently declared "…[i]t is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California. Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias."

The Task Force is grateful for the assistance of the California judiciary and California prosecutors in promoting the integrity of the prosecutorial and judicial process. Please complete the survey by **Friday, June 3, 2022**.

If you have any questions, need assistance regarding the survey, or would like additional time to complete the survey, please contact Department of Justice Research Supervisor, Dr. Tiffany Jantz at Tiffany.Jantz@doj.ca.gov.

Identifying Information

1. **Please select the County for which you are responding**

2. **Full name, position, and email address of person(s) responding. Information for at least one person is required.**

	FIRST NAME	LAST NAME	POSITION	EMAIL ADDRESS
Person 1				
Person 2				
Person 3				
Person 4				
Person 5				

Glossary of Terms

For the purposes of this Information Request, the following capitalized terms have the following meanings:

"**Accused Individual**" means defendant in a misdemeanor or felony filing, minors in a juvenile petition or delinquency proceeding, or if there is no court filing (e.g.: because the prosecuting agency declined to prosecute), the person that the law enforcement agency identified as committing a crime (i.e. arrested and booked, cited to come to court, or otherwise accused in a police report).

"**Case Management System**" means any computerized (i.e., operated through a software program) or manual (e.g. paper files) case management systems, methods, and tools in use by your office.

"**Juvenile Process**" means all juvenile 601 petitions, all juvenile 602 petitions, and all other juvenile delinquency proceedings.

"**Matter(s)**", means any criminal proceeding or Juvenile Process, including, instances where a law enforcement agency submitted a report to the prosecuting agency for consideration of criminal charges and the prosecuting agency declined to prosecute.

"**Person Most Qualified**" means the person(s) on behalf of your office most qualified to provide the requested information known by, or reasonably available to, such person(s).

"**Record(s)**" is broadly defined as all paper documents, databases, emails, videos, audio recordings, text messages,social media, or other electronic records within your possession or control. If any question below asks about the information that your office "records" or has "recorded", such words mean the capture of such information in any Record.

Record Management

The following questions ask you to provide general information regarding the systems or processes in use by your office to record and retrieve information from Records of Matter(s).

3. **Our office uses a Case Management System to record information for each Accused Individual involved in any Matter. ***

( ) Yes

( ) No

Table 15. Use Case Management System to Record Information

AGENCY	FREQUENCY		
	ALL POTENTIAL RESPONDENTS	YES	NO
All respondents	126	121	5
Superior Courts	58	57	1
District Attorney	57	55	2
City Attorney	11	9	2

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #3 QUESTION """"“OUR OFFICE USES A CASE MANAGEMENT SYSTEM TO RECORD INFORMATION FOR EACH ACCUSED INDIVIDUAL INVOLVED IN ANY MATTER." " " " " IS ONE OF THE FOLLOWING ANSWERS (""“NO"")

4. **Please explain how your office records and retrieves information for each Accused Individual involved in a Matter:***

5. **Our Case Management System began recording information in the following year (select one):***

Table 16. Case Management System: Starting Year

AGENCY	FREQUENCY									
	ALL POTENTIAL RESPONDENTS	PRIOR TO 2015	2015	2016	2017	2018	2019	2020	2021	2022
All respondents	121	84	11	5	4	2	6	4	4	1
Superior Courts	57	45	6	1	1	0	1	2	0	1
District Attorney	55	32	5	4	3	1	5	2	3	0
City Attorney	9	7	0	0	0	1	0	0	1	0

6. Our office began recording information for each Accused Individual involved in any Matter in the following year (select one):*

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #3 QUESTION """"“OUR OFFICE USES A CASE MANAGEMENT SYSTEM TO RECORD INFORMATION FOR EACH ACCUSED INDIVIDUAL INVOLVED IN ANY MATTER." " " " ” IS ONE OF THE FOLLOWING ANSWERS (""""“YES"”)

7. Does your office use a computerized Case Management System operated by a software program?*

( ) Yes

( ) No

Table 17. Case Management System Operated by Software Program

AGENCY	FREQUENCY		
	ALL POTENTIAL RESPONDENTS	YES	NO
All respondents	122	119	3
Superior Courts	58	57	1
District Attorney	55	53	2
City Attorney	9	9	0

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #7 QUESTION """"“DOES YOUR OFFICE USE A COMPUTERIZED CASE MANAGEMENT SYSTEM OPERATED BY A SOFTWARE PROGRAM?"""""" IS ONE OF THE FOLLOWING ANSWERS (""""“YES"")

8. What is the brand name (i.e., popular name as marketed by the developer) of the software program?*

Table 18. District Attorney Office Case Management System Software Distribution

DA OFFICE CMS SOFTWARE NAME	COUNT	% OF TOTAL
Prosecutor by Karpel	28	53%
Locally developed/Custom built/Other	12	23%
eProsecutor by Journal Technologies	7	13%
Damion	2	4%
Ciberlaw	2	4%
Odyssey	1	2%
Crimes	1	2%

Table 19. City Attorney Office Case Management System Software Distribution

CITY ATTORNEY CMS SOFTWARE NAME	COUNT	% OF TOTAL
Prosecutor by Karpel	3	33%
Justware by Journal Technologies	2	22%
CityLaw	2	22%
Locally developed/Custom built	2	22%

Table 20. Superior Court Case Management System Software Distribution

SUPERIOR COURT CMS SOFTWARE NAME	COUNT	% OF TOTAL
Odyssey by Tyler Technologies*	27	47%
eCourt by Journal Technologies	17	30%
Locally developed/Custom built	5	9%
Central Square by One Solution	3	5%
Full Court Enterprise by Justice Systems	2	4%
C-Track	1	2%
Contexte by Avenu	1	2%
Multiple**	1	2%

** Mariposa County Superior Court reported that they currently use SunGard Public Sector & JALAN [Central Square] but that a CMS by Tyler Technologies will be incorporated in 2022. ** The Marin Superior Court reported using CJIS, Juris, Beacon and Onbase.*

9. Does the software program used in your office's computerized Case Management System enable you to retrieve information through an electronic query?*

( ) Yes

( ) No

Table 21. Retrieve Information via Electronic Query

AGENCY	FREQUENCY		
	ALL POTENTIAL RESPONDENTS	YES	NO
All respondents	119	114	5
Superior Courts	57	54	3
District Attorney	53	51	2
City Attorney	9	9	0

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #7 QUESTION """"“DOES YOUR OFFICE USE A COMPUTERIZED CASE MANAGEMENT SYSTEM OPERATED BY A SOFTWARE PROGRAM?"""""” IS ONE OF THE FOLLOWING ANSWERS (""“NO"O”)

10. Please explain how you retrieve information for Accused Individual(s) involved in any Matter: *

Matter & Arrest Information

11. Matter Information: Our office records the following information of an Accused Individual involved in a Matter (select all that apply):*

[ ] Name of each Accused Individual

[ ] Court case number(s)

[ ] Your office's case ID for each Matter

[ ] Zip code of the location where the alleged crime occurred

[ ] Prior criminal charges

[ ] Prior criminal Matters

[ ] Prior criminal convictions

[ ] Police Officer Field Investigation or Field Interview Card information (meaning any compilation of notes or observances on a subject encountered by law enforcement whether arrested or not)

[ ] If your office records information other than those listed above, please specify: _____*

[ ] None of the above

Table 22. Matter Information

AGENCY	FREQUENCY										
	ALL POTENTIAL RESPONDENTS	NAME	COURT CASE #	OFFICE CASE ID	PRIOR CRIM CONVICTION	PRIOR CRIM CHARGES	PRIOR CRIM MATTERS	ZIP CODE	FIELD INVEST/ INTERVIEW	OTHER	NONE OF THE ABOVE
All Respondents	126	126	124	98	66	66	64	37	17	32	0
Superior Courts	58	58	57	38	27	27	24	5	8	16	0
District Attorney	57	57	56	52	31	31	32	27	5	13	0
City Attorney	11	11	11	8	8	8	8	5	4	3	0

12. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all Matter-related information listed above, please write "N/A."

13. Our office records the following information for arrests (select all that apply):*

[ ] Arresting agency number(s)

[ ] Your office's arrest record ID for the Accused Individual

[ ] Zip code of the location where the Accused Individual was arrested

[ ] Date of arrest

[ ] The charge(s) specified by the law enforcement agency referring the Accused Individual, including the top charge by the law enforcement agency referring the Accused Individual

[ ] If your office records arrest information other than those listed above, please specify such arrest information: _____*

[ ] None of the above

Table 23. Arrest Information

AGENCY	FREQUENCY							
	ALL POTENTIAL RESPONDENTS	DATE OF ARREST	ARRESTING AGENCY NUMBERS	LEA CHARGES	COURT/OFFICE ARREST RECORD ID	ZIP CODE	OTHER	NONE OF THE ABOVE
All respondents	126	111	107	101	56	33	23	6
Superior Courts	58	52	47	42	27	7	15	3
District Attorney	57	48	51	50	25	20	6	3
City Attorney	11	11	9	9	4	6	2	0

14. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all arrest-related information listed above, please write "N/A."

15. Please identify the name and title(s) of the Person Most Qualified to respond to questions about Matter and arrest data recorded by your office.*

Demographic Information

16. Demographic Information: Our office records the following demographic information of the Accused Individual (select all that apply):*

[ ] Race

[ ] Ethnicity/Ancestry

[ ] Country of origin (nationality)

[ ] Gender/Sex

[ ] Date of birth

[ ] Zip code of the Accused Individual's last known place of residence

[ ] If your office records demographic information of the Accused Individuals other than that listed above, please specify such demographic information: _____*

[ ] None of the above

Table 24. Accused Individual Demographic Information

AGENCY	FREQUENCY								
	ALL POTENTIAL RESPONDENTS	DOB	GENDER/ SEX	RACE	RESIDENCE ZIP CODE	ETHNICITY/ ANCESTRY	COUNTRY OF ORIGIN	OTHER	NONE OF THE ABOVE
All respondents	126	120	117	98	95	36	10	26	5
Superior Courts	58	56	55	45	47	18	3	18	1
District Attorney	57	54	52	46	39	15	3	6	3
City Attorney	11	10	10	7	9	3	4	2	1

17. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all demographic information listed above, please write "N/A."

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #16 QUESTION """"“DEMOGRAPHIC INFORMATION: OUR OFFICE RECORDS THE FOLLOWING DEMOGRAPHIC INFORMATION OF THE ACCUSED INDIVIDUAL (SELECT ALL THAT APPLY):"""" IS ONE OF THE FOLLOWING ANSWERS (""""“RACE"")

18. How does your office determine the Accused Individual's race (select all that apply)?*

[ ] The Accused individual provides this information to our office (the Accused individual self-reports this information to our office)

[ ] The referring law enforcement agency provides this information to our office

[ ] This information is determined from California driver's license and ID card data

[ ] This information is obtained through criminal offender record information (CORI)

[ ] If your office determines the race of the Accused Individual in a way other than as listed above, please specify how such determination is made: _____*

Table 25. How is the Accused Individual's Race Determined?

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	REFERRING LEA	PROSECUTOR'S OFFICE	CALIFORNIA ID	CORI	ACCUSED SELF REPORTS	OTHER
All respondents	98	82	NA	22	18	3	6
Superior Courts	45	31	36	7	4	3	4
District Attorney	46	44	NA	12	12	0	2
City Attorney	7	7	NA	3	2	0	0

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #18 QUESTION """"""HOW DOES YOUR OFFICE DETERMINE THE ACCUSED INDIVIDUAL'S RACE (SELECT ALL THAT APPLY)?""""""" IS ONE OF THE FOLLOWING ANSWERS (""""""THE ACCUSED INDIVIDUAL PROVIDES THIS INFORMATION TO OUR OFFICE (THE ACCUSED INDIVIDUAL SELF-REPORTS THIS INFORMATION TO OUR OFFICE)"")

19. You indicated that the Accused Individual self-reports information about their race to your office. What is the position title of the person who elicits this information from the Accused Individual? *

20. You indicated that the Accused Individual self-reports information about their race to your office. When is this information elicited from the Accused Individual? (select all that apply):*

[ ] Before the first court appearance

[ ] After the first court appearance

[ ] Before the Accused Individual is appointed counsel

[ ] After the Accused Individual is appointed counsel

Table 26. When does the Accused Individual Self-Report Race?

AGENCY	FREQUENCY				
	ALL POTENTIAL RESPONDENTS	BEFORE 1ST COURT APPEARANCE	AFTER 1ST COURT APPEARANCE	BEFORE COUNSEL APPOINTED	AFTER COUNSEL APPOINTED
Superior Courts	3	3	2	1	1

21. Based on your knowledge, how does an Accused Individual provide information about their race to your office (select all that apply):*

[ ] Verbally

[ ] In writing

[ ] Choosing from a set of pre-set categories

[ ] Other - Please specify (Required): _____*

Table 27. How does the Accused Individual Self-Report Race?

AGENCY	FREQUENCY				
	ALL POTENTIAL RESPONDENTS	VERBALLY	IN WRITING	PRE-EXISTING CATEGORIES	OTHER
Superior Courts	3	2	0	0	2

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #18 QUESTION """"""“HOW DOES YOUR OFFICE DETERMINE THE ACCUSED INDIVIDUAL'S RACE (SELECT ALL THAT APPLY)?"""""" IS ONE OF THE FOLLOWING ANSWERS (""""""“THE REFERRING LAW ENFORCEMENT AGENCY PROVIDES THIS INFORMATION TO OUR OFFICE"")

22. You indicated that an Accused Individual provides information about their race to your office by choosing from a set of pre-set categories. Please specify those pre-set categories: *

23. Based on your knowledge, please explain how the referring law enforcement agency determines the Accused Individual's race:

24. Please identify the name and title(s) of the Person Most Qualified to respond to questions about demographic data recorded by your office for Accused Individuals.*

25. Our office collects the following demographic information for the victim involved in a Matter (select all that apply):*

[ ] Race

[ ] Ethnicity/Ancestry

[ ] Gender/Sex

[ ] Date of birth

[ ] Zip code of the victim's last known place of residence

[ ] If your office records demographic information of the victim other than that listed above, please specify such demographic information: _____*

[ ] None of the above

Table 28. Victim Demographic Information

ENTITY TYPE	FREQUENCY							
	ALL POTENTIAL RESPONDENTS	DOB	GENDER/ SEX	RESIDENCE ZIP CODE	RACE	ETHNICITY/ ANCESTRY	NONE OF THE ABOVE	OTHER
All respondents	126	66	65	60	52	20	51	10
Superior Courts	58	7	6	9	3	2	45	5
District Attorney Offices	57	50	50	43	43	16	5	4
City Attorney Offices	11	9	9	8	6	2	1	1

26. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all demographic information listed above, please write "N/A."

LOGIC: NEXT QUESTION(S) HIDDEN UNLESS: #25 QUESTION """"""OUR OFFICE COLLECTS THE FOLLOWING DEMOGRAPHIC INFORMATION FOR THE VICTIM INVOLVEAD IN A MATTER (SELECT ALL THAT APPLY):""""""" IS ONE OF THE FOLLOWING ANSWERS (""""""RACE"""")

27. How does your office determine the victim's race (select all that apply)?*

[ ] The victim provides this information to our office (the victim self-reports this information to our office)

[ ] The referring law enforcement agency provides this information to our office

[ ] This information is determined from California driver's license or ID card data

[ ] Medical examiner, coroner, or medical report

[ ] If your office determines the race of the victim in a way other than as listed above, please specify how such determination is made: _____*

Table 29. How is the Victim's Race Determined?

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	CALIFORNIA ID	REFERRING LEA	VICTIM SELF REPORTS	PROSECUTOR'S OFFICE	MEDICAL EXAMINER	OTHER
All respondents	52	12	48	15	2	16	2
Superior Courts	3	1	2	0	2	0	0
District Attorney Offices	43	9	40	13	NA	15	2
City Attorney Offices	6	2	6	2	NA	1	0

Logic: Hidden unless: #27 Question "How does your office determine the victim's race (select all that apply)?" is one of the following answers ("The referring law enforcement agency provides this information to our office")

28. 28) Based on your knowledge, please explain how the referring law enforcement agency determines the victim's race:

_____

29. 29) Please identify the name and title(s) of the Person Most Qualified to respond to questions about demographic data collected by your office for victims involved in a Matter.*

Declination to Prosecute (DA & City Attorney offices only)

30. Our office records the following information regarding decisions to decline to prosecute (select all that apply):*

[ ] Date of decision to decline to prosecute

[ ] Name of the person who made the decision(s) to decline to prosecute

[ ] Job title of the person(s) who made the decision to decline to prosecute

[ ] The charge(s) for which there was a decision to decline to prosecute

[ ] If your office records information other than as listed above regarding decisions to decline to prosecute, please specify such information: _____*

[ ] None of the above

Table 30. Declination to Prosecute

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	DATE OF DECISION	DECISION MAKER NAME	CHARGES	DECISION MAKER JOB TITLE	OTHER	NONE OF THE ABOVE
All respondents	68	64	63	61	40	12	2
District Attorney Offices	57	55	53	52	33	8	1
City Attorney Offices	11	9	10	9	7	4	1

31. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all declination to prosecute information listed above, please write "N/A."

32. Our office records information regarding the reasons to decline to prosecute Accused Individual(s) (select all that apply):*

[ ] Police misconduct involved in the case

[ ] Injuries to persons involved

[ ] Injuries to the Accused Individual

[ ] Financial loss to persons involved

[ ] Prior criminal record of the Accused Individual

[ ] Victim's level of cooperation in prosecuting case

[ ] Any other mitigating factors that were considered (e.g., seriousness of offense, whether restitution was already made, whether treatment or classes were completed, community service)

[ ] If your office records reasons to decline to prosecute other than as listed above regarding decisions to decline to prosecute, please specify such reasons: _____*

[ ] None of the above

Table 31. Declination to Prosecute

AGENCY	FREQUENCY									
	ALL POTENTIAL RESPONDENTS	VICTIM'S COOPERATION	OTHER MITIGATING FACTORS	PRIOR CRIMINAL RECORD	INJURIES TO PERSONS	POLICE MISCONDUCT	FINANCIAL LOSS	INJURIES TO ACCUSED INDIVIDUAL	OTHER	NONE OF THE ABOVE
All Respondents	68	33	25	19	20	20	17	18	29	19
District Attorney Offices	57	24	16	13	13	14	11	11	24	18
City Attorney Offices	11	9	9	6	7	6	6	7	5	1

33. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding reasons to decline to prosecute Accused Individuals, please write "N/A."

34. Please identify the name and title(s) of the Person Most Qualified to respond to questions about declination to prosecute data recorded by your office.*

Charges Filed (DA & City Attorney offices only)

35. Our office records the following information in deciding charges to file against Accused Individual(s) (select all that apply):*

[ ] Injuries to persons

[ ] Financial loss to persons

[ ] Status of victim (e.g., victim is law enforcement, child, spouse)

[ ] Prior criminal history of Accused Individual

[ ] Victim's cooperation

[ ] Alleged conduct or status enhancements

[ ] If your office records information other than as listed above regarding your office's decision to file charges, please specify such information: _____*

[ ] None of the above

Table 32. Charges to File

AGENCY	FREQUENCY								
	ALL POTENTIAL RESPONDENTS	CONDUCT OR STATUS ENHANCEMENTS	PRIOR CRIMINAL HISTORY	FINANCIAL LOSS	INJURIES	VICTIM STATUS	FINANCIAL LOSS	NONE OF THE ABOVE	OTHER
All Respondents	68	35	32	32	31	28	27	28	6
District Attorney Offices	57	28	25	25	24	21	20	25	5
City Attorney Offices	11	7	7	7	7	7	7	3	1

36. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding decisions on charges to file, please write "N/A."

37. Our office records the following information regarding considerations in deciding the level/severity of charges to file against Accused Individual(s) (select all that apply):*

[ ] Injuries to persons

[ ] Financial loss to persons

[ ] Status of victim (e.g., victim is law enforcement, child, spouse)

[ ] Prior criminal history of Accused Individual

[ ] Victim's cooperation

[ ] Alleged conduct or status enhancements

[ ] If your office records information other than as listed above regarding your office's decision as to the level/severity of the charges to file, please specify such information: _____*

[ ] None of the above

Table 33. Level/Severity of Charges to File

AGENCY	FREQUENCY								
	ALL POTENTIAL RESPONDENTS	CONDUCT OR STATUS ENHANCEMENTS	INJURIES	PRIOR CRIMINAL HISTORY	VICTIM STATUS	FINANCIAL LOSS	VICTIM'S COOPERATION	NONE OF THE ABOVE	OTHER
All Respondents	68	33	31	30	29	29	22	32	5
District Attorney Offices	57	27	25	24	23	23	17	28	3
City Attorney Offices	11	6	6	6	6	6	5	4	2

38. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding considerations in the level/severity of charges to file, please write "N/A."

39. Please identify the name and title(s) of the Person Most Qualified to respond to questions about charge-related data recorded by your office.*

Diversion Programs

40. List all diversion programs in which your office participates or has access to and describe the type of diversion:*

41. Our office records the following information regarding diversion offers extended to Accused Individual(s) (select all that apply):*

[ ] Whether diversion was offered

[ ] Date of diversion offer

[ ] Whether the diversion was pre- or post-plea

[ ] If the diversion offer was post-plea, whether the diversion offer was pre-sentencing (sentencing was put over for a future date) or post-sentencing (court sentenced the Accused Individual and ordered that at a future date the sentence would be vacated if the Accused Individual completed the diversion successfully)

[ ] Whether a diversion offer was accepted

[ ] Reason(s) for diversion offer (e.g., mental health services, drug addiction)

[ ] The terms of diversion (e.g., obey all laws, complete treatment program, complete community service, pay restitution)

[ ] If your office records information other than as listed above regarding offers of diversion, please specify such information: _____*

[ ] None of the above

Table 34. Diversion Offers Extended

AGENCY	FREQUENCY									
	ALL POTENTIAL RESPONDENTS	OFFER ACCEPTED	TERMS	PRE- OR POST-PLEA	DATE OF OFFER	DIVERSION OFFERED	PRE- OR POST-SENTENCING	REASONS FOR OFFER	NONE OF THE ABOVE	OTHER
All respondents	126	85	82	69	64	64	51	52	20	10
Superior Courts	58	46	45	29	23	23	23	22	5	2
District Attorney Offices	57	30	28	32	32	32	20	22	14	5
City Attorney Offices	11	9	9	8	9	9	8	8	1	3

42. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding diversion offers extended to Accused Individuals, please write "N/A."

43. Our office collects the following information regarding diversion accepted by Accused Individual(s) (select all that apply):*

[ ] Whether diversion was completed

[ ] Whether the Accused Individual entered a plea at the time diversion began

[ ] Whether diversion was in-patient or out-patient

[ ] Whether the Accused Individual was allowed to withdraw the plea upon successful completion of the diversion

[ ] Whether the Accused Individual was sentenced to prison/jail or probation upon unsuccessful completion of the diversion

[ ] If your office records information other than as listed above regarding accepted diversion offers, please specify such information: _____*

[ ] None of the above

Table 35. Diversion Offers Accepted

AGENCY	FREQUENCY							
	ALL POTENTIAL RESPONDENTS	DIVERSION COMPLETED	PRISON/JAIL/ PROBATION SENTENCE	PLEA ENTERED	PLEA WITHDRAWAL	IN- OR OUT-PATIENT	NONE OF THE ABOVE	OTHER
All respondents	126	105	87	88	77	38	15	8
Superior Courts	58	56	50	46	44	20	2	3
District Attorney Offices	57	39	29	33	25	11	13	3
City Attorney Offices	11	10	8	9	8	7	0	2

44. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding diversions accepted by Accused Individuals, please write "N/A."

45. Please identify the name and title(s) of the Person Most Qualified to respond to questions about diversion data recorded by your office for Accused Individuals.*

	FIRST NAME	LAST NAME	TITLE(S)	EMAIL ADDRESS
Person Most Qualified				

Release, Bail, and Custody

46. Our office records the following information regarding OR release for Accused Individual(s) (select all that apply):*

[ ] Whether your office agreed to an OR release

[ ] Whether the court released the Accused Individual OR at arraignment or at any bail hearing

[ ] If your office records information other than as listed above regarding OR release, please specify such information: _____*

[ ] None of the above

Table 36. OR Release for Accused Individuals

AGENCY	FREQUENCY				
	ALL POTENTIAL RESPONDENTS	ARRAIGNMENT OR BAIL HEARING COURT OR RELEASE	OFFICE AGREED TO OR RELEASE	NONE OF THE ABOVE	OTHER
All respondents	126	91	77	30	22
Superior Courts	58	54	49	2	14
District Attorney Offices	57	29	22	26	5
City Attorney Offices	11	8	6	2	3

47. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding OR release for Accused Individuals, please write "N/A."

48. Our office records the following information regarding bail extended to Accused Individual(s) (select all that apply):*

[ ] Whether the law enforcement agency referring the Accused Individual set bail pre-filing

[ ] The amount of bail set by the law enforcement agency referring the Accused Individual

[ ] Whether your office requested bail at arraignment or at any subsequent bail hearings

[ ] Whether the court imposed bail at arraignment or at any subsequent bail hearings

[ ] Bail amount requested

[ ] Bail amount imposed

[ ] Whether your office requested bail at or above the bail schedule

[ ] Whether bail was set, bail was denied, or OR release was granted

[ ] Whether the Accused Individual was brought to court in custody, cited out to come to court on his/her own, or bailed out at the jail and came to court on his/her own

[ ] Whether the Accused Individual bailed out if the court imposed bail

[ ] If your office records information other than as listed above regarding bail, please specify such information: _____*

[ ] None of the above

Table 37. Bail Extended

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	AMOUNT IMPOSED	BAIL SET, DENIED, OR OR RELEASE GRANTED	COURT-IMPOSED AT ARRAIGNMENT OR BAIL HEARING	APPEARED IN CUSTODY, CITED OUT, BAILED OUT	BAILED OUT OF COURT-IMPOSED BAIL	PROSECUTOR REQUESTED AT ARRAIGNMENT OR BAIL HEARING
All respondents	126	89	90	83	83	69	71
Superior Courts	58	52	54	51	49	46	41
District Attorney Offices	57	30	28	26	28	18	22
City Attorney Offices	11	7	8	6	6	5	8

49. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding bail extended to Accused Individuals, please write "N/A."

Table 37. Bail Extended (cont'd)

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	PROSECUTOR REQUESTED AT OR ABOVE BAIL SCHEDULE	AMOUNT REQUESTED	AMOUNT SET BY LEA	LEA SET BAIL PRE-FILING	NONE OF THE ABOVE	OTHER
All respondents	126	49	48	35	31	22	7
Superior Courts	58	30	23	22	18	3	4
District Attorney Offices	57	14	18	10	10	17	3
City Attorney Offices	11	5	7	3	3	2	0

50. Our office records the following information regarding custody of Accused Individuals (select all that apply):*

[ ] Whether detention orders were sought

[ ] Whether the Accused Individual was in custody pre-plea

[ ] Whether the Accused Individual was in custody pre-trial

[ ] If your office records information other than as listed above regarding bail, please specify such information: _____*

[ ] None of the above

Table 38. Custody of Accused Individuals

AGENCY	FREQUENCY					
	ALL POTENTIAL RESPONDENTS	IN CUSTODY PRE-TRIAL	IN CUSTODY PRE-PLEA	DETENTION ORDERS SOUGHT	NONE OF THE ABOVE	OTHER
All respondents	126	84	84	49	33	11
Superior Courts	58	48	49	30	6	4
District Attorney Offices	57	29	29	14	24	6
City Attorney Offices	11	7	6	5	3	1

51. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding custody of Accused Individuals, please write "N/A."

52. Please identify the name and title(s) of the Person Most Qualified to respond to questions about bail, release, and custody data collected by your office.*

	FIRST NAME	LAST NAME	TITLE(S)	EMAIL ADDRESS
Person Most Qualified				

Plea Offers

53. Our office records the following information regarding plea offers extended to Accused Individuals (select all that apply):*

[ ] Whether a plea bargain was offered by the prosecuting agency

[ ] Whether the court made a plea offer (i.e. whether there was an offer from the court for an open plea)

[ ] Date each plea offer was extended to the Accused Individual

[ ] Whether there was a counteroffer

[ ] Whether the plea offer was accepted

[ ] Counts/priors/enhancements that would be dismissed or stricken in exchange for the Accused Individual's plea

[ ] Counts/priors/enhancements that would be admitted in exchange for the Accused Individual's plea

[ ] Sentence that would be imposed in exchange for the plea (e.g. diversion, probation, (the terms and conditions for diversion or probation), prison/jail sentence (the terms and conditions for the same; e.g. credits applied))

[ ] Reductions to severity of charges offered (i.e., infraction, misdemeanor, felony)

[ ] Reductions to charging enhancements

[ ] If your office records information other than as listed above regarding plea offers extended to Accused Individual(s), please specify such information: _____*

[ ] None of the above

Table 39a. Plea Offers Extended

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	OFFER ACCEPTED	SENTENCE IF ACCEPTED	REDUCTION TO SEVERITY OF CHARGES	COUNTS, PRIORS, ENHANCEMENTS DISMISSED	COUNTS, PRIORS, ENHANCEMENTS ADMITTED	REDUCTION TO CHARGING ENHANCEMENTS
All Respondents	126	76	75	73	69	69	67
Superior Courts	58	31	29	32	28	26	28
District Attorney Offices	57	34	37	33	33	35	32
City Attorney Offices	11	11	9	8	8	8	7

Table 39b. Plea Offers Extended (cont'd)

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	OFFERED BY PROSECUTOR	DATE	MADE BY COURT	COUNTER-OFFER	NONE OF THE ABOVE	OTHER
All Respondents	126	66	53	48	38	31	8
Superior Courts	58	18	13	14	7	17	3
District Attorney Offices	57	37	32	27	25	14	4
City Attorney Offices	11	11	8	7	6	0	1

54. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding plea offers extended to Accused Individuals, please write "N/A."

55. Our office records the following information regarding plea offers accepted by Accused Individuals (select all that apply):*

[ ] Date plea offer was accepted

[ ] Each count the Accused Individual pled to, including the penal code and severity (misdemeanor, felony), priors/enhancements admitted

[ ] Sentence the court imposed in exchange for the plea (e.g., diversion, , probation, (the terms and conditions for diversion or probation), prison/jail sentence (the terms and conditions for the same; e.g. credits applied))

[ ] If your office records information other than as listed above regarding plea offers accepted by Accused Individual(s), please specify such information: _____*

[ ] None of the above

Table 40. Plea Offers Accepted

AGENCY	FREQUENCY					
	ALL POTENTIAL RESPONDENTS	EACH COUNT	SENTENCE IN EXCHANGE	DATE	NONE OF THE ABOVE	OTHER
All Respondents	126	113	110	102	10	9
Superior Courts	58	57	57	52	1	4
District Attorney Offices	57	47	43	40	8	4
City Attorney Offices	11	9	10	10	1	1

56. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding plea offers accepted by Accused Individuals, please write "N/A."

57. Please identify the name and title(s) of the Person Most Qualified to respond to questions about plea offer data recorded by your office.*

	FIRST NAME	LAST NAME	TITLE(S)	EMAIL ADDRESS
Person Most Qualified				

Outcomes

58. Our office records the following information on the outcomes of prosecution (select all that apply):*

[ ] Charges of conviction

[ ] Dismissal of charges

[ ] Sentences

[ ] Dismissal of enhancements

[ ] Imposition of enhancements

[ ] Dismissal of special circumstances

[ ] Imposition of special circumstances

[ ] Collateral consequences as a result of the sentence (e.g., driver's license suspension; sex offender registration; domestic violence protective order prohibiting ownership, possession, or using a gun)

[ ] Whether the sentence resulted in a prison/jail sentence

[ ] Whether the sentence resulted in probation

[ ] If your office records information other than as listed above regarding the outcomes of prosecution of Accused Individual(s), please specify such information: _____*

[ ] None of the above

Table 41a. Prosecution Outcomes

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	DISMISSAL OF CHARGES	CHARGES OF CONVICTION	PROBATION	PRISON/JAIL SENTENCE	SENTENCES	DISMISSAL OF ENHANCEMENTS
All Respondents	126	121	121	118	117	117	108
Superior Courts	58	58	58	58	58	58	53
District Attorney Offices	57	53	53	51	50	49	48
City Attorney Offices	11	10	10	9	9	10	7

Table 41b. Prosecution Outcomes (cont'd)

AGENCY	FREQUENCY						
	ALL POTENTIAL RESPONDENTS	IMPOSITION OF ENHANCEMENTS	COLLATERAL CONSEQUENCES	IMPOSITION OF SPECIAL CIRCUMSTANCES	DISMISSAL OF SPECIAL CIRCUMSTANCES	NONE OF THE ABOVE	OTHER
All Respondents	126	104	90	93	92	2	6
Superior Courts	58	50	51	48	46	0	2
District Attorney Offices	57	46	30	45	46	2	3
City Attorney Offices	11	8	9	0	0	0	1

59. If your office does not record information regarding one or more of the options listed above, please explain why this information is not recorded. If you indicated that your office records all information listed above regarding prosecution outcomes, please write "N/A."

60. Please identify the name and title(s) of the Person Most Qualified to respond to the above question.*

	FIRST NAME	LAST NAME	TITLE(S)	EMAIL ADDRESS
Person Most Qualified				

PDF Copy of Responses

61. If you would like to receive a PDF copy of your responses, please enter your email address below. Please skip this question if you do not want a PDF copy of your responses emailed to you.

Appendix B: Affirmative Responses by Agency

This appendix provides an overview of selected responses from all three agencies surveyed: City Attorney offices, District Attorney offices, and Superior Courts. District Attorney offices and Superior Courts were divided into three California Regions: Northern, Central, and Southern. Table 42 shows which counties were assigned to each region.

Table 42. Counties Contained in California Regions

CALIFORNIA REGION	COUNTY
Northern	Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba, Tulare
Central	Fresno, Inyo, Kings, Madera, Mariposa, Merced, Monterey, San Benito, San Mateo, Santa Clara, Santa Cruz, Stanislaus
Southern	Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura

Twenty questionnaire response options were selected for inclusion based on their importance and whether they were pertinent to all three agencies. Table 43 shows the response as it appears in the questionnaire and its corresponding label in subsequent tables.

Table 43. Table Labels with Corresponding Questionnaire Response Content

TABLE LABEL	QUESTIONNAIRE RESPONSE
Accused Individual Name	Name of each Accused Individual
Court Case Number	Court case number(s)
Prior Criminal Charges	Prior criminal charges
Arresting Agency Number	Arresting agency number(s)
Date of Arrest	Date of arrest
LEA Charges	The charge(s) specified by the law enforcement agency referring the Accused Individual, including the top charge by the law enforcement agency referring the Accused Individual.
Acc Ind Race	Accused Individual Race
Acc Ind Ethnicity/Ancestry	Accused Individual Ethnicity/Ancestry
Acc Ind Country of Origin	Accused Individual Country of origin (nationality)
Acc Ind Gender/Sex	Accused Gender/Sex
Victim Race	Victim Race
Victim Ethnicity/Ancestry	Victim Ethnicity/Ancestry
Victim Gender/Sex	Victim Gender/Sex
Diversion Offered	Whether diversion was offered.
Diversion Accepted	Whether a diversion offer was accepted.
Diversion Withdrawal	Whether the Accused Individual was allowed to withdraw the plea upon successful completion of the diversion.
Arraignment Bail Court	Whether the court imposed bail at arraignment or at any subsequent bail hearings.
Agency Plea Offer	Whether a plea bargain was offered by the prosecuting agency.
Court Plea Offer	Whether the court made a plea offer (i.e. whether there was an offer from the court for an open plea).
Prison/Jail Sentence	Whether the sentence resulted in a prison/jail sentence.

Tables 44 – 50 display the crosstabulations of agency and questionnaire responses. A check mark indicates that the agency responded affirmatively to the response option.

Table 3. City Attorney Offices by City and Selected Questionnaire Responses

CITY	Anaheim	Burbank	Hawthorne	Inglewood	Long Beach	Los Angeles	Pasadena	Redondo Beach	San Diego	Santa Monica	Torrance
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges	✓	✓	✓	✓		✓	✓	✓	✓		
Arresting Agency Number	✓	✓		✓	✓		✓	✓	✓	✓	✓
Date of Arrest	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
LEA Charges	✓	✓	✓	✓	✓	✓	✓	✓		✓	
Acc Ind Race	✓			✓	✓	✓		✓	✓		✓
Acc Ind Ethnicity/Ancestry	✓			✓		✓					
Acc Ind Country of Origin	✓			✓		✓			✓		
Acc Ind Gender/Sex	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Victim Race	✓			✓	✓			✓	✓		✓
Victim Ethnicity/Ancestry	✓			✓							
Victim Gender/Sex	✓			✓	✓	✓	✓	✓	✓	✓	✓
Diversion Offered	✓	✓	✓	✓	✓		✓	✓	✓	✓	
Diversion Accepted	✓	✓	✓	✓	✓		✓	✓	✓	✓	
Diversion Withdrawal	✓	✓	✓	✓			✓	✓	✓	✓	
Arraignment Bail Court	✓	✓					✓	✓	✓	✓	
Agency Plea Offer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Plea Offer	✓	✓	✓	✓			✓	✓		✓	
Prison/Jail Sentence	✓	✓	✓	✓		✓	✓	✓	✓	✓	

Table 4. California Northern Region District Attorney Offices by County and Selected Questionnaire Responses

COUNTY	Alameda	Alpine	Amador	Butte	Calaveras	Colusa	Contra Costa	Del Norte	El Dorado	Glenn	Humboldt	Lake	Lassen	Marin	Mendocino	Modoc	Mono
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges	✓			✓			✓		✓		✓	✓	✓	✓	✓		
Arresting Agency Number	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Date of Arrest			✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓
LEA Charges			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Acc Ind Race	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓			✓
Acc Ind Ethnicity/Ancestry		✓		✓			✓		✓							✓	
Acc Ind Country of Origin		✓															
Acc Ind Gender/Sex	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Victim Race	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓
Victim Ethnicity/Ancestry	✓			✓	✓		✓		✓							✓	
Victim Gender/Sex	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Diversion Offered	✓				✓	✓				✓	✓		✓	✓	✓		✓
Diversion Accepted	✓				✓		✓			✓	✓	✓	✓	✓	✓		✓
Diversion Withdrawal	✓				✓					✓	✓		✓	✓	✓		
Arraignment Bail Court			✓		✓			✓			✓		✓	✓	✓	✓	
Agency Plea Offer	✓				✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Court Plea Offer	✓				✓		✓				✓			✓	✓		✓
Prison/Jail Sentence	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

COUNTY	Napa	Nevada	Placer	Plumas	Sacramento	San Francisco	San Joaquin	Shasta	Sierra	Siskiyou	Solano*	Sonoma	Sutter	Tehama	Trinity	Tuolumne	Yolo	Yuba
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓
Prior Criminal Charges	✓	✓					✓	✓					✓			✓	✓	
Arresting Agency Number	✓	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	✓	✓
Date of Arrest	✓	✓	✓	✓		✓	✓		✓				✓	✓	✓	✓	✓	✓
LEA Charges	✓	✓	✓	✓	✓	✓		✓	✓				✓	✓	✓	✓	✓	✓
Acc Ind Race		✓				✓	✓	✓		✓			✓	✓	✓	✓	✓	✓
Acc Ind Ethnicity/Ancestry		✓	✓			✓	✓								✓	✓		
Acc Ind Country of Origin																✓		
Acc Ind Gender/Sex		✓	✓	✓		✓	✓	✓		✓			✓	✓	✓	✓	✓	✓
Victim Race		✓			✓	✓	✓	✓		✓			✓	✓		✓	✓	✓
Victim Ethnicity/Ancestry	✓	✓	✓		✓	✓	✓									✓		
Victim Gender/Sex	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	✓		✓	✓	✓
Diversion Offered		✓		✓			✓	✓		✓		✓	✓		✓	✓	✓	✓
Diversion Accepted		✓		✓			✓	✓		✓		✓	✓			✓	✓	
Diversion Withdrawal		✓		✓			✓					✓	✓		✓	✓	✓	
Arraignment Bail Court	✓	✓					✓		✓	✓			✓		✓	✓	✓	
Agency Plea Offer	✓	✓		✓			✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	
Court Plea Offer	✓	✓					✓	✓		✓			✓		✓	✓	✓	
Prison/Jail Sentence	✓		✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓

**The Solano County District Attorney Office did not complete a questionnaire*

Table 5. California Central Region District Attorney Offices by County and Selected Questionnaire Responses

COUNTY	Fresno	Inyo	Kings	Madera	Mariposa	Merced	Monterey	San Benito	San Mateo	Santa Clara	Santa Cruz	Stanislaus	Tulare
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges	✓		✓	✓		✓		✓	✓	✓	✓		✓
Arresting Agency Number	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Date of Arrest	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
LEA Charges	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Acc Ind Race	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Acc Ind Ethnicity/Ancestry	✓							✓					
Acc Ind Country of Origin													
Acc Ind Gender/Sex	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Victim Race	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Victim Ethnicity/Ancestry	✓							✓					
Victim Gender/Sex	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Diversion Offered			✓						✓	✓		✓	✓
Diversion Accepted			✓					✓	✓	✓		✓	✓
Diversion Withdrawal			✓				✓	✓	✓	✓		✓	
Arraignment Bail Court			✓				✓		✓	✓			✓
Agency Plea Offer			✓		✓		✓	✓	✓	✓	✓		✓
Court Plea Offer			✓				✓	✓	✓	✓			✓
Prison/Jail Sentence		✓	✓		✓	✓	✓	✓	✓	✓		✓	✓

Table 6. California Southern Region District Attorney Offices by County and Selected Questionnaire Responses

COUNTY	Imperial	Kern	Los Angeles	Orange	Riverside	San Bernardino	San Diego	San Luis Obispo	Santa Barbara	Ventura
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges		✓		✓		✓	✓	✓	✓	
Arresting Agency Number	✓		✓	✓	✓	✓	✓	✓	✓	✓
Date of Arrest	✓		✓	✓	✓	✓	✓	✓	✓	✓
LEA Charges	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Acc Ind Race	✓	✓	✓	✓	✓	✓		✓	✓	
Acc Ind Ethnicity/Ancestry			✓							✓
Acc Ind Country of Origin										✓
Acc Ind Gender/Sex	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Victim Race	✓	✓			✓	✓		✓	✓	
Victim Ethnicity/Ancestry	✓									
Victim Gender/Sex	✓	✓			✓	✓	✓	✓	✓	✓
Diversion Offered	✓		✓			✓	✓	✓	✓	✓
Diversion Accepted	✓	✓		✓	✓		✓			
Diversion Withdrawal	✓	✓		✓			✓			
Arraignment Bail Court	✓	✓	✓				✓			
Agency Plea Offer	✓	✓				✓	✓			
Court Plea Offer	✓	✓				✓	✓			✓
Prison/Jail Sentence	✓	✓	✓	✓	✓	✓	✓	✓	✓	

Table 7. California Northern Region District Superior Courts by County and Selected Questionnaire Responses

COUNTY	Alameda	Alpine	Amador	Butte	Calaveras	Colusa	Contra Costa	Del Norte	El Dorado	Glenn	Humboldt	Lake	Lassen	Marin	Mendocino	Modoc	Mono
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges			✓							✓				✓			✓
Arresting Agency Number		✓	✓	✓			✓	✓		✓	✓	✓			✓	✓	✓
Date of Arrest	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
LEA Charges	✓		✓	✓	✓	✓			✓		✓	✓	✓	✓	✓	✓	✓
Acc Ind Race	✓	✓		✓	✓		✓				✓	✓		✓	✓	✓	✓
Acc Ind Ethnicity/Ancestry	✓		✓										✓				
Acc Ind Country of Origin	✓																
Acc Ind Gender/Sex	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Victim Race																	✓
Victim Ethnicity/Ancestry																	
Victim Gender/Sex						✓											✓
Diversion Offered		✓	✓	✓	✓			✓					✓	✓			✓
Diversion Accepted	✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	✓	✓	✓	✓
Diversion Withdrawal	✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓	
Arraignment Bail Court	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓		✓	✓
Agency Plea Offer		✓			✓					✓			✓				✓
Court Plea Offer		✓							✓				✓	✓			✓
Prison/Jail Sentence	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

COUNTY	Napa	Nevada	Placer	Plumas	Sacramento	San Francisco	San Joaquin	Shasta	Sierra	Siskiyou	Solano	Sonoma	Sutter	Tehama	Trinity	Tuolumne	Yolo	Yuba
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges	✓				✓	✓		✓		✓		✓		✓	✓	✓	✓	
Arresting Agency Number	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓		✓
Date of Arrest	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓		✓
LEA Charges	✓	✓			✓	✓			✓	✓	✓	✓		✓	✓	✓		
Acc Ind Race	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Acc Ind Ethnicity/Ancestry		✓	✓				✓			✓	✓				✓			✓
Acc Ind Country of Origin															✓			✓
Acc Ind Gender/Sex	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Victim Race																		
Victim Ethnicity/Ancestry																		
Victim Gender/Sex										✓								
Diversion Offered					✓							✓	✓	✓	✓	✓		✓
Diversion Accepted	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Diversion Withdrawal	✓			✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓
Arraignment Bail Court	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Agency Plea Offer					✓			✓	✓			✓	✓	✓		✓		✓
Court Plea Offer					✓							✓			✓	✓		✓
Prison/Jail Sentence	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Table 8. California Central Region District Superior Courts by County and Selected Questionnaire Responses

COUNTY	Fresno	Inyo	Kings	Madera	Mariposa	Merced	Monterey	San Benito	San Mateo	Santa Clara	Santa Cruz	Stanislaus	Tulare
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Prior Criminal Charges	✓		✓	✓				✓	✓				
Arresting Agency Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Date of Arrest	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
LEA Charges	✓		✓	✓		✓	✓	✓	✓	✓			✓
Acc Ind Race	✓	✓	✓	✓		✓	✓		✓	✓	✓		
Acc Ind Ethnicity/Ancestry	✓		✓			✓			✓				✓
Acc Ind Country of Origin													
Acc Ind Gender/Sex	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Victim Race								✓					
Victim Ethnicity/Ancestry								✓					
Victim Gender/Sex							✓	✓					
Diversion Offered			✓				✓	✓		✓			
Diversion Accepted	✓	✓	✓				✓	✓	✓	✓		✓	
Diversion Withdrawal	✓			✓	✓	✓	✓	✓	✓	✓			
Arraignment Bail Court	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓
Agency Plea Offer		✓						✓					
Court Plea Offer							✓	✓					
Prison/Jail Sentence	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Table 9. California Southern Region District Superior Courts by County and Selected Questionnaire Responses

COUNTY	Imperial	Kern	Los Angeles	Orange	Riverside	San Bernardino	San Diego	San Luis Obispo	Santa Barbara	Ventura
Accused Individual Name	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Court Case Number	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prior Criminal Charges	✓	✓		✓	✓	✓	✓		✓	✓
Arresting Agency Number	✓	✓	✓	✓	✓	✓		✓	✓	✓
Date of Arrest	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
LEA Charges	✓	✓	✓	✓	✓	✓		✓	✓	✓
Acc Ind Race	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Acc Ind Ethnicity/Ancestry			✓	✓				✓		
Acc Ind Country of Origin										
Acc Ind Gender/Sex	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Victim Race	✓									
Victim Ethnicity/Ancestry	✓									
Victim Gender/Sex	✓									
Diversion Offered	✓			✓		✓		✓		
Diversion Accepted	✓	✓	✓	✓	✓	✓		✓		✓
Diversion Withdrawal	✓	✓	✓	✓	✓	✓	✓	✓		✓
Arraignment Bail Court	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Agency Plea Offer				✓		✓		✓		
Court Plea Offer				✓		✓				
Prison/Jail Sentence	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Endnotes

[1] Assem. Bill No. 2542 (2019-2020 Reg. Sess.).

[2] Assem. Bill No. 256 (2021-2022 Reg. Sess.) § 2, codified at Penal Code § 745(j) (specifying dates of the RJA's applicability).

[3] *McCleskey v. Kemp* (1987) 481 U.S. 279, 312-313.

[4] Assem. Bill No. 2418 (2021-2020 Reg. Sess.).

[5] It should be noted that results from the City Attorney offices should be interpreted with caution due to the small number. Small differences in frequency counts may produce large differences in percentages.

[6] Solano County DA did not complete the questionnaire.

PART VII

LISTENING TO THE COMMUNITY

CHAPTER 32 Harm and Repair

COURTESY OF DEREK BERWIN/FOX PHOTOS VIA GETTY IMAGES

Dr Ralph Bunche, the Director of the United Nations Trusteeships and Information from non-self-Governing Territories, in London.(1952)

I. Introduction

The Task Force engaged the Ralph J. Bunche Center at the University of California, Los Angeles, to design and implement a plan in which it could facilitate the collection and documenting of important community perspectives independent of the formal meetings of the Task Force. The Bunche Center report, Harm & Repair: Community Engagement Project Report on Reparations in California, follows. The Bunche Center implemented its plan through:

1. holding community listening sessions, and engaging with at least 867 people during 2022;

2. collecting seven oral histories and 46 personal testimonies; and

3. administering two statewide surveys.

The first survey comprised a representative sample of all Californians, with 2,499 respondents. The second sample, with 1,934 respondents, was over 90 percent African American, and reached through connections to listening session participants.

The fundamental goal of this work was to give the community voice in the ongoing statewide conversation concerning reparations—to create space for communities to express their concerns, desires, wishes, and experiences—and to provide the Task Force and the Legislature with additional community input as it explored and deliberated reparations proposals. This chapter was prepared by The Ralph J. Bunche Center Community Engagement Project Research Team.

HARM & REPAIR:

COMMUNITY ENGAGEMENT PROJECT REPORT ON REPARATIONS IN CALIFORNIA

Submitted to:

The California Task Force to Study and Develop Reparation Proposals for African Americans

The Ralph J. Bunche Center Community Engagement Project Research Team:

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November 2022

UCLA Ralph J. Bunche Center for African American Studies

BPP BLACK POLICY PROJECT at UCLA

ACKNOWLEDGMENTS

The Bunche Research Team wishes to acknowledge and thank those individuals and organizations that either contributed to this report directly or supported the work undertaken to complete this report.

First, we would like to extend appreciation to the seven anchor organizations and their staffs. They helped support the organization and facilitation of the listening sessions to ensure that community voices are considered during the Task Force's deliberation over reparations proposals. Their work was at the center of the success and impact of this project:

- California Black Power Network
- Othering & Belonging Institute
- Afrikan Black Coalition
- Black Equity Collective
- Black Equity Initiative
- Coalition for a Just and Equitable California
- Repaired Nations

We would also like to extend thanks to the many organizations and individuals who supported this project from facilitation to funding. They provided resources, time, and facilities, and they gave the community a voice as the Task Force pursues its purpose and mission. These individuals and organizations include:

- Mary Lee, Esq.
- Ama Nyamekye Anane, Good Influence
- Lucid Holdings
- Kelly Lytle Hernandez, Ralph J. Bunche Center for African American Studies at UCLA
- Aria Florant, Liberation Ventures
- Christina Pao, Liberation Ventures
- Chroma Collaborative
- The California Wellness Foundation
- The Weingart Foundation
- The California Department of Justice
- Staff of the Ralph J. Bunche Center for African American Studies at UCLA

EXECUTIVE SUMMARY

This report documents the findings of the Ralph J. Bunche Center's Community Engagement Project for the California Task Force to Study and Develop Reparations Proposals for African Americans. This project was designed to collect and document important community perspectives obtained through three distinct means: 1) holding community listening sessions, 2) collecting oral histories and personal testimonies, and 3) administering surveys. The fundamental goal of this work was to give the community voice in the ongoing statewide conversation concerning reparations – to create space for communities to express their concerns, desires, wishes, and experiences – and to provide the Task Force with additional community input as it explores and deliberates reparations proposals.

Across the above means of engagement, the Bunche Center focused its data collection on four areas deemed important by the Task Force:

- Identifying forms of race-based harm;
- Gauging support for reparations;
- Determining support for different types of reparations; and
- Determining eligibility for reparations.

METHODOLOGY

Between January and August 2022, seven anchor organizations held 17 community listening sessions across the state of California. On average, each listening session had 51 participants, engaging 867 people over the entire project period.

Personal testimonies and oral histories were also collected for the project. In all, 46 personal testimonies, including audio and video recordings, written documents, and photos, were self-submitted between May and September 2022. Additionally, seven oral histories were collected via interviews conducted in August 2022 by the Bunche research team. The majority of the testimonials were provided by African American residents of California, and all the oral histories were provided by African American residents of California, ranging in age from 38 to 88, sourced equally from Northern and Southern California.

Finally, the Bunche Center designed and conducted a closed-ended statewide survey to assess sentiment on reparations measures such as direct cash payments and non-monetary forms of reparations, such as an apology or monuments. The survey recorded responses from two samples. The first was a representative sample of Californians, with 2,499 respondents. The second sample, with 1,934 respondents, was over 90% African American, reached through connections to listening session participants.

KEY FINDINGS

An analysis of the results of the community listening sessions, personal testimonies, oral histories, and statewide survey revealed the following:

- **There are five major types of racially-driven harm that communities consistently identified.** Study participants named lack of educational opportunity, discriminatory policing and law enforcement, economic disenfranchisement, housing inequality, and healthcare disparities most often when asked about racially-driven harms that Black people experience. The participants also consistently cited the following

harms: food inaccessibility, employment and workplace disparities, inadequate business support infrastructure, the cycle of municipal disinvestment in Black neighborhoods, and displacement.

- **There is broad community support for reparations.**
  The survey found that over 60% of Californians support some form of reparations, including financial compensation, community investments, educational opportunities, investments for Black businesses and organizations, and land and property ownership. Furthermore, community listening session participants overwhelmingly supported reparations initiatives.

- **While a majority of Californians support reparations measures, they are divided on which types should be used.**
  The survey queried respondents on the specific forms of reparations to be applied and found that California residents are largely in support of the three primary types of reparations measures – direct cash payments (66% of respondents); monetary reparations without cash measures (77%); and non-monetary reparations, such as an apology or monuments. Support was consistently highest for remedies incorporating monetary measures, but without direct cash payments, among all Californians, including Black participants. The community listening sessions produced similar results except that direct cash payments were the most frequently mentioned form of reparations followed by other monetary measures.

- **There is a lack of consensus about who should be eligible for reparations.**
  Community members consistently expressed concern regarding who would be eligible for reparations, generally dividing into two camps: those who supported reparations based on lineage claims to ancestors enslaved in America and those who supported reparations for all Black people, regardless of lineage.

These findings provide important information for the Task Force as it continues its work of developing reparations proposals. They also provide an indicator of community sentiment, where awareness building and education may be necessary, and where continued community engagement will be required in the coming weeks and months.

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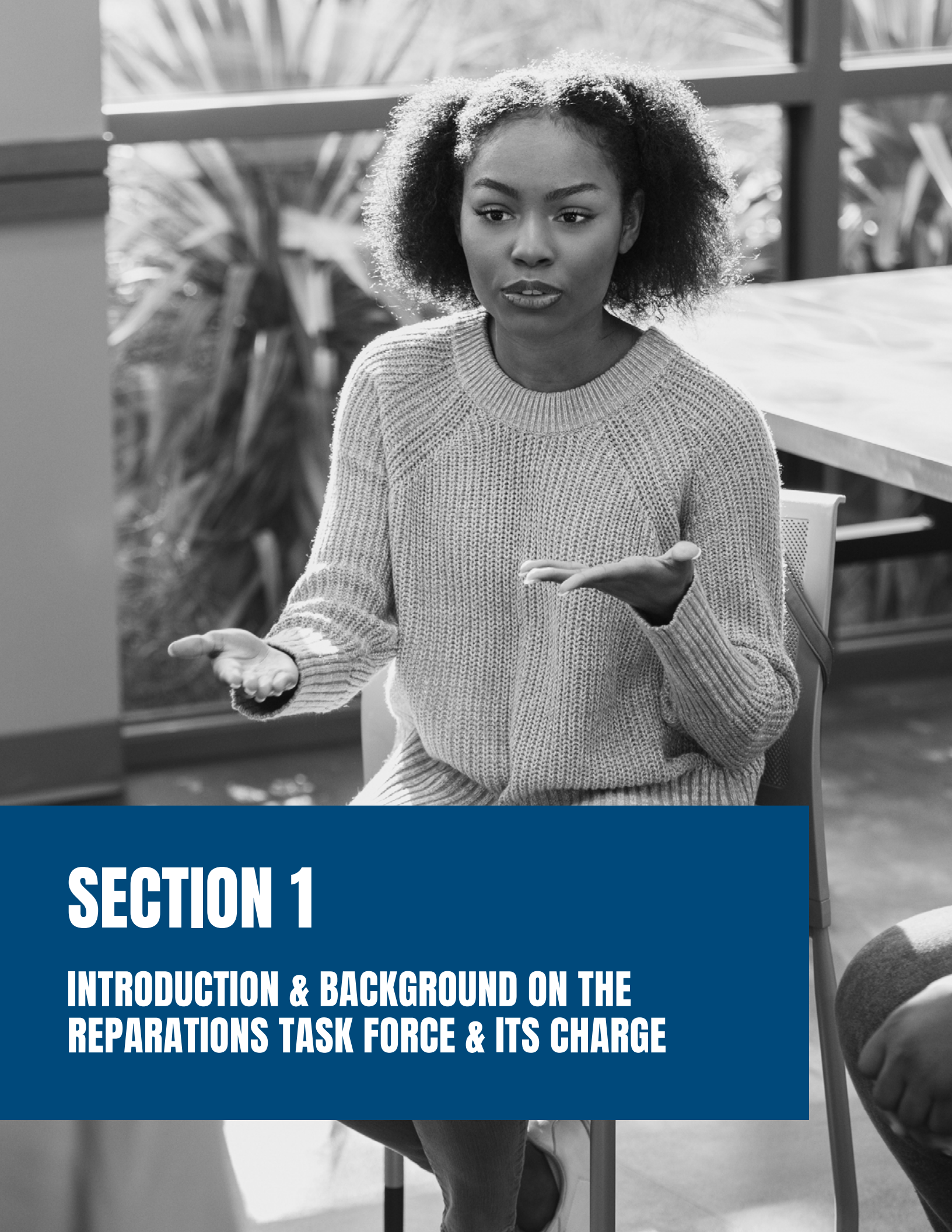


SECTION 1

INTRODUCTION & BACKGROUND ON THE REPARATIONS TASK FORCE & ITS CHARGE

This report documents the findings of the Ralph J. Bunche Center's Community Engagement Project for the California Task Force to Study and Develop Reparations Proposals for African Americans (the Task Force). The Bunche Center's Community Engagement Project undertook the collection and documentation of important community information through three distinct means: 1) holding community listening sessions, 2) collecting oral histories and personal testimonies, and 3) administering surveys. The overarching goal of this effort was to bring the voice of the community into the conversation about reparations (including community members' concerns, desires, wishes, and perspectives) and to provide the Reparations Task Force with further community input as it deliberates reparations proposals. More detail on the assessment efforts and the resulting findings is below.

> **[R]eparations will give us a chance to heal because our struggle, our lives in this country, have been nothing but struggle.**

Before proceeding, it is important to provide the following background information to clarify the purpose and historical importance of this effort.

On September 30, 2020, the California State Assembly enacted Assembly Bill 3121 (AB 3121), thereby establishing the Task Force to Study and Develop Reparations Proposals for African Americans. AB 3121 gave authorization to the California Department of Justice to provide administrative, technical, and legal assistance to the Task Force. This legislation is historically significant, as it makes California the first state in the nation to formally examine the harms and consequences of slavery and potential remedies.

The undertaking of the Task Force is important both in historical and contemporary terms. Slavery and its consequences are deeply woven into the history and development of the United States. From 1619 to 1865, constitutionally sanctioned slavery deprived more than four million Africans and their descendants of a range of rights and privileges, taking from them life, citizenship, cultural heritage, and economic opportunity. Following its legal abolition, government entities at the federal, state, and local levels continued to perpetuate, condone, and sometimes profit from practices that further harmed African Americans and reinforced their marginalized position in society. This legacy of slavery and racial discrimination resulted in debilitating economic, educational, and health hardships that were and continue to be uniquely experienced by African Americans.

AB 3121 charges the Reparations Task Force with studying the institution of slavery and its lingering negative effects on living African Americans, including the descendants of persons enslaved in the United States. As part of this effort, the Task Force will identify, compile, and synthesize relevant evidence-based information on the institution of slavery as it existed within the United States. This includes how California laws and policies continue to disproportionately and negatively impact African Americans, how they perpetuate the lingering material and psychosocial effects of slavery, and how those laws and policies can be eliminated.

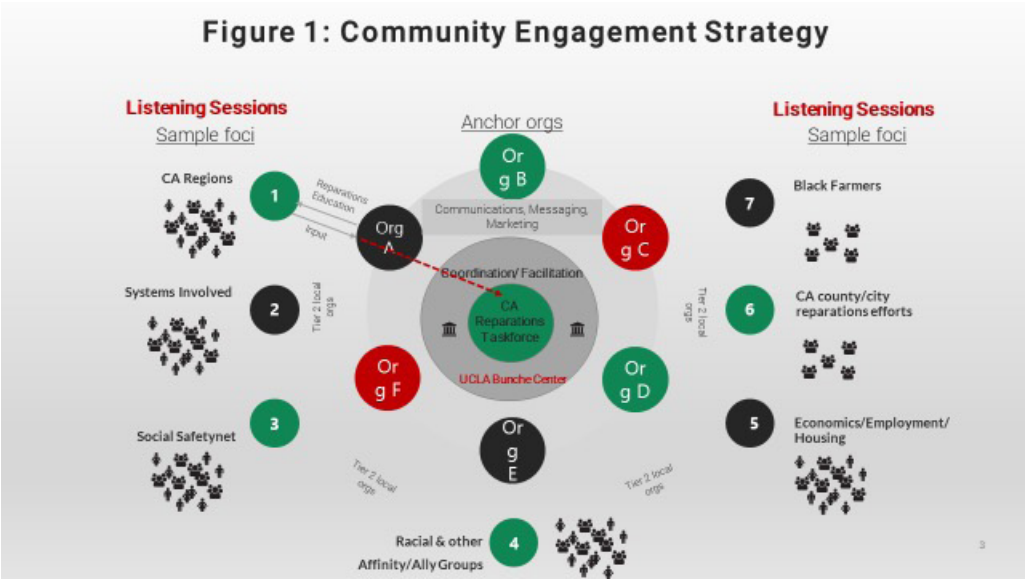
THE TASK FORCE'S COMMUNITY ENGAGEMENT STRATEGY

As part of this data collection effort, the Task Force elected to hold a series of community convening/listening sessions across California to obtain input regarding harms and potential remedies. To aid this effort, the Task Force relied on anchor organizations that had with deep roots, historical significance, and reach in the Black community to assist in the planning and delivery of the listening sessions. Such organizations were well placed to reach a representative share of Black Californians thanks to the historically significant work they have done and are doing in communities, their reputation and trust, and their ability to deliver for community members.

Figure 1 presents a schematic of the Community Engagement Strategy that the Task Force pursued while collecting important information for its deliberations. Anchor organizations were tasked with organizing a series of community listening sessions to solicit community input and gather personal testimony on the harms and legacy of slavery to create well-informed reparations proposals.

The stated goal for the Task Force's community engagement strategy was to collect information on slavery and its consequences (and potential remedies) from a representative swath of the social fabric that makes up California. This included reaching people in different regions; through different service provider organizations, including civil rights organizations, churches, and social service providers; people from different economic backgrounds or employment groups, such as Black farmers; and organizers, policy makers, and otherwise active citizens who have been exploring and advocating for reparations.

Figure 1: Community Engagement Strategy



THE BUNCHE CENTER'S ROLE IN THE COMMUNITY ENGAGEMENT STRATEGY

To complement these efforts, on September 23, 2021, the Task Force elected the UCLA Ralph J. Bunche Center for African American Studies to serve as the intermediary organization supporting the efforts of the Task Force as it pursued its community engagement strategy. The Bunche Center provided an important, neutral-organization function. In this capacity, it helped solicit and identify key stakeholders to administrate and execute the Task Force's efforts. This included the selection of the anchor organizations – who played a foundational role in this effort – as well as locating key personnel to convene this undertaking and organize, conduct, and facilitate the community listening sessions.

As part of its efforts, the Bunche Center recorded and documented important information offered by participants in the community listening sessions. In addition – to complement the stories, ideas, narratives, opinions, and experiences of those who attended the community listening sessions – the Bunche Center also gathered information regarding the community's experiences, concerns, and opinions through two additional avenues. This was done through in-depth interviews and oral histories that were taken with a select number of participants from the community listening sessions. Analysis of personal testimonies self-submitted to the Task Force was also conducted. Finally, a survey of public opinion was designed to collect opinions on reparations proposals from a representative share of the population of California as well as from those who attended the community listening sessions. Together, these activities define the Bunche Center's Community Engagement Project to provide the Task Force with important information on the community's experiences, sentiments, ideas, and opinions concerning reparations that will aid in its deliberations.

The remainder of this report focuses on the findings of these engagement efforts. The next section focuses on findings from the community listening sessions, followed by an analysis of the in-depth interviews, oral histories, and personal testimony, and concludes with the presentation of results from the survey of public opinion on reparations proposals.

SECTION 2

THE BUNCHE CENTER'S COMMUNITY ENGAGEMENT PROJECT DESIGN

As Figure 2 shows, the Bunche Center's Community Engagement Project involved organizing and collecting data from 1) community listening sessions, led by anchor organizations involved with the Task Force's community engagement strategy, as described below; 2) developing a semi-structured interview protocol and conducting in-depth interviews with a select number of individuals as well as analyzing personal testimonies self-submitted to the Task Force; and 3) developing and administering a closed-ended survey of public opinion on reparations proposals.

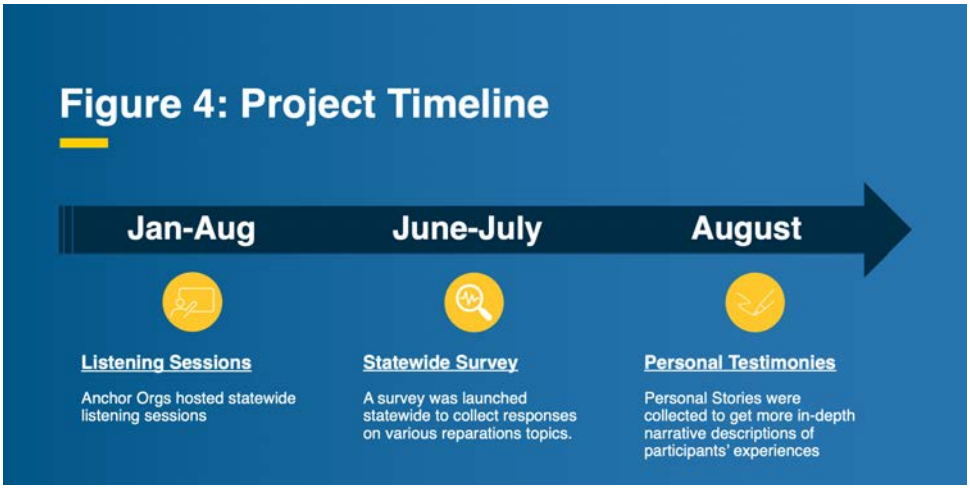
Each of these activities was conducted independently of each other but were nevertheless complementary. Discussions and interactions at the community listening sessions revealed key themes with respect to reparations. The in-depth interviews of participants of the listening sessions allowed for deeper understanding of themes related to reparations than what could be conveyed in the listening sessions. Furthermore, in the community listening sessions, in-depth interviews, and self-submitted personal testimonies, participants offered a number of remedies to address the harms from the legacy of slavery. These qualitative measures dovetailed with the closed-ended public opinion survey administered to Californians and to the participants in the community listening sessions to provide quantitative measures of individuals' opinions about whether, how, and to what extent reparation measures addressing harms should be supported.

For each research activity, the Bunche Center focused on inquiry and data collection in four areas that were deemed essential by the Task Force: 1) the areas of harm, 2) the presence of support for reparations, 3) what type of reparations should be supported, and finally, 4) who should be eligible for the reparations. In the sections that follow, each avenue of inquiry focuses attention on these categories, although the degree of attention to the various areas of concern is different across the activities. As noted, the analysis of the community listening sessions documents the discussions focused on each of the areas of concern, while the in-depth interviews focus

more on harm. The public opinion surveys collected opinion data regarding support for reparations by type with respect to eligibility exclusively.

THE COMMUNITY ENGAGEMENT PROJECT TIMELINE

The Bunche Center's Community Engagement Project began in January 2022 and extended through September 2022. The community listening sessions, held by anchor organizations, began in January 2022, with the final session held in August 2022. Each one of the sessions was recorded using either audio recording or via Zoom for sessions held virtually. The Survey of Public Opinion on Reparations Proposals and Eligibility was administered from the end of May 2022 to July 2022. The survey was conducted with a representative sample (along race, age, and gender) of Californians eighteen years of age and older. A similar survey was administered to those who participated in community listening sessions. These respondents had the opportunity to fill out the surveys from March 2022 to August 2022. Finally, in-depth interviews were conducted in August 2022, and personal testimonies were continuously self-submitted to the Task Force from February 2022 to August 2022.



THE COMMUNITY LISTENING SESSIONS

The community listening session process must be described before the findings of the report are presented. The key stakeholders in this process included the anchor organizations, the convener and organizer of the listening session project, and the professional facilitator of the listening sessions.

ANCHOR ORGANIZATIONS

For the listening sessions, seven anchor organizations were invited to participate. Suggestions for anchor organizations were solicited from among Task Force members, thought leaders in the state, workers in philanthropy, and the landscape of organizations engaged in community organizing in Black communities across California. The final organizations were chosen for invitation to serve as anchor organizations based on the following criteria:

1. Organizations that are skilled in community outreach and community mobilization.
2. Organizations with deep roots in the Black community. Such organizations are well placed to reach a representative share of Black Californians because of the historically significant work that they do in communities, their reputation and trust, and their ability to deliver for community members.
3. Organizations with historical significance and reach within the Black community – to assist with the planning and delivery of listening sessions. Reach of the organizations proved very important in the selection

of anchor organizations. A high priority was set on the selection of organizations that were part of or leading broader networks that either cut across issues or regions of the state.

4. Organizations that have reach with ally groups and organizations who must be educated about the Task Force and its mission, efforts, findings, and recommendations.
5. Organizations with a presence in multiple parts of the state.
6. Organizations engaged in a cross-section of social justice issues with diverse Black populations.

The anchor organizations that helped plan and facilitate the listening sessions include:

- **California Black Power Network:** The California Black Power Network is a growing, united ecosystem of Black-empowering grassroots organizations working together to change the lived conditions of Black Californians by dismantling systemic and anti-Black racism.
- **Othering & Belonging Institute:** The Othering and Belonging Institute at UC Berkeley advances a groundbreaking approach to transforming structural marginalization and inequality. We are scholars, organizers, communicators, researchers, artists, and policymakers committed to building a world where all people belong.
- **Afrikan Black Coalition:** To liberate all Afrikan people through organizing intellectual & economic resources to transform the quality of Afrikan/Black lives. To ensure Afrikan/Black people globally are equipped to build sustainable infrastructures to advance Afrikan/Black people on a local, regional, and national level.
- **Black Equity Collective:** The Black Equity Collective's mission is to join funders and communities as partners in strengthening the long-term sustainability of Black-led and Black-empowering organizations in Southern California.
- **Black Equity Initiative:** Composed of Inland Empire organizations that share a desire to improve social conditions through empowerment, education, and policy change. Guided by a deep commitment to the liberation and self-determination of Black people, this work advances our mission by helping us to deepen our influence and reach for educational equity throughout the region.
- **Coalition for a Just and Equitable California**: A statewide, grassroots Coalition of California community-based organizations. The mission: Achieve reparations and reparative justice for Black American descendants of U.S. slavery living in California.
- **Repaired Nations:** The mission at Repaired Nations is to educate, organize and empower low-income Black youth in the Bay Area to launch cooperative enterprises for sustainable economic security through shared ownership and control of housing and businesses.

KEY PERSONNEL AND CHARACTERISTICS OF THE LISTENING SESSION PROJECT

The Bunche Center contracted with highly qualified experts to help facilitate the listening sessions. In particular, the center contracted with Mary Lee as a lead convener for the project, who has more than thirty years of experience as a public interest and civil rights attorney, community activist, and public policy advocate. She is an experienced educator, trainer, and project manager with a background in strategic planning and transformative systems change. She has also served as deputy director of a national organization working to advance racial and economic equity.

In addition to being involved in the initial planning of this project with the anchor organizations, including how these groups would engage with members of the Black Community, Mary Lee participated in brainstorming regarding the need for a survey and a portal to collect individual reflections, stories, and testimonies.

Lee coordinated and convened eight meetings with the community engagement stakeholders – including the anchor organization group meetings – and supported the facilitation of the community listening sessions, including serving as a breakout group facilitator at two listening sessions. Lee also tracked the progress of all community listening sessions and responded to all inquiries from the anchor organizations themselves, the Task Force and the California Department of Justice.

The Bunche Center contracted with Ama Nyamekye Anane to professionally facilitate all community listening sessions held by the anchor organizations. Anane is the founder of Good Influence Consulting, a Black-owned boutique firm that helps organizations engage with and learn from their stakeholders, refine their strategies accordingly, and communicate more meaningfully.

In this role, Good Influence partnered with the anchor organizations to design the format, schedule, and manage logistics of the listening sessions. Some listening sessions focused on specific issues and communities, such as questions of health, housing, mass incarceration, education, the faith community, and the needs of Black rural, urban, and suburban communities. All participants were asked a set of open-ended questions, prompting them to share any harms related to slavery, as well as repairs, compensation, restitution, and "Dos and Don'ts" for structuring reparations. The sessions were designed to allow participants to share their voices uninterrupted for 3-5 minutes. This format enabled diverse stories, recommendations, and perspectives of community members to be heard. For larger group convenings, Good Influence trained facilitators to lead breakout rooms.

Recognizing the mental and emotional weight carried in the listening session conversations, Good Influence worked with each anchor organization to integrate wellness and inspiration practices throughout the process. For example, some listening sessions opened with inclusive prayer, spoken word poetry, music, meditation, and/or visual art, all produced by Black Californians. After a few sessions, the following quotation was also displayed at the start of each listening session, as it reflected a common sentiment we heard from many participants: "There is more to Blackness than our struggle" – Angela Shanté.

TYPICAL LISTENING SESSION FORMATS AND FLOWS

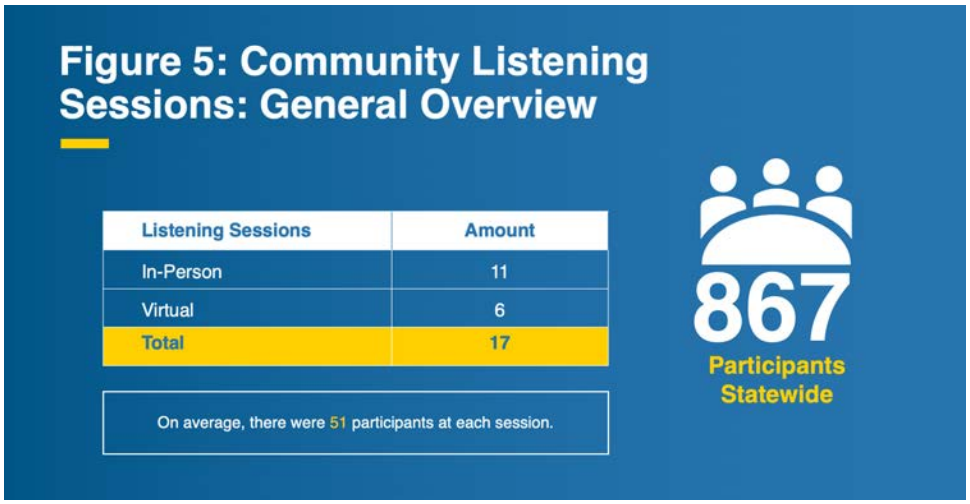
Although no structure was mandated for facilitating community listening sessions, some elements proved universal at each session. Each session tended to begin with a welcome and introduction by a representative of the hosting anchor organization, followed by a short educational segment providing a brief history of reparations and an introduction to the California Reparations Task Force.

Following the introductory period, anchor organizations typically had a local community leader give a speech or hold a panel on topics relevant to reparations and issues pertinent to the work of the hosting anchor organization. Following the community discussion, the hosting anchor organizations allocated most of the allotted program time to recording community testimonies, finally ending the listening session with a call to action.

KEY CHARACTERISTICS OF COMMUNITY LISTENING SESSIONS

In total, 17 listening sessions were planned and hosted by the anchor organizations. Of these, 11 were in-person, and 6 were virtual. The in-person events were largely held later in the project period in response to local public health decisions to reduce restrictions on public events relative to changing pandemic conditions. On average, 51 people participated in each listening session, with a total of 867 participants over the project period. We cannot confirm that all 867 were unique participants as we did not inquire about multiple session attendance. Thus it is possible that one person (or more) may have attended two (or more) listening sessions.

Nonetheless, the target audience for these listening sessions was diverse and comprehensive. During publicity for these events, extensive efforts were made by all partner organizations to ensure multi-generational participation ranging across socioeconomic groups. Further, in some cases, community testimonies were sought primarily from some of the most vulnerable communities in California, such as people who are unhoused, justice system-impacted individuals, and Black women to ensure inclusion of groups traditionally underrepresented.



Anchor organizations exercised care and discernment while selecting the geographical locations of the event venues. Approximately one-third of the listening sessions were conducted virtually via Zoom, and thus could be accessed by individuals across the state. The remainder of the sessions occurred in-person, in geographic regions that possess larger concentrations of Black communities in the state. This included areas within the San Francisco Bay Area, Southern California, and the Inland Empire. Specifically, sessions were held in Sacramento, Berkeley, Vallejo, Los Angeles, Riverside, and San Diego. The settings of these sessions primarily consisted of community centers, minority-owned businesses, and public parks. Anchor organizations' representatives determined that these locations were more accessible to their target populations, and that local attendees would possess connections to their local community. Thus, it was anticipated that the attendees would express and contribute community grounded perspectives and insights.

SECTION 3

COMMUNITY LISTENING SESSIONS ANALYSIS & FINDINGS

This section reports findings from 17 community listening sessions regarding the major themes discussed at these events that fall into the following major categories of inquiry: harms experienced, types of reparations, support levels for different types of reparations, and eligibility.

METHODOLOGY AND DATA

At least one researcher on the Bunche team attended each virtual and in-person listening session hosted by each respective anchor organization. They provided logistical support (e.g., time keeping), took observational notes, and ensured that each session was recorded, whether via Zoom for the virtual sessions or with a handheld recording device for the in-person sessions. All audio recordings went through a two-step transcription, using both artificial intelligence software and a professional transcription service. First, the transcriptions were uploaded to Otter.ai, an online software program, to draft the preliminary transcripts. The preliminary transcripts were then uploaded to Adept Word Management, Inc., a third-party professional transcription consulting company, to clean the transcripts up and ultimately ensure that the audio files were accurately documented.

This generated over 1000 total pages of transcripts from the 17 official listening sessions. The transcripts were analyzed and coded by two primary researchers using Atlas.ti, a web- and desktop-based qualitative analysis software program, to assist in the creation, organization, and analysis of codes within the transcribed data.

ANALYSIS

Researchers employed a qualitative approach to the analysis of the listening session data, applying a two-pronged framework for thematic content analysis to meticulously identify and assess prevalent themes. Using a hybrid of deductive and inductive analytical techniques, a codebook (see section appendix) was derived that highlighted key themes relative to our four primary areas of inquiry: harm types, reparation types, eligibility, and support levels.

By first applying an inductive framework of analysis, the researchers were able to identify primary themes emerging within each of the four primary categories. The themes for the four areas of inquiry that emerged from the first cycle of inductive coding were used to develop the initial codebook of themes. From this foundation, researchers revisited each of the transcripts a second time, utilizing a deductive approach in a content analysis process.

Using a deductive framework, researchers reviewed and assigned statements and responses within the listening session data to the codebook themes. This form of content analysis prompted greater refinement and organization of the initial codebook, while allowing for newer codes to emerge, which contributed to greater accuracy and validity of the themes identified within this section. This approach, in which content is dissected and parceled out, enabled the researchers to understand not only the types of themes prevalent within the data but also their frequencies.

The analysis centers the perspectives, experiences, and narratives of Black participants within the aims of the Task Force. As such, the researchers labeled and categorized their responses according to the primary categories that drive this study and sought to report the direct insights obtained from Black Californians “as is,” at face value (e.g., using data-derived codes; see the Appendix at end of this section). Ultimately, the purpose of presenting and eliciting direct responses and statements from Black Californians was to highlight and acquire legitimacy for the real, everyday experiences of a group that is most often overlooked and undervalued within society.

RESEARCH TRUSTWORTHINESS: VALIDITY & RELIABILITY

To promote the utmost reliability and validity of the project process, researchers applied a two-pronged analysis (as noted previously) and implemented consistent peer review and discussion sessions.

In the first phase of the listening session data analysis, researchers used a sample of the transcription data to code inductively or openly, allowing the voices of the participants to influence the creation of the codes and thereby to guide the identification of the corresponding themes. The next phase of the analysis involved deductive content analysis, which were applied to align content with each of the corresponding themes and fine tune the code categories accordingly. These two phases of analysis allowed not only for the respondents' insights to guide integral themes found within the parameters of the four predetermined areas of inquiry but also for greater insights to be garnered relative to trends or issues that emerged outside of these categories. Moreover, this two-step analysis cycle assured the validity and reliability of the interpretation and categorization of the findings.

Further, the review cycle, undertaken to ensure the consistency and accuracy of the entire analysis, was multifold. In addition to applying a two-pronged method of analysis, the data collected was consistently coordinated with other members of the research team, who provided feedback on the coding of the themes as they emerged. Although the analysis of the listening session data was mainly performed by a subset of the research team, the other members of the team also regularly engaged in a continual and iterative process of weekly peer debriefing, review of code labeling, and revision of coded categories. The entire team of researchers periodically met over Zoom to produce consensus in coding categories and finalize the codebook that would be applied to all the transcripts, as well as reviewing and approving content labeled and assigned to each code category.

FINDINGS

EMERGENT HARMS

The identification of harms and the discussion of remedies for such harms formed a majority of the listening session content. Participants and facilitators communicated their various stories and testimonies about harms caused by institutional racism and the legacies of slavery. Many participants were audibly emotional as they recounted their stories of loss, grief, and trauma.

In every session, facilitators posed a correlative question to gauge the forms of harm and types of discrimination that Black listening session participants regularly experience within their everyday lives. Although the exact wording of the question was not fixed, the questions asked at the listening sessions were broadly comparable. Examples of such questions asked by facilitators include:

- To repair harm, we have to acknowledge harm. If you had to describe the one to three harms you would want reparations to acknowledge, what would they be?
- What are some of the harms that have happened to you, your family, and your community, as a result of being Black?

Figure 6 shows the top five most common themes that emerged in the community listening sessions, in this order: 1) education inequity, 2) discriminatory policing & law enforcement, 3) economic disenfranchisement, 4) housing harms, and 5) healthcare disparities. The instances of harm are discussed at greater length below.

EDUCATIONAL INEQUITY

Harms relating to educational inequity were the most frequently mentioned within the community listening sessions. Educational inequities include the lack of a supportive infrastructure that enables opportunities for Black students to thrive and prosper educationally. Education – considered the great equalizer among life circumstances – is thought to provide a pathway toward success and economic mobility. However, Black Americans exhibit the lowest educational attainment and completion rates of all groups, which prompts inquiry into the factors and circumstances that contribute to this disparity. Participants within the community listening sessions cited experiences of specific struggles and hardships faced exclusively by the Black community that contribute to disproportionate outcomes between Black students and their non-Black counterparts.

Lack of Black Instructors

One theme that emerged during dialogue pertaining to Black children's educational struggles in K-12 education and early childhood learning was the lack of Black teachers and instructors within the classroom. There were frequent references of this theme among listening session respondents, namely that their children encountered a lack of fundamental understanding at the hands of non-Black teachers. This lack of understanding, as one participant mentions, translates to the "mistreatment of our Black students, which causes a lapse in their ability to learn." Such mistreatment, both from teachers and from school personnel, was consistently voiced within the listening sessions. One parent noted that the lack of understanding that a teacher had for her son led to him being singled out and experiencing differential treatment by school personnel:

> "[T]he teacher tried to previously have him tested out of the class to be put in special ed because she just simply didn't want him in the class. He wasn't a bad student. This all happened behind my back without any knowledge, without any parent consent. The principal knew about it. The entire staff knew about it. The special education department questioned it, but they really couldn't get anywhere with their questions. So, the principal basically continued his stance on that."

A few respondents mentioned that some teachers make Black children feel defective and are responsible for pushing them out of the school system. Ultimately, these participants indicated that the lack of foundational understanding or even willingness to understand, results in implicit bias against Black students on the part of teachers and staff, thereby fostering an animosity or scrutiny that the child will internalize and that can greatly affect their ability to grasp concepts and learn on par with their peers.

School to Prison Pipeline & Over-Criminalization of Black Boys

The implicit biases of school instructors and personnel relates to the emergent theme of over-criminalization of Black boys in schools. Some listening session participants' responses directly demonstrated the widely known " school-to-prison pipeline" that connects Black children in schools to outcomes of carceral involvement. Specifically, these responses detailed the process whereby non-Black school staff constructed alternative narratives of Black boys, in which the boys were perceived and interpreted through a deficit-based lens. One participant shared their perspective about how Black boys are:

"[B]eing categorized because [they're] a student of color. And they're creating negative narratives for our Black boys, which also seems to be the catalyst for them being forced into the prison system based on their quote-unquote perception of behavior or what they qualify as behaviors and things like that. Teachers misusing their position in order to push a narrative based on these particular structures that are put in place …"

Another story was conveyed, which details the extent that racial bias may contribute to not only the manner in which the school decides to intervene in conflict arising between two students but also how racial prejudice can interfere with development and influence early involvement with the juvenile carceral system:

> [W]e have to be aware, and we have to make our kids aware of what's going on ... until we get reparation[s] ... as far as I'm concerned, we're still in slavery.

"…[M]y oldest, in the second grade, there was an incident on the playground where a little girl ran into him on the playground. He was minding his business, playing … when this situation happened with this little girl running into him, they pushed to have him prosecuted as a second grader, prosecuted for assault against this little girl, where the principal also went to the parents and encouraged them to have him prosecuted for assault because this little girl who ran into him suffered a bloody nose."

Lack of Culturally Responsive Curriculum

Another theme that was alluded to in several instances while discussing educational harms hindering Black people referred to the lack of culturally responsive curriculum and pedagogical approaches. Respondents who spoke to this phenomena indicated the importance of feeling a sense of connection and belonging within the classroom. Although this can be achieved through a variety of channels, participants often mentioned the significance of being taught through an Afro-centric lens. One participant noted, "I think that's very important that we have real education and real history in the schools. Our children need to know what happened pre-colonization as it references to Africans."

The lack of a high-quality and culturally relevant curriculum was also discussed by another participant, who concluded that the absence of such is a supportive curriculum is a primary reason why a larger subset of Black youth are "lost" and eventually become involved with the carceral system. Specifically, the participant detailed how those imprisoned are victims because:

"They had nowhere to go. Nowhere to express themselves. They didn't have the proper education to rebuild their community, and they didn't know all the things that were coming up against them. All the things that were going, that were put in front of them as hurdles. They fell over the hurdles, and they didn't realize what was happening to them was an organized effort to destroy them."

As the participant conveys, it is the lack of a culturally inclusive and empowering curriculum for Black youth while coming of age that represents yet another way in which K-12 schooling system marginalizes Black populations. Failing to connect and correlate lesson plans to the specific experiences and realities of students – namely students of color – can contribute negatively to their identity development.

DISCRIMINATORY POLICING, LAW ENFORCEMENT & CRIMINALIZATION

Black Californians who participated in the listening sessions discussed at length their experiences and concerns with the criminal legal system, and detailed their experiences with discriminatory policing practices, in particular.

Throughout all of the listening sessions, the matter of police reform represented a major area of concern. Participants openly discussed the need to eradicate police violence, and many participants specifically recalled various encounters within California's criminal legal system, and the subsequent harms resulting from such system involvement. Five prevalent sub-themes emerged throughout the listening sessions:

1. Racial profiling within policing
2. Excessive use of force by police
3. Discrimination and Injustice Within the Legal System

4. Negative experiences with incarceration
5. The extensive history of legalized racism and anti-Blackness

Racial Profiling Within Policing

One of the most pressing anxieties expressed by Black Californians within their comments was the act of racial profiling by law enforcement. Many attendees suggested that racial biases and profiling resulted in disproportionate incarceration rates and harsher sentencing. They argued that these practices resulted in negative impacts for Black communities statewide.

Some participants referenced the "War on Drugs" as a facet of efforts by the government during the early 1980s to justify racial targeting within policing. One attendee described the "War on Drugs" as a War on Black people, and this point was reiterated by a subset of participants. Many stated their belief that the "War on Drugs" was a ploy to over-police and convict Black people.

Regarding more recent experiences of racial profiling, several participants referred to instances of racially motivated prejudice and profiling of Black children at the hands of police. One attendee noted:

"And I can recall one night, my sister and I – this was probably my first encounter. We were coming home from her school dance. She attended Jordan High School, and we were coming home from a school dance. [We] got to our home, and … The police weren't accustomed to seeing African Americans with nice cars or living in nice homes. They pulled up beside my sister and I and began to ask us questions, made us get out of the car, and it went from bad to worse just by the responses we gave. Where are you coming from? Why are you driving this type of vehicle? And my sister gave them short answers, and that was not good enough for them. One of the police officers held off and slapped her, and that just set alarms off through the city of Long Beach and Compton. At that time, that was the Rainbow Coalition, so Al Sharpton and Reverend Jesse Jackson came. My father was a pastor, and he was well-known. He contacted them. They came, and we did the march all the way from Long Beach to Compton. And you would think that – you know, as kids, we thought that would change things."

Excessive Use of Force by Police

The history and knowledge of – and in some instances experiences with – police use of excessive force causes fear in everyday life. Some parents acknowledged that they live with this fear every day beginning as soon as their children step out of the door:

> "You don't know what it means to send your kid out and not know if they're gonna get stopped by the police or get killed that day."

Others discussed how fear of the police shapes their everyday lives, consciously or unconsciously, in ways that many might not recognize:

> "In the years that I've progressed here and saw all the killings and all the different things that was just unnecessarily – I believe – unnecessarily done to the Black people, it brought me to become aware of my surroundings. Where I go, even though we're free to walk out there, you are not like – you can't express yourself in a way. My son now, he's 24. Both my kids were born here. Grew up … And it's like I have to tell him, you drive out there, son. If you are stopped by the police, please, please, just do what they say. I never thought that I'd have to be telling my kids this type of stuff because to us, America was the place of freedom. We came here to get a better life and everything else."

> "Well, fast forward to a couple of years ago where my son was. He and his friend were jaywalking across the street … and it actually wasn't jaywalking. The light had turned green for them to go, and it was one of those intersections where the light changes really quick. They get to the other side, and before they could get their foot onto the sidewalk, a cop came up because the light has turned red now. He pulls my son and my brother to the side. My brother is white. I have an adopted brother. They pull

my son and my brother to the side – same age, both of them. They threw my son on the hood of the car, told my brother to have a seat on the sidewalk. Asked them why were they jaywalking? [M]y son, [said] 'Sorry, officer. We, you know, we were trying to get across.' [The officer told him to] shut up. You know, to that extent. My brother, on the other hand, white privilege, was like, 'You can't do that to us. You can't do that.' And he, the officer, did not do anything to him. They profiled my son, took his picture. We had to go down to court. He got a jaywalking ticket. We told the judge exactly what happened. And the thing of it, it was, the judge was an African American judge. We brought my Caucasian brother with us to court so that he could tell. They did not care anything about that. And so, you know, that right there set fear and not only fear, but anger, anger towards [the] police system, towards authority, towards, you know, all of that."

Discrimination and Injustice Within the Legal System

Notable experiences were shared by listening session participants that describe discriminatory practices and judgments being applied within the legal system infrastructure. Specifically, the participants described the legal process as unfairly impacting Black Californians in terms of accessibility to legal resources and information, the processing of conviction and sentencing procedures, and the structure of the bail bonds system. One participant shared some evidence concerning this, saying:

"It's so bad that so many Black men or Black females are incarcerated … And, you know, as far as recidivism and the justice system, we don't have a fair shake. You know, there's not an equal playing system or playing field as far as receiving sentences, you know? Because, we don't always have a fair shake as far as receiving the same sentencing as our white counterparts do."

This "lack of a fair shake" in the legal system was conveyed across many reflections shared by the listening session participants. Specifically, the jury selection process and the discretion of final verdict were described as a primary area in which the legal infrastructure harms Black people. As one participant said, there are "all types of ways that the unjust legal system touches us. And the juries and the jury selection process … there have to be changes to that."

Another experience that emerged in a few instances included the lack of quality legal representation, in terms of the acquisition of a public defender, and the lack of suitable and competent legal defense and support. One participant described how the lack of ability to pay for an experienced attorney led to being pushed to accept a plea deal to evade a trial. Another participant described a similar experience and extrapolated this occurrence to the greater injustices of the legal infrastructure, noting:

"It appears that when a lot of young men or anybody who is caught up in any accusations of criminal activity goes to court that there are incredible amounts of charges laid on them, and you know, assuming that it would be very terrible to even try and fight that with a lawyer or jury system which some of them can't afford. And so, what happens is they get – they're partial to plea bargain to a few relatively minor charges, and they still wind up with a record because of that. And I think that's just a terrible injustice and a terrible misuse of the justice system. And I think that's probably something that affects a lot of people that are caught up in the justice system, and that needs to change."

Another respondent describes this issue of anti-Blackness being perpetuated within the courtroom and in legal dealings, as follows:

"I've been on jury duty a lot, and I never get to see a courtroom. Why? Because these prosecutors are making deals with our young men, right? Our beautiful young men with a lot of potential, destroying their potential at that point. All right? That has to stop. You know, I hear a lot of people talking about it, but I don't see anything changing, right? You know, that affects a whole bunch of people, right? Strong young men are really there to take care of their family. So now they've got children who, again, grow up without their father. What is that about? Why is that allowed to happen to such a marginalized community at a rate so

much greater than any other community, especially those resources? It's ridiculous. Why is the question I ask – and whatnot. Why is it necessary for a person to be pulled from their family, for the destruction of property, while those people who destroy lives get to walk free? Right? So there needs to be a split happening – right? So, I don't know. I don't know the solutions, but I'm just sharing my perspective. Yeah."

The theme of being falsely imprisoned and criminally convicted by law enforcement agents emerged several times as well. One participant described being falsely convicted and imprisoned for over two decades. It was not until former President Barack Obama granted him clemency that he was allowed to return to his community:

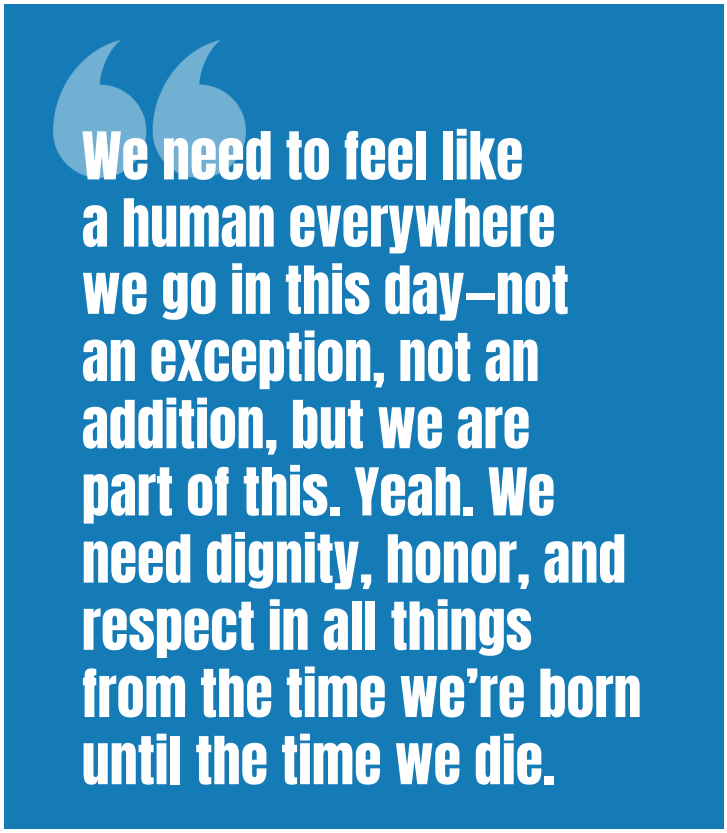
"I'm one of those people who Obama released from prison when he did his clemency project. I was serving two life sentences for a crime that I did not commit."

The discriminatory way in which Black people have been falsely targeted by police and entrapped within the carceral state cannot be overstated, as false convictions have a tremendous impact on the lives of individuals, their families, and their lineages for generations. This observation was reflected by a gentleman who shared he was falsely imprisoned and later had his sentence commuted:

"I believe that time is our most valuable asset and that we need to be very cautious on how we spend our time, what we spend our time on and who we spend our time with … It's the most valuable asset … and I'm almost seventy years old. My children are in their fifties, right? And that time is so valuable that a lot of people don't understand that time is your asset. You can't, you [can't] get anything back that you give away in time that you spend in time. You know, before I left in my twenties, I started my company when I was seventeen years old, and then I was incarcerated, and then I got out in 1990, and by 1996 I was serving life for a crime I didn't commit … I got eight children and twenty-three grandchildren, and three great [grandchildren]. So, I just came here to say, look to introduce myself to let you all know that I'm here. I'm back after twenty-one years of incarceration for a crime I didn't commit."

Finally, the participants in the listening sessions identified the inaccessibility of the bail bonds system as a primary tool used to enforce the detainment of Black individuals as they await their legal proceedings. The discriminatory nature of this system was discussed briefly by some participants, and wide consensus was found regarding the disproportionate difficulty experienced by Black people in accessing funds for bail, in addition to the bail amounts determined by the judges. One individual detailed their experience navigating this system:

"All the sudden, I don't have bail. I'm in jail. I just lost the job I have with a whole bunch of people – a community of people I work with who have respect for me, and I have respect for them. That's destroyed. There's no more income because you don't have bail? What? Because you did something that – you know … it just destroys everything, and it's not necessary to destroy lives even when someone makes a mistake."



Negative Experiences with Incarceration

The racialized targeting of Black populations by the police – in addition to the lack of institutional fairness

within the legal process, especially with respect to conviction – was cited by many listening session participants as the main catalyst for the Black communities' overrepresentation in the U.S. prison population.

Among those who had experienced the carceral system, the poor quality of conditions within the system was cited as another significant source of harm. Described as a form of retribution for one's alleged crimes, the prison industrial complex as an institution was described by many Black participants as "excruciatingly cruel" toward Black people. One respondent reported:

> "It's really important to acknowledge that correctional institutions have not been correcting anyone but have been places of torture and that people have been treated like less than people – like less than animals under the care of the government."

Further, the impact of incarceration extends beyond convicted individuals to their families as well, which was acknowledged in several instances. A few participants noted that the jails and prisons in which individuals are held are often distant from where their families reside, which further exacerbates harms experienced by the incarcerated individual and their family. More specifically, one listening session attendee described this experience as:

> "The separation of families and the protection of young families … That's something that I see that should never be happening. Imprisoned people are separated from their families. That should never happen. First of all, [it's] questionable even why they're in prison because we shouldn't trust police officers, you know, as telling the truth. So, we should never even consider their testimony, first and foremost, when it comes to imprisoned people. But the fact that they imprison people so far away from their families is problematic. If somebody has to be imprisoned, they should be in the community."

Extensive History of Legalized Racism and Anti-Blackness

Although California was a free state before to the Emancipation Proclamation, many Black Californians recognized that the legacy of slavery shaped legislation nevertheless at the federal level. Several attendees proposed remedies for the vestiges of this archaic legislation; they also communicated a desire for the acknowledgment of these discriminatory laws. Among the mentions of these historical legal injustices were the following:

> "The first state to have legalized slavery was Massachusetts. It said, 'there should never be any bond slavery, [villeinage] or captivity among us unless it be by lawful captives taken in just wars and such strangers as willingly sell themselves or are sold to us.' That was in 1641. First state to legalize slavery. The Thirteenth Amendment says, 'Neither slavery nor involuntary servitude except as punishment for crime whereof the party have been duly convicted.' The Fifth Amendment … talks about crime, and it says that the persons have to be … convicted with due process of law. The Fourteenth Amendment … It talks about citizens et cetera, okay? And it says this also was a matter of – without due process of law, but the Thirteenth Amendment said nothing about due process of law. Now the Massachusetts law was recognized as making slavery legal. It used the word unless it be lawfully captive et cetera. The Thirteenth Amendment used the statement except as punishment. Except [is] a synonym of unless. So, my point is: slavery is a continuing tort. We are still legally slaves because they didn't say by due process of the law here. It says if you are duly convicted. What does that mean? We have been convicted by this society. They consider all of us criminals."

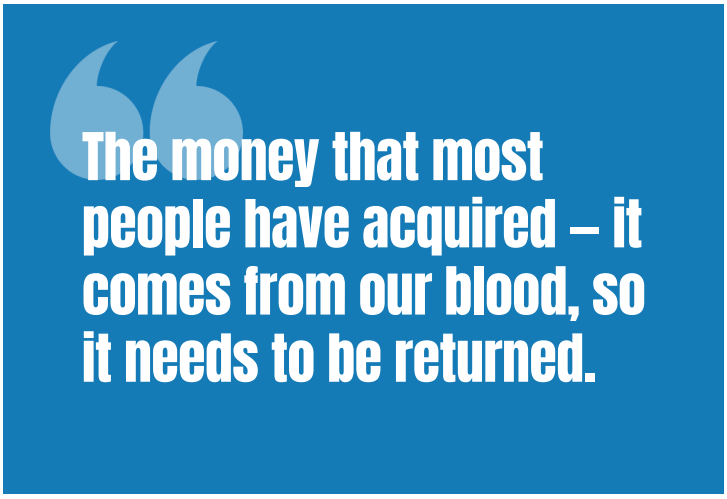
> "Every time my husband, nephews, and brothers go out – they have PhDs, they're running organizations – they still are equally threatened by the police that are there to protect them. It doesn't matter. So, at some point, we have to stand and say enough is enough."

ECONOMIC DISENFRANCHISEMENT

Among the numerous individual responses recorded in the community listening sessions, experiences stemming from economic and financial disenfranchisement were among the most commonly described. Disenfranchisement – the act of depriving a person or group of people of inherent/guaranteed/assured freedoms, rights, or privileges – when in reference to financial or economic deprivation, refers to the exclusion of individuals from opportunities that the individual or group requires to improve or sustain their financial outlook and generate wealth.1 Furthermore, a group that is economically disenfranchised and possesses fewer opportunities than other groups to achieve financial security and upward social mobility is thus structurally oppressed by both the institutions and the beneficiaries of this configuration. This sort of oppression can result in widespread disparities among the financial prospects and outcomes of these groups, to which economic inequality, or the "unequal distribution of income and opportunity between different groups in society," takes place. This is widely evident throughout the listening sessions data, in which Black respondents largely discussed themes related to both the historical origins and present-day channels through which this discrimination persists.

Lack of Compensation for Forced Labor

It was commonly noted throughout the community listening sessions that from its earliest origins, the United States had legalized and endorsed the institution of chattel enslavement of Africans and Black people. Slavery of Black people within the U.S. dates to before the official founding of the country as an independent, sovereign nation, and remained an active institution for nearly 250 years. The economy of America relied upon the forced, unrelenting labor of Black people and their children for generations, on behalf of the white individuals to whom they were sold. Unyielding labor, in addition to other atrocities – such as whippings, mutilation, lynchings, rape, branding, and dismemberment – were commonplace and became ingrained as a central feature of enslavement. The labor of those enslaved largely consisted of harvesting agricultural products – such as rice, cotton and tobacco – as well as tending to livestock, and the construction of buildings – among other things. Despite the revenue and wealth this generated, both for the individual slave owner and for the nation, those who were enslaved and those who descended from formerly enslaved ancestors received no financial restitution or repayment for the services rendered or the atrocities endured.



The participants in the listening sessions often referred to this lack of comparable compensation for the forced labor and ancestral bloodshed as being unresolved and long overdue. One participant mentioned how the "…vast amount of blood money gained by the U.S. government and some of its citizens can be directly tied to the uncompensated labor from my ancestors. With that blood money, the government and some of its citizens have been reaping the benefits passing down to generations their wealth from the institution of slavery, and we've been systematically locked out of that."

This notion is not incorrect, as the institution of slavery and the forced labor of Black ancestors served as the primary catalyst for the development of the United States as a major economic powerhouse globally. The production of food, goods, and infrastructure – carried out by Black ancestors forced to labor through inhumane conditions – built and carried the U.S. Gross Domestic Product and allowed America to rise to the extent it is currently, the largest economy in the world. Despite high levels of amassed wealth built on the backs of enslaved Africans, the U.S. has failed to render any formal accountability for the atrocities that occurred within the first several centuries of its founding and continues to fail to recognize the need for restitution or repayment to the descendants of those enslaved for their ancestors' painful, shattering, forced contributions to the economic growth of this nation.

1 Merriam-Webster

Longstanding History of Legal Provisions Suppressing Black Peoples' Earning Potential and Outcomes

Another economic topic that emerged in the listening session data involved the continuity, or lack thereof, of laws and policies that legally reinforced economic disparities and inequality. A few respondents discussed how, after slavery was formally abolished, there were promises of financial restitution to be allotted through the government, including the payment of 40 acres and one mule to each individual family unit. These promises, however, as noted by some participants, did not come to pass for a large majority of Black families. One participant details this occurrence more explicitly, stating:

> "General Sherman tried to give – he took federal land along the coast from the Atlantic to the Pacific to give back to freed slaves … after Sherman did his executive order – it's called order number fifteen – President Andrew Johnson came in and revoked it so that African Americans could not gain economic independence."

Ultimately, there was very little enforcement of restitution provisions, and many families did not receive their benefits. A few listening session participants followed-up and remarked on this, in a similar manner. Primarily, they described the wealth that white Americans have acquired post-slavery as something that "comes from our [ancestors'] blood… so it needs to be returned."

Unequal Opportunities for Economic Upward Mobility Between Black and Non-Black Individuals

Regarding the ways in which economic harms manifest today, there were quite a few references made to the racial gap in opportunities to build and maintain financial wealth and security. While describing their financial hardships, a few listening session attendees touched on differences in income stemming from differences in employment opportunities. One participant explained their experience of being employed and compensated at lower salary than a white counterpart with similar credentials. In another instance, a participant described not only the complications of receiving lesser pay on average, but a narrower employment outlook and simultaneously lower-level economic opportunities that stem from such underemployment. The participant said, "[T]hat is ridiculous. And yet white men … get these great jobs, and they can pay off their debt. But that doesn't happen for Black women."

The employment of Black individuals in blue-collar employment industries, and the implications of this, was alluded to within the listening sessions, specifically regarding the gap in economic opportunities. Some participants described many Black workers as being employed in occupations that, on average, provide lesser pay, fewer benefits, lower prestige, and fewer opportunities to progress. This is demonstrated by one individual, who noted that they could identify the lack of opportunity in their own prospects and those of their family members:

> "I'm actually working towards my MSW, working towards getting [an] LCSW, and in light of just everything that has gone on, my nephews are having a very difficult time finding opportunity. I will have my third degree, and I'm still having difficulty finding opportunity because it is about networking. It's about who can walk you in …"

As other participants expressed, the pandemic took a tremendous toll on the economic conditions of Black individuals. One listening session attendee describes this as follows:

> "Yeah. Then the pandemic hit. Everything – they had to put things on hold. But there's – you know, now we have – what's that, inflation? What's that, the crisis that we're having with the money? Everything is high. Gas high. So, no one can afford anything right now, so all that's getting put on hold and – but the housing is still going up. It makes no sense."

To highlight the unequal opportunities by race, one participant referred to the recent sale of the Baldwin Hills-Crenshaw Mall. The mall, located in the heart of Black Los Angeles – the Crenshaw District – was formerly owned by a people of color-led investment firm and is one of the oldest malls in the country. It went into financial distress partly because of the global pandemic and was offered for sale. One bidding group was led by a local, community-led, mostly Black investment group called Downtown Crenshaw. The participant pointed out that this community-led investment group was not selected by the trustee of the sale (an independent financial company with no ties to the community) even though they had the highest bid and were from the community:

> "I'm part of downtown Crenshaw, the organization that fought to buy the Crenshaw mall, which although we submitted the highest bid, they refused to sell the mall to us…"

HOUSING INEQUITY & DISPLACEMENT

One of the primary concerns for the attendees of the listening sessions was discriminatory practices regarding assessments of their homes and the economic barriers that they face when seeking to buy homes and property in California. In these discussions, several participants expressed their anxiety regarding the affordability and availability of quality housing options in California, specifically with respect to their ability to maintain housing amid rising costs and discriminatory practices in the housing market.

Rising Home Costs

Participants widely alluded to the increasing costs of both renting and owning property within California, as a major concern. Those looking to purchase a home faced rising costs in terms of the initial down payment as well as closing costs, which they referred to as increasingly difficult. One participant described their experiences with attempting to purchase a home in the current housing market:

> "And it has been interesting to see how property values and how our homes – and how Black homes are valued just based off certain things that they may have culturally represented in the house. And we also see there is a prevalence of cash offers only in places like East Oakland for different residences. So now the average person who might want to build some wealth and some sustainability for themselves, if they don't have half-a-million dollars in cash, you can't live anywhere from High Street in East Oakland all the way down to the San Leandro border if you don't have that much money in cash."

Further, other participants noted that these rising costs contribute to the evident housing crisis, in which many individuals, especially Black people, are being priced out of their homes. The result – as some participants noted – is an increasing rate of Black homelessness and displacement of Black people out of neighborhoods they had historically called home. Remarks from one participant, allude to these changes:

> "I live by the USC area where Black and Brown people are giving up their properties, and it saddens me that Black and Brown people are in that area giving up their property to these developers that don't care about us … And then to watch in my neighborhood, developers and homes that I can probably afford to own, they're coming in and just smashing houses down and building apartment buildings all the way up to the sky. So, where I was staying at, it was a Black-owned – lady. Her mother passed up in age. I begged her, please – it's not even my property, but I begged her, 'Please don't sell your property because everybody else is doing it.' But I guess when developers come and you don't see that type of money ever in your life, you give up your property. So that's what she did. She gave up her property. So now I'm in a position where they're on me. Like, hey, we need you to move. And I'm like, hey, wait a minute, I know rent is high, and I don't want to move if I'm going to have to run into a homeless problem."

This experience speaks not only to the process of being priced out but specifically being priced out of communities that have been historically occupied by fellow members of the Black community.

Gentrification

The theme of gentrification emerged within the discussion of housing inequity, and many participants described experiences of this process. Broadly, gentrification is the residential displacement of lower-income residents by higher-income individuals willing and able to pay higher rent levels in economically changing lower-income neighborhoods that tend to be disproportionately Black or Brown communities. Many recount their experiences with rental prices rising so high that they could no longer afford their residence or any other residence within their neighborhoods. They also could not afford rising home prices in historically Black communities that once provided affordable home ownership. One participant referenced this phenomenon, detailing their struggles in acquiring home ownership in an area of their preference:

> "I want to be able to buy a home. I'm finally in a position to be able to buy a home but guess what? I'm only approved for $500,000 which means I'm gonna have to leave the community that I love and want to live in and want to continue to raise my kids in … [T]he house across the street just sold for 1.6 million … So, I can't afford to live in the community that I love and have built in."

This and several other stories shared by listening session participants make evident that the burden of having to sacrifice either owning a home or residing in a location that is preferred is one that wears greatly on Black people. The reasons for choosing a particular neighborhood or community to reside and settle down in ranged from the quality of local amenities to the prevalence and belonging of ones' cultural community to perceived safety. Black individuals have experienced a long history of destruction of personal property and dismantling of community at the hands of the majority groups in society. In the present-day version of this process, the erosion of generational ownership within particular neighborhoods is seen – namely historically Black communities – due to the rising home costs.

Another participant shared a story with similar circumstances, and said:

> "[T]he way it is now, it seems like we're being pushed out. We can't be in the home that we're – that you grew up in, so it feels like you have a place."
>
> "And so, we've lost family homes. We've lost generational homes that have been in our families for years. And now we're coming to a time where it's becoming too expensive to live. And so, we're losing not only the knowledge of how to upkeep a home, right? But also, how to act. How can we actually stay here, right, and afford to live in this space and then pass it on and have the luxury of even dreaming of passing it along to our kids?"

The importance of not only owning property, but specifically owning it within an area that enables Black people to feel a sense of safety and belonging cannot be understated.

Discriminatory Lending & Rental Experiences

In addition to being disproportionately impacted by gentrification and rising housing costs, Black Californians recounted experiences of discriminatory behaviors and practices witnessed or endured while attempting to purchase or rent properties. Several participants described outright prejudice while shopping for rental properties. One participant said:

"Fontana was very racist, and they definitely made you realize that there was a dividing line as far as where you could live. Nobody could live south of Miller because they had signs up showing that there were places for sale and for rent, but if you go and inquire about [them], they would say it was already sold. It was already rented."

This anecdote is indicative of the prejudice of the property owners and landlords, many of whom deny Black individuals the opportunity to rent or own their properties. Experiences such as these are clear cases of discrimination based on race. However, several other experiences of being denied the opportunity to rent a home based on economic standing were also detailed – namely, participation within a housing assistance-voucher program.

A few participants described their experiences in obtaining a rental unit through use of government-funded Section 8 vouchers. Specifically, participants discussed the hardship they experienced in securing a rental property using these housing vouchers, which ensure that the full rate of rent will be paid to the landlord each month because the government subsidizes the remaining portion of rent that the tenant cannot pay. Essentially, the Section 8 Voucher program ensures the property owner receives full compensation for their unit. Nonetheless, a participants discussed their struggles in being accepted for a rental unit while having Section 8 assistance. One educator working closely with Black families within a school-based setting offered her perspective on this and the crisis it presents for children of parents who are low-income and struggling to obtain a place to live:

> "Demand that these landlords stop discriminating on Section 8 vouchers and that we get our students housing because our kids can't thrive … we had three Black students in middle school commit suicide in one week you know?"

Other experiences that were discussed within the theme of housing harms involved discriminatory practices within lending. A few respondents alluded to experiences in which they had difficulty securing a bank loan for home purchases, though they met all qualifications. One respondent noted specifically, "when I tried to purchase my house, it was difficult. At the time I was making a salary, I had more than 50% to put down, but I couldn't get a full loan. I couldn't get a full loan. I had the money. I had everything, and I just couldn't get it."

Another participant discussed the significantly high ratio between the costs of the mortgage and the interest rates and property taxes on homes that she experienced. The participant took on a home loan with very high interest rates, paying over 200% of the actual cost of her mortgage on interest, fees, and local taxes. This experience exemplifies sub-harms, as it relates to housing harms: lack of affordability of home, lack of information and insight upon obtaining home loan, lack of regulation/price-gap over home loan interest rates, and predatory lending practices.

The experiences participants articulated exhibited a pattern of systematic discrimination and predatory lending practices against Black Californians. Listening session attendees repeatedly emphasized the barriers that these practices pose to upward economic mobility and self-sufficiency. The perspectives shared by Black Californians also suggested that the denial of the opportunity to accumulate capital and wealth for their families was among the primary factors in economic disenfranchisement and wealth inequality.

HEALTH CARE DISPARITIES

Instances of discrimination within the healthcare sector, lack of affordability of quality healthcare services, and blatant anti-Blackness fall into this category. Listening session participants provided detailed experiences of structural racism from healthcare professionals, in service provision, and across the entire fabric of the healthcare infrastructure.

Disproportionate Access to Quality Healthcare Services

There was quite a bit of discussion within the listening sessions about lack of access to healthcare services – with even less access to higher-quality services. This was described by several participants in a variety of instances, with one explicitly noting: "[Black folks] don't have … [y]ou know … equal access to health care." The lack of access to quality healthcare was further elaborated on by other individuals, one of whom stated:

"[We need] access to resources that affects our bodies. And wanting – for me, wanting to see Black women be their full selves, to live up to their full potential. And forces that shape our societal structures, including those access or lack of access to resources, become embodied in our health. So, creating that framework, creating that framework where we have the choice to – the decision to have access to the best possible health resources, to the decision that's not just based on our income level."

Furthermore, there was wide discussion of the social determinants of health, specifically, how structural racism is embedded into the healthcare infrastructure. One individual described this as follows:

> "Right now, there is so much out there in health care to prove that this is true. You know, they're even out there saying racism is a public health crisis. So, if you out there admitt[ing] it, do something … I feel like this is what's killing us, you know?"

Disparate Black Health Outcomes

There was frequent mention of the disparate healthcare outcomes that Black individuals often encounter. The most prevalent topic to emerge from the listening sessions involved considerations pertaining to Black mortality and birth injustices that Black families experience. Describing this, one individual detailed their traumatic experience while giving birth:

> "My birth experience is very stressful and disrespectful. [It] still traumatize me to this day and actually transformed who I was as a clinician and a person because of who I have to become to overcome things like that that impact your body."

> **"I would say 90% of our people have … experienced some form of trauma, and they didn't know how to live with it, so … they act out with crime, with self-sabotage, and just isolation … It's mental – it's mental trauma.**

Other perspectives arising from conversations relating to Black mortality injustices included how "Black women need to be safe wherever they decide to give birth" and the fact that "…the Black infant health rate is horrible."

This was further elaborated on by several participants, with one specifically noting:

> "The attack of the womb needs to end on all levels. I know I'm going way beyond, but we need to protect the Black womb. If we're going to protect Black people, it starts right there. Right?"

Inadequate Mental Healthcare Access

Among health harms, many emphasized mental health. Notably, participants characterized mental health harms as enduring, stigmatizing, and often the primary factor behind other health issues. One person indicated:

> "… mental health illnesses, substance abuse, emotional and physical abuse, things like that. Those are issues that we need to break the stigma behind that."

Historical and Inter-generational Trauma Within Health Care Settings

Within health care settings, many participants described instances of racialized trauma perpetrated by medical professionals. Notably, participants shared stories pertaining to the nation's history of forced sterilization of Black people. As one individual shared:

> "The sterilization of men and women, I think is something that is … has been problematic in the past, and just the sub par treatment continues. And so just for like reproductive health to be in the conversation is one of many major harms since slavery and just wanted to just say that here."

A few other participants detailed their connections to forced sterilization today, expressing the inter-generational impacts of having elder family members suffer from distress and trauma due to their exploitative experiences with healthcare professionals. One example was expressed by a participant recounting a story from a woman about her late mother's health battles:

> "[A] young woman said that she had just lost her mother earlier this year and that she wanted reparations to address the medical harms that her family and other African Americans who are descendants of people who were enslaved in this country face because while her mother was in her last days, her mother told her that she was a victim of forced sterilization, and that … in her last days, that she had went to a doctor for a procedure, and while that procedure was supposed to happen, the doctor gave her a hysterectomy."

Other participants drew connections between healthcare injustices today and those experienced in the past. One person specifically drew parallels between the present and past treatments of Black people that fell below the standard of care:

> "The disposable treatment of what I would say, just Black bodies in general, has endured since slavery, infant and maternal health comes to mind. Like as the United States, as a developed nation, African American mothers and babies have very high mortality rates. And I think that is … a hangover since chattel slavery where we have been treated like chattel and … the health care system continues to treat Black folks not well … where they have to go to the hospital many, many times to get treatment."

EXTENT OF SUPPORT FOR REPARATIONS

Supportive of Reparations

Another common theme in the listening session was the level of support for reparations initiatives. A majority of the listening session participants vocalized their support of reparations to rectify past and current harms and to pay homage to Black ancestors. A seventy-five-year-old participant, who was born in Compton, stated that she was fighting for reparations when "no one else was doing it" and that reparations was necessary for "repair" and to "make us [Black people] whole."

Not only did participants talk about their support for reparations, many also underscored the importance of reparations by describing the various ways in which debts are owed to Black Americans. As one participant noted:

> "[T]he nation must recognize how the country has continued to profit off of Black people, our labor, and our creativity. It continues to create ways to marginalize and dismiss our community."

> **We are traumatized by exclusion and marginalization. And I think that reparations will build a platform for us to be rid of that … and from that stable base begin to build according to our needs.**

Another participant communicated the importance of reparations to their ancestors and the imperative that Californians continue the fight for reparations using different organizing strategies, stating:

> "People say what can [you] do? One thing, wherever you go, talk about reparations. Write it on your mail, reparations in memory of our ancestors. You don't never hear me talk without beginning with

reparations in memory of our ancestors. You could talk about it, write it up for our ancestors, find you a grassroots organization, get involved, document everything that you did."

Questioning or Unsure of Reparations

Most participants were in full support of reparations. Yet, a small but significant minority were unsure about these initiatives. They were worried about the effectiveness of particular types of reparations options, and/or whether any reparations would seriously be considered.

Among the latter group, some questioned whether direct cash payments would serve as an effective way of holistically resolving generational harms. One participant noted, "I'm not a proponent of giving cash as a reparation because we have been so thoroughly damaged psychologically that cash money would not lift us up out of our circumstances." Another participant echoed this statement:

> "It can't just be like a cash payment. Like, that is not acceptable. It needs to be something that is generational because what happened to Black people in this country is generational. This has to be something that our kids' kids' kids are benefiting from because of everything else that our ancestors dealt with. So, it's – like someone offering anything like a $50,000 cash payment, or I don't know what it is, but it just needs to be a substantial generational reparations."

While most participants were in support of direct cash payments, they simultaneously asserted that this initiative must be either substantial enough to impact generations to come or be paired with other forms of reparations.

Others raised uncertainty about whether the government would be serious about giving Black people reparations. Many were skeptical of government because of its past treatment of or inability to protect Black people.

RESOLUTIONS: A REPARATIONS APPROACH/FRAMEWORK

A large portion of the listening sessions were dedicated to discussion of reparations options. The purpose of discussing different types of reparations was to determine which forms would serve to uplift and support Black community members the most. In every session, facilitators posed a version of one of the two questions below, to elicit a conversation about their desired form of reparations:

1. As you think about some of the harms discussed, how would you want to see reparations structured in a way that could help Black people heal and thrive?
2. What is your vision for the future of Black California? What does it look like, sound like, feel like (for California to be a place where Black people are thriving)?"

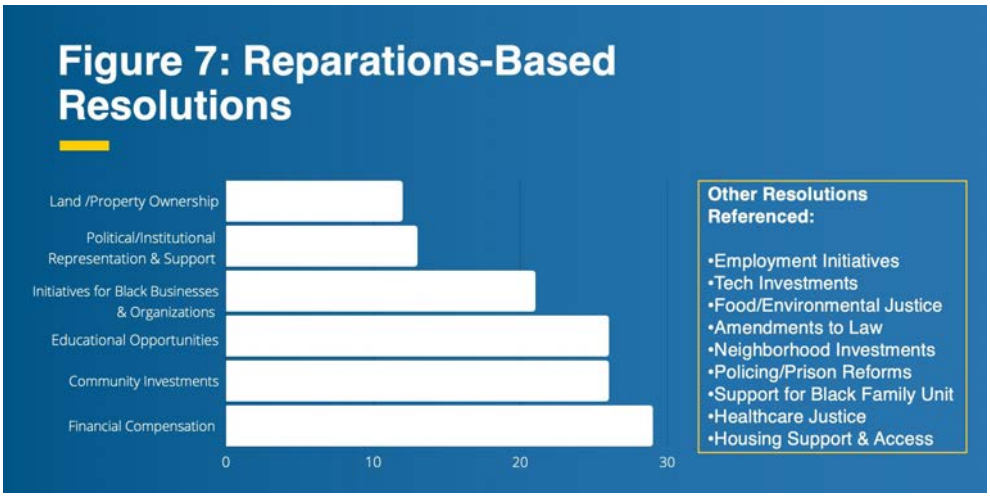


Figure 7 shows that the top five types of reparations mentioned were: 1) financial compensation (direct cash payouts & non-direct monetary alternatives) 2) investments in Black businesses and organizations, 3) educational opportunities, 4) community investments, and 5) land and property ownership.

Other forms of reparations that emerged, although to lesser degrees, included housing support and accessibility, legal amendments and resources, employment initiatives, policing & prison reforms, healthcare justice, and government acknowledgment of wrongdoing. It should be noted that many resolutions discussed by participants were not easy to put into mutually exclusive categories. A discussion of findings is below.

FINANCIAL COMPENSATION & INVESTMENTS

By far, the most commonly referenced form of reparations was financial compensation and economic assistance. Widely discussed options under this category included direct cash payments, loan debt forgiveness or reductions, tax relief, and the expansion of economic reserves and assistance.

Provision of Direct Cash Payouts

Direct compensation, through cash payments, was the most cited reparations option within the listening sessions. Participants who were in favor of direct cash payments believed that cash compensation was the only appropriate way to remedy the financial exploitation of unpaid slave labor. As one participant explained:

> "Reparations should be in the form of cash payments. I definitely believe in cutting the check just like others have received reparations … Everybody else has received cash payments. We definitely need to receive the cash payments. The vast amount of blood money gained by the U.S. government and some of its citizens can be directly tied to the uncompensated labor from my ancestors. With that blood money, the government and some of its citizens have been reaping the benefits passing down to generations their wealth from the institution of slavery, and we've been systematically locked out of that."

Ultimately, participants who favored direct cash payouts referred to this form of reparations as enabling Black individuals to have the fiscal reserves to build institutions and systems that center Black people and their needs. For example, one participant noted:

> "… I'm saying, give us the money and the resources. We will create our own healthcare system and make sure that all our people are well mentally, physically, and emotionally. I do not believe and trust the system that has been in place to fix our needs."

"[N]o level of reparations that is strictly monetary … is going to offer long-term healing if it doesn't come with a change in the nation … I'll take what you give me, but I'll have to guard that so tough to keep you from finding a way to get it back from me.

Many participants spoke of the need to pair reparations proposals to gain maximum effectiveness. They regularly discussed the necessity of a multi-pronged reparations policy proposal that not only involved direct cash

payments, but also other alternatives intended to address a variety of discriminatory harms experienced by the Black community. As one individual shared:

> "… with the move for reparations … I want … some repair that includes a monetary level of compensation … you know, give us back what you took, and with what I wish it could be, which is really the dismantling of racism and structural and systemic issues in our society. So, without the one, I'm often kind of pressed to see what will the other bring … if you don't remove the harm, if you don't dismantle the systems that are causing all this harm, and you give us land and some things, I don't imagine that you're not going to find a way to come back and take it."

Further, participants indicated that increasing financial literacy would be important for obtaining the most benefit from direct cash reparations. For instance, one participant noted, "I think it is a lack of knowledge on some things for us, and it'll be great to get money, but if you don't know what to do with that money, learn how to invest in assets, you know, things like that, then that money will be gone."

Although direct cash was extensively discussed in the listening sessions, many participants also referenced alternative forms of financial investments.

Alternatives to Direct Cash: Debt Reduction and Cancellation

One form of financial compensation popular amongst listening session attendees included debt relief, through form(s) of loan reductions, modification of loan terms/interest, and expansion of loan provision opportunities. This relief was indicated across loan categories, including housing, educational, business, and personal loans.

The majority of participants that mentioned loan proposals, emphasized the need for outright debt cancellation. To some, loan debt reductions do not extend far enough to account for the debts owed to Black Americans nor the immense racial disparities in wealth. One participant went on to express the need for:

> "[R]eparations around forgiveness of loans and then all this other stuff … [because] that loan debt – you know, [is] super high, and we have such little wealth."

Other participants described a proposal for initiatives that would modify the prevailing lending process and qualification guidelines. Proposed modifications to adjust existing loan terms, practices and qualifications included:

- Eliminating unfair, discriminatory, and predatory practices within the lending process by creditors
- Expanding loan access to more Black people
- Enabling greater opportunities for loan repayment
- Reducing negative impacts on personal credit and finances
- Promoting increased ownership of assets that would appreciate and create wealth streams

Additionally, many were concerned about loan interest rates. Loan interest rates were described by participants as a primary source of hardship that causes further complications to Black individuals' debt repayment abilities. This was demonstrated in one participant's account of her struggle to pay-off her mortgage (and possibly home equity) loan(s) obtained over 20 years ago:

> "I own a home … [M]y house note is 1,365 dollars. Only 400 of it is for the note; the rest is interest. What if I don't have to pay no interest on anything"

Moreover, she expressed how the interest on her mortgage alone comprised an excessively high portion of her monthly income, burdening her – as well as many others – financially.

Alternatives to Direct Cash: Tax Relief, Benefits, and Exemptions

Tax adjustments were another fiscal policy intervention frequently mentioned during the listening sessions. Specifically, participants suggested adjustments such as tax incentives, benefits, exemptions, and credits for reparations-eligible Black Californians. The purpose of this type of resolution is to aid in providing economic relief to Black community.

Participants offered two types of tax adjustment proposals: 1) the eradication of taxes outright and 2) the reduction of taxes. Several individuals declared "that black people should be exempt from taxes in California" altogether. One participant argued that tax relief "for the next four hundred years" could serve as a way to "pay back every dollar of our blood sweat and tears that we have built in this country." This notion of long-term tax relief was proposed as a resolution that could offset some of the heavy economic debts that are still owed to Black people today and was echoed by another participant:

> "I also look at, you know, some tax exemptions and incentives for both putting our people to work and also for giving us tax breaks and incentives. Because, as was mentioned earlier, you know, our community has already provided centuries of work and labor for free for this country. So, I don't, I don't see why tax exemptions of some form, you know, would be a big problem and issue."

Others also mentioned reductions to taxes owed, in the forms of tax incentives and benefits, as a way to secure economic stability by freeing up money to invest and build wealth. Tax reductions and benefits were described as particularly important for Black families from California, as one participant detailed:

> "[W]e pay large amounts of taxes here in California, as you know. And we've always paid taxes, even on the lowest, lowest of income. It seems like the government says part of it still belongs to me. So that's something I would think that might be a consideration in helping families."

Alternatives to Direct Cash: Economic Assistance and Reserves

Participants mentioned expansion of Black economic assistance and reserves as a form of reparations. They saw economic assistance as resources and initiatives designated specifically for Black individuals with the purposes of uplifting and supporting them economically. Some expressed a need for universal basic income payments, while others referenced areas of economic assistance in addition to income supplements, including rental relief, un- and under-employment services, technological support and training, medical bill vouchers, and financial literacy programs, among others.

Fiscal reserves were described as pools of available monies that Black individuals could access as a sort of financial safety net for times of financial emergencies. As an example, one participant talked about the high costs of single motherhood and need for assistance programs:

> "If you have a single person, in order to survive in San Bernardino, you need to make 38,000. You add a child to that, you need to make 79,000. So, when we look at single mothers, you know, we need to look at that. We need to look at, again, that income and that maintenance, you know, of cost associated with maintaining once we, you know, if we do receive any money. So, I think that those are important things to look at and specifically programs, funding programs that are going to sustain us, so …"

Expansion of economic reserves were also discussed in terms of setting aside funds for the development of endowments, subsidies, grants and scholarships with the goal of providing economic mobility for Black people. This need was referenced by one participant, who mentioned:

> "So, that endowment for Black-led organizations, a foundation, a fund, or something in perpetuity to support Black [individuals and] organizations..."

Some participants responded that it was important for these endowments and reserves be managed by Black communities themselves. The following is a perspective that highlights this sentiment:

> "The state needs to endow a Black community foundation that they don't run, they just fund, but that the funds are available for you all to be able to do your work long-term. And to be able to pay more than living wages, to be able to honor the work, to be able to shift and change narrative. I think that having permanency and ongoing structured resources is essential because we have a Latino community foundation, we have a Jewish community foundation, we have grantmakers concerned with immigrants and refugees. We have all of these populations' specific funds, and we need them all. We have no permanency for Black people, and that is a travesty, and it needs to change."

Moreover, participants held that these forms of financial assistance and compensation could lead to wealth generation. Discussions surrounding these types of financial reparations initiatives were often paired with beliefs that reparations needs to address Black peoples' lack of financial capital today to promote opportunities for economic mobility tomorrow. Overall, financial incentives and support proposals – including both direct cash payments and non-monetary initiatives – were among the most popular reparations resolutions discussed.

OPPORTUNITIES FOR AND INVESTMENTS IN BLACK ORGANIZATIONS & INITIATIVES

A majority of participants within the community listening sessions described, in one way or another, a vision for reparations that included greater investments in the development and expansion of Black infrastructure. Many believed that more infrastructure development in Black communities for business development, nonprofit development or other institutional support could improve economic opportunities, and proposed expansion of the following opportunities and programs:

- Creating New and Supporting Existing Business Infrastructure
- Developing Robust Culturally Relevant Education Systems
- Supporting Nonprofit and Community Organizations to Promote Permanancy of Black Institutions

Black Business Initiatives & Opportunities

An overwhelming number of participants communicated their preference for opportunities and initiatives to increase and uplift Black business, as a form of reparations. They favored investment in Black business ventures because they believed that "investing in black businesses and creating or expanding opportunities would set black people and their endeavors up for success."

Many also referenced the need for business development because of past harms by white society in destroying successful black businesses. Many shared examples and stories of this in great detail. One in particular noted the need to rebuild Black Wall Street:

> "…[re]building Black Wall Street, you know, not in just Oklahoma, but all states, all cities, all counties. Taking control so that we have that power with that. With good financial backing, good financial stability and reserves, we can put our black dollars together, and we can purchase. Now, we all have investment within our community. We're getting residuals for that … I did some follow-up and some research, and one young gentleman, not Black, went into our Black community where no one else wanted to go and invest and got the people to invest. And so now they get residuals in that community. They built a store, they build markets, they build clothing stores, and they all own a piece of that and get a monthly residual. He said it took craftiness to do it as far as legal concern, but he got it done. And so now, within that black community, people feel, you know, prideful. They have ownership, they keep their community up, they buy – recycle their black dollars and buy within their community. And that's where we need to be. We need to have that power because for as long as I've known, we are on these calls, we talk

about moving forward, but we don't, and we're wondering why. But I believe that, financially, if we get ourselves together with our finances, credit, ownership, land, property, we have that power to move forward and build and do what we need to do."

Others recounted their experiences of the past with community-based businesses and their understanding of the significance of seeing Black business on a regular basis. One participant recounted:

> "[It would be] nice if it could kind of go back to the way it was where you found some more Black people, right … like back in the day, right, when it was Black businesses, Black shops, Black folks … That felt good. It felt like you had a place in the world, like you belonged somewhere. The way it is now, it seems like we're being pushed out."

Another referenced their experiences from a recent trip that sparked excitement around the possibility and significance of investing in the creation and sustainment of Black business infrastructure:

> "I recently just got back from Tulsa, Oklahoma, and I got to visit Black Wall Street. And I got to be in that energy, that vibration of Blacks working for themselves and creating for themselves and just succeeding for themselves. And I feel that Oakland – Black Oakland, you feel me – definitely has those qualities. And you know being a child of the '90s, like, I got to see that in my lifetime, and I feel that it's not lost, but it needs to be reinvented. And there's people in our Black culture that's too often been not asked to sit at the table. So, I feel that there will be a seat for everyone, whether you're queer, whether you're straight or, you know, whatever religion you are, because we need each other to succeed.

"I was the first in my family to go to college, and so without that prior experience … within the family, it's like everyone's just kind of figuring it out from scratch. So you're at a disadvantage when compared to your counterparts.

Many participants saw investing in Black businesses as a way to enhance Black neighborhoods and cities, promote individual entrepreneurship, as well as an avenue to build wealth for families and individuals. For instance, a couple of participants mentioned the idea of reparations in the form of designated areas zoned for Black businesses. Black business zoning would be a pipeline to bring up young Black entrepreneurs so "they can get started early on, and by the time they become young adults they'll be well-versed in how to operate and run a business." Another participant reflected this same sentiment, noting:

> "I'm really interest[ed] in supporting Black neighborhoods and developing policies and practices to promote locating healthy retail sources within the Black community, and that goes back to what I was saying – that we don't have nothing zoned for our people, for Black people. You go – once you hit 46th going down East 14th, it's all Latino businesses. That's their thing; that's their whole environment right there, you know? So, I would like to see something like that where we have our businesses, so we can bring kids through there so they can see parents developing and creating businesses, so they have something to aspire to and to learn from."

Quality Educational Improvements, Resources & Opportunities

A majority of participants were in favor of the expansion of educational resources and opportunities for Black students and teachers in the form of 1) free college education, 2) student debt relief, 3) financial support for Historically Black Colleges and Universities (HBCUs), 4) initiatives for enhancing representation of Black teachers and Black curriculum, and 5) the creation of alternative Black schools. First, the participants emphasized the potential impact of student debt relief and free college education across multiple generations:

> "[F]or me personally, I believe that the best and probably easiest and most efficient way to deliver reparations would be to eliminate student debt for all African Americans in this country – regardless of how much it is – and to provide an open door for African Americans and their descendants to as much free education. If you want to get five PhDs … you can actually do that as you want for the next 300 years."

In addition to investing in individual students, many participants reiterated the importance of providing free college education to Black students through monetary investment in HBCUs to enable Black students to attend for free.

Another major region of potential educational reparations was identified in increased funding and support for Black teachers to enhance representation and inspire Black studies within the K-12 system. For instance, some participants supported expanding the representation of Black teachers by providing incentives or extra stipends to recruit and retain Black teachers. Participants saw this as a crucial way to support Black students emotionally within the curriculum:

> **"[Reparations] really must be a transformation of the system and allowing access to spaces and information that is often gate-kept in order to go further, in order to further disadvantage black people.**

> "I feel that the more Black teachers we have … that our Black students would have a better chance because they know our struggle. You know, and they know how to address our needs. They know how to address the type of curriculum we need and want. They know how to address, you know, every aspect of our lives … So, I think the more Black teachers, the better chance our Black students will have."

Listening session participants were widely in favor of expanding available resources and support for Black educators and those aspiring to become educators. Specifically, participants voiced their support for providing greater opportunities to enter the field of teaching, which would incentivize and promote increased entry into teaching professions by Black individuals. Participants felt that this would not only serve to support Black children within the classroom but also to offset the current supply deficit of teaching personnel within K-12 classrooms. As one participant noted:

> "I guess what I might add as an addition to funding for free tuition for colleges, like, free credentials. To make teacher credentialing free and to reduce the barriers to the profession like the CBEST, CSET."

In addition to increasing Black representation in the teaching professions, participants called for overhauling "the history and curriculum in literature when it comes to actually telling the whole truth about Black and African American history" to educate students about their heritage and history before and beyond slavery. In the same vein, other participants stated that instead of investing in non-Black education institutions, there should be an investment

to “create our own [Black] schools, to teach our own kids – because why would we continue to trust a system that has systematically mis-educated us for years …”

Support for Black Nonprofits and Community Organizations

Many participants expressed the need for increased support for the advancement of Black nonprofit organizations and community organizations. They advocated for the creation of Black-led nonprofits, greater funding allocations and reduced red-tape.

Participants emphasized expanding the availability of resources, including start-up funding and property acquisition, to enable more Black individuals to launch Black-serving organizations. One individual, described disparities within the current nonprofit infrastructure, demonstrating the need for Black individuals to create and operate these organizations in addition to receiving the financial support to do so:

> “[We’re] trying to figure out how to get dollars to support us having an infrastructure for Black folks to actually access education, quality education, K-12 or preschool through twelve, but then higher education … For the organization in the sense of the nonprofit itself, what I see is … how much money we don’t get, right? How we are discriminated against not only being Black but then also being women, right? That there has to be infrastructure or a similar setup, that there is an endowment for Black organizations, specifically in California, to ensure that we get funding, right?”

These participants also highlighted the need to receive funding to start and sustain these organizations. As one individual puts it:

> “… [the] funding to start and grow and make sustainable black nonprofit organizations, I think is key. I remember my board not coming through on their donations and funders not coming through, and I had to sell my washing machine and dryer to pay my staff because I wanted to walk in integrity with them, right?”

Participants went on to express how Black organizations were often underfunded relative to other non-Black organizations. One participant described their experience in trying to secure funding for their nonprofit, citing the unequal distribution of funds received relative to white-led nonprofit organizations. She said:

> “There’s a lot of discrimination in the nonprofit world. So, I don’t know if you guys all know this, but Black-led, Black benefiting nonprofits receive 76% less than white-led, white-benefiting nonprofits in terms of unrestricted funding.”

The participants shared their belief that Black individuals leading nonprofits should receive comparable treatment to their white counterparts and that the government has a responsibility to step in to address disparities that are evident in the data. As one nonprofit leader shared:

> “[W]ith unrestricted funding, what ends up happening is the person who’s giving you the money, they trust you to use the money that you need in order to advance your mission versus directing you to how you should use their money by saying, ‘Oh, this has to go for direct services.’ And I really think California needs to investigate this because I have a white grant writer, and that white grant writer will testify before the state legislature that when he writes the same grant for a white-led organization, 90% of the time, they get funding. When he writes for me, it’s 10%, okay? So, we can bring this up, and people will be dismissive of it. But if we have actual concrete evidence, then I think we need to get before the state legislature and share that.”

Discussions around support of Black-led organizations not only involved the expansion of funding opportunities, but also included reducing the red-tape that regulates these organizations by government and other external entities. Many participants were concerned about the many stipulations Black-led organizations must adhere to – such as a referrals process and board protocol – to operate and qualify for funding. Some participants argued

that these regulations cause complications for both the internal organization and its service population (i.e., Black communities). One participant noted, how increased representation in stakeholder settings is important to influencing these policies, saying:

> "Increasing the equitable representation of Black people in the shareholder group increases our ability to influence policies and procedures that impact our individual lives, the well-being of our families, and the country as a whole."

Ultimately, in addition to enhanced funding allocations to these organizations, participants advocated for autonomy over their own organizational affairs and operations. A couple of the participants described the necessity for organizations that are Black-led, Black-operated, and Black-serving to have agency and independence over their management. As one nonprofit leader detailed:

> "The state needs to endow a Black community foundation that they don't run, they just fund, but that the funds are available for [us] all to be able to do [our] work long-term. And to be able to pay [our staff] more than living wages, to be able to honor the work, to be able to shift and change narrative."

INVESTMENTS TOWARDS SUSTAINING BLACK FAMILIES, NEIGHBORHOODS & COMMUNITY SPACES

Land and Property Ownership

Finally, one of the most popular forms of reparations mentioned in the listening sessions centered around land and property ownership. Participants cited land and property ownership as an important vehicle to secure generational wealth. Participants referenced the history of land ownership for Black Americans citing the history of failed promises, property destruction and theft by government and white society as reasons for reparations of this kind.

There is wide acknowledgment that "land was stolen [and] It needs to be returned." A few individuals shared stories relative to having their families' land seized and stolen from them, and one individual in particular references his families' efforts to trace and obtain their ancestor's property:

> "I'm here to talk about Nelson Bell, one of a few African American settlers during the gold rush in Coloma, California. He passed away January 1869. At that time, his land and personal property was put into probate and later sold by the probate administrator. The land is now part of a California state park. We have good reason to believe that we are the descendants of Nelson Bell. We have historical records and documents from a certified genealogist and information from Ancestry.com that indicates our kinship to Nelson Bell. He is, in fact, my fourth great-grandfather. We have employed a certified genealogist in the state of Virginia to research historical records in that state regarding Nelson Bell. And so far, the results have been very positive. Additional research is currently ongoing. We also have registered with Where Is My Land. Our purpose is to seek reparations once the research is complete and supports our position."

In another example, a participant expressed similar sentiments of wanting to re-purchase their families' property:

> "Is there any programs that would help us gain land? Now, back east, where I was born and raised, I'd like to be able to go back and buy my grandfather's farm back … [T]hey all passed away back in the middle to late '60s. The farm has been sitting idle. A couple of years ago, a couple of the Amish people bought the farm, but they have done nothing with it. The house and barn and stuff were built before 1900. Grandpop moved there in 1906 and was there till the '60s, when they passed away, Grandma and Grandpop. But I mean, the house is still standing. It's leaning, and it's probably full of snakes and stuff, but I would love if there was some kind of program or – I guess you call it a program or organization or something, where we could buy back, especially land that's in – that was in the family."

The importance of owning and maintaining land cannot be understated, as a variety of individuals acknowledge that land and property ownership is an important vehicle to secure generational wealth.

However, it was mentioned that for many Black people to have the capital to acquire land in the first place, "[we need] grants to start them up because they stole all that from us." Similarly, another participant cited this form of reparations as the primary way to right "the wrongs that have been done."

Homeownership & Housing Accessibility Initiatives

Many listening session participants cited the need for increased access to affordable housing as a form of reparations. They referenced renter relief programs, reduction or elimination of mortgage loans, property tax reductions and cancellations, and additional housing subsidies and vouchers as examples of how this form of reparations might be put into practice. One idea frequently referenced by participants pertained to adjusting the costs of housing. The proposed initiative would entail modifying property values, creating limits on housing/rental cost increases and regulating mortgage interest rates.

In addition to land and home ownership, some participants suggested reparations come in the form of "sovereign land for all Indigenous and melanated people of the land" to occupy states and/or cities to "govern and build our own economy."

> **My vision for black California is bringing the village back together, bringing the culture of everyone is family. You know, we protect each other, we provide for each other, and we support each other when there's struggling without judgment.**

Conservation of Black Cultural Hubs and Community Spaces

Many participants, while discussing their vision for Black California, described a vision of Black neighborhoods and hubs in which they could occupy space, free of surveillance, fear, and limitations to their cultural expression. For many, investing in Black communities meant investing in the environmental health of their neighborhoods. One participant described their vision for Black California as "neighborhoods with cleaner air, neighborhoods with thriving economic centers, access to safe outdoor recreational spaces within walking distance of our homes." Another participant echoed this perspective saying:

> "To me, I feel like Black California should have the opportunity to focus on ways in which we can thrive so that it feels like a joyful place. It feels like a place where our entire being is considered – financially, politically, culturally – that we are taken care of, that our health is seen more holistically. And so, it tastes like good food that is affordable. It feels like good housing that is affordable. It sounds like bustling neighborhoods that play cultural music. It sounds like the exhaust from the sideshows. It's the music coming out of the scraper bikes. That's what it sounds like."

Participants reminisced about current Black cultural community staples that they have seen disappear over time. For instance, one participant referenced the Ashby Flea Market in South Berkeley that was "dwindling down," saying:

> "Everybody knew to be there Saturday and Sunday. You could be there all day. Get what you want to get, eat whatever, come back, whatever. It was a cultural thing for us. Even though it's a lot of Afro-cen-

tric stuff – but it was ours, you know? And then now, it's different. It's just on life support, and that's what you see. A lot of these different areas that we knew were our neighborhoods are literally on life support – if that."

Participants who shared this opinion felt that investing in and preserving Black communities would involve increasing Black representation in leadership; creating spaces of refuge, safety, and family; and preserving Black community centers and cultural hubs. One participant said that they wanted "a full place dedicated to Black people" where they could have "a place … to have peace of mind. A place where we can call our own, and we can feel safe." They called for institutional investments to sustain Black communities and neighborhoods to create a "resurgence [of] Black commerce, Black buildings, Black bars, and Black restaurants."

DISCUSSION OF ELIGIBILITY

Eligibility has been a central topic since the Task Force began meeting in June of 2021, and discussions in the listening sessions about eligibility were centered on the following question: Who should be eligible for reparations and why?

The listening session conversations around eligibility mirror the diverse perspectives showcased in the public convenings held by the Task Force. Two prominent perspectives consistently emerged during these conversations: 1) support for lineage-based reparations eligibility, and 2) support for the eligibility of all Black people, regardless of lineage. Support of eligibility qualifications on the basis of ancestry to those enslaved was slightly more referenced than support for extending eligibility to all Black people in California.

SUPPORT FOR LINEAGE-BASED REPARATIONS

Many participants agreed with the Task Force's decision to limit reparations to those who are descendants of enslaved Africans in the U.S. They often mentioned the generational impacts of having elders in their family struggle due to their experience as enslaved people.

Other participants in favor of lineage-based reparations referred to past promises owed to formerly enslaved Black people in the U.S. that the government had failed to follow through on. One participant remarked:

> "I think the people who should be eligible for reparations should be descendants of enslaved people. And the reason why is because we were all offered our forty acres and the mule."

In many other instances, as cited throughout the report thus far, participants referenced the large role that the institution of slavery had played in the founding and succession of the U.S.

SUPPORT FOR THE ELIGIBILITY OF ALL BLACK PEOPLE REGARDLESS OF LINEAGE

Participants who supported extended eligibility for all Black residents of California often cited the broader impacts of anti-Black racism that Black Californians experience regardless of whether they are a direct descendant of enslaved Africans in the U.S. One participant stated:

> "As a pastor, I've seen people at all levels, Black people at all levels being affected by racism and a product of slavery. So, if they're rich, poor, brilliant or not so brilliant, each one of them have been affected in one way or another. So, I believe that all Black people, every single last one of them, should get some form of reparations. And I say this because racism doesn't care what part of the continent you're from, what part of the country you are from, how well educated you are. It still has a negative effect."

Two other participants reiterated this sentiment. One participant noted the expansiveness of racism and enslavement: “[A]ll of our tribes should be eligible for reparations because we’ve been separated, scattered, and unavailable to utilize the resources that we kind of built on. So, I think all Black people.”

Another participant stated, “So yes, I think every Black person deserves some type of reparations because we all have experienced what it feels like to be whipped, whether it be an actual whip, whether it be a mental whip, whether it be you redlined in whatever community or wherever you grew up at.”

Other participants supported reparations for all Black people because of concerns about lineage-based reparations. They stated that some Black residents may not have paperwork to verify their lineage, and therefore that factor would limit who could get reparations.

SECTION 3 APPENDIX

TABLE 1: AMENDED CODEBOOK

Categories	Subcode(s) Label/Name
Types of Harm	Educational Inequity Discriminatory Policing, Incarceration & Legal Systems Economic Disenfranchisement Housing Inaffordability & Inaccessibility Healthcare Disparities Un- or Underemployment & Workplace Discrimination Inadequate Business/Organizational Support Infrastructures Neighborhood Disinvestment Food Inaccessibility Lack of Government Acknowledgments of Anti-Blackness
Forms of Reparations	Financial Compensation & Investments Black Business Initiatives & Opportunities Advancement of Black Non-Profit & Community Organizations Enhancement of Educational Resources & Opportunities Sustaining Black Communities & Preserving Cultural Hubs Initiatives for Land and Property Ownership Affordable and Permanent Supportive Housing Reforms Policing & Legal System Infrastructure Reforms Expansion of Black Representation & Supportive Policies in Government Settings Expansion of Employment Opportunities & Initiatives Advancement of Health Care Justice & Service Provisions Food & Environmental Justice Initiatives Formal Acknowledgment and Apology
Eligibility	Eligibility
Level of Support for Reparations	Supportive of Reparations Questioning or Unsure of Reparations No Support for reparations
Impacts of Harm	Social Stigma & Prejudice Separation & Dismantling of Families Collective Stressors & Intergenerational Trauma Lower Quality of Life

SECTION 4

IN-DEPTH INTERVIEWS, ORAL HISTORIES, & PERSONAL TESTIMONY ANALYSIS & FINDINGS

This section reports the findings from the in-depth interviews, oral histories, and analysis of the personal testimonies self-submitted to the Task Force portal. It also focuses on the major areas of inquiry: harm, support for reparations, and who should be eligible for reparations.

Two methods were used to obtain personal testimony:

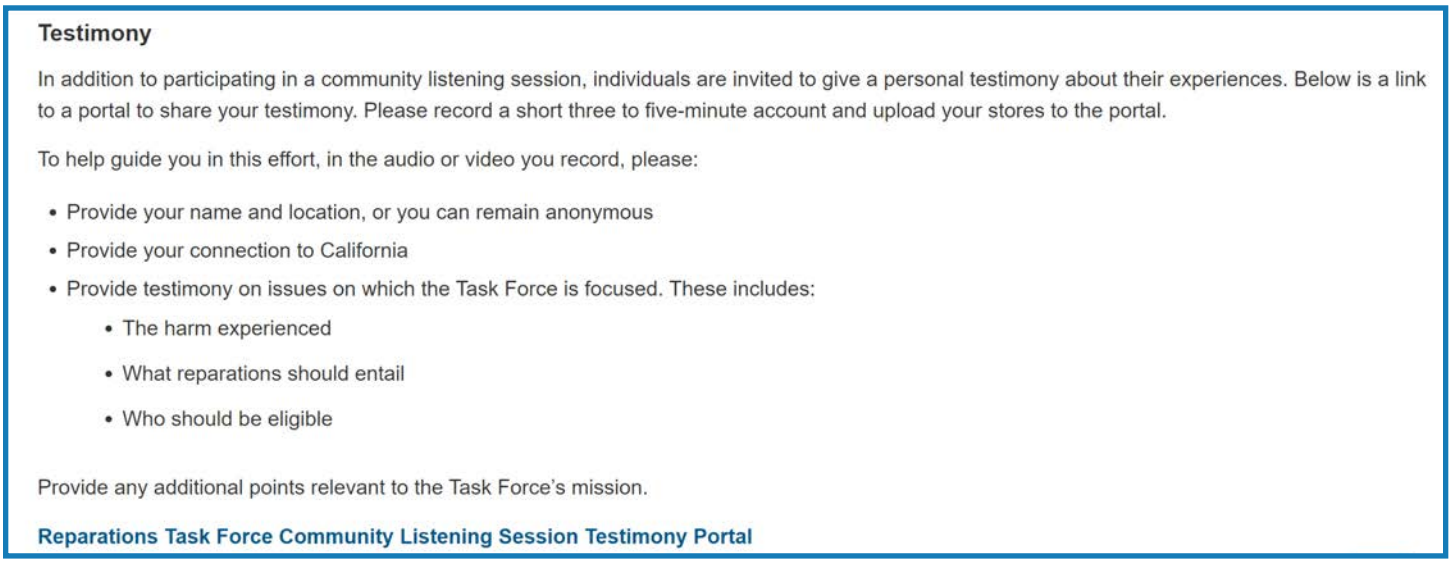
1. Personal Testimony Portal: Community members were able to access the portal through a web link to upload self-guided testimony to Box, a secure, cloud-based content management system.
2. Oral History Interviews: Several community members were invited to complete a semi-structured oral history interview with the oral historian on the Bunche Center team.

DATA

PERSONAL TESTIMONY PORTAL

On the UCLA Bunche Center website, the Box link for the Personal Testimony Portal was titled the "Reparations Task Force Community Listening Session Testimony Portal." The Portal allowed community members to upload their personal testimony to submit to the Task Force. In all, 46 testimonies were submitted via the Portal between May 10 and September 1, 2022. The testimonies were multimedia content, including audio and video recordings of personal testimony, written documents, photos, and fliers. The Portal link was disseminated through anchor organizations, community listening sessions, and Task Force members. The guidelines provided to respondents indicated they could state their name and/or their connection to California or remain anonymous. The guidelines also indicated respondents could upload a three- to five-minute recording focused on harms, eligibility, or what reparations should entail. Clicking the link led respondents to Box to upload their testimony using a web-enabled device. Before the upload, respondents were further informed that private personal information would be kept confidential.

Of the 46 testimonies submitted, 93% of participants indicated they were African American, with some specifically identifying themselves as descendants of persons enslaved in the United States. Two respondents identified themselves as white, and one identified as an American of Yoruba descent. Additionally, while most respondents indicated they were California residents, two respondents identified themselves as residents of other states.



Testimony

In addition to participating in a community listening session, individuals are invited to give a personal testimony about their experiences. Below is a link to a portal to share your testimony. Please record a short three to five-minute account and upload your stores to the portal.

To help guide you in this effort, in the audio or video you record, please:

- Provide your name and location, or you can remain anonymous
- Provide your connection to California
- Provide testimony on issues on which the Task Force is focused. These includes:
  - The harm experienced
  - What reparations should entail
  - Who should be eligible

Provide any additional points relevant to the Task Force's mission.

Reparations Task Force Community Listening Session Testimony Portal

Screenshot of the instructions and link to the Personal Testimony Portal on the UCLA Bunche Center Website

ORAL HISTORY INTERVIEWS

Oral history interviews were conducted with seven individuals between August 4 and August 31, 2022. Oral history interviewees, hereafter referred to as narrators, were identified through their connection with anchor organizations. Three men and four women, all African American, with ages ranging from 38 to 88 years were interviewed. All narrators were California residents, split almost evenly between Northern and Southern California.

METHODOLOGY

PERSONAL TESTIMONY PORTAL

From the personal testimony files, audio and video files were converted to written format using Otter.ai, a text transcription software that uses artificial intelligence. These transcripts were manually analyzed for recurring themes using Taguette, an open-source tool for coding text-based qualitative data. A grounded theory of qualitative analysis was employed to analyze these materials. Thus, instead of specifying themes before the analysis was begun, the researcher identified themes through the process of analysis by noting recurring words, phrases, and ideas. Given the self-directed nature of the submission process, a grounded theory was chosen to best capture the richness of the data before classification. As participants continued to submit testimony through September 1, 2022, the themes were updated and refined.

Photo submissions were analyzed for content and context. Notably, the photos tended to include less specifically usable information than the files in other formats. The researcher noted: individuals and details in the images; connections between submitted images in a set where they may have, for instance, related to the same events or individuals; and she outlined questions to obtain additional contextual information.

ORAL HISTORY INTERVIEWS

In total, the contact information for eight potential narrators was provided to the Bunche Research Team. The oral historian contacted all eight individuals to conduct interviews. Ultimately, oral history interviews were conducted with all seven narrators who affirmed interest.

Upon initial outreach via phone or email, the oral historian conducted a preliminary interview with each narrator. These calls ranged from 15 minutes to an hour in length. During that time, the oral historian explained that the interview would focus on illustrating the harms that African Americans have experienced in the aftermath of slavery and Jim Crow. From this preliminary interview, the oral historian and narrator worked together to develop the scope of the interview, targeting the specific areas of harm to which the narrators felt best able to speak. All interviews followed a largely similar format: obtaining family and personal background, specifying identification, detailing harms, and naming potential remedies. Given the innate personal nature of each narrator's experience of harm, a semi-structured interview methodology was employed. From the preliminary interview through the end of the interview, narrators were invited to introduce new topics and experiences as they surfaced. Several narrators also opted to provide documents for the oral historian to review in preparation for the interview.

While the harms focused mainly on the narrator, most narrators also provided stories about other family members' experiences. In witnessing their experiences, the oral historian used probing questions to help the narrators provide as much detail as possible on their individual experiences of harm.

Duration

All interviews took place between August 4 and August 31, 2022. On average, each interview session lasted 1 hour and 13 minutes, with the shortest interview lasting 38 minutes and the longest lasting an hour and a half. Narrators who provided testimony that required more than two hours to communicate were invited to participate in a subsequent session. Overall, three narrators completed at least two interview sessions. Ultimately, 11 interview sessions with the 7 narrators were conducted in total.

Consent Form

All interviewees were provided a consent form (included in the Appendix) either through email or physical mail. This form indicated that participation in the project was voluntary, the interviews were to be recorded, and recorded materials would become property of the UCLA Ralph J. Bunche Center for African American Studies. Completed consent forms were obtained and digitally stored. In one instance, where a participant could not receive a digital consent form before the interview, the consent form was read aloud, verbal consent was recorded, and a physical consent form was mailed.

Format & Analysis

All narrators were interviewed remotely. One narrator was interviewed over the phone, while all others completed their interviews through the Zoom video conferencing platform. After the interviews were complete, the audio files were transcribed using Otter.ai, and transcripts were uploaded to Taguette. The researcher used inductive and deductive analysis to assess the transcripts of each oral history. The themes generated from the Personal Testimony Portal submissions were manually applied and refined to analyze the interview transcripts, and new themes were incorporated.

FINDINGS FROM THE PERSONAL TESTIMONY PORTAL

The most frequently occurring themes that emerged from the self-submitted personal testimonies were:

- Financial Compensation
- Direct Cash Payments
- Education
- Housing and Land Ownership
- Lineage-Based Reparations

Please note that in all excerpts below, bolded words and phrases reflect places where the researcher has added emphasis to highlight the emergence of a theme that the excerpt illustrates.

FINANCIAL COMPENSATION

Respondents emphasized the importance of financial compensation. Notably, even those who advocated for multifaceted forms of reparations included financial compensation as a requisite.

> **Respondent: But the first and primary demand is for financial repair**. And that will help close the wealth gap. **And while we can never really put a dollar value on the harms that were experienced … we can start fresh in actually saying that there was harm that was done, and that the government will pay.** And according to some works, for instance, I believe in From Here to Equality [by William Darity Jr.], they have equated that value … in terms of unpaid wages … with a pretty conservative interest rate. They've come up with about $20 trillion. We actually have seen figures that are as high as a quadrillion of dollars. **So basically, the government owes a debt to Black Americans.**
>
> (Santa Rosa, CA Resident)

> **Respondent:** I believe that reparations should be a multi-pronged approach. There should be free education for descendants for as long as slavery was practiced in the USA. That would ensure generations of African Americans in principle have the same opportunity to right the wrongs that were handed down to slaves over the hundreds of years. We cannot approach this as a one-time, one-off event. This should be a years' [sic] long endeavor.

- **Free Education** to HBCUs or any other college of choice
- **Business grants**
- **Home loans** either significantly **reduced interest rates or zero rates** for as long as necessary

- 40 acres and a tractor with access to **mortgage and commercial loans**
- Family trust and education around how to manage wealth and pass it down to heirs
- **Life insurance policies** that are matched to ensure legacy funds are passed down.

(Respondent with Connections to Richmond, CA)

DIRECT CASH PAYMENTS

Consistent with financial compensation, respondents reiterated the need for direct cash payments as an integral component of reparations.

> **Respondent**: I also believe the **California reparations plan should emphasize direct cash compensation** to the descendants of U.S. slavery. Let me repeat that, I also believe the **California reparations plan should emphasize direct cash compensation** to the descendants of U.S. slavery.
>
> (Diamond Bar Resident)

Pointedly, one respondent cited Oregon Senate Bill 619 as a potential template for the provision of direct cash payments.

> **Respondent:** Now, for me, **cash payments can be modeled after Oregon's Senate Bill 619**, which essentially offers anyone who's an American slave ancestor – who's been claiming Black for the last ten years on documents – **$123,000 a year in lifetime payments, tax-free**. I believe that the cost of living in Oregon compared to California is 39% [less] of the cost of living in California. So that would mean that we need a direct cash payments policy. **And I'm talking about direct to the those who are harmed, not into a trust to be governed by institutions.** Directly to the people is the best way to fix the harms that we've survived and to address the debts we have, as well as poverty itself. **But these direct cash payments, if it's [$]123,000 in Oregon, that would mean it needs to be [$]177,000 per person every year for life in California**, and that's still separate from the land that we're owed.
>
> (New York Resident Raised in Alameda, California)

EDUCATIONAL RESOURCES AND OPPORTUNITIES

Many calls for reparations included educational components, usually relating to access and support services. Several interviewees explained how educational experiences were disrupted due to lack of opportunity or financial constraints.

> **Respondent:** Both of my parents never completed high school. Only work, work, work, while living in the projects [of New Jersey].
>
> (New Jersey Resident)

Several respondents supported tuition-free college and student loan forgiveness. However, illustrating her daughter's experience at a California state institution, one parent emphasized the need for support not just to attend but to succeed in higher education programs.

> **Respondent:** In the case of my eldest child, she made it to Cal State LA. While she was there, they determined that she was remedial and needed to be in remedial classes. We were shocked to learn that, as I have been a lifelong volunteer at her school. She graduated with high grades. She had no issues of being remedial in the system. And she graduated [high school] and was optimistic about her future.
>
> When she finally signed into the class, we figured we had no choice. She had to sign up for this class – this series of classes – to be able to even get classes that were going to be worth credit. It turns out that the entire student group in that class was young Black students. My husband and I found this shocking, absolutely shocking. We questioned it, we challenged it, there was no other alternative. And she contin-

ued through the program. She made it through the first semester, and she got decent grades, and she seemed to be on her way to becoming a college student. It turns out that she ultimately left, and there was no support for her. There was no support for her peers. A number of the other students that were in the remedial class with her also left, deeming that college just wasn't for them … **So please consider long-term education and not just paying for it but also helping support the students through the system as you make your recommendations for reparations.**

(Diamond Bar Resident)

HOUSING AND LAND OWNERSHIP

Issues of housing and land ownership often co-occurred across submissions. Respondents used the terms redlining, eminent domain, Black displacement, and gentrification to specify both past and contemporary harms.

Respondent: Since our arrival in California, I have seen many things happen to the detriment of foundational Black Americans, aka American Freedmen … **redlining**, in addition to that, **lands taken [by] public domain or eminent domain, for the freeway. The 105 freeway.**

(Southern California Resident)

Respondent: And I'll say, you know, being in Los Angeles, **I've been working in the housing advocacy space for probably four or so years now. But I've uncovered a lot of evidence of just Black displacement when it comes to land and housing issues in this state.** Even currently, today, in the 21st century, there are still a lot of Black Americans who are struggling in Los Angeles because they're just continuing to try to fight against poverty, fighting against the establishment, and basically just trying to sustain themselves in a state, in a country that hasn't fairly redistributed resources ... We're talking about **60,000 plus homeless residents in Los Angeles** … you know, **over 40% of that [is] Black … when they're only 8% of the total population.**

(Los Angeles Resident)

Coinciding with the identifications of lack of land ownership and access to housing as sources of harm, the respondents also emphasized land as a component of reparations.

Respondent: I also advocate for that infamous 40 acres and a mule [that] should be afforded to all. As well as cows, pigs, sheep, horses and any other self-sustaining mechanisms to the descendants of U.S. Slavery.

(San Lorenzo Resident)

Respondent: My vision for the future of Black California is to have a sovereign land for all indigenous melanated people in the land.

Respondent: There's 45 million acres owned by the federal government. [There's] also Katie Porter, the congresswoman who's arguing that even more of that land should be taken back from white oil executives who plan to drill oil on it. We, as the Black American community, are already talking about how we're going to be building solar panels on our land because we know California is moving towards green energy. **So, Katie Porter is someone who could work with [us] to make sure that there's enough acreage of land for every Black American to receive their 40 acres claim, at least in California.**

(New York Resident Raised in Alameda, California)

LINEAGE-BASED REPARATIONS

Respondents primarily advocated for lineage-based reparations. Many used some iteration of the following language.

Respondent: "I also want the reparations commission to know that I strongly support their decision for **lineage-based eligibility for reparations**. Because the purpose of this reparations commission is to **provide**

reparations for slavery and the impact of slavery, its legacy and vestiges, including Jim Crow, on the descendants of U.S. slaves.

(New Jersey Resident)

Several contended that those who descended from persons enslaved in the United States have had distinct experiences.

> **Respondent:** So, I say all that to say, I am definitely in favor of reparations in the form of cash payments **for descendants of U.S. slaves**. There are a lot of different justice claims that are out [there] that people definitely should fight for. **But in terms of reparative justice, these are things that specifically happened to specific people that I am a part of**. And there are specific instances and grievances that need to be repaired.
>
> (Santa Rosa Resident)

> **Respondent:** Reparations will help to repair the economics as well as obtain equity in a country of our ancestors. **That lineage, that heritage continues to live on with Americans that have been here from the very beginning, not by choice, but by force.**

One respondent argued for broader eligibility to include descendants of anyone who was "kidnapped, trafficked, enslaved, and often impregnated," regardless of race or skin color. However, this view was not expressed by the majority, who emphasized lineage-based reparations for the descendants of persons enslaved in the U.S.

ADDITIONAL THEMES

Photo & Mixed Media Submissions: Highlighting Lesser-Known Histories of African Americans

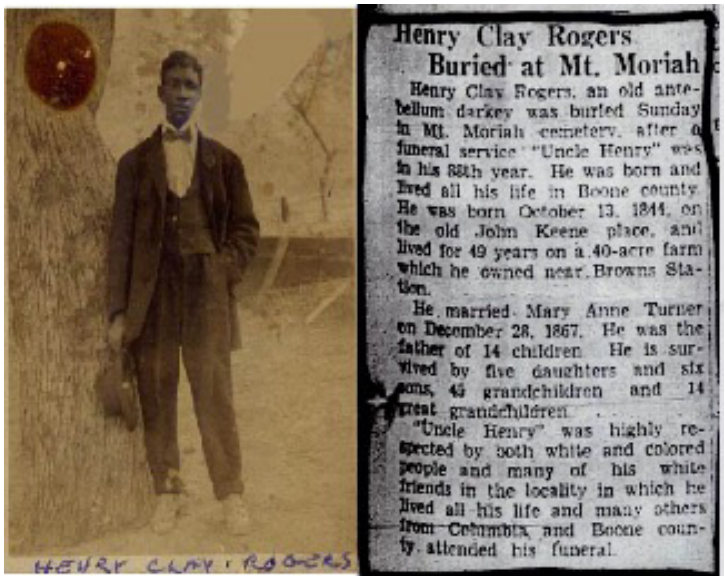
Personal Testimony Portal Submission about Green Flake

As mentioned, several photos were submitted via the Personal Testimony Portal. Additionally, materials related to two documentaries were submitted by respondents. The first was a 40-minute documentary on the history of reparative justice efforts beginning with Callie House and Harriet Tubman, and the second was a flier for a forthcoming documentary about contemporary advocacy for reparative justice. Unlike other personal testimonies, these submissions, particularly the photos, often did not address specific harms or support for reparations that the Task Force should consider. Instead, they were connected by a common theme of highlighting lesser-known histories, especially the contributions of African Americans.

As indicated below, several photos were submitted that had a connection to a monument of Green Flake. Additional research revealed that Flake, while enslaved, was integral in the westward settlement of the Church of Jesus Christ of Latter-Day Saints to the Salt Lake Valley during the mid-19th century.

Another photo documented the obituary of Henry Clay Rogers. He had been born before the end of the Civil War and died in 1931, having owned 40 acres in Boone County, Missouri, for nearly 50 years.

The final series of photographs captures a written document on the life history of Eunice Salary, a woman brought from South Africa as a child. She lived through enslavement and died in 1927 at the age of 110 years with 89 grandchildren and great-grandchildren. Collectively, these submissions are consistent with a theme to be discussed in the oral history findings, acknowledging what's frequently characterized by community testifiers as the "true" history of African Americans.



Personal Testimony Portal Submission about Henry Clay Rogers

Comments on the Communications and Participatory Process of the AB3121 Task Force

Another finding pertained to the communications and participatory process of the AB3121 Task Force's work. One respondent indicated a need for more clarity about how to actively participate.

> **Respondent: I would also really appreciate a more clear process when learning how to testify in front of the California Reparations Task Force**. I'm a PhD student in education. Some other people I know are graduate students or they've been doing research [and] they pay attention to these things. This is also my job, to be [a] Reparations Research Fellow. **So, I would appreciate having space and being able to know how to participate in meetings as a live actor**, as a person who is from the state who's been here for three generations and is also a student at the same time.

Finally, another testimonial submitter argued for the need for dedicated communications efforts, arguing that too few Black Californians are aware of the Task Force.

> **Respondent:** The other day, actually, I spoke to this elderly woman and her sister, and I asked them, **'Hey, do you know about the Reparations Taskforce?' She said, 'No, I have no idea** …' We visited a church here, a long-time standing church called St. Andrews and we asked the congregation how many people knew about the Task Force and what's going on with the reparations right now? And maybe 10-20% at most [knew], and there may have been 50 people in the congregation. **So, whatever decision needs to be made needs to be made quickly to really get this word out nationally, but especially here in California.**

Crack Cocaine Epidemic

Though not a dominant theme, multiple respondents identified the crack cocaine epidemic as a primary source of harm, emphasizing its impact on family dissolution, children, and communities. Most identified the state or federal government as complicit.

> **Respondent**: We are owed a debt for slavery. We're owed a debt for government-sanctioned genocide. We are owed a debt because **California has been complicit in locking up our men** and affecting 10 million families, locking up 1 million men for slavery in prisons **due to the crack cocaine epidemic that you, the government, put into our communities throughout this country.**
>
> (Southern California Resident)

> **Respondent: I happen to be an 80s baby. And I remember the crack epidemic and the war on drugs, and my biological mother actually happened to fall victim to the crack epidemic** and going into the system. And because of that, there were, unfortunately, **a lot of things that happened or that we saw that should not have happened to children.** Then to hear of the government's role, not

only in the distribution of the substances but also the crackdown on the people and treating addiction as a crime instead of what we see it now as, as a sickness. **A lot of stuff ended up happening to me personally during that time, to a lot of children that were around during that time.** We saw the areas that we are forced to live in degrade to levels that I wouldn't wish on anybody and that were even worse than third-world conditions, **simply for the fact that we happen to be Black in America and the government allowed things to happen.**

(Santa Rosa Resident)

Legal Protections to Ensure Security

Several respondents identified the legal system as a source of harm and as a target for reparative justice. One respondent uploaded a copy of her filing to the State of California Second Appellate District, requesting an investigation into perceived judicial misconduct and 14th Amendment violations. Other respondents more broadly spoke of the need for legal protections to ensure that reparations are successfully implemented.

Respondent: I would say I would like to see reparation be structured where we get some financial stability. Also, to get land. We get access to technology to get access to resources, and for a time, we get the resources and **laws and everything to go in our favor, so we can have access to those things without people attacking us and hurting us while we're doing our thing.**

Respondent: And so, to rectify that, to rectify the harms that were done by the government, we are calling for cash payments for Black American descendants of U.S. slaves. **We're calling for protections by the government and an assurance written in law that this will never happen again.**

(Santa Rosa Resident)

Beyond California: Federal Level and the Other States

Several argued that many of the stated harms connect to issues beyond California.

Respondent: To me, the most important harms **I want California to address the issues that happened due to migration. A lot of people in my family would not have even come this way had their land not been taken due to eminent domain down South.** And I would like for that to be addressed like it was addressed with the Bruce family, with the beach over there in Manhattan Beach. I feel that these are the most important harms because they are interconnected. The housing crisis goes hand in hand with the health care issues.

(Pasadena Resident)

Thus, several suggested that California is setting a precedent for what they'd like to see in other states and ultimately at the federal level.

Respondent: I believe that California can lead the nation in beginning to heal not just Black America, but America in general. Because helping Black Americans addresses poverty, crime, illness, mental health, and so on and so forth. So, I can't stress enough that I strongly support reparations.

(New York Resident Raised in Alameda, California)

<u>Other States</u>

Respondent: I'm here in **Atlanta, Georgia, and** I do support the reparation bill for [a] lineage [basis]. And I think all descendants of slaves should support this bill. **I know [I'm] not in California, but I'm hoping they'll be able to put the same kind of bill here in Atlanta, Georgia.**

Respondent: I want the **New Jersey reparations commission** to know the harms in which my family is still suffering educationally, economically, and psychologically.

Federal-Level Reparations

> **Respondent:** So, I would hope that we can at least get some form of guarantee from Gavin Newsom, Shirley Weber, and many of the politicians out in California, the elected officials out in California who have supported this measure. **I hope we can get their support as far as making a demand of President Biden to set up a federal commission for reparations by executive order.** I think that the damages that have been done to the Black community of America, the descendants of American chattel slavery, is **too deep for any local entity to handle, and it definitely needs to be handled on the federal level.** So, I would support an effort to push Biden to take action.

FINDINGS FROM THE ORAL HISTORY INTERVIEWS

Generally, the areas of harm narrators identified fell broadly into five areas:

- Education
- Home & Land Ownership
- Employment, Forced Labor, & Business Hardship
- Psychological & Emotional Trauma
- Failure to Acknowledge True History

Please note that to maintain confidentiality, pseudonyms are used below to identify each narrator.

EDUCATION: IDENTITY AND FUTURE

Education was a significant theme across interviews. When discussing the harms related to basic education, narrators consistently connected these harms to an impact on their sense of identity.

Basic Education

> **"Teaching history in a way that centers our identity, I think like Black Americans just need that space.**"
>
> (Ronnie Lynne)

One respondent identified himself as The Man Whose Blood Remembers because, although he does not personally remember the "atrocities that were passed down from the shores of Africa to the slave ships and the American Plantations," he believes "[e]ach atrocity that was faced by his ancestors was written in his DNA." The Man Whose Blood Remembers attended middle school in Oakland, CA, in the 1990s. When his teacher's lesson on the Civil War seemed unclear compared to the lesson on the American Revolutionary War, he became curious.

> **The Man Whose Blood Remembers:** I remember being in middle school, and they were presenting the Civil War. And they didn't clearly define the reason why in the book. So, I asked my teacher, and he just said, because of state rights and this disagreement, you know? So, I didn't know. I didn't know it was due to slavery and basically them trying to keep the union because of slavery – which was the primary reason – until I got older. I remember when I found out because I [had] actually asked my teacher. He was teaching a subject, and he wouldn't even tell me the truth.

The Man Whose Blood Remembers would not learn the integral factor that slavery played in the Civil War until he became an adult. Acknowledging that many history programs have improved, he noted that while the legacy of slavery is part of United States history, often the courses that go into the most depth are ethnic studies cours-

es at the collegiate level. Thus, he argued, many Black students are left to learn their history from family members or during adulthood, contributing to a lost sense of identity.

The Impact of School Proximity: Parental Advocacy

Violet Allen grew up in South Los Angeles in the 1970s. While she attended kindergarten through middle school in her neighborhood, as her parents observed the influx of drugs and gang violence alter the community around them, they successfully petitioned to send her to school in Westchester. Despite the perceived exceptional level of education at that school, she always perceived a sentiment that she did not have a right to be there.

One teacher routinely marked her grades down for talking in class, admitting only during a parent-teacher visit that he'd been marking her down for raising her hand to ask questions. When she struggled in science and math, another teacher minimized the value of courses, claiming they were unimportant. Moreover, she could not participate in extracurricular activities due to her school's distance from home. A teacher's comments about math or Violet Allen's inability to participate in after-school activities may initially seem innocuous. However, Violet Allen communicated how these shaped both her sense of self and future opportunities.

> **Violet Allen:** My mom got me a tutor through my church. And so, he would meet with me at church over chemistry. And he was just amazed at what I knew. And how would I know he just thought I was fine. And he was a teacher at a local high school. **So, I'm thinking to myself, you know, if I had this teacher, it might have been different for me in terms of my science and math. Like, I hate science. I'm out now, but had I had him, then it would have been different** versus this woman telling me, 'Don't worry about chemistry. It's not that important. You don't even need it.' **I mean, I needed it to graduate. Well, I needed it to get into the type of college I wanted to get into.** And this woman is telling me I don't need it. **And it just kind of placed a psychological barrier on me** where I just wanted to get through this course with a decent grade. Excelling in it wasn't a concern of mine, just getting through it.

Additionally, her school's distance from home meant she carpooled with her neighbor who taught at the school. Thus, when her neighbor left, Violet Allen left. With colleges often using extracurricular activities as a gauge for student discipline, she was less able to reflect that.

> **Violet Allen:** Well, I do know that one of the things that high school students do is they get involved in extracurricular activities so that they can bolster their college application. They want to be able to say **they participated in this club or did this sport. It shows discipline, ability to discipline oneself to stay focused. I wasn't able to necessarily show that through school.** In terms of after school, let's say I wanted tutoring. I couldn't get that at school or meet with the teacher after school to go over math problems. When I left school, I left. And I'll tell you that it's the lady across the street from me the one I was telling you about who was the piano teacher. She worked at Redondo. She was a PE teacher. So, I was able to drive in with her. **And so, I drove with her in the morning, and I left with her in the afternoon. So, when she left work, I left work.**

Juxtaposing her own experience to that of her daughter, she reflected that distance also meant difficulty in parental advocacy. As mentioned, it was only after her mother visited the school that her teacher admitted to penalizing her for raising her hand. When her daughter recently requested a more rigorous math class, Violet Allen could submit her daughter's grades with letters from her teacher and math tutor and then follow up with the principal. The difference between her experience and her daughter's is that having a quality school for her daughter near their home increased the feasibility of Violet Allen's parental engagement and advocacy.

Professional Education Access

Two narrators spoke about the challenges of gaining access to professional education. The Man Whose Blood Remembers spoke about two medical professionals, his wife and his brother, who struggled to gain entry into medical programs in California despite high grades. While his brother, the first in their family to go to college,

ultimately became a nurse practitioner, the pressure of having to support himself through school financially slowed his progress. For his wife's pursuit of a registered nursing (RN) program, her commitment ultimately forced her out of state.

> **The Man Whose Blood Remembers:** And, and just to share my, my wife is a nurse too. And so, she ended up having high honors when she graduated from LVM nursing school. But she couldn't get into any RN programs in the state of California despite that. So, she actually had to go to school in Idaho, because they ended up just accepting her. You know, like, immediately, like, you know, what, you know, not immediately there's a process, but I mean, they saw, you know, like her experience and everything, and they accepted her. But she, like all the programs that she tried to buy for in the state of California, like she couldn't get in any despite having high honors. I think she had the highest, I'm sorry, the fourth or third highest GPA of her graduating class.
>
> **Interviewer:** What year was this that your wife was trying to get into RN programs?
>
> **The Man Whose Blood Remembers:** It was a process. So, it was probably like, a couple years where she was trying different ones. I would say maybe, like, between 2016 [and] 2017 because I believe 2018 is when she actually started a program.
>
> **Interviewer**: Yes. And had to go to Idaho for it?
>
> **The Man Whose Blood Remembers**: Yes, yeah. Because I wanted to make sure she was able to succeed at what she wanted to do. So, while she was there, I had the kids with me here. Despite at that time, I was working two full time jobs. And so, then I ended up just start working one, but I was still working overtime and stuff. And so, I had all four of the kids while she went to school, because I wanted to make sure she was able to do what she actually wanted to do.

Similar to The Man Whose Blood Remembers, Violet Allen also spoke of the challenges of attaining professional education. An administrative judge with a state regulatory agency, Violet Allen doubts whether she would have pursued law again if she had known the cost. After being waitlisted and subsequently denied entry to the University of California, Hastings, she began attending law school in 1995 at a private institution. Though her father's veteran status would have covered her tuition at a state school, attending a private university required her to take out loans. She graduated in 1999 with $85,000 in debt. After 25 years of loan payments, she still owes $50,000.

While she's spent the last 10 years as a civil servant, because her loans were unsubsidized, it's only under the temporary update to the Public Service Loan forgiveness program that she would have had a chance at her loans being discharged. Violet Allen's story is significant because it illustrates that even in her apparently successful position, the impact of student debt is significant. That student debt integrally shaped her career choices.

> **Violet Allen:** Everybody has their own opinions about reparatory justice and what it should look like. For me, and this is just for me, I personally believe that educational opportunities, and specifically **not having to incur the amount of debt that I did, would have made a world of difference for me, and the type of law that I could have and would have practiced.** I think I would have definitely done something different with my career. I would have probably worked in civil rights. **I would have probably done some nonprofit work. I would have probably worked in areas to serve the needs of people who didn't have access to lawyers. I had to pay back loans.** So, I had to have a job where I was getting money to pay back my loans. So, I initially started in a private industry. I started as a private attorney. And that's just because of the choices, the limitations that I had, with the type of choices I could make. I couldn't be a nonprofit attorney; I couldn't be a civil rights attorney. Couldn't afford it.

The through line in many of the narrators' accounts is that their pursuit of higher education was motivated by the belief that earning a degree would open doors for greater opportunity. However, as discussed with respect to housing and employment as well, the returns on degrees have often been less than promised.

EMPLOYMENT, FORCED LABOR, & BUSINESS HARDSHIP

Collectively, harms related to employment, forced labor, and business hardships represent the most discussed theme of harm. Every narrator reported at least one, and often multiple, accounts of harm that either they or their family members experienced while working. Broadly, the sub-themes can be categorized as:

- Histories of enslaved and forced labor in California and the rest of the U.S.
- Gatekeeping practices and elusive barriers to entry
- Reliance on their expertise but restrictions on their career advancement
- Lack of social capital

Histories of Forced Labor: A Grandfather Enslaved in California & a Grandmother and Former Sharecropper Currently Living in California

Four of the seven narrators gave accounts of their grandparents who were either enslaved persons or sharecroppers in the United States. When considering the contemporary relevance of these narrators' accounts of their elders, it should be noted that of these four individuals who experienced forms of bondage, one was enslaved in California. Additionally, another, who was a sharecropper in Arkansas, is still alive today. Finally, one narrator, aged 88 years, gave a personal account of forced labor after wrongful imprisonment.

Enslavement in California

Foundational Black American's great grandfather lived in California as early as the mid-1800s, appearing on the 1850 Census.

> **Foundational Black American:** Well, it's my understanding that my great grandfather was enslaved in Kentucky or Tennessee and brought to California as a slave. [Name removed] A decorated historian reached out to our family in 2006, I believe. The document she shared stated that **our great grandfather, not only was he sold once, but he was sold twice here in the state of California.**

Ties to Slavery in The City of Oakland

Another narrator also reported to a history of enslavement within California. In describing a lawsuit that he attempted to file against the City of Oakland, Bishop Porter indicated that enslaved labor was used to build the Port of Oakland and Oakland railroads.

Consistent with Bishop Porter's report, according to a City of Oakland Memo authored by Mary Mayberry, Interim Director of the Department of Workplace and Employment Standards, and distributed on April 13, 2022, the Oakland City Council enacted the City of Oakland Slavery Era Disclosure Ordinance in 2005. The ordinance was intended to promote the full and accurate disclosure to the public of the scope of historical ties to slavery within Oakland and create a fund for contractors subject to the ordinance to voluntarily contribute to "promote healing and assist in remedying the present-day legacy of slavery." Among contractors potentially subject to this ordinance, were any textile, tobacco, railroad, shipping, rice, and/or sugar company doing business with the city.

Legacy of Sharecropping

Three narrators attested that their grandparents were sharecroppers. Ronnie Lynne's grandfather was a sharecropper in Alabama who served in World War II and moved to California.

The Man Whose Blood Remembers' grandmother, born in the 1920s, began sharecropping at eight years old, attending school for only half a day. His grandmother was threatened with a loaded gun and rescued her brother from a fire pit while she was still a child, and The Man Whose Blood Remembers recounted she experienced familial separation due to sharecropping.

The Man Whose Blood Remembers: She also mentioned to me that her mother and her father both wasn't on the same farm that she was on. That they lived on a different farm and that she lived with her auntie. And so, what at first, **she didn't know that that was her auntie. She thought it was her mom.** And she ended up finding out later [when] she got older. But **even her father and her mother was on different farms too. So, they weren't even together on the same farm. So they were, like separated.**

Gatekeeping: Navigating Elusive Barriers to Entry

While narrators' accounts of employment discrimination and hardship have been categorized into sub-themes to identify specific elements, often the accounts illustrated more than one type of harm.

The Man Whose Blood Remembers: I'd apply for a position that I was well qualified for. You know because of the way that I talk, right [they say] Yeah, sure. Come on, in. **But the thing is, nobody can lie with their eyes**, like the way they look at you.

Gatekeeping is used here to describe a phenomenon by which access to opportunities is barred without a clear rationale. Gatekeeping was a recurring theme in employment-related harms, particularly for narrators at transition points in which they sought new employment or business development opportunities.

Beginning his own business after being routinely denied employment positions, Ronnie Lynne's grandfather, a World War II veteran, encountered gatekeeping during the second half of the 20th century.

Ronnie Lynne: [M]y paternal grandfather, you know, he was a sharecropper in Alabama. And he only had an eighth-grade education. But when he came to LA, I heard how he couldn't find work. You know, **he served in World War II, [but] couldn't find a job**. And he **started his own construction businesses, but he would have to get white men to pretend like they own[ed] the company, just so he can get work.** And that was true for my maternal great grandfather from Louisiana. He also served in World War II. And when he, you know, moved out here, [he couldn't] find work. So, you know, **I heard stories about how they, even though they fought in World War II, they still were being discriminated against.**

Several narrators described more contemporary iterations of gatekeeping. Elaborating on gatekeeping at different phases of the employment application process, The Man Whose Blood Remembers described that he would be met with enthusiasm over the phone, which would be contradicted when he showed up to the interview. Noting examples of gatekeeping before he could attain an interview, he reflected upon a point in which he considered whether to continue indicating his race on applications.

The Man Whose Blood Remembers: In some cases, they have a **requirement to put your race or not put it**. And I was just like, man, it **sometimes made me wonder if I was to not put it, would they give me a better chance? But then they probably gonna see me.** But then I was just like, I can't not be who I am. Like, I can't do that. Because if that's the case, then I shouldn't be there anyway. **Even though it's affecting my family and potential for me to grow and advance, I can't try to hide who I am** because somebody wants to treat me unfairly.

Notably, Freda Day elucidated how she has encountered gatekeeping while navigating hiring agencies. She has found that hiring agencies serve as a gatekeeper by discounting her worth.

Freda Day: So even though this was a Black company, where everyone in reality was actually paid, well, **in order for me to get the job, I got to deal with this gatekeeper, who's gonna discount me to a Black-owned firm.** And it happens. It happened when I left that job and went to the job that I have now. They went through three people who were not Black, who were horrible, but now you hire the third person who is great. But I gotta take the discount, because y'all hired two, two incompetent people before me. Like, how does that work? A white gatekeep-

er, I got an interview in your house, in a very posh part of LA where I can see wealth all around you. And you're discounting me, as we sit looking out [over] the hills. Like this is the world we live in. **I had to leave that job and come back and then command the salary that I deserve, that I should have been paid in the first place.**

Using Their Expertise but Barring Their Advancement

Related to gatekeeping was the harm of having the expertise accepted but the opportunities provided for promotion and advancement being limited. Often, narrators' ideas or expertise were used while either their:

1. Responsibilities disproportionately increased relative to coworkers without commensurate compensation, or
2. Ideas were adapted while excluding them from the process.

Disproportionately Increasing Responsibility Without Compensation

Of the seven narrators, three described examples of being expected to carry additional responsibilities relative to others at work, often while making the same or less than their coworkers.

Noting the barriers that he had navigated to reach his position, including instances in which he was more qualified than those with more specialist positions, The Man Whose Blood Remembers felt the need to frame his professional advice discreetly.

> **The Man Whose Blood Remembers:** I went to one meeting, and they had someone who was supposed to be a specialist on something. **I didn't want them to see because I had more experience in it. And so, they really wanted to lead into training, and I didn't want them to feel like less than, so I framed it a certain way. I even approached, trying to give them guidance to where I posed it as questions.** So, then it gave them an opportunity to answer more so and then for me to just add to it … And so, they actually was really happy. Instead, of me being able to correct them – because he should have known some of those things. **But I don't want to ever make anybody feel like I was made to feel on a regular basis, even though I was actually the qualified person.**

When The Man Whose Blood Remembers' expertise was perceived, he was routinely placed in employment positions that prevented him from progressing. Multiple times, he was asked to train several of his superiors. At one point, while working in construction, his employers even attempted to reassign the sites he was supervising so he could help his new boss supervise his own.

Freda Day described a similar experience while working in accounting. Despite having both a college degree in her profession and regularly advising her coworker, Freda Day was paid less than the coworker she advised.

> **Freda Day: But a woman again, who was trained up in this profession who did not know accounting, who cannot do some of the things that I can do, she was making $10,000 more than me.** And she asked me, "Do you know how much money I make?" I said, "No." She said, **"Well, I know how much money you make … You should be making the same if not more than me because anytime I need to know something, I come to you … You have a degree, and I don't."** So, I've been at this now for 30 years. And I've been with this company since 2015. And I've literally had to leave in order to come back on the terms that I should have had when I came through the door in the first place.

Attempting to justify why she'd given the only two Black women on her staff noticeably larger caseloads than others, Violet Allen's manager characterized them as "workhorses" who could get a lot done. Yet, when special assignments arose, which often provided pathways for promotion, neither Violet Allen nor her colleague was ever afforded an opportunity.

> **Interviewer:** And when people were given these special assignments, there wasn't any sort of criteria that they explained about how they chose who was going to have this assignment?

> **Violet Allen:** Not to my knowledge. Because I recall asking to be placed on an assignment. Something, you know, interesting, different, noteworthy. **And I never really could ascertain what criteria was used to place folks in these assignments.** I do recall asking this guy [Name removed] who was in charge of a special project. I asked [him], **"How do you choose the judges for your project for these particular cases?" And he said it was who he liked.**

Adapting Ideas While Excluding Them from the Process

Consistent with the accounts of gatekeeping and limited opportunities for advancement, one narrator demonstrated how ideas matching her own were adapted to create a novel office, but she was deemed ineligible to apply for the specialist position in that office.

> **Kay Move: [E]ven if we remove the fact that I wrote a grant, which ended up being the blueprint of what this office looks like. I mean, I had direct experience.**

In 2017, Kay Move submitted a proposal for the City of Sacramento's Creative Economy Grant after the City called for ideas to bolster the creative economy. After earning two degrees – an associates in television production and broadcast journalism and a bachelor's in communications – working for her local Public Broadcast Service, the Sacramento Film Commission, and the communications news division of the California Farm Bureau Federation, Kay Move proposed an idea.

> **Kay Move: My idea was all about a city-sanctioned Film Office that would provide local resources and assistance to filmmakers in grant making,** you know, getting databases together of the crews and filmmakers in town. And **they actually put that office together**, but they **would not even give me the chance to interview for that position.**

Kay Move submitted her application and resume for the specialist position in the new office, which was consistent with the ideas she had proposed in her grant application. However, she was not invited to interview. She spoke to a Black filmmaker who received an interview and described his interviewers as disengaged before they cited his insufficient work history.

> **Kay Move: If you knew he didn't have enough work history, why are you interviewing him if that's automatic, you know** … Why are you interviewing him in the first place, and here I am with direct experience [and] a ton of work history. At the time that I applied for this field office job, I had been at the California Farm Bureau for ten years. So, I definitely had a track record and work history. **And it just seems like they picked somebody that they would easily be able to tell no.**

Lack of Social Capital

Gatekeeping and minimal opportunities for advancement correlated with limited opportunities to develop social capital. As reported, when Violet Allen inquired about the criteria used to distribute special assignments, one person in authority told her he chose those he liked. Violet Allen indicated that having few people to explain how these social systems worked created obstacles.

> **Violet Allen:** When there are not very many Black folk, specifically Black Americans within a department, an agency, an institution, then the ability to kind of explain processes and how to move up are not there.

Commenting on the intersections of race and class, Ronnie Lynne, a professional within Hollywood, also contended that the absence of social networks removed safety nets for making mistakes. Thus, those who are less connected are required to maintain exceptionalism.

Ronnie Lynne: I feel like Hollywood reflects society; you know? Like, [it's] about relationships, right? People whose parents went to college with someone who's already established. **But as a Black American, many of us, some of us, are still the first generation to go to college. We don't have those sorts of connections because of the history.** But I've seen white kids whose families they have these sorts of connections because of their privilege. And it helps. They get away with a lot. **Let me just say that. They can make a mistake, and [it will be] overlooked. You make the mistake [and it] is judged harsher.** It's harder for you to get promoted. And it's harder to make it because it's such a competitive industry. Having resources like connections and money, make a difference. And if you're just starting out at the bottom, and you don't know anyone, you get vomited out.

Similarly, Freda Day experienced the impact of a lack of social capital from the beginning of her career to the point at which she began her business. From the beginning, a senior partner made the deliberate decision not to give her mentorship shaping her opportunities.

Freda Day: I had the senior partner come to me and tell me, "You are too smart. You're the kind of person who, if I train you, you're going to take everything you are going to learn, and you're going to leave." **So, this man mentored many people … But what I was told was that I was too smart.**

Subsequently, when Freda Day began a firm with her business partner, another Black woman, they found that despite their expertise, consistent mentorship for young professionals, and ability to keep accounts in the Black, due to their lack of social connections, they could never grow to profitability due to undercapitalization.

Freda Day: It was a business management practice. You know, an accounting office for high net worth, high profile people. I had walked away from the company that I was with, with an anchor client. We knew we needed two anchor clients to sustain the business. And we thought we had a second anchor client, and then that guy wound up stiffing us, but you know, **when you have a small practice, people want you to be discounted. And I understood that, in a way … But our skills are the same, my skill set didn't change because I changed location.** But when we came to that realization, we decreased our hourly billing. But in terms of being a retainer client, those numbers are not going to change much.

HOME & LAND OWNERSHIP

The Man Whose Blood Remembers: Just something simple. **Just [to] be able to have a home for my family.** Like, that was just the goal. A home in the area that I grew up [in], that my family had been in since the 1940s. That's just what I wanted. I don't need to have the best car. **Like, I just want my kids to be able to have a home. And it was too hard to get.**

Consistent with the personal testimonies submitted via Box, the challenge of attaining and maintaining land and home ownership was the second most significant theme in the oral history interviews. In addition to discussions about redlining and segregation, narrators went into depth about historical and contemporary home and land ownership harms related to:

- Inherited property
- Urban planning & development
- Corporate interests

Inherited Property

As a child, Violet Allen looked forward to visiting her mother's family every other year in Rapides Parish, Louisiana, where they collectively owned 40 acres of land. From the time she was about eight years old, Violet Allen recalls her mother receiving letters annually from an attorney requesting that she sell her inherited portion of the family land. Her mother refused for over fifty years until, in 2012 she received a notice of a petition to partition the land.

Violet Allen: The individual, who is a veterinarian out of my mom's small hometown, had been purchasing pieces of my relatives' portion of the land. And so, this individual had such a large interest that it was not financially feasible for us to continue to fight in order to maintain the very small portion that was left. He was able to acquire roughly 30 acres of the 40, leaving 10 small acres for the remaining family members. So, he was able to go to court and file what's called **a petition to partition the land and to force the sale of the land so that he could not only maintain his 30 acres, but he could then force the sale of the 10 remaining acres** and then give the remaining heirs… a small monetary compensation for their portion.

When they attempted to defend their land, Violet Allen used her legal expertise to organize her family, find an assessor and an attorney in Louisiana, and draft documents to fight the sale. However, the process was too far gone when the family realized what had been happening. Illustrating the distinct vulnerability of individuals who inherit property and the fact that even with her expertise, navigating the legal process surrounding the inherited property proved difficult. Given this difficulty, Violet Allen is an advocate for the right to first refusal.

Violet Allen: I think we should have been given the right to first refusal. That should be a law that before my cousin can sell to Jim Bob, my cousin must give me the right to buy it. If I decide no, I don't want to buy your portion, then you can sell to an outsider. That's something that's not allowed, or that's not typically done with respect to heirs' property. And then all of the heirs should be advised that Jim Bob has presented cousin A, B, C, D, with offers to sell the land. [We] were completely kept in the dark. And **we're talking about a people who are just coming out of Jim Crow. Without access to lawyers, I was the first lawyer in my family.** I am the only lawyer in my family on both sides. My mom had 11 siblings, which means I had hundreds of cousins. I am the only lawyer on both sides of my family.

Violet Allen lived out another issue associated with inherited property when her father and his siblings decided to sell their late mother's property in Texas. Despite her efforts to buy the land with her two cousins, several obstacles prevented her from purchasing it.

Violet Allen: [T]he rough valuation of the land was probably about $100,000, and I told him that I wanted to buy it, and I don't have a whole lot of money. But I was willing to do whatever I needed to do to buy the land. And so, I contacted my cousin in Arizona, two cousins in Arizona, one is a vice president [at] a bank. Another one is a police chief, got money, and I said you guys, let's go into it together. Let's purchase this together. It's land right next to Whole Foods Market, right next to Harley Davidson. You know, it's valuable. **So, my cousin starts investigating, and he finds out that we cannot get a mortgage on the land** … I believe the reason was, because there was no home on it. And so, if we were to buy it, we'd have to buy it in cash. Okay, so I'm thinking to myself, Okay, yeah, that's a risk. But you know, let's still do it.

Then the second issue that came was that even if we purchased it, we couldn't find anybody who would insure us. And I forgot there was a specific reason that they would not insure the land. And it escapes me, but it was something along the lines of it not being that type of property that was insurable for most insurance companies. So, I was running the risk of, if I buy this land, and I erect something on it, then you're talking about losing a life savings when I'm a single mom. I'd love to be able to send my daughter to college. I can't risk investing in this property and not being able to insure it. So, ultimately, I decided that I could not as an individual woman, purchase this land, although I wanted to.

And then the third issue with this land is that Whole Foods and Harley Davidson advised us that my grandmother never owned all of the land, a portion of it belonged to someone else. In fact, they were claiming that a portion of it belonged to them. And so there would be litigation, fighting title, or establishing title to the land. Knowing that I have the issue of it **not possibly being insurable, not with me not being able to hold a mortgage on it, and then me possibly having to battle, a title fight with Whole Foods**, which is owned by Amazon, I don't care how smart I think I am. I don't have the financial wherewithal to fight that kind of power. So, Daddy and all of his siblings sold the land.

Inherited Property in California

Foundational Black American's interview echoed the phenomenon of heirs unwillingly losing inherited land. Connected with his family's history in California among the Black pioneers, Foundational Black American described a concerted effort to erase records of Black land ownership.

> **Foundational Black American:** It was a book that was written by, I believe, Karen L. Robinson. The book was titled *Gaining Ground [African American Landowners in California, 1848-1860* and] was actually her master thesis. And it's at Arizona State University. That's the only copy left on campus; it has to be checked out by students. And that particular book really spoke about the African American pioneers of California, that were landowners from 1850, California began a state or the union until 1950. **And it showed [an] extreme decrease, and then land ownership of these African Americans. And I just find it interesting that that book was pulled out of circulation.** And the only way I was able to get a copy or actually get the information from the book was to have a student at Arizona State University go into [the] library, check it out and take pictures. But I was I was stunned because a lot of this history, you have to go to higher education [to] learn it. And I don't even call that critical race. I call it just teaching th[o]rough history. And so, if we taught that history, and it wasn't hidden, one would then question, well, what happened to all the Black landowners? **My family is living proof of what happened to all the Black landowners. We just happen to have the deeds that were not destroyed** ...

The deeds to which Foundational Black American referred are those detailing his great-grandfather's ownership of land in Coloma, CA, which was ultimately seized under eminent domain.

> **Foundational Black American:** For my great grandfather to come home from fighting for this country and be told, "You're gonna sell your land boy" – because they call them boys back then – "or you're gonna be jailed." Now that came from the archives. [The] Department of Justice actually shared that with me. **Legislation was actually created to take land from my family. And they took land.** Why? Well, as I began to read documents, there was gold still there. When [my relative] said, 'No, you guys [can't] dredge up my land." They wrote in the newspaper, "Negroes surely to lose against the state of California."

Despite acknowledgments about his family's ownership, Foundational Black American attests that none of the lands have been restored. Thus, the through line between Violet Allen and Foundational Black American's stories is that even when Black families have attained land ownership, maintaining ownership across generations has consistently been threatened.

Urban Planning & Development

Continuing the theme of urban development, one narrator illustrated the hardships created by development projects that directly target or exclude Black communities.

<u>Building Through Black Corridors</u>

> **Freda Day:** My children's grandmother purchased a home over by where they built the 91 freeway for $14,000. That house didn't achieve his highest level of appreciation because they put the freeway literally at the end of the block. The freeway went through the end of the block. Well, we know that had racial implications, as did the 110 freeway, [the] 10 freeway, and **all of these freeways that became built went through Black corridors. So, the house didn't really appreciate very much in value.**

Ultimately, leaving California to purchase a home in Texas allowed her children's grandmother to pay cash for a home. However, the narrator emphasized the importance of such implications: Many who are likely to be eligible for lineage-based reparations in California, should they occur, have emigrated due to hardships experienced in California.

Levittown & Racial Covenants

Pointing to the example of Levittown, Freda Day indicated that urban developments that have deliberately excluded African Americans have also created hardships for Black home ownership. Her great grandmother moved into the Kingsborough Housing Projects, a primarily Black housing project in New York, in the early 1940s. She lived there most of her life. By contrast, when suburban development projects called Levittown were constructed, often with racial covenants, residents who lived in white housing projects were afforded access to social mobility.

> **Freda Day:** For my great grandmother, there was no daggone Levittown for Black people. She wasn't able to move out of the projects and into some other housing that was different. My grandmother lived in the projects until she moved into a nursing home.

CONTEMPORARY HOUSING HARMS: CORPORATE INTERESTS

Denial of Mortgage Modification during the 2008 Housing Crisis

Before the 2008 housing crisis, Violet Allen bought a home in the Southland Park area of Sacramento, California. Wanting to live in her childhood community near her aging her mother, yet unable to secure a home in the once predominantly Black community she grew up in, Kay Move used an inheritance from her aunt to put a down payment on her home in another area. She then left California to care for her dying grandmother. When she returned to California amid the housing crisis, she secured a mortgage modification with her lender.

> **Kay Move:** When I first bought the house. I was paying $4,400 a month. I had a first and a second mortgage. Like I said I had some inheritance from my Louisiana family. So, we were able to keep up that payment $4,400 a month for a year. And then at that time, you know we refinanced [and were] able to get a little bit less than $3,700 a month but it was still deemed that the property was underwater. So, looking to get the modification with Chase [Bank], they finally agreed to it. And they sent a trial modification contract for $1488 a month. And I'm like, okay, so this is something I can work with, even with my underemployment [and] the inheritance running out.

Despite paying her mortgage every month for two years, under the presumption that the modification would become permanent, her mortgage was ultimately sold to another lender, beginning the modification process anew.

> **Kay Move:** There was this algorithm where **you had to be making you know, X amount of money over your mortgage price in order to even be considered for modifications at lesser rate.** So, it's like, the more money you made, the better modification package they would give you. At one time, they were offering interest rates at 2%. My modification ended up being at 4%. But they also had something they were offering called principal reduction. They were paying off $100,000, or even half of people's mortgage, just paying that off. But only if you make enough money. **And I'm like, if I made all this money, I wouldn't even need a modification, I would just pay the bill.** I wasn't thinking about it in these terms at the time, before I got into my advocacy work, but it's like, okay, well, **if Black people are, you know, the data is showing that they're underpaid**, and most situations that their median incomes is like [$]40,000 or under. So, they set the rules, so that **it's unattainable**.

Over the years, Kay Move's mortgage was sold to multiple lenders who engaged in practices such as increasing her payment by $100 without notice and subsequently refusing to accept her payment. After falling into default, the lender foreclosed on Kay Move's home, and it was nearly sold.

> **Kay Move: My house was on the auction block.** I couldn't go because I had to work. But I did have a friend go for me. **And he said that it was like a scene from the movie *Men in Black* because it was all these private investors with earpieces and talking.** And they were calling the houses, and then people would bid on them… Not just normal people going to try to buy a house [but] these were

private investors. And that's a big problem. Sacramento sold a large swath of the housing inventory to these private investment firms like BlackRock. So, they buy up the properties, and then everybody has to go in as a renter, and then they're charging exorbitant prices for rent. So that's how we ended up in that situation. But he said it was basically like a scene from the movie *Men in Black*. And he said, **they called my house**, and then they were like, oh, **no, this one has a stay on it. So, this one won't be sold today, but that's how close my house got to being sold out from under me.**

Corporations Buying Up Single-Family Homes

Consistent with Kay Move's account, The Man Whose Blood Remembers described how in the current housing market, investors and corporations are continuing to overbid for homes that enter the market. The practice makes it virtually impossible for individual families to buy homes, even in neighborhoods in which they have always lived. As an aspiring small-business owner in real estate, the phenomenon also meant that The Man Whose Blood Remembers' previous work to position himself to begin his business was moot.

> **The Man Whose Blood Remembers:** Basically, people who have like billions of dollars and stuff, they're purposely purchasing any homes that come on the market. They will purposely purchase it at a higher rate. So that, basically, can end up driving the market. So that's happening … **They only, build a certain amount of homes at a certain time, which causes overbidding.** And so, then when someone overbid[s], and it happens multiple times, they can now use that as like the point of [value]. There was some homes that I was actually attempting to try to buy. And that was one of the things they did. [When] they started off, it was like [$]300,000 for certain homes. And then they would only build a certain amount. And they have you go through this process where you're waiting, and then you try to buy it, and then someone bids like [$]100,000 extra. I don't have [that] type of money … **I did all this work to get in this position to finally be able to almost bid in this.** Now, something new is put in place to, where I still can't because now people are coming up with $300,000 ... I can't compete with that. My family don't have money like that. I barely got to a position where I can even almost try.

PSYCHOLOGICAL & EMOTIONAL TRAUMA

The impact of psychological and emotional trauma was another dominant theme across the interviews. One of the repeated notions was that when recounting past harms there's a reluctance among elder African Americans to talk about their experience.

> **The Man Whose Blood Remembers:** She [his grandmother who was a sharecropper as a child] encountered a lot of racial racism. But I think for her being so young, and encountering it, she didn't really look at it for being that. **But when she shared the story, which was difficult to get … from what I've been seeing, some of the older generation[s] don't really like sharing some of their experiences. So, it kind of took a lot to get her to talk about it.** But then she didn't want to really, like really take a deep dive and think on it too much, which is understandable, because it was traumatizing.

> **Ronnie Lynne**: My elders were very religious or Christian. So, that's how they dealt with it was through their faith. **Black Americans were super into the church. That was how they dealt with their pain.** [It] was through the church through community. **But there was clearly harm, you know, trauma. It just was something you didn't talk about** … The **older Black people, that's how they dealt with it. They will go to church three, four times a week, they will yell, scream and just the assurance that they believed God was with them.**

Notably, in both instances, narrators are describing the impact of the psychological trauma on their elder family members. That is, the experience of trauma limited their elders' ability to talk about the struggles they have undergone and thereby limited these narrators' ability to understand their family histories.

Among the narrators who described their own psychological trauma, they were able to speak more about the specific origins of their trauma and what the experience of trauma looks like in their lives. For one narrator, his trauma originated from being forced to continue facing the land ownership harms that took his family's land.

> **Foundational Black American:** The trauma that I mentioned – when we talk about slavery, I can't relate to that, because I just can't. But the trauma I mentioned is like everything after I think. Okay, slavery was legal, it was wrong. There are some cruel things that happen. I didn't live it. But what I do live and what's in my veins are those ancestral ties. **When I say trauma, there are sleepless nights.** Whether people believe it or not, I've had my great grandfather come and talk to me. And tell me I haven't found all the documents yet. And so, some of that is the lack of trust. I walk through life convincing myself that I have to believe that not all white people are a certain way. I have to look for the good in people. Even though the majority of white people are afraid of other white people because they've told me, and they show me what their continued silence of allowing this systemic system to continue on. **So those are emotions that I cannot even begin to describe.** But it's stress. When we think about **why do Black men have high blood pressure? Have ailments? You know, why am I passionate? Why does my voice fluctuation change? My voice? That's trauma.** That's – I don't know any other way to explain it. Right? I have to humble myself and suppress feelings and emotions, and that's traumatic within itself. **It's actually relieving sometime[s] to let my voice go up. But I, I feel like well, if I do that, I might scare somebody, or I'm going to be titled as the angry Black man** that has a cost. That comes with [a] cost. People say, "How do you sit and talk to these people?" And I say, because not everybody did what's being done. But it's trauma. When I hear white people tell me, "We stand with you. [We] just have to be silent now."

For another narrator, her trauma sourced from going through the process of filing a suit against the State of California based on racial and gender discrimination. In addition to her diagnosis with nerve damage following her experiences of harassment, she illustrated the emotional toll that fighting the case itself took both on her and her family.

> **Interviewer:** And one of the things that you mentioned, is in deciding to accept the settlement. You wanted to be able to be a mom again. To the degree that you feel comfortable, what ways did you find that focusing, you know, working on your case took you away from being a mom?
>
> **Violet Allen:** Depression, I was very depressed. [I was] unable or just failing to engage in the way and at the level that I did. I think when I had my daughter, one of the things that I always wanted her to know, was that when she entered a room, that I was happy to see her. That I was joyful to see her. That her just entering a room would light me up, and light up my life. And when I was going through this process, I found that I was very unhappy, and that when she entered a room, I wasn't joyful. Just her presence would literally bring me joy because I wanted this child so badly, and I have this beautiful baby. And so, when I was going through this just not engaging in a way that she deserved.

FAILURE TO ACKNOWLEDGE TRUE HISTORY

One of the final major themes across the interviews was the harm associated with failing to acknowledge history in its truth. Some narrators connected this failure specifically to experiences in education in which history was deliberately obscured, such as The Man Whose Blood Remembers' description of his teacher explaining the Civil War as an issue of states' rights.

However, many more connected a failure to acknowledge history more broadly. Often this theme occurred concurrently with the theme relating to inaccessibility to data and records. As noted, Foundational Black American described how histories of Black land ownership in California, and limitations on access to records which illustrate that land ownership has both limited his ability to learn about his own family and erased the contributions of other Black pioneers.

One narrator connected this lack of knowledge of African American history and their contributions to the U.S. to a sense of shame and lack of purpose for many African Americans.

> **Ronnie Lynne:** For me, as a Black American, I felt like growing up, we were made to be ashamed of who we are as Black Americans. I was always hearing Black Americans talk about Egypt. Oh, we're Egyptian. **It was just something to make us feel like, we we've done something, and it was just [having] this obsession with trying to prove that the first Egyptians were Black instead of us being proud of what our families built here**, you know, we, we can never just be proud of who we are as Black Americans. Like, you know, I love the fact that, you know, I'm of African descent, but I also felt like we were told made me feel like Africa was better than what we built here character, like, we were ashamed that our ancestors were slaves. But for me, what helped me was just accepting that my family built their own culture here. And they, you know, there's nothing to be ashamed of, like, they overcame such great obstacles … **We get judged a lot as Black Americans. We were always told we don't work hard enough. We're always complaining. You don't value education. And you know, the history says otherwise.** History says that Black people built their own schools – HBCUs. The history shows that Black Americans fought for public schools, so everybody can get a free education. But yeah, you have immigrants who come here and white people who say, well, why don't you just do what Asian Americans do? They go to college. And you know, people don't know our story … **I feel like a lot of Black Americans, they don't have a sense of purpose because they don't value their legacy. They don't value what their families went through. They're looking outward. Just for validation** … So, for me, definitely teaching history in a way that centers our identity, you know, instead of us, you know, I think like Black Americans just need that space.

ADDITIONAL FINDINGS & CLOSING THOUGHTS FROM NARRATORS

Connected to the dominant themes of harm detailed above – home and land ownership, education, employment, psychological and emotional trauma, and failure to acknowledge true history – the narrators' stories also reflected several additional themes, but to a lesser extent.

Health Harms Connected to Employment

While health harms did not emerge as a dominant themes, notably most of the health-related harms described were linked with employment. The two most prevalent sub-themes were issues around taking health-related leaves and employment conditions that correlated with injury and fatality. Of the four women who were narrators, three of them described issues with taking employment leaves related to medical conditions. Additionally, each of those three women described employment situations experienced by themselves or their family members which correlated with injury and, in the worst cases, fatality.

Inaccessible or Inadequate Government Services

Specifically, four areas were mentioned regarding inaccessible or inadequate government services:

1. **Denied benefits for Black veterans under The Servicemen's Readjustment Act of 1944, commonly known as the G.I. Bill:** Relating the experiences of her two grandfathers, Ronnie Lynne, described how despite their service in World War II, neither was able to access the benefits of the G.I. Bill. Moreover, once they came to California, both experienced difficulty getting jobs, despite their service. As mentioned, her paternal grandfather, ultimately, launched his business after being unable to find work. Nevertheless, he frequently had to hire white men to pretend they owned the company.
2. **Small Business Administration (SBA) loans:** The Man Whose Blood Remembers found that despite claims that the SBA and the Minority Business Development Agency (MBDA) are professed to help Black and minority business owners, he found little support when referred to an MBDA-affiliate organization for support. He remarked, "[The MBDA] have these other government organizations that's connected with them. But one of the groups that they referred me to was actually called ASIAN, that was the name of

the organization. It was actually spelled Asian, and it actually meant something. But it was connected with one of the groups that's supposed to help me get a loan. And of course, they didn't give me nothing, you know."

3. **Services for working caregivers:** As a working single mother, Freda Day experienced the challenges of those who make too much to qualify for support services related to housing, childcare, or healthcare but cannot make enough money to afford all these expenses, especially when they're caring for multiple generations. In discussing these challenges, she described the need for a sliding scale and more support for families caring for Black elders who have lived through years of hardship that contribute to health disparities

4. **Legal representation for parolee candidates:** During her five years as a parole revocation attorney with the California Parole Department, Violet Allen observed what she characterized as the frequent lack of a zealous defense. She noted, "An inmate had a specific period of time within which he or she could be on parole … Let's say it was four years. [I] **found that the board was holding inmates after this four-year mark. This information would come to the attorney's knowledge …** But rather than challenge that and push for the inmate's immediate release, it would be something where the **attorney didn't want to rock the boat** in order to not get work. You want to continue to get work. **So, parole revocation work became an economy fueled off of maintaining folks in prison.**

Civil & Military Service Consistently Reflected in Personal Histories

It's notable that as they spoke about their family and personal histories, every narrator's history reflected a commitment to military or civil service to their country as teachers, judges, municipal workers, and soldiers. Bishop Porter proudly spoke about the feats of military bravery for which two of his relatives had been honored. Kay Move, while priding her parents' work as lifelong civil servants also mourned her father's premature death from a brain aneurysm at the age of 59, which his coworkers attributed to hidden stressors on the job.

Belief in Repairing America as a Whole

Finally, the narrators echoed the sentiment that they wanted harms to be acknowledged and repaired not only because of what has happened to the descendants of slavery, but because the contributions Black Americans have made and can make with reparations have integrally shaped the nation for the better. Thus, they believed that providing reparations to the descendants of slavery was not just an effort to repair Black America, but to heal the nation as a whole.

> **The Man Whose Blood Remembers:** "I really do believe if you fix the descendants of slavery in America … [and] the government actually do what they supposed to do ... it actually allows the U.S. to say and show, we were actually willing to clean up our own messes. **We were willing to be the country we said that we were when we said liberty and justice for all."**

SECTION 5

PUBLIC OPINION SURVEYS ON REPARATIONS PROPOSALS & ELIGIBILITY ANALYSIS & FINDINGS

This section reports findings from the statewide surveys to assess public opinion on reparations proposals and on eligibility. The findings are reported for the statewide representative sample in California and for those who completed the survey through the community listening session process. The survey results are provided with a focus on the following two major areas of inquiry: support for reparations and who should be eligible for them.

DATA

The Bunche Center designed a closed-ended survey that queried a representative sample of Californians about their support for reparations proposals and their opinion about who should be eligible for that support. The sample consisted of 2,449 individuals from across the state who were over the age of 18, and was conducted from May 10, 2022, to June 6, 2022. A proportional stratified sampling frame of the American Community Survey (ACS) 1-Year estimates of California was used to mirror the state's demographics in terms of age, ethnicity, gender, and race. The research team at UCLA designed the web-based survey and it was administrated by LUCID HOLDINGS Marketplace, a third-party source.

In addition, the community listening session survey was administered between March and August 2022. This survey was offered to those who either directly participated in the community listening sessions or were connected to the survey by a listening session participant. In total, 1,934 respondents completed the community listening session survey. The analysis below compares the results of the representative statewide survey to those who completed the survey based on connections to the community listening sessions, where appropriate.

METHODOLOGY

The research sought to understand the level of support for reparations in the state of California. Survey questions were developed based on the suggested reparation measures to address past harm according to the United Nations Human Rights Office of the High Commissioner:

- Restitution should restore the victim to their original situation before the violation occurred (e.g., restoration of liberty, reinstatement of employment, return of the property, and return to one's place of residence).
- Compensation should be provided for any economically assessable damage, loss of earnings, property loss, economic opportunities, or moral damages.
- Rehabilitation should include medical and psychological care and legal and social services.
- Satisfaction should include the cessation of continuing violations, truth-seeking, search for the disappeared person or their remains, recovery, reburial of remains, public apologies, judicial and administrative sanctions, memorials, and commemorations.

A Likert scale was used to collect respondents' attitudes and opinions on the extent to which the participant agrees or disagrees with reparation measures for eligible Black residents in California. The scale was used to rank survey respondents' level of support by choosing one of the following: *strongly support*, *support*, *likely support*, *strongly oppose*, *oppose*, *likely oppose*, *neither support nor oppose*, and *unsure*. For ease of presentation, the responses are reduced to three broad sentiments: support, indifferent, and oppose. The newly defined support category combined the *strongly support*, *support*, and *likely support* responses, while the oppose category combined *strongly oppose*, *oppose*, and *likely oppose*. The indifferent category collapsed the *neither support nor oppose* category and the *unsure* category together.

For racial atrocities committed in California, our research identified three main categories for reparation remedies, direct cash compensation, monetary, (no direct cash) measures, and non-monetary measures. In this case, direct cash compensation refers to a one-time cash payment.

Monetary measures are a collection of economic and financial proposals that invest in Black communities, such as: economic investments (e.g., grants, business loans, entrepreneurial investments); education (e.g., educational grants); health care (e.g., expansion of Medi-Cal); housing (mortgage assistance/down payment/housing revitalization grants); loan/debt forgiveness (e.g., student, mortgage, business debt relief) ; and financial resources (e.g., universal basic income, baby bonds, annuities, endowments, trust funds).

Non-monetary measures refer to proposals such as an apology from the state; curriculum reform (i.e., K-12 education on Slavery/Transatlantic Slave Trade); monuments (e.g., memorials to honor victims of Slavery/Transatlantic Slave Trade, abolitionist monuments); and restoration of unfairly seized property/land.

This section first presents results from the representative statewide sample and then compares them to the results from the community listening session surveys.

KEY FINDINGS

SUPPORT FOR REPARATIONS

A Majority of Californians Support all Types of Reparations Measures

Past research has focused on reparations in the form of direct cash payments for harm caused and has shown that support for reparations falls when reparations is defined as such. Although our research finds there is majority support for reparations in the form of direct cash payments (64%), support is significantly higher for remedies that include monetary measures (77%) but do not include cash payments. Support is also significantly higher for remedies that include non-monetary (73%) forms of reparations (Figure 8).

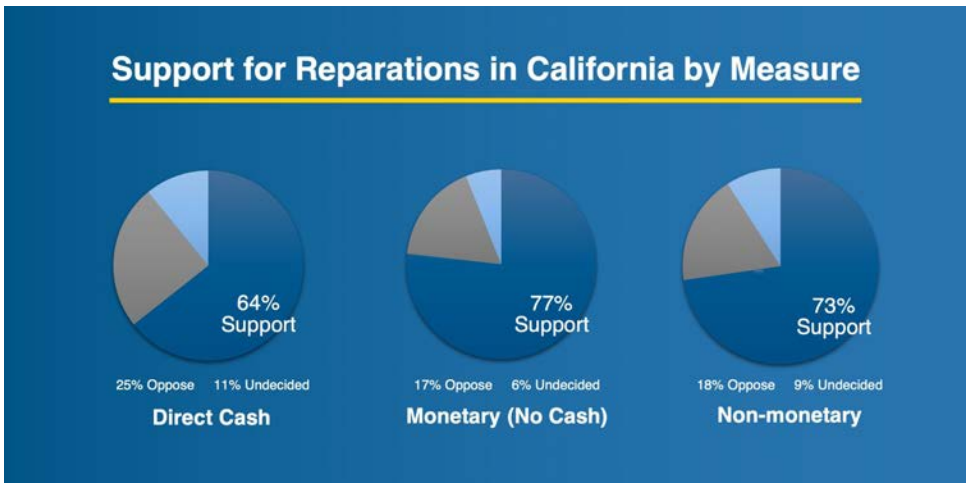


Figure 8. Support for reparation measures for the state sample

These findings support past research but show that support for monetary reparations (arguably equivalent to cash in value) is quite high if cash is not included. Despite this, a majority of Californians support a direct cash form of reparations.

Below, support in California for all three reparations measures is explored by key demographic variables. The results shows that support for reparations in California differs significantly by race, age, educational attainment, and political affiliation.

Black Californians Are Much More Likely to Support All Reparation Measures (Especially Direct Cash Transfers)

Support for direct cash compensation vastly differs by race (Figure 9). Non-Hispanic Black (86%) support for direct cash payments was nearly two times greater than support among Whites (48%) and Asian Americans.

Support within the Latinx community for such forms of reparations is fairly strong as well, with nearly two-thirds (61%) supporting direct cash compensation.

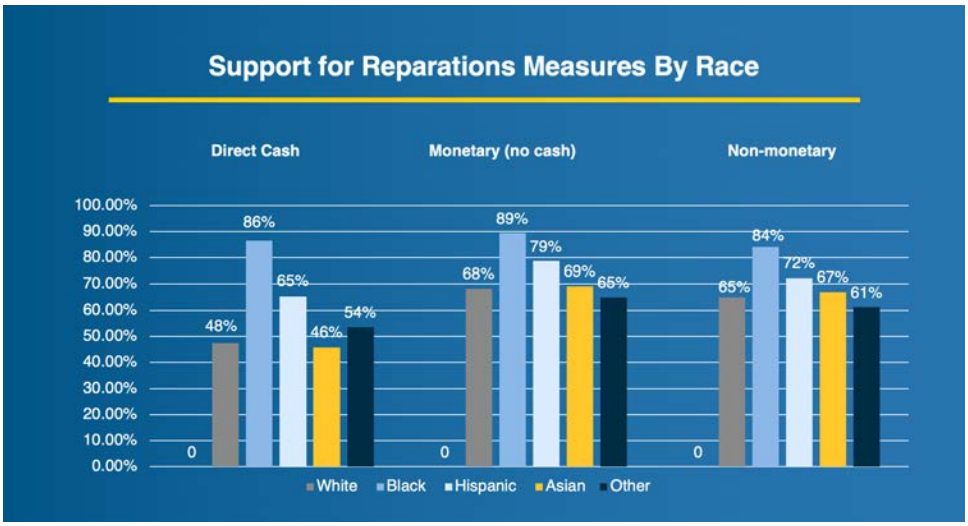


Figure 9. Support for reparations by race from the state sample

Still, support for monetary (no cash) measures was the most supported reparations measure across all racial and ethnic groups. Black Californians support this reparations measure the most (at 89%) and only slightly more than their support for direct cash payments (see above at 86%). Over three-fourths (79%) of the Latinx community indicated support for monetary based (no cash) reparations measures, while support for this reparations measure for whites, Asian Americans, and others hovered in the 60% range. Still, a majority of these groups supported monetary (no cash) measures for reparations.

Further analysis not shown here reveals that Black Californians' higher support for monetary (no cash) reparation measures is driven by their strong support for business investments (82%) within Black communities and educational investments (81%). Their support for non-monetary reparations measures is driven in part by their much stronger support for the restoration of seized property (78%), compared to other racial/ethnic groups.

Younger Californians Are More Likely to Support Reparations for Eligible African Americans

The survey found that younger Californians support all reparation measures more strongly than older Californians (those older than 45) (Figure 10).

Age is a particularly significant indicator for the strength of support for direct cash payments as the reparations measure. According to the breakdown provided for the state sample, respondents aged 30 to 44 (74.2%) offered the most significant support for direct cash compensation, followed by roughly three-fourths (73.6%) of those aged 18 to 29. By contrast, only roughly one-third (38%) of respondents aged 65 or older expressed support for this measure.

There is a similar trend regarding the level of support for monetary (no cash) and non-monetary measures. While a large majority (83%) of people aged 30 to 45 supported monetary no cash reparations, support declined (73%) with those aged 45 to 54. Similarly, support (62%) for non-monetary measures was significantly lower for people aged 55 to 64 than among those aged 18 to 29.

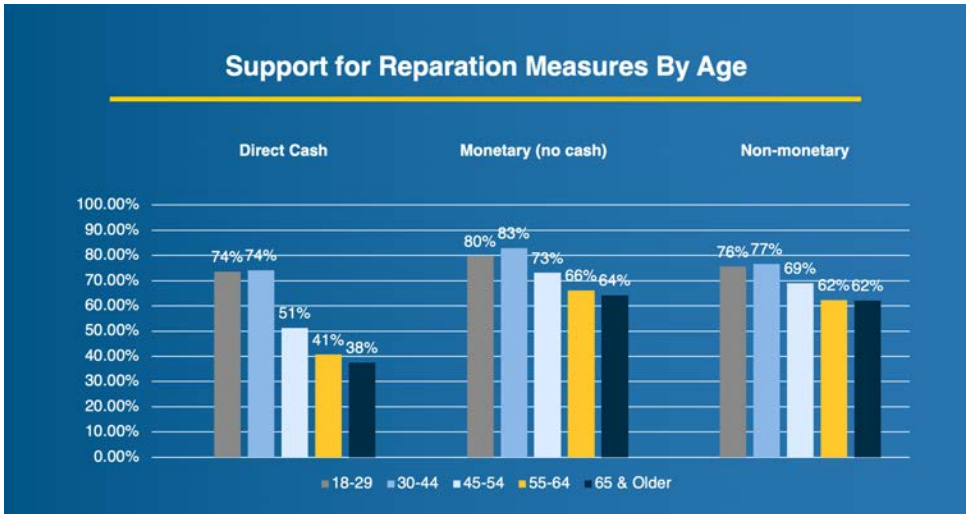


Figure 10. Support for reparation measures by age

Women in California Are Slightly More Likely to Support Reparations for Eligible African Americans

The proposal for direct cash compensation was equally supported by men (62%) and women (62%). However, support varied in the support for monetary (no cash) and non-monetary measures. Overall, women expressed more support for monetary no cash reparations measures (79%) than men (74%). The greatest difference in support between women and men was regarding non-monetary reparations measures, which women were much more likely to support – 75% of women versus 69% of men (Figure 11).

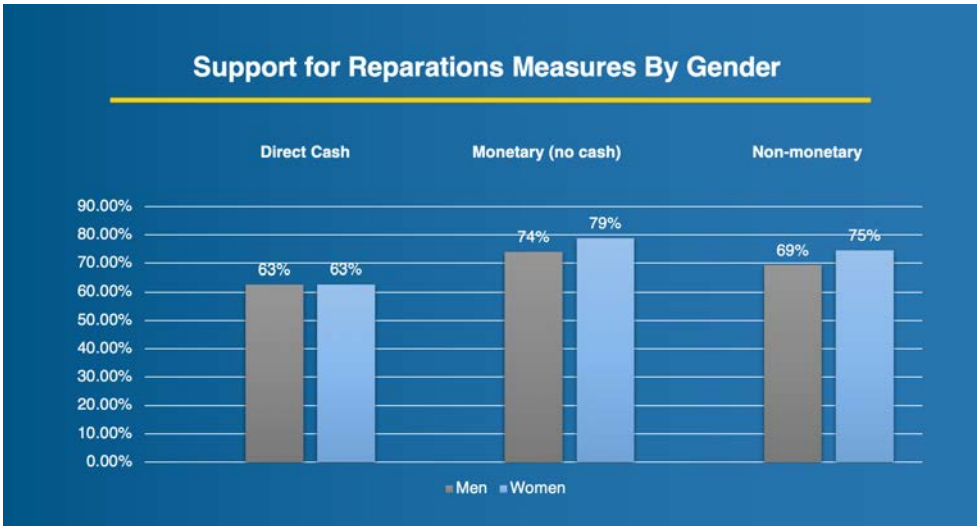


Figure 11. Support for reparation measures by gender

More Educated Californians Are More Likely to Support Monetary (No Cash) Reparations

With respect to educational attainment, the results from the state sample show that the greatest support for reparations came from more educated Californians – those with a bachelor's degree or more – who supported monetary (no cash) reparations at 87% and 85%, respectively (Figure 12). While a majority of Californians expressed support for direct cash payments, this support did not vary significantly by educational attainment. Support for non-monetary remedies as a form of reparations also did not significantly differ by educational attainment, except that those with only a high school diploma were less likely than others to support this form of reparations.

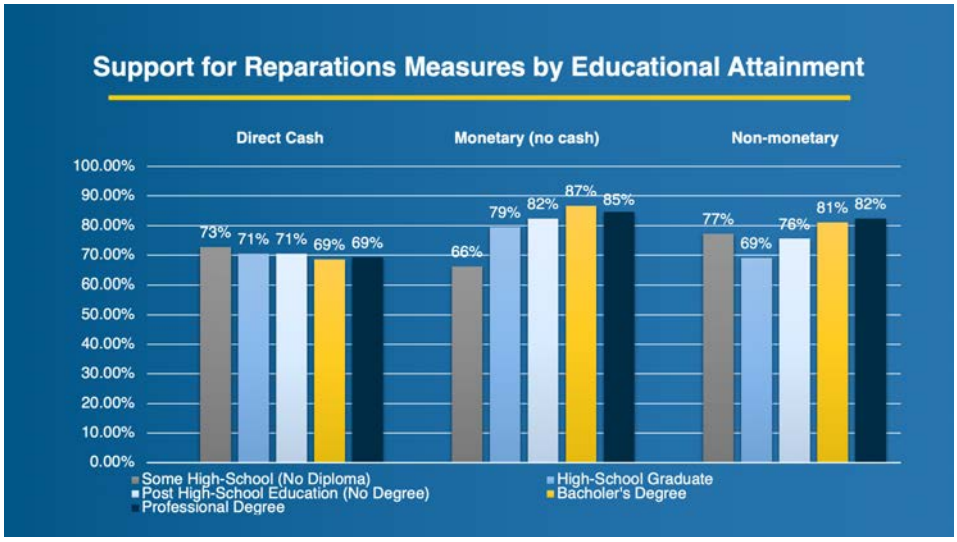


Figure 12. Support by educational attainment

Democrats in California Are More Likely to Support All Measures of Reparations for Eligible African Americans

Political affiliation had a significant impact on support for reparations. Democrats overwhelmingly expressed the most support for all types of reparations: for direct cash compensation (73%), monetary (no cash) measures (86%), and non-monetary (82%) reparation measures (Figure 13).

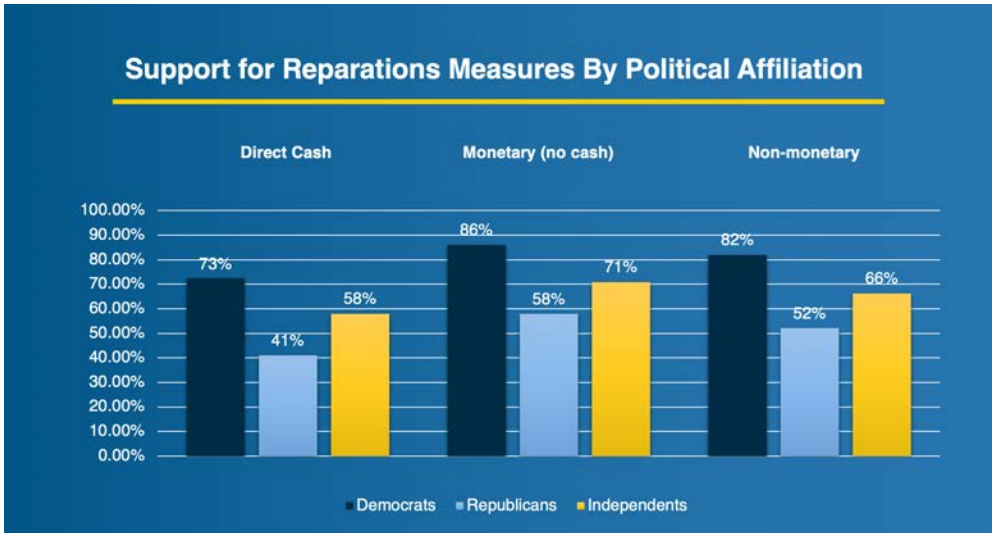


Figure 13. Support by political affiliation

In comparison, Republicans supported direct cash payments as a form of reparations (41%) at a level nearly half that of Democrats and nearly a third less than Independents. However, a majority of Republicans indicated support for monetary (no cash) reparations measures (58%) and non-monetary measures (52%). There was also strong support for monetary (no cash) reparations measures from Democrats (86%) and Independents (71%).

The Level of Support for Reparations Differed between the California Statewide Sample and the Community Listening Session Sample (but Only for Those Not Black)

Figure 14 compares the results from the California Statewide representative sample and that from the community listening sessions. It is important to note that well over 90% of those who attended the community listening sessions were Black.

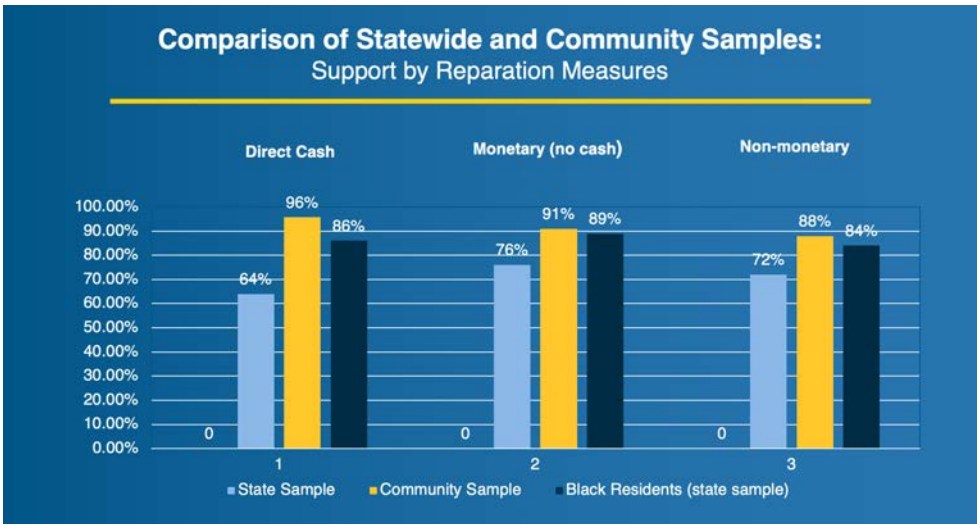


Figure 14. Comparison in the level of support for reparations within the state sample, community sample, and Black respondents from the state sample

Significant differences were seen in the level of support for reparations across these samples. To begin with, support for direct cash compensation (96%) was significantly higher in the community listening session sample than in the state. There was a nearly 30-percentage-point difference in the level of support between the community listening session sample and the state representative sample for this form of reparations. Respondents in the community listening session sample were also much more likely to support monetary (no cash) and non-monetary reparation measures when compared to all Californians.

However, the differences in support for reparations were smaller when comparing the levels of reparations support between Black respondents in the statewide sample and the community listening session sample, which was overwhelmingly Black. Black respondents from the statewide sample shared a perspective with those who participated in the community listening session regarding support for most reparation measures. Nearly all participants from the community listening session sample (91%) supported monetary (no cash) measures, as did a large majority of the Black respondents (89%) from the state sample. Moreover, the level of support for non-monetary measures (88%) from the community sample was nearly the same as Black respondents (84%) from the state sample. The one slight deviation in these observations was support for direct cash payments where support for this form of reparations is more strongly supported – by a margin of 10 percentage points – by community participants than by Black residents in the state.

ELIGIBILITY

There Was a Difference in Opinion Regarding Eligibility for Reparations between the Statewide and Community Samples

The survey also queried respondents about their responses to questions regarding who should be eligible for reparations in California. The opinions about who should be eligible for reparations differed across the statewide sample, the community listening session sample, and Black residents in the statewide sample. A plurality of respondents in the statewide sample supported reparations for all Black people (30%) followed closely by support for lineage-based reparations (29%). Lineage-based reparations refers to people who are descendants of those enslaved in the U.S. In the statewide sample, 24% believed that reparations should be for those Black people who experienced race-based discrimination (Figure 15).

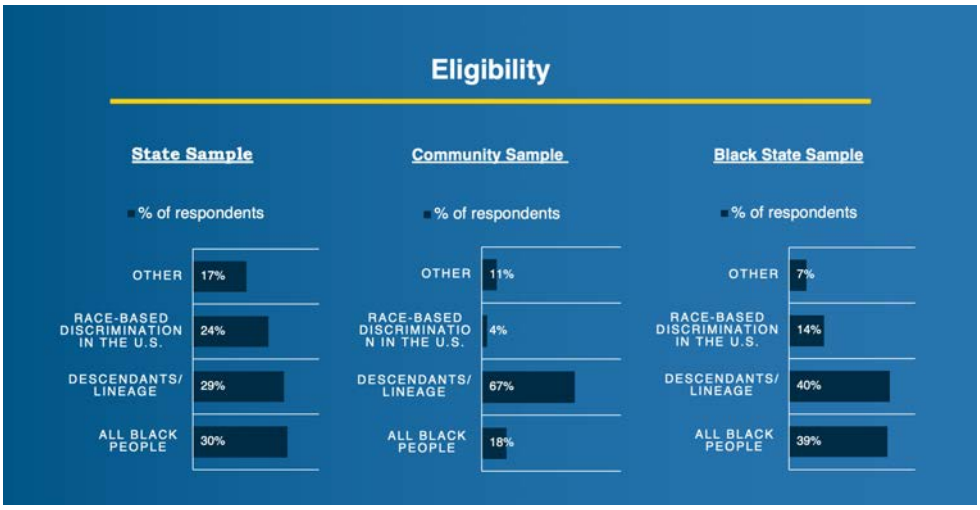


Figure 15. Eligibility support by state, community, and Black respondents within the state sample.

On the other hand, 67% of respondents in the community listening session sample supported reparations for people who descended from those enslaved in the U.S. (lineage based), while 18% supported reparations for all Black people. Black Californians were in the middle of responses when compared to both the overall statewide and community listening session samples. Black Californians indicate nearly equal support for lineage-based (40%) reparations and for reparations for all Black residents (39%).

SECTION 6

KEY TAKEAWAYS

The overarching goal of the Bunche Center's Community Engagement Project was two-fold:

1. To give the community voice and allow them to express their concerns, desires, wishes, and perspectives in the conversation about reparations in California.
2. To provide the Task Force for the Study of Reparations Proposals for African Americans with direct community input as it deliberates reparations proposals.

Through three major research activities, the Bunche Center's Community Engagement Project sought to collect and document information regarding race-based harms, support for reparations and their kind, and who should be eligible for them. These efforts included collecting information from community listening sessions that were organized and held by a strong group of community-based anchor organizations, from oral histories and personal testimonies of those who participated in the process, and from a survey developed by the Center.

This project documented a wide variety of racially based harms experienced as told through various means by members of the Black community in California. Moreover, the members who provided personal testimony or unsolicited opinions and stories at the community listening sessions were in close agreement about how these experiences reduced their quality of life and, in many instances, compromised their mental and physical health. These members also agreed that acknowledgment and recognition of the harms should, at minimum, be publicly made and that the harms warrant serious consideration for restitution.

The Bunche Center Community Engagement Project found remarkable similarities in the themes, concerns, and remedies collected across these three distinct research activities. In both the community listening sessions as well as the oral histories and personal testimonies, the types of race-based harms expressed converged. The harms expressed included those related to barriers to educational success; miseducation around racial histories; economic disenfranchisement; criminalization based on race; and race-based harms in housing and labor markets, to name a few. These all led in some way to psychological and emotional trauma.

The Bunche Center Community Engagement Project also finds consistency in sentiments about who should be eligible for reparations. The two most mentioned eligibility standards included lineage based ones or for all Black people. The lineage-based standard referred to those whose ancestors could be traced to those enslaved in the U.S. In contrast, all Black people refers to those who are Black and may or may not have ancestors to trace back to those enslaved in the U.S. Fewer made mention of whether only Black people who experienced race-based discrimination should only be eligible.

Surprisingly, or unsurprisingly, the remedies proposed, especially in the community listening sessions and through the oral histories and personal testimonies, were remarkably similar. Not only were their calls for and support of direct cash transfers, but also for monetary interventions that were not direct cash-based transfers. These included such things as business, education and community-based investments, debt relief from student loans, mortgages or business loans, and calls for land ownership or return of land improperly confiscated, among other things. They also included identifying non-monetary remedies, including reform of the criminal legal system or reworking school-based curriculums to reflect more accuracy of the Black experience in American history.

The survey designed and administered by the Bunche Center provided Californians and members of its Black community an opportunity to express their desire and level of support for reparations in measurable ways. In separate efforts, it asked a representative sample of Californians – as well as those who were connected to the community listening sessions – a series of questions about support for different kinds of reparation measures for eligible persons. These measures were grouped into three distinct categories: 1) direct cash payments, 2) monetary measures that included no cash, and 3) non-monetary measures such as apologies or monuments.

The Bunche Center Community Engagement Project found that a majority of Californians support all three types of reparations measures. Still, support is significantly higher for remedies that include monetary (no cash) measures. Black Californians are much more likely than other racial and ethnic groups to support all three reparation measures (especially direct cash payments). However, they still supported monetary (no cash) measures at the highest level.

Younger Californians, Democrats, and, to a lesser extent, Independents are more likely to support all three reparations measures for eligible African Americans than their older and Republican peers. Combined, these results show strong support in California for remedies that address racial harms to African Americans in California.

While most Californians agree on their support for reparations, they are less clear on who should be eligible. Californians and Black Californians, in particular, are split in who they think should be eligible for reparations. By similar percentages, both groups indicate that eligibility for reparations should go to all Black people and to those who are descendants of enslaved people in the U.S. This is in contrast to community listening session participants who were slightly more in favor of eligibility criteria that only included descendants of those enslaved in the U.S.

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PART VIII

RECOMMENDATIONS FOR EDUCATING THE PUBLIC

CHAPTER 33 Educating the Public & Responses to Questions

COURTESY OF CALIFORNIA SECRETARY OF STATE/CALIFORNIA STATE ARCHIVES

I. Introduction

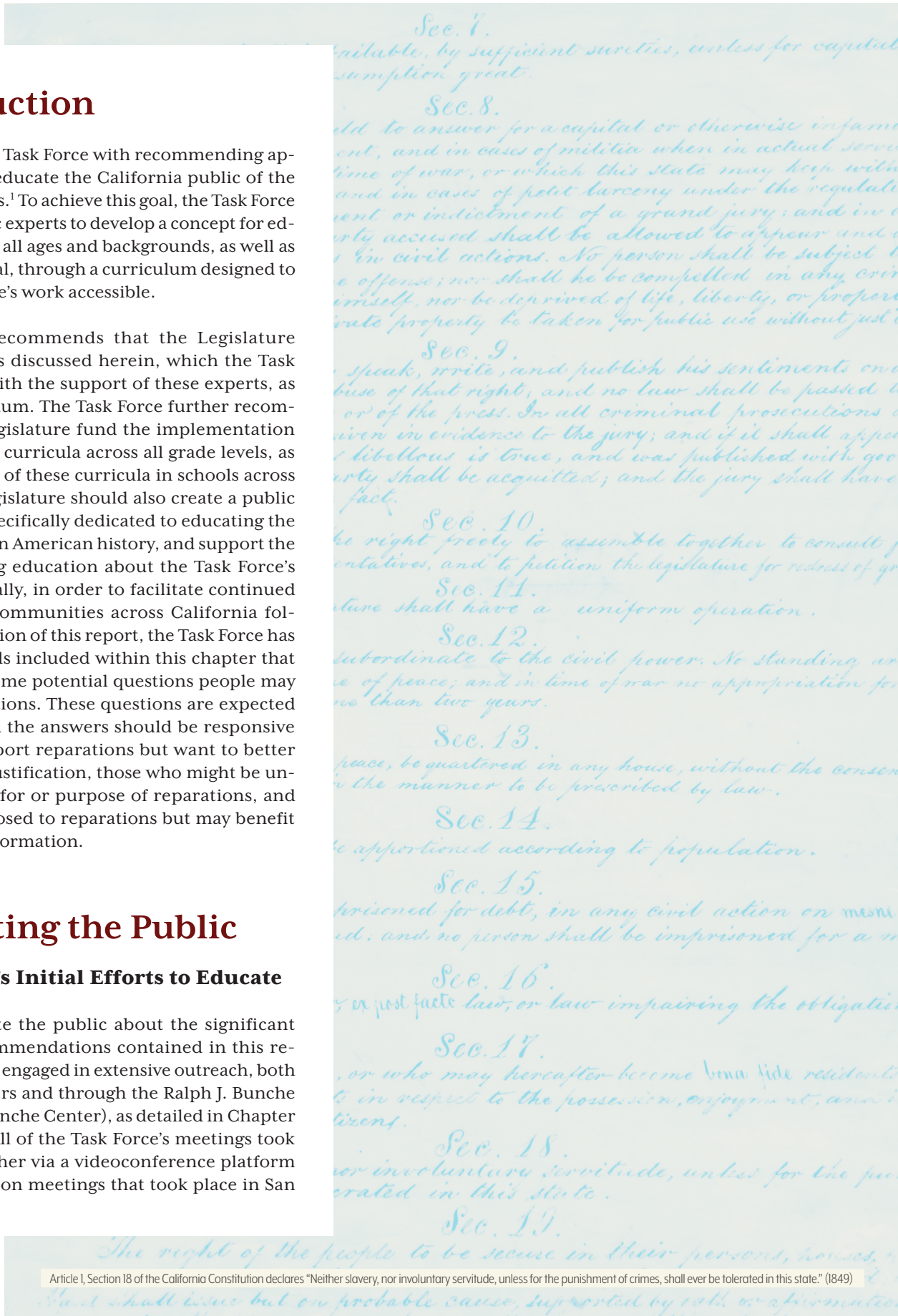
AB 3121 charges the Task Force with recommending appropriate ways to educate the California public of the Task Force's findings.[1] To achieve this goal, the Task Force consulted academic experts to develop a concept for educating students of all ages and backgrounds, as well as the public in general, through a curriculum designed to make the Task Force's work accessible.

The Task Force recommends that the Legislature adopt the concepts discussed herein, which the Task Force developed with the support of these experts, as a standard curriculum. The Task Force further recommends that the Legislature fund the implementation of age-appropriate curricula across all grade levels, as well as the delivery of these curricula in schools across California. The Legislature should also create a public education fund, specifically dedicated to educating the public about African American history, and support the initial and ongoing education about the Task Force's findings. Additionally, in order to facilitate continued conversations in communities across California following the publication of this report, the Task Force has developed materials included within this chapter that will help answer some potential questions people may have about reparations. These questions are expected to come from—and the answers should be responsive to—those who support reparations but want to better understand their justification, those who might be unaware of the need for or purpose of reparations, and those who are opposed to reparations but may benefit from additional information.

II. Educating the Public

The Task Force's Initial Efforts to Educate the Public

In order to educate the public about the significant findings and recommendations contained in this report, the Task Force engaged in extensive outreach, both through its members and through the Ralph J. Bunche Center at UCLA (Bunche Center), as detailed in Chapter 32 of this report. All of the Task Force's meetings took place in public, either via a videoconference platform or through in-person meetings that took place in San



Article I, Section 18 of the California Constitution declares "Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state." (1849)

Francisco (March 2022), Los Angeles (September 2022), Oakland (December 2022), San Diego (January 2023), Sacramento (March 2023), Oakland (May 2023), and Sacramento (June 2023). All meetings were also live-streamed through the California Department of Justice's website. All materials considered by the Task Force in

COURTESY OF CAROLYN COLE/LOS ANGELES TIMES VIA GETTY IMAGES

The public gives input during a California Reparations Task Force meeting in Los Angeles. (2022)

these meetings were posted on the website hosted by the Department of Justice for the Task Force's administrative support: https://oag.ca.gov/ab3121. These materials have included not only drafts of report components and expert reports considered by Task Force members to generate the legislative recommendations contained in this report, but also presentations made to the Task Force by witnesses appearing before it and public comments and emails submitted to the Task Force's email intake portal. Various Task Force members engaged in community outreach and engagement through national and local news media broadcast and social media, and appeared on numerous panels and at events addressing the subject matter of the Task Force's work. Following the issuance of its Interim Report in June 2022, the Task Force received scores of organizational endorsements of the work of the Task Force, the study of reparations, or both. This support has come from large and small organizations, including social service providers, bar associations, civil rights advocates, professional national psychological associations, educators and social workers, and groups representing the faith community.

The work of the Task Force has prompted individuals and organizations to pursue independent public education initiatives including serial television programs based on the harms chronicled in this report; and documentary film projects capturing Task Force proceedings, findings, recommendations, and remarks by Task Force members. The Task Force anticipates that these productions will contribute to the public's understanding of the reverberating impact of 246 years of enslavement and its lingering effects, and also generate discussion and support for reparations for African Americans in California. Therefore, while these independent projects are neither subject to approval nor endorsed by the Task Force, the Task Force welcomes and encourages the wide dissemination, across multiple platforms, of the information contained in this report.

The groundbreaking work of the Task Force, its members, consulting experts, and the attorneys, researchers, and staff of the California Department of Justice's Civil Rights Enforcement Section and Research Center has illuminated a history of discrimination and its resulting harms— heretofore ignored, buried, or willfully forgotten. It has also established the foundation for further educational efforts to make clear the necessity for policies to address such harms and deter their repetition.

Principles Underpinning a Concept to Educate the General Public

The Task Force recommends that the Legislature continue the development of a curriculum based upon the Task Force's final report for grades 9-12 school students. In furtherance of this recommendation, the Task Force retained two professors, Dr. Travis J. Bristol, an associate professor of teacher education and education policy at the University of California, Berkeley, School of Education, and Dr. Tolani A. Britton, assistant professor at the University of California, Berkeley, School of Education, to advise the Task Force on the structure, components, and process of an appropriate curriculum and pedagogy. Their feedback provided the basis on which the Task Force formulated the recommendations set forth in this chapter.

The development of such curriculum will benefit the public at large, including students in other states, by teaching a major portion of American history that is largely unknown. For example, Chapters 1-13 of the report summarize the harms and "lingering negative effects of the institution of slavery and . . . discrimination . . . on living African Americans and on society in California and the United States."[2] Chapter 32 further details the legacy of these historical and present-day harms. And Chapters 34-40 detail the vast extent to which federal and California laws created a system of subjugation of African Americans as a group and exacerbate lingering material and psychosocial effects of the enslavement and post-enslavement periods.

The initial work of Professors Bristol and Britton will focus on grades 9-12, but as discussed below, the Task Force further recommends that the Legislature fund

the establishment and implementation of standard educational programming at age-appropriate grade levels, from early elementary school through college.

In addition, the Legislature should ensure that the Task Force's final report is circulated as widely as possible, in both electronic and paper formats, throughout California—including to universities and colleges, schools, governmental bodies, libraries, private organizations, and other institutions as well as to members of the public. Translated versions should also be available in Spanish and other languages that are frequently used at the state and local level, as appropriate.

The Task Force believes that the Legislature should be mindful of several important goals in ensuring the public is educated about both the critical historical information contained in the Task Force's report and the Task Force's findings and recommendations. The Legislature should also seek to build a collective base of knowledge, to inform racially diverse communities and to appeal to different ways of learning. California is an extremely diverse state, and so the task of educating the public should be approached in a manner that will ensure that educational content be accessible to every Californian. Few subjects in America are more difficult to discuss, more polarizing, and more prone to misinterpretation than race. Conversations in the absence of factual historical and contemporary issues opens the door to increased polarization, misunderstanding, and division. Accordingly, California's educational effort should be designed to encourage honest, informed conversations about race among the general public, in schools, in religious institutions, at dinner tables, in board rooms, and in other parts of society. This can inspire reflection and requisite action that supports the more perfect union that has been repeatedly cited as a foundational principle for California and the nation.

As documented in this report, the harm to African Americans spans centuries, and therefore, the repairs should be long in the implementation, involving immediate remedial action, a longstanding commitment scaled over years to address the enormous harm, and guarantees of non-repetition. Accordingly, broad public education about the Task Force's findings will help effectuate these outcomes.

To ensure that this report and its call for reparations is not a passing moment to be soon forgotten, the Task Force recommends that there be consistent messaging to create a common understanding that reparations is fundamentally about justice—one that should matter to all Californians because it goes to the heart of the ideals that America aspires to embody. Concise statements and simplified messaging should be developed (e.g., through video, infographics, slogans, and tag lines) to define what "reparations" means, make this complex and contentious subject matter easier to understand, and reveal that this is an issue in which all Americans should have a vested interest.

Public Education Fund

The Task Force also recommends that the Legislature create a public education fund specifically dedicated to educating the public about African American history in the United States and in California. One model for such a public education fund can be found in the Japanese American incarceration reparations commission's recommendation of a Civil Liberties Public Education Fund (CLPEF), the government-sponsored program that was developed out of the Civil Liberties Act of 1988.[3] CLPEF's mission was to educate the public on the issues surrounding the wartime incarceration of Americans of Japanese ancestry. In 1996, President Bill Clinton appointed a board of directors to oversee its operation.[4]

The CLPEF board's stated mission was to publish and distribute the records of the hearings, findings, and recommendations of the Commission on Wartime Relocation and Internment of Civilians (CWRIC) so that the events surrounding the exclusion, forced removal, and incarceration of persons of Japanese ancestry would be remembered, and the causes and circumstances of this and similar events illuminated and understood.[5] The CLPEF board was also charged with making disbursements of $5 million in federal funds, a portion of which was used to republish the findings of the CWRIC. CLPEF also oversaw the editing of more than 4,500 pages of transcripts from CWRIC hearings to provide a complete and accessible record for the public's use in understanding what occurred, and the

The Legislature should also seek to build a collective base of knowledge, to inform racially diverse communities, and to appeal to different ways of learning. California is an extremely diverse state, and so the task of educating the public should be approached in a manner that will ensure that educational content will be accessible to every Californian.

rationale for the reparations program implemented at the Commission's recommendation.

An additional $3.3 million was distributed to fund 135 projects, including 18 national fellowships in the areas of curriculum, landmarks/exhibits, art/media, community development, research, research resources, and national fellowships. Among the diverse recipients from 20 states and the District of Columbia were museums, educational institutions, libraries, artist and theater groups, as well as individuals. Projects ranged in funding from $2,000 to $100,000.[6]

In 1997, CLPEF held a national curriculum summit involving 50 curriculum grant recipients and educators, with the goal of integrating lessons learned into a national education curriculum. CLPEF also held a national conference in San Francisco in 1998 to allow grant recipients to share and discuss their projects. Earlier in the same year, CLPEF and the Smithsonian Institution co-sponsored national Days of Remembrance in Washington, D.C. to commemorate President Franklin D. Roosevelt's signing of Executive Order 9066 and call national attention to this landmark event. Several public service announcements were also produced with CLPEF funds.[7]

After the federal CLPEF expired in 1998, the California Civil Liberties Public Education Program (CCLPEP) continued and extended the work of the federal effort. CCLPEP sponsored projects to ensure that "events surrounding the exclusion, forced removal, and internment of citizens and permanent residents of Japanese ancestry will be remembered, and so that the causes and circumstance of this and similar events may be illuminated and understood."[8] In 1998, the California Civil Liberties Public Education Act authorized $1 million in state funding to support the development of educational resources about World War II incarceration and the importance of protecting civil liberties, even in times of national crisis. Administered by the California State Library, CCLPEP awarded nearly $9 million over 12 years to nonprofit organizations, colleges and universities, public libraries, community groups, teachers, writers, researchers, and artists.[9]

Like its federal predecessor, CCLPEP funded a wide variety of projects including: books; videos (documentaries or films); curricula (lesson plans as well as teachers' guides and/or teacher training sessions); exhibits; collections or digitization of existing collections; oral histories; artistic works, including poetry, music, and art installations; conferences, field trips, or other types of special events; academic resources and research; memorials or public honors; and website development.[10]

CCLPEP's competitive grant program also supported the creation and dissemination of educational and public awareness resources concerning the history and the lessons of civil rights violations or civil liberties injustices carried out against communities or populations. These included civil rights violations or civil liberties injustices perpetrated on the basis of an individual's race, national origin, immigration status, religion, gender, or sexual orientation.[11]

The Task Force recommends that the Legislature adopt a public education fund model that similarly allows for versatile projects to support public education, including curricula, audio books, public arts displays, literary works, documentary films, student essay contests, seminars, podcasts, and any other media that may be appropriate to educate all Californians about "[t]he lingering negative effects of the institution of slavery and the discrimination described in [this report] on living African Americans and on society in California and the United States," and all of the findings and recommendations set forth in this report.[12]

One seminal study found that when high school students from historically marginalized racial and ethnic groups that were at-risk of dropping out took an ethnic studies course, their attendance rate increased by 21 percent, their grade point average increased by 1.4 points, and they earned, on average, 23 more credits.

Ensuring the Curriculum Benefits the African American Community, Including Descendants of People Enslaved in the United States

Not only should an appropriately-developed and comprehensive curriculum benefit California children and the public generally, it should also be designed with the goal of specifically educating the African American community, particularly children who are descendants of people enslaved in the United States. Access to a culturally relevant and sustaining curriculum increases engagement and academic outcomes for students from diverse racial and ethnic groups.[13] For example, one seminal study found that when high school students from historically marginalized racial and ethnic groups that were at-risk of dropping out took an ethnic studies course, their attendance rate increased by 21 percent, their grade point

average increased by 1.4 points, and they earned, on average, 23 more credits.[14] Another study found longer-term benefits for students of color who had been enrolled in an ethnic studies course, including that these students had higher rates of attendance and graduation, and an increased likelihood of attending college when compared to their peers who did not have access to an ethnic studies course.[15] While culturally relevant work remains important for all students, disengagement in high school is associated with fewer positive life outcomes such as a lower likelihood of high school graduation and college enrollment.[16] Since high school is an important time to prepare students for life and a career, part of that preparation should include a curriculum that speaks to both the structural challenges and opportunities that children face.

The Task Force recommends that grade-level appropriate curricula be developed across every grade level, and the initial curriculum should be designed for high school students and young adults, followed by a curriculum for younger children, and one specifically for young adults in carceral settings.

Given the clear and compelling evidence on the short- and long-term positive academic impacts of culturally relevant curriculum on students of color,[17] there is a particular urgency to develop a curriculum on the historical and contemporary lived experiences of African American students in California. On both academic *and* non-academic outcomes, African American students perform at lower levels when compared to their peers. For example, in the 2021-2022 school year, only 30 percent of African American students performed at or above grade level on the California Assessment of Student Performance and Progress (CAASPP) literacy assessment, compared to 61 percent of white students.[18] Similar outcome disparities arise in the CAASPP math assessment, where only 16 percent of African American students performed at or above grade level compared to 48 percent of white students.[19]

The Task Force Recommends a Reparations Curriculum

In order to educate Californians about the findings and recommendations of the Task Force, and because of the stubborn opportunity gap between African American students and their peers, the Task Force recommends that the Legislature fund the development and implementation of a standard curriculum encompassing the contents of this final report. In rendering this recommendation, the Task Force recognizes that access to a curriculum that reflects the diversity of an increasingly interconnected world will allow *all* of California's children to expand their understanding of our state and nation. The Task Force recommends that appropriate curricula be developed across every grade level and the initial curriculum be designed for high school students and young adults, followed by a curriculum for younger children, and one specifically for young adults in carceral settings. These curricula could also be adapted for use by adults in community popular education aimed at increasing civic engagement. Finally, a curriculum should be developed for advanced learning and to further the academic study of these issues at the college and university level. The proposed curriculum should be cross-disciplinary and seek to connect history, literature, math, and science, as the final report details the breadth of the harms that need to be understood by the public. The curriculum should include lessons on reparations that can be embedded in existing required high school coursework.

The Task Force offers the following detailed design plan, developed in consultation with the Task Force's educational curriculum experts, Dr. Travis J. Bristol and Dr. Tolani A. Britton.

The initial step requires selection of specific lead curriculum designers who have a clear sense of the scope of the curriculum. Those leads and their selected teams should conduct a landscape analysis of existing Black or African American studies high school curricula. This should include extensive engagement with teachers and community programs that have developed and are delivering coursework on Black or African American studies and/or reparations. The planning team should execute a brainstorming day in which a consultation group comes together to share curriculum design ideas based on existing reparations lessons in workshops and to begin the collective design process. During this process, the team should consider all ideas, including unique and novel ones.

Following this initial process, the design teams should develop a draft outline of model curriculum with the lead curriculum co-designers. Using high school as an example, the outline should differentiate content across grade levels 9-12. The team should design essential questions based on each chapter of the reparations report, appropriate for grade levels 9/10 and 11/12. The team

should then scope and sequence the curricular units based on each chapter of the report, as appropriate for grades 9/10 and 11/12. Finally, the team should ensure the essential questions cut across content areas and align to Common Core State Standards.

In order to test the conceptual product, the design team should run one or more one-week curriculum institutes, both virtually and in-person, to refine the outline of the model curriculum with various groups of teachers, students, and community-based educators. The participants should be surveyed about the process and contents of the curriculum, and the lead team should meet to review the results, assess progress and feasibility, and assess the remainder of the process.

Following the completion of this preliminary concept development, the lead team of curriculum co-designers should proceed with working with selected teachers, students, and community-based educators to pilot activities related to the implementation and real-world testing of the model curriculum and collect lesson examples for each content area across grades 9/10 and 11/12. The lead team should convene smaller work groups of teachers based on grade and subject taught. These groups should meet at least three times per semester.

The smaller work groups and the larger group of teachers, students, and community-based educators should have one or more dedicated meetings that include design time and feedback loops in small groups based on the grade and subjects taught in order to fine-tune the contents and deployment of the curriculum.

This process should be followed by further demonstration and test sessions—both virtually and in-person—to solicit feedback for curricular content for grades 9/10 and 11/12 from students, community-based educators, school-based teachers, parents, and administrators. The design team should develop assessments based on student work from the test period for curricular content across content areas for grades 9/10 and 11/12.

Following the development of the curriculum using this model recommended by the Task Force, the design team should produce a report detailing the methodology for the development of the curriculum and make the curriculum widely available. The Task Force recommends that the Legislature hold hearings at an appropriate time to study the development and contents of the curriculum and, subject to the Legislature's findings with regard to the curriculum, fund and otherwise encourage its implementation across the state.

III. Responses to Questions About the Task Force's Reparations Proposals

With any major initiative, such as reparations, it is natural that there would be questions from members of the public—whether supporting, opposing, or simply seeking answers about reparations. The following are anticipated questions and responses to concerns that members of the public may have about reparations for African Americans in the State of California. This section is not intended to be exhaustive. Instead, the Task Force offers it as a perspective to contribute to a developing national public dialogue and to encourage these difficult and essential conversations in the homes of every American. The answers provided here are intended to ensure that there are clear responses to challenges to reparations, as well as to help facilitate those conversations.

California was a "free state," not a "slave state." Why should it be responsible for reparations at all?

Even though California entered the Union in 1850 as a "free state," the state government at the time nonetheless permitted and committed grave injustices against African Americans and allowed its residents to enslave African Americans. These injustices—which all took place *in California*—included enslavement, legal public and private segregation, discrimination in state funding and programming, and stigmatization that upheld a white supremacist racial hierarchy that remains in place to this day.

California fugitive slave law. California passed and enforced a fugitive slave law, and some scholars estimate that up to 1,500 enslaved African Americans lived in California in 1852.[20] In fact, numerous enslavers who actively supported the Confederacy moved to California before and during the Civil War and brought with them or sent ahead the persons they enslaved and

saw as their chattel property to work on farms and ranches, and to mine gold on their behalf.[21] Some of these individuals established leadership roles in the young state; for example, Confederate John LeConte, a physicist who employed his scientific knowledge to make gunpowder for the Confederate army, was UC Berkeley's first acting president.[22] Enslaved people labored under violent conditions, and even "free" African Americans lived under racist laws that restricted their rights and rendered them vulnerable to violence and exploitation.[23] Thus, California bears direct responsibility for atrocities that occurred during the enslavement era, which can only be redressed through comprehensive reparations.

Scholars estimate that up to 1,500 enslaved African Americans lived in California in 1852.

California and the Fourteenth and Fifteenth Amendments. Enslavement, even with all its atrocities and horrors, is far from the lone basis for the case for reparations at either the national or state level. Post-enslavement atrocities, as detailed in this report, are a critical dimension of the justification for reparations. For example, during Reconstruction, Congress passed the Fourteenth Amendment, which promised equal rights for all citizens, and the Fifteenth Amendment, which prohibited states from denying a person's right to vote on the basis of race; California did not ratify these amendments until 1959 and 1962, respectively.[24]

California and the Ku Klux Klan. After slavery ended in 1865, Jim Crow found a home in California. For example, in the 1920s, California became a "strong Klan state" with a sizable Ku Klux Klan presence in Los Angeles, Oakland, Fresno, Riverside, Sacramento, Anaheim, and San Jose.[25]

Housing Segregation. In the decades that followed enslavement, the federal, State of California, and local governments acted with private actors to create and intensify housing segregation. Government actions intertwined with private action and segregated America, leading to enormous wealth disparities, environmental harms, unequal educational and health outcomes, vast wealth differentials, and over-policing of African American neighborhoods in California and across the nation that all continue to this day.[26] For example, California allowed extensive use of racially restrictive covenants, which were widely used throughout the state.[27] According to the 1973 U.S. Commission on Civil Rights Report, by 1940, 80 percent of homes in Los Angeles contained restrictive covenants barring African American families from owning homes.[28] Some of these covenants remain a part of public record. From 1937 to 1948, more than 100 lawsuits attempted to enforce covenants and evict African American families from their homes in Los Angeles.[29]

In other words, while California was a "free state," it was deeply complicit with the institution of slavery and an active participant in perpetuating its badges and incidents. Further, in the decades that followed, the state implemented laws and policies infected with racism that flowed from the institution of enslavement, targeting African American people. These laws and policies continue to have effect, as they have resulted in the cumulative, compounding, and cascading inter-generational harm experienced by African Americans in California today.

COURTESY OF MPI VIA GETTY IMAGES

An engraving showing an enslaved family trying to run away. (1864)

The United States fought a Civil War to end enslavement and implemented Reconstruction programs. Why was that not enough to address the harms caused by the practice?

Enslavement was foundational to the creation of the United States. For 246 years, the United States had built one of the largest and most profitable enslaved labor economies in the world[30] with almost four million enslaved people,[31] and cotton was the economic engine that powered the nation. The Constitution protected enslavement and gave Southern states outsized political power.[32] Half of the nation's pre-Civil War presidents were enslavers while in office.[33] More than 1,800 Congressmen, representing 40 states, once enslaved African Americans.[34]

COURTESY OF ARCHIVE PHOTOS VIA GETTY IMAGES

An African American Union soldier of the American Civil War. (c. 1863)

Merely ending enslavement did not provide reparations for enslavement.[35] The Civil War did not provide compensation for the atrocities committed on enslaved persons before the war. Additionally, the emancipation of those who were enslaved could have been achieved without the war, as proposed by President Abraham Lincoln in 1862.[36] Further, white people alone did not deliver freedom—African Americans fought beside them in the Union army and risked their lives to emancipate themselves.[37]

At the end of the Civil War, Congress seized land from wealthy Southerners intending to distribute 40 acres to each formerly enslaved person to address the harms of slavery.[38] In January 1865, 400,000 acres in South Carolina and Georgia were deeded to 40,000 formerly enslaved persons who settled on and worked the land.[39]

But by April of 1865, President Lincoln had been assassinated. Vice President Andrew Johnson assumed the Presidency, and soon declared: "This is a country for white men, and by God, as long as I am President; it shall be a government for white men[.]"[40] President Johnson rescinded the land reparations program, ordered the Black settlers off land they owned, and returned it to former enslavers.[41]

In the end, four million men, women, and children across the nation were released from enslavement without acknowledgment, apology, compensation, or resources. There were no meaningful or lasting changes to laws, institutions, or systems, and there were none of the requisite legal, medical, psychological, and other care and services. All of the disparities detailed in this report result directly from the subjugation of African American during slavery, and the comprehensive legal, political, financial, and social systems established thereafter to maintain the oppression of African Americans and their descendants. Moreover, these were the harms visiting on those *living* at the time of emancipation—many thousands did not live to see emancipation.

And for the descendants of those who were enslaved, 90 years of legal segregation and subjugation followed, during which California was an active participant in the exclusionary laws and practices that swept the nation.[42] Legal segregation in the United States ended only about 50 years ago,[43] but its effects have had a lasting and devastating impact and there has been no meaningful repair.

Since the Civil War, the United States and California have both implemented many programs to try to foster equality—especially in housing, education, and government programs. Why do we need reparations and more policy changes when we have already done so much?

While many programs have been implemented following emancipation, as discussed in this report, most if not all of them benefitted non-African American people of color or even white people more than they benefited African Americans, much less descendants of formerly enslaved persons or formerly enslaved persons themselves. In fact, beginning with the Homestead Act of 1862, which gave over a million white households 160-acre land grants in the western territories, all the way through the expansion of government assistance programs during the 1930s New Deal era, government

programs consistently *excluded* African Americans.[44] Today, the majority of recipients of government assistance are white.[45] Specifically with regard to "welfare," these types of programs do not address the group-specific harms directed at descendants of enslaved persons or the African American community more generally, nor were they so intended. They do not pay the debt owed for unpaid labor, nullification of generational wealth production, denial of humanity, creation of a permanent slave race status, an ever-present psychological state of terror and impending threat and doom, and a state of perpetual anti-Blackness with no recognized social existence.[46]

As a result of 400 years of anti-Black sentiments and denial of humanity, we live in a society where real progress toward equality for African Americans is treated as too much to ask. The federal government has and continues to engage in restitution initiatives and pays compensation to so many others, but again, not to African Americans.

With respect to housing and education, America is as segregated today as it was in the 1940s when the wholesale exclusion of African Americans from equal education, employment, and the benefits of the New Deal, like federally insured home loans, deprived them of choices as fundamental as where they would live.[47] The opportunities that created America's *white* middle class, resulting in white households having nine times more assets than African American households, have simply never been accessible to the African American community. The cumulative, unremitting impact of centuries of anti-Black laws and policies has led this country to where we stand today, with African Americans having shorter life expectancies than the rest of the population, African American women dying at three to four times the rate of white women from complications related to pregnancy or childbirth, and huge persistent disparities in nearly every aspect of American life, from individuals experiencing homelessness to policing. All of these disparities result not only from the subjugation of African Americans during enslavement, but also from the comprehensive legal, political, financial, and social systems established thereafter to maintain the oppression of African Americans and descendants.

Similarly, affirmative action was not intended to be reparations. Affirmative action policies developed as an antidiscrimination measure to create opportunities for unjustly excluded groups whose members could not gain entrance despite their qualifications and merit.[48] It does not compensate for keeping those groups out in the past. Furthermore, affirmative action alone cannot eliminate the Black-white wealth inequality, which is a main goal of reparations.[49] Affirmative action programs have also been very limited, and they have failed to remedy the gross disparities and discrimination in employment, housing, wealth, and income to which African Americans continue to be subjected. Finally, since the passage of Proposition 209 in 1996, governmental affirmative action has not existed in California for more than 25 years.

The United States is a nation of self-made success in which lots of people have suffered harms but have not looked to the government to solve their problems. Why should the government step in here to address these issues?

This is simply not true. When people have been victimized, when tragedy strikes, and when a large group of people are collectively impacted by an event, the government has stepped in numerous times to provide reparations—in the form of compensation paid for a harm suffered. For example, the federal and state governments have compensated farmers, fishermen, veterans, people exposed to pesticides or other toxic chemicals, miners affected by black lung disease, and those whose properties have been damaged in a natural disaster. Those reparations programs seem to find wide acceptance by the public, including those not affected by the underlying harm.

In addition, when someone commits a crime, the state requires that restitution be paid by the offender. However, when it comes to harms that the state commits, accountability is exceptionally rare. This is a form of denying those who are wronged the right to repair. The federal government has and continues to engage in restitution initiatives and pay compensation to many others—but not to African Americans. Some relatively recent examples discussed in chapter 15 include payments to: Japanese Americans incarcerated during World War II; families who lost loved ones during the September 11, 2001 terrorist attacks (47 of whom were from California); the victims of the Boston Marathon bombings; and Americans taken hostage in Iran ($4.4 million per person for the 444 days they were held hostage).

Morality also compels California to make reparations. Every act of injustice necessitates the duty of atonement.

American society, including Californian society, rests upon a financial foundation of centuries of the stolen labor of enslaved Africans. The nation and state continue to benefit from the stolen lives and labor of millions of African Americans. The bedrock document of American government and society—the federal Constitution—embraced slavery. The deprivation of freedom, extraction of free labor from enslaved persons, and countless other atrocities committed upon African Americans since 1619 have not been repaired. California has never atoned for its role in the horror of slavery and its badges and incidents.

Enslavement and its enduring effects are a national responsibility. Why should California, rather than the federal government, engage in reparations instead of waiting for the federal government to act?

The debt that is owed to African Americans belongs to all of the United States, including California. Although the federal government and other states have thus far forsaken this debt and failed to take any meaningful steps to redress it, that does not give California a free pass, particularly for wrongs committed by California. On the contrary, when others fail to act, it is even more important for those committed to the American ideals of liberty and justice for all to fulfill their moral duty. Governments can and often do step in to acknowledge grievous wrongs and help alleviate the pain of those who have suffered, even where they have not directly caused all of the harm suffered. The federal government, for example, undertook reparatory efforts following the terrorist attacks of September 11, the mass shooting of children at Sandy Hook Elementary School, and the Iran hostage crisis—all despite not being the party directly responsible. California has this same power to provide repair for African Americans in our state. In the face of federal inaction, and particularly with respect to historic and modern-day harms against African Americans perpetrated by California, an even stronger moral imperative exists to acknowledge and redress the injustice and injury experienced by African Americans in California.

California stepping into the breach no less diminishes the responsibility of the federal government. The harms meted out against African Americans resulted from national and local collusion. While California has a clear responsibility to make reparations as detailed in this report, the Task Force strongly believes that the federal government has a duty to engage in a national reparations effort. Aside from the need for a uniform and equal reparations program across the country, federal reparations could also be more far-reaching with the resources of the federal government. For example, the combined budgets of all state and local governments in the country amount to around $3.5 trillion, while the federal government annually spends about $6 trillion.[50]

The Task Force's recommendations would benefit descendants in California, even if their ancestors lived and/or were enslaved in other states. Why should California be responsible for reparations for people who migrated from other states?

First, through enactment and enforcement of the Fugitive Slave Act, California was responsible for the re-enslavement of and forced relocation of African Americans to other states. Thus, California bears complicity in and responsibility for many Californian descendants whose ancestors were enslaved in other states, as California forced many of those ancestors back into enslavement in those other states.

Second, while reparations are rooted first and foremost in enslavement, California, like other states, sanctioned racial terror and discrimination following emancipation. California used its legal and authoritative framework to ensure that the badges and incidents of enslavement persisted without remedy, profiting in the process. Consequently, even if Californian descendants had ancestors who were enslaved in other states, when those descendants or their ancestors became Californians, they experienced the continued badges and incidents of slavery and lingering discrimination that California perpetuated (as documented throughout Chapters 1-13 of this report).

If California is taking responsibility for atrocities that took place outside of California and providing reparations for those whose families lived outside of California, why not also provide reparations for those whose ancestors suffered the same atrocities, but outside of the United States?

A case can be made that the United States should pay reparations to descendants of persons who were enslaved in other locations that were part of the Atlantic slave trade system, also known as the "Triangle Trade," as well as to those who died during the brutal forced passage to the Americas during this period. The Task Force strongly urges any government that benefitted from this historical blight on humanity to make reparations for the same types of atrocities detailed in this report.

However, this Task Force was charged with making a recommendation to the California Legislature regarding a reparations program operated by the State of California. To that end, the Task Force voted to limit eligibility to Californians who are able to trace their lineage to being an African American descendant of a chattel enslaved person or a descendant of a free African American living in the United States prior to the end of the 19th Century. This decision reflects AB 3121's direction to the Task Force and the Task Force's judgment that California's moral obligation extends first and foremost to those within the community of eligibility. This focus on descendants of African American enslaved persons or free persons in the United States is therefore warranted because California played a more direct role in the commission of atrocities and harms to the ancestors of these community members than it did to others who were similarly harmed by enslavement beyond the borders of the United States.

The harm here can never be undone, but to the extent financial reparations can seek to restore, the decision was made to trace reparations payments back to those who suffered the original harm—to the lives taken, the labor stolen, the families destroyed, the bodies and souls brutalized and dehumanized. The Task Force has accordingly recommended this harm-based approach.

The Task Force's final report documents how African Americans as a group have been subjected to inter-generational harm up through the present. Why limit monetary reparations only for those within the eligible class?

The UN Principles on Reparation include five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[51] Reserving monetary reparations (including monetary-equivalent reparations such as free tuition or loan forgiveness), or restitution, for the eligible class is appropriate since restitution's central purpose in the reparations context is to endeavor to restore victims to the status they would have had in the absence of the atrocities suffered. The harm here can never be undone, but to the extent financial reparations can seek to restore victims to their prior status, the decision was made to trace reparations payments back to those who suffered the original harm—to the lives taken, the labor stolen, the families destroyed, the bodies and souls brutalized and dehumanized. The Task Force has accordingly recommended this harm-based approach.

But to reserve monetary reparations to those who are descended from enslaved persons does not require ignoring the ongoing harm to the larger African American community that can be addressed by changes in policy. As set forth in Chapters 1-13 of this report, African Americans in California and across the United States have and continue to experience myriad harms and atrocities that are the direct result of a system in place since the time of chattel slavery, including legal segregation and government discrimination, designed to suppress, exploit, exclude, and subjugate African Americans on the basis of race. As the international law framework for reparations and AB 3121 both recognize, the community of persons who are considered "victims" of this system is broad and inclusive of those who continue to suffer the unremitting legacy of enslavement.[52] Through the changes to laws and policies recommended in Chapters 18-30 of this report, the Task Force aims to address the harms that persist and extend to all African American Californians. These legislative reforms are no less essential to reparations, but take a different form of satisfaction, rehabilitation, and guarantee of non-repetition beyond monetary payments or restitution.

People of color of all different ancestries have suffered numerous harms throughout California's and the United States' history. Why should African Americans and even more specifically, the eligible class, get reparations while others do not?

AB 3121 created the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States. As conveyed by the Task Force's name, the Legislature's specific charge to the Task Force was to "[s]tudy and develop reparation proposals for African Americans" to address the lingering harms flowing from "[t]he institution of slavery" as well as from "de jure and de facto discrimination against freed slaves and their descendants from the end of the Civil War to the present, including economic, political, educational, and social discrimination."[53] This is the mandate assigned to, and carried out by, the Task Force.

While other people of color have suffered harms, the experience of 246 years of enslavement, 90 years of legal segregation and racial terror, and decades more of systematic subjugation and exclusion is unique to African Americans and without near equivalence, resulting in persistent lingering consequences today.

Making reparations to African Americans for the incomparable atrocities suffered by their ancestors and for harms that have persisted need not be to the exclusion of reparations for other groups that have endured harms that also warrant reparations under international law. Our history to date, however, is that African Americans have repeatedly been promised and then denied their humanity and reparations. Promises have been made, beginning with "40 acres and a mule,"[54] running through "[s]eparate educational facilities are inherently unequal"[55] and even to the present day, and have been broken. As the examples discussed in Chapter 15, Examples of Other Reparatory Efforts and the History of the Reparations Movement in the United States, demonstrate, the United States and others have provided reparations—however imperfectly—for a host of harms, and yet African Americans continue to be left behind, having received no reparations from the federal government, nor from any state, for enslavement nor for the extensive pattern of government-sanctioned race-based discrimination and subjugation they have suffered.

Moreover, reparations need not be a zero-sum game. Just as there have been numerous reparatory initiatives prior to this report, the cases for redress for others can and should be made. The Task Force hopes this report—and the implementation of its recommendations by the Legislature—can serve as a model for future efforts.

While other people of color have suffered harms, the experience of 246 years of enslavement, 90 years of Jim Crow and racial terror, and decades more of systematic subjugation and exclusion is unique to African Americans and without near equivalence, resulting in persistent lingering consequences today.

But, for example, just as the 1988 Japanese American mass incarceration reparations commission was not asked to account for reparations for others wrongly incarcerated, so, too, does this Task Force's focus need to remain on the task at hand.

Other groups of people endured specific harms in California, such as railroad workers and miners from China, and Indigenous individuals subjugated through the Mission system. Why prioritize reparations in California for African Americans?

To prioritize reparations for African American Californians is not to prioritize African American Californians "over" others—it is to begin a long overdue process of acknowledging, atoning for, and seeking to repair an historical wrong that has persisted for over 400 years. And California has taken steps to acknowledge and atone for other state sins. Some of these efforts are outlined in Chapter 15, Examples of Other Reparatory Efforts and the History of the Reparations Movement in the United States. Undoubtedly, there is more work to be done and more harms to others that warrant repair, and the Task Force hopes that this report can provide a model for other efforts to examine and redress the harms others have suffered in California and in the United States.

Enacting reparations in California could potentially cost California residents a lot of money. But neither I nor my family ever enslaved anyone. So why should we have to take responsibility for reparations for African Americans?

Reparations is a collective debt. As a democracy, we share an individual and a collective obligation to the common good. As we reap the benefits of democracy, so too do we accrue its obligations and liabilities. And while African Americans are among those who cherish most American democratic ideals associated with the common good, they have been among those least likely to benefit from these ideals. The nation was enriched not only by two and one-half centuries of forced free labor from generational enslavement, but also by the iterations of racial exclusion that continued for more than 100 years thereafter into the present day. California's white population, business interests, and leaders reaped enormous economic, political, and social advantages by separating the state into devalued African American neighborhoods and enhanced-value white neighborhoods, and by excluding African Americans from the rights, benefits, and opportunities available to its white residents.

This wealth was achieved at an incalculable long-term cost to African Americans, resulting in huge and growing disparities for them in income, wealth, housing, health outcomes and life expectancy, education, and other crucial metrics as noted below.

Reparations is not a hand-out—it is not welfare. As detailed in this report, reparations is in recognition of a debt owed from the cumulative, compounding, and lingering effects of stolen lives, wages, property, opportunities, protections, and government benefits. This is a debt African Americans have been trying to collect on since 1898, when Callie House and Rev. Isaiah Dickerson launched the first mass-based reparations movement in the United States.[56] It is a debt imposed upon the United States by the United Nations' Universal Declaration of Human Rights which stipulated that the United States has an obligation to eliminate all forms and relics of slavery, an obligation that the United States has failed to satisfy.[57]

Moreover, the debt is a collective one—just as any other societal debt that our nation incurred years, decades, or even more than a century ago, such as from wars, public works projects, natural disasters and human-caused wrongs, pension and social security disbursements and other entitlements. For example, an Associated Press analysis in 2013 of federal payment records found that the government is still making monthly payments to relatives of Civil War veterans—148 years after the conflict ended.[58] Ironically, the first to receive reparations post emancipation were slave holders,[59] while the formerly enslaved and their descendants' efforts for compensatory justice were dismissed, evaded, stalled, or outright refused at every turn.[60] Adding to the collective nature of this unpaid debt is the reality that "every institution with some degree of history in America, be it public, be it private, has a history of extracting wealth and resources out of the African-American community."[61] Finally, American law established a general principle that taxpayers are liable for the acts of our government officials acting under the protection of law.[62] And corporations are liable for the actions taken by their employees on behalf of the corporation. Among the liabilities we have incurred as a society is repairing the damage done to African Americans by the U.S. federal and state governments.[63]

As a democracy that prides itself on truth and justice, reparations is simply an act in which America honors its debt to African Americans; a long overdue debt to which "America has defaulted on this promissory."[64] Dr. King goes further, stating: "Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked 'insufficient funds.'"[65]

The historical impact of racial discrimination and its present-day consequences

Some have argued that white hostility has been more important than Black self-determination in the history of this country.[66] The Civil War ended enslavement of African Americans in 1865—but the South was determined to reinstate laws that closely approximated it.[67] And no wonder—for 246 years, the U.S. had built one of the largest and most profitable enslaved labor economies in the world.[68] The enslaved population of the United States was almost four million,[69] and cotton was the economic engine reaping profit for the entire country.[70] The nation's constitution protected enslavement and gave Southern states outsized political power.[71] Half of the nation's pre-Civil War presidents were enslavers while in office.[72] More than 1,800 congressmen, representing 40 states, once enslaved African Americans.[73]

"Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked 'insufficient funds." — Dr. Martin Luther King, Jr.

California did not protect African Americans from enslavement. While California entered the Union in 1850 as a non-slave state, California's 1849 antislavery state constitution meant little because it was not a crime to keep someone enslaved.[74] From 1852 to 1855, the California legislature passed Fugitive Slave Laws allowing anyone accused of escaping enslavement to be chased down, dragged before a court, and sent back to the South, even if they had been living in the free State of California.[75]

California compromised African Americans' right to vote and equal protection under the law. During that 12-year period from 1865 to 1877 called "Reconstruction," when Congress sought to protect the rights of newly freed African Americans, the Fourteenth Amendment was ratified in 1868—ostensibly guaranteeing the equal protection of the laws.[76] The Fifteenth Amendment was ratified in 1870—ostensibly prohibiting states from discriminating against voters on the basis of race.[77]

But California officials openly refused to abide by the Fifteenth Amendment.[78] California's Attorney General instructed county clerks not to register African American voters until Congress passed legislation commanding them to do so.[79] It would take California nearly another decade to change its constitution in 1879 to partly conform to the Fifteenth Amendment's requirements,[80] and nearly another century to formally ratify the Fourteenth and Fifteenth Amendments in 1959 and 1962, respectively.[81]

California allowed African Americans to be terrorized because of their race. Much of legal segregation found its way into California. White supremacy groups flourished in the West.[82] In the 1920s, California became a "strong Klan state" with sizable Klan chapters83 emerging in San Francisco, Los Angeles, Oakland, Fresno, Riverside, Sacramento, Anaheim, and San Jose.[84]

California did not protect African Americans' housing rights. While the harms suffered by African Americans as a result of racial discrimination are too numerous to mention here, California's history of housing discrimination is a stark example of the devastating impact today for California's African American residents:

- Between 1939 and 1945, the Home Owners' Loan Corporation created maps to guide lenders of home mortgages.[85] These maps rated neighborhoods from "A," for the best neighborhoods, to "D," the worst neighborhoods.[86] Grade "A" was shaded in green on the maps and assigned to blocks in neighborhoods that were new and all white.[87] Grade "B," shaded in blue, was assigned to stable, outlying, Jewish and white working-class neighborhoods.[88] Grade "C", shaded in yellow, was for inner-city neighborhoods bordering mostly African American communities or neighborhoods that already had a small African American population.[89] Grade "D", shaded in red, was the worst category, and reserved for all-African American neighborhoods, even if it was middle class.[90] This process was called "redlining."[91] Historians generally agree that redlining resulted in the devaluation of African American homes across the entire country, making it difficult for African Americans to buy, build, or renovate their homes.[92]

Consequently, the redlining maps of yesteryear correspond with many of California's most segregated, impoverished, underserved, and polluted neighborhoods of today.

The effects of 400 years of compounding governmental and private acts of racial violence and discrimination have resulted in disparities between African American Californians and white Californians in almost every corner of life.

- The Federal Housing Administration, Veterans Administration, and the Home Owners' Loan Corporation helped millions of mostly white Americans buy houses, while refusing the same opportunity to African Americans.[93] Between 1934 and 1962, the federal government had issued $120 billion in home loans creating America's middle class, 98 percent of which went to white people,[94] *thereby depriving African Americans from being able to accumulate and pass on generational wealth.*

- California was a leader in racially restrictive covenants. By 1940, 80 percent of homes in Los Angeles contained racially restrictive covenants barring African Americans.[95]

- Racial exclusionary policies enhanced the value of white neighborhoods, and diminished the value of African American ones:

  - City officials zoned African American residential communities as commercial or industrial regardless of their residential character.[96] This created a vicious cycle. African American residential communities zoned as commercial or industrial attracted polluting industries and lowered property values.[97] White families would be less likely to move into the industrial zone, as white families generally had more money.[98]

  - The construction of freeways, subways, commercial and upscale residential developments, and parks that led to vast increases in regional productivity and wealth were often disproportionately routed through African American neighborhoods, dispossessing residents of their homes and businesses. One study in 2007 found that between 1949 and 1973, 2,532 eminent domain projects in

992 cities displaced a million people, two-thirds of whom were African American.[99]

» In 1954, Los Angeles destroyed the prosperous African American neighborhood of Sugar Hill by building the Interstate 10 freeway.[100]

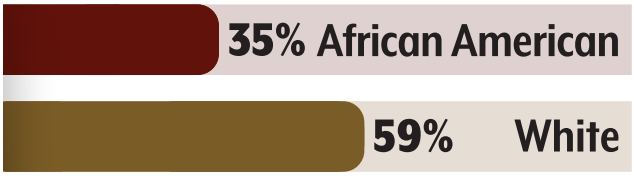
» In 1956, so-called "Urban Renewal" policies enabled San Francisco to condemn and tear down the Fillmore District, resulting in 20,000 African American residents being displaced and 883 African American businesses destroyed.[101]

Reckoning with the consequences of 400 years of racial discrimination

The Task Force was charged with revealing the extent of America's (including California's) collective debt resulting from racial discrimination.

As noted in the Introduction to this report, the effects of 400 years of compounding governmental and private acts of racial violence and discrimination have resulted in disparities between African American Californians and white Californians in almost every corner of life.

CALIFORNIA HOMEOWNERSHIP IN 2019



- *Income disparities.* In 2018, on average, African American Californians earned $53,565, compared to $87,078 for white Californians.[102] Around 19.4 percent of African American Californians live below the poverty line, compared to nine percent of white Californians.[103] African American Californians are also far less likely to own a home than white Californians; in 2019, 59 percent of white households owned their homes, compared with 35 percent of African American Californians.[104] In fact, African American homeownership in California in the 2010s has been lower than in the 1960s, when sellers could still legally discriminate against them.[105]

- *Wealth disparities*. Today, white American households continue to be far more likely to hold assets, and the types of assets they hold are worth, on average, more than those of African American households.[106] In 2019, the total financial assets of white households had a value more than nine times higher than those of African American households.[107] The median African American household wealth was approximately $24,100, while median white household wealth was approximately $188,200—a difference of $164,100.[108]

- *Housing disparities*. The burden of houselessness falls heaviest on African American Californians. Nearly 40 percent of California's unhoused people are African American, even though they represent only six percent of the state's total population.[109]

- *Life expectancy disparities*. In 2021, an African American Californian's life expectancy is six years shorter than the state average,[110] African American babies in California are more likely to die in infancy,[111] and African American California mothers giving birth die at a rate of almost four times higher than the average Californian mother.[112] Compared with white Californians, African American Californians are more likely to have diabetes,[113] to die from cancer,[114] or be hospitalized for heart disease.[115]

These disparities resulting from continuing patterns and practices of racial exclusion call upon us as Californians to remember that each time America has owned up to its collective wrongs, repaired them, and become more inclusive and more faithful to its ideals, our nation and our state has become stronger, better, and a more perfect union. While no amount of money can compensate for 400 years of humiliation, dehumanization, emotional distress, and trauma, vis-à-vis reparations, African Americans are "fighting to win material benefits, to live better and in peace, to see their lives go forward, to guarantee the future of their children."[116]

Endnotes

[1] Gov. Code, §§ 8301, subd. (b)(2); 8301.1, subd. (b)(2).

[2] Gov. Code, § 8301, subd. (b)(1)(C).

[3] Com. on Wartime Relocation and Internment of Civilians, *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians, Part 2: Recommendations* (June 1983), p. 9 (as of June 1, 2023).

[4] Yamato, *Civil Liberties Public Education Fund* (Mar. 19, 2023) Densho Encyclopedia (as of May 18, 2023).

[5] *Ibid.*

[6] *Ibid.*

[7] *Ibid.*

[8] Ed. Code, § 13000, subd. (a); Assembly Bill No. 491 created an advisory board and brought additional funding to the California Civil Liberties Public EducationProgram. (Assem. Bill No. 491 (2017-2018 Reg. Sess.).)

[9] Wood, *California Civil Liberties Public Education Program* (Aug. 5, 2014) Densho Encyclopedia (as of May 31, 2023).

[10] *Ibid.*

[11] Cal. State Library, *California Civil Liberties Program* (as of May 31, 2023).

[12] Gov. Code, § 8301, subd. (b)(1)(C).

[13] Bristol, *Teaching Boys: Towards a Theory of Gender Relevant Pedagogy* (2014) Gender and Education, p. 12; Ladson-Billings, *Culturally relevant pedagogy 2.0: A. K. A. the Remix* (2014) 84 Harvard Educational Rev. 1, 74–84.

[14] Dee and Penner, *The Causal Effects of Cultural Relevance: Evidence from an Ethnic Studies Curriculum* (Feb. 2017) 54 Am. Educational Research J. 1, 127 (hereafter Causal Effects).

[15] Bonilla et al., *Ethnic Studies Increases Longer-Run Academic Engagement and Attainment* (2021) Proceedings of the Nat. Academy of Sciences, 118(37), pp. 1, 5-7.

[16] Henry et al., *School Disengagement as a Predictor of Dropout, Delinquency, and Problem Substance Use During Adolescence and Early Adulthood* (Feb. 2012) J. of Youth and Adolescence 41(2) pp. 156-166.

[17] Dee, Causal Effects, *supra*, at p. 127, fn. 14.

[18] Cal. Dept. of Ed., *2017- 2022 CAASPP ELA/Literacy Results for All Achievement Levels by Selected Race/Ethnicity* (as of May 19, 2023).

[19] Cal. Dept. of Ed., *2017-22 CAASP Mathematics Results for All Achievement Levels by Selected Race/Ethnicity* (as of May 19, 2023).

[20] Chapter 2, Enslavement.

[21] *Ibid.*

[22] Dowd, *UC Berkeley Removes Names of 2 Halls that Honored White Supremacists* (Nov. 18, 2020) SFGate (as of May 19, 2023); Smith, *UC Berkeley to Remove Names of LeConte and Barrows Halls Due to 'Controversial Legacies'* (Nov. 18, 2020) L.A. Times (as of May 19, 2023).

[23] See, e.g., Chapter 2, Enslavement; Hemmendinger, *Black Testimony Exclusion Law* (2016) Colored Conventions Project (as of May 19, 2023).

[24] Les Benedict, *The Ratification of the Fourteenth Amendment* (June 2018) Origins, Or. State Univ. (as of May 19, 2023); Cottrell, *It Took 92 Years for California to Ratify the 15th Amendment* (Jun. 26, 2020) The Union (as of May 19, 2023).

[25] Hudson, West of Jim Crow: The Fight Against California's Color Line (2020) pp. 171-172.

[26] See, e.g., Chapter 5, Housing Segregation; Chapter 6, Separate and Unequal Education; Chapter 7, Racism in Environment and Infrastructure; Chapter 11, An Unjust Legal System; Chapter 13, The Wealth Gap.

[27] See Chapter 5, Housing Segregation.

[28] Understanding Fair Housing (Feb. 1973) U.S. Com. on Civil Rights, p. 4.

[29] Rothstein, The Color of Law (2017) pp. 80-81.

[30] See Baptist, The Half Has Never Been Told: Slavery and the Making of American Capitalism (2014) p. xxiii.

[31] Bourne, *Slavery in the United States* (Mar. 26, 2008) EH.Net, Economic Hist. Assn. (as of May 19, 2023).

[32] Baptist, *supra*, at pp. 9-11. For an in depth discussion, see Chapter 2.

[33] See Rosenwald, *Slave-Owning Presidents Become Targets of Protestors* (June 3, 2020) Wash. Post (as of May 19, 2023).

[34] Weil et al, *More than 1,800 Congressmen Once Enslaved Black People. This Is Who They Were, and How They Shaped the Nation* (Nov. 28, 2022) Wash. Post (as of May 19, 2023).

[35] See Darity and Mullen, From Here to Equality: Reparations for Black Americans in the Twenty-First Century (2nd ed. 2022) p. 246.

[36] Darity and Mullen, *supra,* at pp. 100-101.

[37] See Chapter 2, Enslavement.

[38] See Chapter 13, The Wealth Gap.

[39] Barton, *Sherman's Field Order No. 15* (Sept. 30, 2020) New Ga. Encyclopedia (as of May 19, 2023). (hereafter Sherman's Field Order).

[40] Petrella and Loggins, "This is a Country for White Men": White Supremacy and U.S. Politics (Jan. 5. 2017) Black Perspectives, African Am. Intellectual Hist. Society (as of May 19, 2023).

[41] Barton, Sherman's Field Order, *supra*, at fn. 45.

[42] See, e.g., Executive Summary.

[43] Darity and Mullen, *supra,* at pp. 100-101.

[44] See, e.g., Chapter 13, The Wealth Gap; Chapter 10, Stolen Labor and Hindered Opportunity.

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[46] Vargas and Jung, *Antiblackness of the Social and the Human* in AntiBlackness (2021) pp. 2, 4, 7-8, 10.

[47] Frey, *Neighborhood Segregation Persists for Black, Latino or Hispanic, and Asian Americans* (Apr. 6, 2021) Brookings Inst. (as of May, 19, 2023).

[48] Darity and Mullen, *supra,* at pp. 248.

[49] *Id.* at p. 249.

[50] Urban Inst., *State and Local Expenditures* (as of May 19, 2023); FiscalData, *How Much Has the U.S. Government Spent This Year? U.S. Treasury* (as of May 19, 2023).

[51] See Chapter 14, International Reparations Framework for more detail.

[52] As discussed in Chapter 14, International Reparations Framework, The UN Principles on Reparation defines victims as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law." (U.N. Gen. Assem., *Adopted Resolution 60/147: 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* (Mar. 21, 2006), p. 5.) The International Commission of Jurists has explained that the term "victim" was intended to be broad under the United Nations Principles on Reparation—a "victim is not only the person who was the direct target of the violation, but any person affected by it directly or indirectly." (Internat. Com. of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (Revised Edition, 2018) p. 34.) For its part, AB 3121 conveys the Legislature's recognition that, while descendants of enslaved persons are due special consideration, the larger African American community has suffered and continues to suffer the weight of anti-Black bias and racism. Gov. Code, § 8301, subds. (a)(4)-(6), (b)(1)(C).

[53] Gov. Code, § 8301, subd. (b)(1)(B)-(C).

[54] See Chapter 13, The Wealth Gap.

[55] *Brown v. Bd. of Ed.* (1954) 347 U.S. 483, 495.

[56] Darity and Mullen, *supra*, at p. 11.

[57] See Chapters 2-13 and 14 of the Task Force report.

[58] Baker, *America is STILL paying for the Civil War*, Business Insider (Mar. 19, 2013) (as of May 25, 2023).

[59] Hunter, *When Slaveowners Got Reparations*, N.Y. Times (Apr. 16, 2019) (as of May 30, 2023).

[60] Bunn et al., Say Their Names (2021) pp. 298-299.

[61] *Ta-Nehisi Coates Revisits the Case for Reparations* (interview with Ta-Nehisi Coates) (June 10, 2019) New Yorker (as of May 25, 2023).

[62] See, e.g., 28 U.S.C. § 2674.

[63] See generally Brophy, Reparations Pro and Con (2006).

[64] *Read Martin Luther King Jr.'s 'I Have a Dream' Speech in its Entirety* (Jan. 16, 2023) NPR (as of May 25, 2023).

[65] *Ibid.*

[66] Bittker, The Case for Black Reparations (1973) p. 75.

[67] See, e.g., Foner, Reconstruction: America's Unfinished Revolution, 1863-1877 (1988) pp. 597-561.

[68] See Baptist, The Half Has Never Been Told, *supra*, at p. xxi.

[69] Bourne, *Slavery in the United States*, Economic History Association (as of May 25, 2023).

[70] See Baptist, *supra*, at p. xxi.

[71] *Id.* at pp. 9-11.

[72] See Rosenwald, *Slave-Owning Presidents Become Targets of Protestors*, Wash. Post (June 3, 2020) (as of May 25, 2023).

[73] Weil et al., More than 1,800 Congressmen Once Enslaved Black People. This Is Who They Were, and How They Shaped the Nation, Wash. Post (Jan. 20, 2022) (as of May 26, 2023).

[74] See Smith, Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction (2013) pp. 65-68.

[75] An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union (Apr. 15, 1852) ch. 33, Cal. Stat., at 67–69; An Act to Amend an Act respecting Fugitives from Labor and Slaves Brought to this State prior to Her Admission into the Union (Apr. 15, 1853) ch. 67, Cal. Stat., at 94; An Act Amendatory to an Act to Amend an Act respecting Fugitives from Labor and Slaves Brought to this State prior to her Admission into the Union (Act of Apr. 13, 1854) ch. 22, Cal. Stat., at 30; Smith, Freedom's Frontier, *supra*, at pp. 67-72.

[76] U.S. Const., 14th Amend.

[77] U.S. Const., 15th Amend.

[78] See Report of the Attorney-General for the Years 1868 and 1869 (Sacramento: D.W. Gelwicks, c. 1870) pp. 6-7.

[79] *Ibid.*; Shaffer, *California Reluctantly Implements the Fifteenth Amendment: White Californians Respond to Black Suffrage, March – June 1870* (2020) Cal Poly Pomona, p. 42 (as of May 26, 2023).

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[81] Cottrell, *It Took 92 Years for California to Ratify the 15th Amendment* (June 26, 2020) The Union (as of May 26, 2023).

[82] Smith, *California's Last Slave Case* (Mar. 5, 2014) N.Y. Times (as of May 26, 2023).

[83] Kent, *The Hidden History of Culver City Racism* (Apr. 5, 2019) Streets Blog LA (as of Apr. 5, 2022).

[84] Hudson, West of Jim Crow, *supra*, at pp. 171-172.

[85] Taylor, Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility (2014) p. 236.

[86] *Ibid.*

[87] *Ibid.*

[88] *Ibid.*

[89] *Ibid.*

[90] *Ibid.*

[91] *Ibid.*

[92] *Id.* at p. 237.

[93] See Chapter 5, Housing Segregation; Public Broadcasting Service, *Go Deeper: Where Race Lives* (as of May 26, 2023).

[94] Public Broadcasting Service, *Go Deeper: Where Race Lives*, *supra*.

[95] U.S. Com. on Civil Rights, Understanding Fair Housing (Feb. 1973) p. 4.

[96] Taylor, Toxic Communities, *supra*, at pp. 184-186.

[97] *Ibid.*

[98] *Ibid.*

[99] Fullilove, *Eminent Domain & African Americans: What Is the Price of the Commons?* (2007) Inst. for Justice. p. 2 (as of May 26, 2023).

[100] Rothstein, The Color of Law, *supra*, at p. 131.

[101] Taylor, *How 'Urban Renewal' Decimated the Fillmore District, and Took Jazz with It* (June 25, 2020) KQED (as of May 26, 2023).

[102] Sen. Joint Economic Com., Rep. on The Economic State of Black America in 2020 (Feb. 14, 2020) p. 28 (as of May 26, 2023).

[103] *Ibid.*

[104] Cal. Forward, Building Racial and Economic Equity Through Home Ownership (Apr. 2021) (as of May 26, 2023).

[105] Cal. Housing Finance Agency, *Black Homeownership Initiative: Building Black Wealth* (as of May 26, 2023); Reid, Crisis, Response, and Recovery: The Federal Government and the Black/White Homeownership Gap (Mar. 2021) UC Berkeley Terner Center for Housing Innovation, p. 2 (as of May 26, 2023).

[106] Hicks et al., Still Running Up the Down Escalator: How Narratives Shape our Understanding of Racial Wealthy Inequality (2021) Insight Center for Community Economic Development, Duke University, p. 8 (as of May 26, 2023).

[107] *Ibid.*

[108] *Id.* at p. 6.

[109] Cimini, *Black People Disproportionately Homeless in California* (Oct. 5, 2019) Cal Matters (as of May 26, 2023).

[110] Thomas and Valentine, Health Disparities by Race and Ethnicity in California: Pattern of Inequity (Oct. 22, 2021) Cal. Health Care Foundation, p. 7 (as of May 26, 2023).

[111] *Id.* at p. 42.

[112] Cal. Maternal Quality Care Collaborative, The California Pregnancy-Associated Mortality Review (2018) p. 21 (as of May 26, 2023).

[113] Thomas and Valentine, Health Disparities by Race and Ethnicity in California, *supra*, at p. 25.

[114] *Id.* at p. 28.

[115] *Id.* at p. 19.

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PART IX

KEY CASES AND STATUTES

CHAPTER 34 Introduction to Compendium of Statutes & Case Law

COURTESY OF ANDREYPOPOV/ISTOCK VIA GETTY IMAGES PLUS

Statue of Lady Justice with legal books in the background.

I. Introduction

Through its enactment of AB 3121, the Legislature charged the Task Force with compiling "[t]he federal and state laws that discriminated against formerly enslaved Africans and their descendants . . . from 1868 to the present" and identifying "[h]ow California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated."[1] The Task Force produced Part IX of the report, the legal compendium, to not only catalogue, but to summarize and memorialize for the public the many state and federal laws that have perpetuated discrimination against African Americans in California, as well as some cases and laws that advanced the rights of African Americans by setting aside those racist laws and policies. Due to the myriad ways in which laws and cases have created and nurtured this system of subjugation, the compendium is illustrative, not exhaustive. Nevertheless, Chapters 34-40 are intended to provide a comprehensive documentation of the centuries-long struggle in California, dating back to the earliest years of statehood, for personhood, equality, and equity.

This compendium is divided thematically, based on six major subject areas discussed throughout the Task Force's report: (1) Housing; (2) Labor; (3) Education; (4) Political Participation; (5) the Unjust Legal System; and (6) Civil Rights. In doing so, the compendium documents many of the constitutional provisions, statutes, and court cases that form the foundations of the discrimination and atrocities discussed throughout Chapters 1-13 of this report.

Beginning with California's 1850 Constitution, this compendium highlights laws that discriminated against African Americans and created and maintained white privilege and supremacy. As described in Chapter 2, Enslavement, when California's Constitution began taking shape, lawmakers in the state created a racial hierarchy that reinforced slavery and denied African American people freedom and the rights of citizenship. California even adopted a Fugitive Slave Law in 1852 to return freedom seekers to their enslavers. California's laws also denied African American people voting and homesteading rights, the ability to testify in court, and the ability to enroll their children in the public education

system. The state further prohibited African Americans from inheriting property, stifling economic stability and the development of generational wealth.

The state reinforced and broadened this racial hierarchy in the 1879 state Constitution. In it, the state expanded many laws to protect white men's rights and privileges, while denying the same rights to African American Californians. And, at the same time that the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution sought to liberate African Americans, California embraced constitutional provisions and laws that excluded African American people from those liberties, entrenching racial segregation and white supremacy. For example, even though the Fifteenth Amendment to the United States Constitution prohibited states from abridging the right to vote based on race, California state and local officials often prevented African American Californians from voting through residency requirements, poll taxes, and other legal hurdles.

At the same time that the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution sought to liberate African Americans, California embraced constitutional provisions and laws that excluded African American people from those liberties, entrenching racial segregation and white supremacy.

Even when African American Californians made gains in certain areas, full equality has remained out of reach. As described in Chapter 10, Stolen Labor and Hindered Opportunity, this compendium documents how the state's laws and policies created an unequal playing field for African American Californians to work and earn a living. One example of this is the Fair Employment Practices Act (FEPA), passed in 1959. Though the California Legislature enacted it to eliminate discrimination in employment, in *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 495-97, the California Supreme Court interpreted the FEPA to eliminate only discrimination in hiring decisions, not on the job. This case eliminated one potential layer of protection for African American Californians against discriminatory or racist mistreatment by their employers. As the legal cases collected in the compendium show, African American residents repeatedly faced barriers in employment, including exclusion from labor unions, the denial of job contracts, and rulings that prevented African American residents from even seeking damages for violations of anti-discrimination laws. At times, court decisions would recognize instances of discrimination, hinting at progress for African American workers and business owners, but ultimately worsening the situation by creating loopholes that subjected them to greater discrimination.

Initially, the state's Constitution did not consider African American to be residents state citizens, nor did it permit African American residents to vote or run for office.

The compendium also documents many of the laws and policies discussed in Chapter 6, Separate and Unequal Education, used by the state to exclude African American Californians from countless educational opportunities since the beginning of the state's public education systems in the 1870s.[2] While African American Californians struggled and made advances to end education discrimination throughout the twentieth century, government officials continued to place new hurdles before them. Even when several court rulings reiterated the Supreme Court's determination in *Brown v. Board of Education* (1955) 349 U.S. 294, that districts could not operate segregated schools, local officials resisted and sidestepped this ruling in order to maintain segregation.[3] For instance, in *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779, the city of Yorba Linda attempted to form a separate, predominantly white school district to avoid having its white children attend school with African American children in the area, a tactic used throughout the country—especially across states in the South that had been members of the Confederacy—to maintain segregation.

Similarly, the laws and policies included in the compendium reveal how African American Californians faced tremendous political restrictions from the state's inception, reinforcing this report's discussion in Chapter 4, Political Disenfranchisement. Initially, the state's Constitution did not consider African American residents to be state citizens, nor did it permit African American residents to vote or run for office. It was not until 1879 that California amended its constitution to recognize men of African descent, and it took even longer to include African

American women. But by then, white men had already established a stranglehold over key positions of power in California, excluding African American residents from the corridors of power for decades more. And this entrenched power enabled and maintained the systems of racial discrimination discussed throughout this report.

In addition to this report's discussion of An Unjust Legal System in Chapter 11, this compendium highlights many of the egregious laws and rulings reinforcing discrimination against African American people in our state and in our country. Early California statutory law prevented Black people from testifying against white people.[4] Several cases include examples of strategies prosecutors used to exclude African American potential jurors, to secure all-white juries, contributing directly to the current mass incarceration crisis. Similarly, *People v. Gullick* (1961) 55 Cal.2d 540 exposed how police influenced witnesses into identifying African American suspects in line-ups, regardless of their accuracy. As a supplement to the history of the atrocities discussed in Chapters 1-13 of this report, this compendium serves as an overview of the many laws that built up state and federal legal systems designed to subjugate African American Californians.

This compendium serves as an overview of the many laws that built up state and federal legal systems designed to subjugate African American Californians.

It is important to note, however, that there are numerous state and federal cases and laws that are not included in this compendium. For example, the compendium focuses on cases decided by the California Supreme Court and the United States Supreme Court between 1850 and 2020, tracking the years from this state's founding to the year AB 3121 was enacted. Though comprehensive, this compendium does not exhaustively list every case, law, policy, and practice that reinforced the structures of slavery and racial discrimination; to do so would result in a compendium far exceeding the length of the report itself. The compendium also does not include local and municipal laws, nor cases from municipal courts, trial courts, district courts, or other appellate courts. Given the long and wide-ranging history of discrimination in this state and across the country, a full list would be nearly impossible to authoritatively and accurate complete and would result in an unwieldy record. Instead, the compiled constitutional provisions, statutes, and cases support the findings set forth in Chapters 1-13, demonstrate the need for the policy changes recommended in Chapters 18-30, and support the Task Force's effort, as further described in Chapter 33, to educate the public regarding the longstanding and wide-ranging ways in which governmental entities, often through the strategic use of the court system, have reinforced the system of permanent discrimination, a legacy of enslavement in our country.

Chapters 35-40 consist of constitutional provisions, statutes, and case law that had significant impacts on the development of our unjust legal system as it relates to African Americans. Specifically, each chapter includes both federal and state statutes and case law. Chapter 35 consists of statutes and case law relating to how African Americans have been wronged by housing laws. Chapter 36 consists of statutes and case law relating to how African Americans have been wronged by labor laws. Chapter 37 consists of statutes and case law relating to how African Americans have been subjected to racial discrimination in education. Chapter 38 consists of statutes and case law relating to how African Americans have been denied full political participation. Chapter 39 consists of statutes and case law relating to how African Americans have been wronged by our unjust legal system. And Chapter 40 consists of statutes and case law relating to how African Americans have been wronged by civil rights cases.

Endnotes

[1] Gov. Code, § 8301.1, subds. (b)(1)(F), (b)(3)(C).

[2] See *Ward v. Flood* (1874) 48 Cal. 36.

[3] See, e.g., *National Assn. for the Advancement of Colored People v. San Bernardino City Unified School Dist.* (1976) 17 Cal.3d 311 (declaring that the state had a "constitutional obligation" to take the necessary steps toward desegregation).

[4] See *People v. Hall* (1854) 4 Cal. 399, 403.

CHAPTER 35 Housing: Federal Statutes & Case Law

COURTESY OF BETTMANN ARCHIVE VIA GETTY IMAGES

Members of the Providence Branch of the NAACP picket the Rhode Island State House in support of fair housing legislation. (1963)

I. Federal Statutes and Case Law

1862

***The Homestead Act of 1862*, 37 Cong. ch. 75, 12 Stat. 392, Repealed by Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1787**

Summary of Facts and Issues: The federal Homestead Act of 1862 gave any person over the age of 21 or a head of household, who was or intended to be a citizen, and who had not taken up arms against the United States, the opportunity to claim ownership of up to 160 acres of land. To own the land, the homesteader had to live there for five years and make improvements to the property.

Impact of the Law: The Act was a federal land policy that promised landownership to its citizens and was central to westward colonization over and against sovereign territorial claims of Indigenous peoples. Since African Americans were not granted citizenship status until 1868, most homesteaders were white.[1]

1866

***The Civil Rights Act of 1866* 42 U.S.C. § 1981**

Summary of Facts and Issues: The Civil Rights Act of 1866 guaranteed all citizens, regardless of race, the same rights to purchase, hold, and convey real property as was enjoyed by whites, but it did not prevent private agreements prohibiting African Americans and other non-white groups from owning homes in particular areas.

Impact of the Law: While the Act was one of the first attempts at remedying the grossly inferior legal and social status of African Americans during the Reconstruction period after the Civil War, the Act did not dismantle the system of residential racial segregation following the Civil War. The gaps in the Act's coverage meant that through private agreements and other actions, neighborhoods would remain segregated. Even after segregation was declared unconstitutional, neighborhoods—and consequently schools and other public facilities—had not been integrated, and a disproportionate amount of public resources had flowed into white neighborhoods, cementing segregation in fact even where it did not exist in law.

1914

Jones v. Jones 234 U.S. 615

Summary of Facts and Issues: When a freed African American man died without a will in Tennessee, his widow claimed she inherited his property pursuant to a state law.[2] The deceased's brother challenged this, contending the land passed to the deceased's siblings (who were also born enslaved), as his heirs at law.[3] The Supreme Court relied on pre-Civil War precedents to hold that "slaves . . . were not within the meaning and effect of the statutes of descent, and no descent from or through a slave was possible except as provided by some special statute."[4] Since Tennessee had only conferred the right to inherit upon children of formerly enslaved persons, and not collateral descendants (siblings), the Supreme Court held that siblings were not heirs at law capable of inheriting real estate, and that the Fourteenth Amendment did not prohibit a state from denying inheritance to formerly enslaved persons.[5]

Impact of the Ruling: Even though Mr. Jones acquired the land after he had been emancipated, the U.S. Supreme Court held that statute did not violate the equal protection clause, despite limiting the rights of his formerly-enslaved collateral descendants to inherit. This case made it more difficult for African American people to acquire and retain wealth through property ownership.

Subsequent History: Although in 1919 Tennessee amended the statute to allow inheritance for collateral descendants of enslaved persons,[6] this case is still cited in a secondary source about inheritance for the proposition that the right to inherit property can be abridged by the legislature.[7]

1917

Buchanan v. Warley 245 U.S. 60

Summary of Facts and Issues: A Louisville, Kentucky ordinance limited the use of a residence by persons of one race if the majority of residences on the block were already inhabited by persons of another race—with the aim of enforcing residential segregation.[8] The effect was to limit the ability of African American people to buy houses on majority-white residential blocks, and vice-versa.[9] When an African American purchaser no longer wanted to complete a house sale because, due to the ordinance, they would not be able to occupy the house due to their race, the seller brought suit to force the sale.[10]

Impact of the Ruling: The U.S. Supreme Court held the ordinance violated the Fourteenth Amendment because it violated the property rights of the seller to dispose of their property as they chose based on the race of the purchaser.[11] While the Court reiterated that some mandatory segregation of the races was permitted under the Fourteenth Amendment, as interpreted by *Plessy v. Ferguson*, the Court held that government impositions on the right to own, use, and dispose of property violated the protections in the Fourteenth Amendment, in part because it impacted the property rights of white sellers.[12]

1926

Corrigan v. Buckley 271 U.S. 323

Summary of Facts and Issues: A group of property owners in Washington, D.C., entered into a contract (called a "racially restrictive covenant") agreeing not to sell their property to African Americans.[13] Later, one of the property owners sold their land to an African American, and another property owner sued to block the sale.[14] The Supreme Court held that because restrictive covenants arose from agreements between private individuals, rather than state actors, the Court did not have jurisdiction, since the Fifth and Fourteenth Amendments only protected individuals from actions of the government.[15] The Court rejected an argument that the judicial enforcement of such covenants was state action, because the issue had not been raised below.[16] This case is different from the above-discussed *Buchanan v. Warley*, where the Court was reviewing a municipality's ordinance—government action—prohibiting the sale of land based on the race of the purchaser.

Impact of the Ruling: Private individuals were allowed to enter into contracts limiting the disposition of their property using racially restrictive covenants, allowing for individuals to practice racial discrimination without violating the Fifth, Thirteenth, or Fourteenth Amendments. Approval of racially restrictive covenants—and their enforcement in court—allowed for continued and increased racial segregation and the severe limitation of property rights and wealth for African Americans.[17]

1948

Shelley v. Kraemer 334 U.S. 1

Summary of Facts and Issues: Certain landowners in St. Louis, Missouri entered into a racially restrictive covenant to prevent the sale of certain parcels of land to African Americans, and in 1945 brought suit to prevent the sale of a specific property to an African American owner.[18] The Court did not repudiate *Corrigan v. Buckley*'s holding that racially restrictive covenants, as agreements between private property owners, did not raise constitutional issues.[19] Still, the Court held that judicial enforcement of such agreements constituted state action, and prevented enforcement of the racially restrictive covenant under the Fourteenth Amendment's equal protection clause.[20]

Impact of the Ruling: While the Court did not prohibit racially restrictive covenants as such, it expanded the view of state action covered by the Fourteenth Amendment to encompass judicial enforcement of such covenants in state courts, building on *Hurd v. Hodge*'s prohibition applicable to federal territories, making them no longer enforceable in court to prohibit sale of property to African Americans nationwide. The case did not, however, make any impact on the then-developing practice of redlining, which depended upon the granting of mortgages by the federal government rather than the practice of imposing racially restrictive covenants.

1967

Hurd v. Hodge 334 U.S. 24

Summary of Facts and Issues: White property owners of a group of houses in Washington, D.C. subject to a racially restrictive covenant sued to reverse the sale of properties within the covenant to African Americans.[21] The Supreme Court held that court enforcement of such racially restrictive covenants violated section 1 of the Civil Rights Act of 1866, codified at 42 U.S.C. section 1981, which provided that all citizens have the same right to sell property regardless of race.[22] The Court did not overrule *Corrigan v. Buckley*, holding that such private restrictive agreements are not invalidated as long as they are achieved through voluntary adherence, but held that judicial enforcement was government action that violated federal law and public policy.[23] The Court held it need not reach whether the action also violated the Fifth Amendment since it could resolve the case on statutory grounds.[24] Justice Frankfurter concurred, stating that court action enforcing the covenant would violate the Constitution.[25]

Impact of the Ruling: The Court's decision prohibited judicial enforcement of racially restrictive covenants in federal territories, including Washington, D.C., but held the voluntary use of such covenants was acceptable. Additionally, the majority decided the case based on statutory rather than constitutional grounds, potentially allowing a future Congress to undermine the case with a repeal or amendment of the federal statute.

Reitman v. Mulkey 387 U.S. 369

Summary of Facts and Issues: In 1964, California voters passed Proposition 14, which added article I, section 26 to the California Constitution, and prohibited the state from denying, limiting, or abridging, "directly or indirectly, the right of any person, who is willing or desires to sell, lease, or rent any part or all of his real property, to decline to sell, lease, or rent such property to such person or persons as he, in his absolute discretion, chooses."[26] This in practice overturned state laws prohibiting racial discrimination in the sale and lease of residential housing, and the case arose out of two consolidated cases where persons refused to rent to or attempted to evict tenants due to their race.[27] The U.S. Supreme Court upheld the decision of the California Supreme Court finding section 26 unconstitutional because it involved the state in racial discrimination in the housing market.[28] Section 26 "was legislative action 'which authorized private discrimination' and made the State 'at least a partner in the instant act of discrimination . . . .'"[29] While rejecting the notion that a state was required to have a statute prohibiting racial discrimination in the housing market, the Court held section 26 went beyond this and "constitutionalized the private right to discriminate," in a way that significantly involved the state in private racial discrimination contrary to the Fourteenth Amendment.[30]

Impact of the Ruling: The Court expanded the notion of state action here to allow for the repudiation of an amendment that "constitutionalized" the private right to discriminate on racial grounds in housing.[31] The case reinstated state fair housing laws and allowed their continued expansion in the state.

Subsequent History: The Supreme Court distinguished the holding of *Reitman* in *Schuette v. Coalition to Defend Affirmative Action, Integration, and Immigrant Rights*, which upheld the State of Michigan's constitutional amendment prohibiting affirmative action.[32] The Court emphasized that the amendment in *Reitman* expressly authorized and constitutionalized the private right to discriminate, which significantly encouraged the involvement of the state in private racial discrimination.[33] In contrast, the Court held that a voter-approved constitutional amendment banning affirmative action did not "address or prevent injury caused on account of race," but rather allowed voters to "determine whether a policy of race-based preferences should be continued."[34]

1968

Jones v. Alfred H. Mayer Co. 392 U.S. 409

Summary of Facts and Issues: African Americans filed a lawsuit after the respondents refused to sell them a home in Missouri due to their race.[35] Petitioners alleged the refusal violated 42 U.S.C. section 1982, which provides all citizens the same right "as is enjoyed by white citizens [] to inherit, purchase, lease, sell, hold, and convey real and personal property."[36] The lower courts rejected the claim, holding the statute applied only to state action and did not reach private refusals to sell, but the Supreme Court reversed, holding that section 1982 "bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment."[37] The Court held that Congress

has the power under the Thirteenth Amendment to "rationally . . . determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation," and protection of the right to purchase property clearly fell within this authority.[38]

Impact of the Ruling: The Court provided a broad view of the power of Congress to pass statutes under the purview of the Thirteenth Amendment directed at eliminating the "badges and incidents of slavery," particularly as related to fundamental rights that are the "essence of civil freedom," like purchasing property.[39] But the Court reiterated that the statute (and its decision) did not reach beyond racial discrimination, did not extend to advertising or other representations indicating discriminatory preferences, did not address provision of services or facilities in connection with the sale or rental of the dwelling, did not refer to discrimination in financing arrangements or brokerage services, and did not empower a federal administrative agency to assist or provide for intervention by the Attorney General.[40] The federal Fair Housing Act of 1968, discussed below, prohibited several of the types of discrimination that were not specifically outlawed by section 1982.

1977

Village of Arlington Heights v. Metropolitan Housing Development Corp. 429 U.S. 252

Summary of Facts and Issues: A housing developer applied to the Village for the rezoning of a 15-acre parcel from single-family to multiple-family zoning, in order to build townhouse units for low- and moderate-income tenants.[41] The Village refused, and the developer sued, alleging the denial was racially discriminatory and that it violated the Fourteenth Amendment and the Fair Housing Act of 1968.[42] The Supreme Court upheld the denial, holding that showing a state action had a racially discriminatory impact was not enough to demonstrate a violation of the Fourteenth Amendment.[43] Instead, proof of a racially discriminatory intent or purpose as a motivating factor for the decision is required to show a violation of the equal protection clause, and the Court did not find such proof in this case.[44]

Impact of the Ruling: The Court set out several factors for consideration in determining whether there is proof that a racially discriminatory purpose was a motivating factor for a challenged action, including: extreme disproportionate impact, the absence of justification, historical background of the action, departure from normal procedural standards, and departures from typically applied substantive rules.[45] The Court's standard here foreclosed equal protection claims based only on discriminatory impact, and set a high standard of proof for any claims to demonstrate the requisite discriminatory intent.

1978

Gladstone Realtors v. Village of Bellwood 441 U.S. 91

Summary of Facts and Issues: The Village of Bellwood and several white and African American residents thereof sued two real estate brokerage firms, alleging the brokers were engaging in racial "steering," directing prospective home buyers interested in equivalent properties to different areas according to their race, in violation of the Fair Housing Act of 1968.[46] The Village of Bellwood alleged that it had standing to sue because it has "'been injured by having [its] housing market . . . wrongfully and illegally manipulated to the economic and social detriment of the citizens of [the] village'"; the individual respondents alleged that they had "'been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society.'"[47]

Impact of the Ruling: The Supreme Court held that standing under the Fair Housing Act is as broad as allowed under Article III of the constitution, and was broad enough to encompass the plaintiffs here and the injuries alleged.[48] This allowed municipalities and African Americans to challenge discriminatory real estate practices undertaken by private parties.

1981

City of Memphis v. Greene 451 U.S. 100

Summary of Facts and Issues: Pursuant to the request of white residents, the City of Memphis closed the northern end of a street in a predominantly white neighborhood, thereby restricting access to and through the neighborhood by those living immediately to the north, in a predominantly African American neighborhood.[49] African American residents of the northern neighborhood sued, alleging the closure denied them of benefits of property given to white residents in violation of 42 U.S.C. section 1982 and the Thirteenth and Fourteenth Amendments.[50]

Impact of the Ruling: The Court first determined there was no evidence of discriminatory intent in the closure decision, and thus plaintiffs could not sustain a Fourteenth Amendment equal protection claim.[51] The Court then held that the closure did not show African American property owners would be refused a similar accommodation, that the value of African American property would be depreciated, nor that it restricted access to African American homes, and thus plaintiffs did

not demonstrate an injury within the reach of 42 U.S.C. section 1982.[52] Finally, the Court held plaintiffs could not sustain a claim under the Thirteenth Amendment because the inconvenience of needing to use a different street, though it fell mainly on African American residents, was a function of "where they live and where they regularly drive—not a function of their race," and despite the potential disparate impact on a segregated neighborhood, this type of municipal action did not rise to the level of a badge or incident of slavery that would violate the Thirteenth Amendment.[53]

II. State Case Law and Statutes

1861

Williams v. Young 17 Cal. 403

Summary of Facts and Issues: Ms. Young, a "Mulatto," or mixed-race person, and widow of Mr. Young, sought to defend against her ejection from the Williamses' property by using state homesteading as a defense. Prior to Mr. Young's death, the Youngs purchased the property from Mr. Williams but had not finished paying the entire price. After Mr. Williams passed, his wife tried to eject Ms. Young from the property, claiming that the homestead defense did not apply to Mulattos, and that she had a sheriff's deed to and a lien on the property.[54]

Impact of the Ruling: The Court held that since Ms. Young did not abandon the homestead, she could not be ejected from the home since the lien on the property was not enforceable, the title and right of possession remaining with Ms. Young until the sale of the property settled. In this case, the California Supreme Court held that the Homestead Act applied to African Americans and Mulattos.[55]

1879

Article I, Section 17 of the California Constitution of 1879 (Amended Nov. 6, 1894; Repealed Nov. 5, 1974)

Summary of Facts and Issues: With regard to housing and property ownership, California's Constitution originally declared: "Foreigners of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens."

Impact of the Law: In 1879, citizenship expanded to include people of African descent who were deemed eligible to become citizens of the United States. However, both white and non-white foreigners who could not naturalize and/or establish state residency did not have property rights. And in 1894, article I, section 17 was amended to state that "[f]oreigners" had the same rights in property, "other than real estate," as native-born citizens.

1959

Unruh Civil Rights Act (Civil Code Section 51)

Summary of Facts and Issues: The Unruh Civil Rights Act declares that all persons in California are free and equal, and no matter their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language or immigration status, all are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Impact of the Law: As a result of the Unruh Civil Rights Act enacted in 1959, California business establishments, including those providing housing and public accommodations, could no longer engage in unlawful discrimination by refusing to lease or rent to African Americans. This Act has been interpreted by the courts to prohibit arbitrary discrimination by business establishments. Further, by enacting remedial provisions to the Act through Civil Code section 52, including allowing for actual and punitive damages in cases of housing discrimination violations, the Legislature created a true enforcement mechanism for individuals to seek redress for discrimination.

1962

Seaborn Burks v. Poppy Construction Company 57 Cal.2d 463

Summary of Facts and Issues: An African American couple brought an action for damages and injunctive relief alleging discrimination with respect to the sale of a house in a tract. The first cause of action was based on the Unruh Civil Rights Act, which prohibits discrimination in "business establishments," and the second was based on the Hawkins Act (former Health & Saf. Code, §§ 35700-35741) which relates to discrimination in "publicly assisted housing accommodations."[56]

Impact of the Ruling: This case represents the first California Supreme Court case interpreting the Unruh Civil Rights Act. The Court reversed the lower court's dismissal of claims under the Unruh and Hawkins Acts against

the defendant building developers, who were responsible for sales of publicly assisted houses on a tract of land.[57]

Lee v. O'Hara 57 Cal.2d 476

Summary of Facts and Issues: Defendant real estate brokers refused to rent the premises to plaintiff solely because of his race. The real estate brokers argued that because they were acting as agents on behalf of property owners, they required consent by all parties to rent to plaintiff, who was African American. Since such consent was not proven, they could not be accused of denying services to plaintiff on the basis of race.[58]

Impact of the Ruling: The court held that the Unruh Civil Rights Act applies to real estate brokers when acting in their professional capacity. As such, they were prohibited from racially discriminating against protected classes in real estate transactions, even if purportedly acting pursuant to the instructions of their clients.[59]

1963

California Fair Employment and Housing Act Gov. Code, §§ 12900-12999 (Formerly Health & Saf. Code, § 35700 et seq.)

The Rumford Fair Housing Act

Summary of Facts and Issues: The California Fair Employment and Housing Act, part of which was previously known as the Rumford Fair Housing Act, extended housing discrimination prohibitions to housing generally and for the first time afforded an administrative remedy for housing discrimination. Specifically, the Act prohibited racial discrimination in the sale or rental of any private dwelling containing more than four units, enforceable by a specially designated state commission.

Impact of the Law: The California Fair Employment and Housing Act, along with the Unruh Civil Rights Act, represented the move for fair housing legislation at the state and local levels across the nation. These state civil rights laws predated the federal civil rights laws of the 1960s that prohibited discrimination in employment and housing.

1964

Proposition 14 (Formerly Article I, Section 26 of the California Constitution) (Repealed Nov. 5, 1974)

Summary of Facts and Issues: This proposition repealed the Rumford Fair Housing Act by adding a state constitutional right for persons to refuse to sell, lease, or rent residential properties to other persons on the basis of race. The ballot referendum was designed to repeal state and local housing discrimination laws. It passed in November 1964 with over 65 percent of the vote. As such, housing discrimination on the basis of race became constitutionally protected.

Impact of the Proposition: After its passage, the right to discriminate in housing on the basis of race was enshrined in the California Constitution and those practicing racial discrimination could invoke express constitutional authority with respect to their residential property. Proposition 14 was overturned by the California Supreme Court in *Mulkey v. Reitman* (1966) 64 Cal.2d 529 (discussed immediately below), a decision which was upheld by the United States Supreme Court in *Reitman v. Mulkey* (1967) 387 U.S. 369 (discussed above).

1966

Mulkey v. Reitman 64 Cal.2d 529

Summary of Facts and Issues: The defendant owners refused to rent any of their unoccupied and available apartments to an African American couple or any other African Americans, claiming a constitutional right to do so pursuant to Proposition 14, discussed above.[60]

Impact of the Ruling: Finding a violation of equal protection under the Fourteenth Amendment to the United States Constitution, the California Supreme Court overturned Proposition 14, striking down the California constitutional provision that prohibited the state from restricting a property owner or landlord's right to refuse to sell or rent to qualified citizens on the basis of race.[61]

1971

Stearns v. Fair Employment Practice Com. 6 Cal.3d 205

Summary of Facts and Issues: Ernest Cooper, an African American man, attempted to rent an apartment from Val Stearns. Mr. Stearns required him to submit to a credit check before Mr. Cooper could rent the apartment. Three hours later, Mr. Stearns rented the same apartment to a white person, soliciting an immediate deposit without requiring a credit check, offering the white person occupancy as soon as the apartment could be cleaned. The Fair Employment Practices Commission found that Mr. Stearns discriminated against Mr. Cooper, and Mr. Stearns challenged the Commission's decision.[62]

Impact of the Ruling: The California Supreme Court affirmed the lower court's ruling that the landlord discriminated by erecting a bureaucratic barrier to Mr. Cooper's occupancy of the apartment that had not been similarly instituted for the white man. Since such a procedure could be used to completely discourage or delay an African American applicant until an eligible white applicant could be found to fill the vacancy, the

Court concluded that Mr. Stearns's behavior constituted housing discrimination.[63]

1991

Walnut Creek Manor v. Fair Employment & Housing Com. 54 Cal.3d 245

Summary of Facts and Issues: Robert Cannon, an unmarried African American man, filed a housing discrimination complaint with the California Department of Fair Employment and Housing against the Walnut Creek Manor, on the grounds of discrimination on the basis of his race and marital status. Mr. Cannon was placed on a waiting list for the 418-unit apartment complex, and was told to check back every six months as the waiting period was one to one and one-half years. More than two years later, it was shown that the rental manager made no attempt to offer Mr. Cannon available apartments, but did call other non-African American applicants who applied after him. It was additionally shown that after the rental manager met Mr. Cannon, she designated him as an undesirable tenant, but after the Department commenced its investigation, she altered the code rating to desirable. Other acts of discrimination were also considered by the Court, including the rental manager renting 32 apartments to non-African American applicants after Mr. Cannon's complaint. After the California Fair Employment and Housing Commission—which at the time administratively adjudicated housing discrimination claims—determined Walnut Creek Manor violated California fair housing laws, the court of appeal affirmed, authorizing the commission to award unlimited compensatory damages for housing discrimination, but found that the commission's award of general compensatory damages for emotional distress violated the judicial powers clause.[64]

Impact of the Ruling: The California Supreme Court held that the rental manager's refusal to rent to Mr. Cannon because of his race constituted one violation of the Fair Employment and Housing Act. For the purpose of authorized remedies, the court determined that multiple acts of discrimination against the same complainant on the same unlawful basis establishes only one unlawful practice. As such, the Act authorized only one punitive damages award for this type of discriminatory conduct.[65]

Endnotes

[1] See Chapters 2 and 13.

[2] *Jones v. Jones* (1914) 234 U.S. 615, 616.

[3] *Ibid.*

[4] *Id.* at p. 617.

[5] *Id.* at pp. 617-619.

[6] Tenn. Code Ann. § 310-303 (1919).

[7] See 79 Am.Jur.2d (2023) Wills § 144.

[8] *Buchanan v. Warley* (1917) 245 U.S. 60, 70-71.

[9] *Ibid.*

[10] *Id.* at pp. 69-71.

[11] *Id.* at pp. 81-82.

[12] *Id.* at pp. 79-81.

[13] *Corrigan v. Buckley* (1926) 271 U.S. 323, 327.

[14] *Id.* at pp. 327-328.

[15] *Id.* at pp. 330-331.

[16] *Id.* at pp. 331-332.

[17] See Chapter 5, Housing Segregation (discussing the harms from use of racially restrictive covenants).

[18] *Shelley v. Kraemer* (1948) 334 U.S. 1, 4-6. This is a consolidated opinion that also disposes of a similar case arising out of Michigan, *McGhee v. Sipes*.

[19] *Shelley*, *supra*, 334 U.S. at pp. 8-9.

[20] *Id.* at pp. 19-21.

[21] *Hurd v. Hodge* (1948) 334 U.S. 24, 26-27.

[22] *Id.* at pp. 33-34.

[23] *Id.* at pp. 28-36.

[24] *Id.* at p. 30.

[25] *Id.* at p. 36.

[26] *Reitman v. Mulkey* (1967) 387 U.S. 369, 370-371.

[27] *Id.* at p. 372.

[28] *Id.* at pp. 375-377.

[29] *Id.* at p. 375.

[30] *Id.* at p. 376.

[31] *Ibid.*

[32] *Schuette v. Coal. to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN), et al.* (2014) 572 U.S. 291.

[33] *Id.* at pp. 302-303.

[34] *Id.* at p. 311.

[35] *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 412.

[36] *Ibid.*

[37] *Id.* at pp. 412-413.

[38] *Id.* at pp. 440-441.

[39] *Ibid.*

[40] *Id.* at p. 414.

[41] *Vill. of Arlington Heights v. Metropolitan Hous. Dev. Corp.* (1977) 429 U.S. 252, 254.

[42] *Ibid.*

[43] *Id.* at pp. 265-266, 270-271.

[44] *Id.* at pp. 266-271.

[45] *Id.* at pp. 266-268.

[46] *Gladstone Realtors v. Village of Bellwood* (1979) 441 U.S. 91, 93-94.

[47] *Id.* at p. 95.

[48] *Id.* at pp. 109, 111, 115.

[49] *City of Memphis v. Greene* (1918) 451 U.S. 100, 102-103.

[50] *Id.* at pp. 102, 105-106.

[51] *Id.* at p. 119.

[52] *Id.* at pp. 123-124.

[53] *Id.* at p. 128.

[54] *Williams v. Young* (1861) 17 Cal. 403, 403–404.

[55] *Id.* at p. 406.

[56] *Seaborn Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 468.

[57] *Id.* at p. 476.

[58] *Lee v. O'Hara* (1962) 57 Cal.2d 476, 477-478.

[59] *Id.* at p. 478.

[60] *Mulkey v. Reitman* (1966) 64 Cal.2d 529, 532.

[61] *Id.* at p. 545; see also *Grogan v. Meyer* (1966) 64 Cal.2d 875, where plaintiff, an African American, sought to rent an apartment in a four-unit apartment building, but was denied due to the landlord's general policy of denying African Americans the opportunity to occupy property owned or managed by him. Citing *Mulkey v. Reitman*, *supra*, the California Supreme Court reversed the judgment by the San Francisco Municipal Court, concluding that Proposition 14 infringes upon the equal protection clause of the Fourteenth Amendment. (*Id.* at pp. 876-877.) See also *Prendergast v. Snyder* (1966) 64 Cal.2d 877, where plaintiff Ms. Prendergast, a white woman, rented an apartment in defendant's seven-unit dwelling. Thereafter, she married Mr. Prendergast, an African American, and he moved into his wife's apartment. Defendant then purported to terminate their tenancy, claiming that it was his right "(1) to select with whom he would associate with in the continuing relationship of landlord and tenant and in the relationship of neighbors under the same roof, and (2) to acquire, use, enjoy and dispose of his property in any manner he may choose which is not prohibited by statute, ordinance or other legislation." The California Supreme Court held that the defendant's actions were illegal, citing *Mulkey v. Reitman*. (*Id.* at pp. 877-878.)

[62] *Stearns v. Fair Employment Practice Com.* (1971) 6 Cal.3d 205, 208-210.

[63] *Id.* at p. 212.

[64] *Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 251-273.

[65] *Id.* at pp. 267-273.

CHAPTER 36 Labor: Federal Statutes & Case Law

COURTESY OF JOHN VACHON/ANTHONY POTTER COLLECTIONVIA GETTY IMAGES

An African American man picketing Bowman Dairy for job discrimination. (1941)

I. Federal Statutes and Case Law

1787

***Fugitive Slave Clause* U.S. Const. Art IV, § 2, Cl. 3**

Summary of Provisions: "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."[1]

Subsequent History: Enslavement and involuntary servitude, except for punishment for crime, was later prohibited by the Thirteenth Amendment to the United States Constitution. (U.S. Const. amend. XIII, § 1.)

1850

***Strader v. Graham* 51 U.S. 82**

Summary of Facts and Issues: Dr. Christopher Graham, a Kentucky enslaver, allowed three of his enslaved persons to visit Ohio and Indiana.[2] But when they later fled to Canada through a steamboat owned by Strader and another man, enslaver Graham sued them for the monetary value of his lost enslaved persons.[3] They defended saying that the enslaved persons had become free because of their time in Ohio and Indiana.[4] The Louisville Chancery Court decided that the enslaved men did indeed belong to Graham and that he was entitled to recover $3,000 for his damages caused by their escape by way of the steamboat.[5]

Impact of Ruling: The United States Supreme Court held that the United States Constitution would not control the law of Kentucky in this case and that the conditions of those enslaved in Kentucky depended on the laws of Kentucky.[6] The Court therefore determined that the decision of the state court of appeals was conclusive and that the U.S. Supreme Court lacked jurisdiction to determine otherwise.[7]

1865

Amendment XIII to the United States Constitution

Summary of Provisions: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.[8]

1872

Slaughter-House Cases 83 U.S. 36

Summary of Facts and Issues: The State of Louisiana enacted a regulation allowing the City of New Orleans to regulate the place and manner of slaughtering of animals, including the butchering, inspection, and processing of animal meat within the city in an effort to better manage the city's sanitation, health, and safety.[9] The city created a corporation, granting it exclusive rights to have and maintain slaughter-houses, landings for cattle, and yards for enclosing cattle, to the exclusion of all other slaughter-houses in the city.[10] Existing slaughter-houses and butchers were required to close their facilities and instead bring their stock to the city corporation for processing at a cost.[11] The slaughter-houses affected by these changes sued under the Thirteenth and Fourteenth Amendments, claiming that the regulations amounted to involuntary servitude, abridged the privileges and immunities of citizens of the United States, denied them of equal protection of the laws, and deprived them of their property without due process of law.[12] The Court held that the regulation of the place and manner of conducting the slaughtering of animals, the business of butchering within a city, and the inspection of the animals to be killed for meat and of the meat afterwards, were among the most necessary and frequent exercises of a state's police power.[13] In so holding, the Court reasoned that the statute under consideration was aptly framed to remove from the more densely populated part of the city the noxious slaughter-houses, and large and offensive collections of animals necessarily incident to the slaughtering business of a large city, and to locate them where the convenience, health, and comfort of the people require they should be located.[14]

Impact of Ruling: The Court reasoned in its holding that there was a distinction between citizens of the United States and citizens of a state and that the language of the federal Constitution was meant to protect citizens of the United States and was not intended to provide additional protection for citizens of a state.[15] Therefore, "the entire domain of the privileges and immunities of citizens of the States . . . lay within the constitutional and legislative power of the States, and without that of the Federal government."[16] The Court acknowledged that the main purpose of the Thirteenth and Fourteenth Amendments was the "freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery.[17]" The benefits of these amendments could flow more broadly to members of other races who are impacted by a deprivation of these rights, however.[18]

1905

Clyatt v. U.S. 197 U.S. 207

Summary of Facts and Issues: The prohibition against peonage was authorized by provisions of the Thirteenth Amendment forbidding slavery or involuntary servitude. A statute provided that anyone who holds, arrests, or returns a person to a condition of peonage would be held liable.[19] However, the person who made the arrest could not be convicted unless there was proof that the persons so returned had been in peonage prior to the arrest.[20]

Impact of Ruling: Peonage was a form of compulsory service, based on indebtedness. It was used to circumvent the prohibition of slavery and involuntary servitude under the Thirteenth Amendment. *Clyatt* was one of the first cases in a lengthy federal effort to abolish peonage. However, the Court narrowly interpreted a statute that aimed to punish those who arrested persons with intent to subject them to a condition of peonage by stating that the statute requires the person to have been in a condition of peonage beforehand.[21]

1906

Hodges v. U.S. 203 U.S. 1

Summary of Facts and Issues: On October 8, 1903, a grand jury indicted Reuben Hodges, William Clampit, and Wash McKinney with knowingly, willfully, and unlawfully conspiring to oppress, threaten, and intimidate a group of citizens who were of African descent.[22] The defendants were convicted following a trial for threatening and intimidating the group of men, who were employed by a lumber manufacturing company, so that they would quit their jobs at the company, essentially preventing the men from enjoying the same rights and privileges as white citizens.[23] The defendants appealed their conviction to the Supreme Court, objecting to the indictment based on the argument that federal courts lacked jurisdiction over the matter.[24] In interpreting the Thirteenth Amendment, the Court opined that while the purpose of the Amendment was the emancipation of "the colored race" it was not an attempt to commit that race to the care of the nation and it was a denunciation of a condition and not a declaration in favor of a particular people.[25] The Court concluded that the federal government lacked jurisdiction to charge the defendants and reversed the judgment of the district court.[26]

Impact of Ruling: The Court reasoned that if the inability to freely contract was a badge of slavery, then any other wrongs done to an individual would be enforceable by Congress under the Thirteenth Amendment. The Supreme Court ruled that the federal government did not have the constitutional power to convict defendants for using force and intimidation to prevent African American citizens from performing their employment contracts. The court held that: (1) the Thirteenth Amendment's protection extends to all races, not just the African race and that (2) the defendants' violent acts that prevented the employees from freely exercising their right to contract were not a badge of slavery.[27]

Subsequent History: In *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, the Supreme Court overruled *Hodges,*[28] reasoning that Congress has the power under the Thirteenth Amendment to "determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation."[29]

1938

New Negro Alliance v. Sanitary Grocery Co. 303 U.S. 552

Summary of Facts and Issues: New Negro Alliance requested that retail stores operated by Sanitary Grocery Co. adopt a policy of "employing negro clerks in certain of its stores in the course of personnel changes."[30] After the retailer ignored the request, New Negro Alliance "caused one person to patrol in front of one of the respondent's stores on one day carrying a placard which said, 'Do Your Part! Buy Where You Can Work! No Negroes Employed Here!' and caused or threatened a similar patrol of two other stores. . . ."[31] The retailer sought to enjoin New Negro Alliance from picketing, patrolling, boycotting, or urging others to boycott the retailer's stores.[32] The trial court ruled that labor laws had no application to the dispute and entered a decree prohibiting the New Negro Alliance from picketing, protesting, or boycotting the retailer.[33] The appellate court affirmed, holding that the issue was not a labor dispute within the meaning of the Norris-La Guardia Act, which is a factor in determining the jurisdiction of federal courts in issuing injunctions.[34] Therefore, the trial court had jurisdiction to enter the injunction. The Supreme Court reversed the decree, holding that under the Norris-La Guardia Act, "it was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning 'terms and conditions of employment' in an industry or a plant or a place of business should be lawful."[35]

Impact of Ruling: The Court's interpretation of the term "labor dispute" in section 13 of the Norris-LaGuardia Act removed federal courts' jurisdiction to issue an injunction prohibiting labor action in cases involving labor disputes between labor unions seeking to represent employees and employers and between those seeking employment and potential employers.[36] By its terms, the Act permitted the picketing of company stores by any group with an interest in the dispute, including the terms and conditions of employment, which extended to the activities of an independent corporation demanding that the stores employ African American workers. The Act did not proscribe any particular background or motive for labor action.[37]

1941

Mitchell v. U.S. 313 U.S. 80

Summary of Facts and Issues: The Interstate Commerce Commission claimed that it lacked the ability to enforce a statute prohibiting discrimination in interstate transportation.[38] Upon entering Arkansas, an employee of a railroad company excluded from a Pullman carriage an African American U.S. Congressperson who was traveling across country.[39] The available car lacked the amenities of the Pullman car, such as air conditioning.[40] The United States Supreme Court held that the point of the statute was to prevent discrimination, including racial discrimination, and that the Commission's purpose was precisely to determine the fairness of the railroad carrier's practices.[41] The Commission's determination that there was no violation of the Interstate Commerce Act because of an insufficient volume of African American passengers failed to recognize that the Act prohibited even a single incident in violation of the Act.[42] Accordingly, subsequent actions by the railroad carrier to ensure that there would be no repetition of the discrimination was not sufficient to avoid liability under the Interstate Commerce Act.[43]

Impact of Ruling: The purpose of the Interstate Commerce Act, beginning at title 49 United States Code section 1, was to end discrimination in interstate transportation.[44] The Interstate Commerce Commission had jurisdiction to determine whether a railroad carrier engaged in unlawful discrimination in failing to provide equal sleeping cars to different races, and a passenger had standing to bring suit even though they did not show that they intended to take another journey on the same train.[45] The Act requires carriers to provide equally comfortable accommodations to people of different races and a single instance of discrimination is sufficient to violate the Act even if the carrier's subsequent actions remedy the issue.[46]

1942

Taylor v. State of Ga. 315 U.S. 25

Summary of Facts and Issues: The United States Supreme Court held that a Georgia statute which would

in effect require peonage (a form of coerced labor) or threat of penal sanctions was a form of involuntary servitude and thereby violated the Thirteenth Amendment and the Act of 1867.[47]

Impact of Ruling: The Court established that the Thirteenth Amendment prohibits more than slavery. The Supreme Court made it clear that "involuntary servitude" encompasses compelling debtors to work to repay debt, even if the contract was voluntary at the formation, if the consequence of the refusal or inability to work was a threat of penal sanction.[48]

1944

Pollock v. Williams 322 U.S. 4

Summary of Facts and Issues: Emmanuel Pollock was charged under a Florida statute making it a misdemeanor to induce advances with intent to defraud by a promise to perform labor and failing to perform the labor for which money was obtained.[49] Under the Florida statute, the failure to perform the labor for which the money was obtained was prima facie evidence of intent to defraud.[50] The Supreme Court held that the Florida statute violated the Thirteenth Amendment and the Federal Antipeonage Act, whose aim was not merely to end slavery, but to maintain a system of completely free and voluntary labor throughout the United States.[51]

Impact of Ruling: Despite the Antipeonage Act of 1867, peonage and other forms of coerced labor continued to exist in the United States by virtue of state laws like the Florida statute in this case. The Court noted that state statutes that presume intent and enforce peonage have a coercive effect in producing guilty pleas.[52] Therefore, the Court rejected the state's argument that although the presumption of intent language was omitted from the statute during its 1913 revision, the procedural presumption of intent was not at issue in this case because Pollock pleaded guilty to the charge.[53] The Court took a holistic approach to the reading of the Florida statute and found that the effect of peonage invalidated the entire statute.

Steele v. Louisville & N.R. Co. 323 U.S. 192

Summary of Facts and Issues: An African American locomotive fireman employed by Louisville & N.R. Co. sued on behalf of himself and other African American firemen who were a minority of all firemen employed by the railroad, and who were essentially required to accept representation by the union chosen by the majority white firemen.[54] This union excluded African Americans from membership.[55] In 1940, the union, without informing the African American firemen, served notice to the railroad and 20 other railroads of the union's desire to amend the existing collective bargaining agreement to exclude all African American firemen from the service.[56] The union and railroads subsequently entered into a new agreement whereby African American firemen could not occupy more than 50 percent of the firemen positions in each class of service in each seniority district.[57] The agreement also controlled the seniority rights of African American firemen and their employment.[58] The Supreme Court held that under the 1934 Railway Labor Act the labor union chosen to act on behalf of a craft has a duty to represent all members of that craft regardless of union affiliation, and has at least the same duty to represent the interests of non-union African American people excluded from union membership as does a legislature under the Fourteenth Amendment's equal protection clause.[59]

Impact of Ruling: Section 2 of the 1934 Railway Labor Act empowered the labor union with the largest membership to act as exclusive bargaining representative of the craft of locomotive firemen. In this case, the labor union excluded African American firemen from its membership and bargained with the railroad to limit the number of African American firemen employed in various positions. The Court interpreted the statute to require a union to represent the interests of African American craftspeople, and to prohibit discrimination by the union against non-members on the basis of race.

Subsequent History: In companion case, *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76* (1944) 323 U.S. 210, the Supreme Court affirmed the jurisdiction of federal courts under the Railway Labor Act.[60] Later, in *Graham v. Brotherhood of Locomotive Firemen and Enginemen* (1949) 338 U.S. 232, the Supreme Court again affirmed its holding in *Steele v. Louisville & N.R. Co., supra,* following the union's latest attempt to discriminate against African American firemen after the union negotiated an agreement with the Southern railroads to demote and make non-promotable African American firemen in favor of white firemen, irrespective of seniority.[61] The Supreme Court reaffirmed that the Railway Labor Act imposes upon the union the duty to represent all members of the craft without discrimination and invests a racial minority of the craft with the right to enforce that duty.[62] Still, in *Brotherhood of R. R. Trainmen v. Howard* (1952) 343 U.S. 768, the union there, by agreement, forced the railroad to agree to discharge African American train porters and instead fill their positions with white men, who under the agreement would do less work for more pay.[63] This "aggressive hostility" to the employment of African Americans employed in train, engine, and yard services led the Supreme Court again to affirm its holdings in *Steele* and *Graham* that the racial discrimination practiced by the union was unlawful, whether African Americans are classified as train porters, brakemen, or something else, and that federal courts have jurisdiction to provide a remedy.[64]

1969

Glover v. St. Louis-San Francisco Ry. Co. 393 U.S. 324

Summary of Facts and Issues: Thirteen petitioners, eight of whom were African American, despite being qualified for higher positions, were classified as "helpers" for years and the railroad refused to promote them.[65] The petitioners alleged that apprentices were made to carry out jobs equivalent to the higher positions, but to avoid promoting any African American employees, the railroad did not promote any of the petitioners.[66] The Railway Labor Act gives the Railroad Adjustment Board exclusive jurisdiction over suits between employees and carriers, but as the Court observed this case was between employees and the union and management.[67] Respondents moved to dismiss the case because petitioners had not exhausted other remedies, namely, filing a grievance.[68] However, representatives had told respondents that nothing would be done and that a formal complaint would be a waste of time.[69] The Supreme Court held that in this matter, jurisdiction over the union and railroad was proper because the Railroad Adjustment Board had no power to order the kind of relief necessary in this case.[70] Further, the Court held that while in some cases there may be a requirement to exhaust administrative remedies, the exhaustion requirement is subject to exceptions such as the case here where exhaustion would defeat the overall purpose of the federal labor relations laws and the circumstances of the case indicated that any effort to proceed formally with contractual or administrative remedies would be wholly futile.[71]

Impact of Ruling: The Court determined that under the Railway Labor Act, the Railroad Adjustment Board did not have exclusive jurisdiction to interpret the terms of the collective bargaining agreement in this case. Plaintiffs were not required to exhaust all remedies for grievances, as the circumstances of this case were determined to have fallen under the exception for instances in which filing a grievance would be futile.

1971

Griggs v. Duke Power Co. 401 U.S. 424

Summary of Facts and Issues: Defendant Duke Power Company required passage of two aptitude tests and a high school degree for applicants to be placed into a higher-waged department.[72] African American employees challenged the policy under the Civil Rights Act. The court held that employers were in violation of the Civil Rights Act if they required standardized intelligence tests or a high school education if it was not significantly related to job performance.[73]

Impact of Ruling: Title VII of the Civil Rights Act of 1964 prohibits neutral employment practices that discriminate on the basis of a protected trait, regardless of intent.[74] Here, the aptitude tests were not shown to be related to job performance and they disproportionately disqualified African American applicants as compared to white applicants.[75]

1973

McDonnell Douglas Corp. v. Green 411 U.S. 792

Summary of Facts and Issues: An African American mechanic and laboratory technician was laid off from his job with McDonnell Douglas Corp.[76] The employee (Green) was a long-time activist in the civil rights movement and claimed that his discharge and McDonnell Douglas's general hiring practices were racially motivated.[77] Green subsequently took part in at least one protest against the corporation, which disrupted its operation by blocking access to the plant.[78] Following the protest, McDonnell Douglas publicly advertised for qualified mechanics.[79] Green applied for the position and was denied based on his participation in the protests.[80] Green filed a complaint with the Equal Employment Opportunity Commission alleging McDonnell Douglas refused to rehire him because of his race and persistent involvement in the civil rights movement, in violation of the Civil Rights Act of 1964.[81] The Commission issued a right to sue letter making no finding with respect to Green's allegation of racial bias, but finding reasonable cause to believe that Green had been fired because of his civil rights activity.[82] Following a dismissal and subsequent appeal, the case was brought before the Supreme Court to decide the order and allocation of proof in a private, non-class action challenging employment discrimination.[83] The Court held, "[t]he complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."[84] The Court found that Green had proved a prima facie case and that the burden then shifted to McDonnell Douglas to articulate some legitimate, nondiscriminatory reason for the employee's rejection.[85] If the employer successfully articulates this reason, the burden then shifts back to the employee to prove that the reason was in fact pretext.[86] The case was returned to the trial court to undergo this inquiry.

Impact of Ruling: In establishing a case of racial employment discrimination, the Court set forth the applicable

rules as to burden of proof and how it shifts upon the making of a prima facie case. This important framework reconciled the lack of harmony among the circuit courts.[87]

Subsequent History: In *Hazen Paper Co. v. Biggins* (1993) 507 U.S. 604, the Supreme Court held that in a disparate treatment case, liability depends on whether the protected trait actually motivated the employer's decision, and that whatever the employer's decision-making process, a disparate treatment claim cannot succeed unless the employee's protected trait actually played a role in that process and had a determinative influence on the outcome.[88]

1975

Johnson v. Railway Exp. Agency, Inc. 421 U.S. 454

Summary of Facts and Issues: An African American railway employee filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging that the railway company discriminated against African American employees with respect to seniority and job assignments.[89] Three weeks after the employee filed his complaint, he was terminated.[90] More than two and a half years after filing his complaint with the EEOC, the Commission issued a decision finding reasonable cause to believe the employee's allegations.[91] It was over nine more months before the EEOC gave the employee his right to sue letter to institute an action under title VII of the Civil Rights Act of 1964.[92] During that time, the statute of limitations had run on the employee's potential concurrent claim under 42 U.S.C. section 1981.[93] The Supreme Court held that if a worker experiences racism in private employment, there are different ways they can seek federal help and take action to resolve the issue, including by pursuing a claim under title VII of the Civil Rights Act of 1964 and/or pursing an action under 42 U.S.C. section 1981.[94] The Court further held that just because someone files a timely discrimination claim with the EEOC, it does not pause or stop the deadline for filing a legal case based on the same facts under 42 U.S.C. section 1981, which exists co-extensively with title VII.[95] In other words, the clock for the legal time limit continues to run regardless of the EEOC filing.[96]

Impact of Ruling: Racial discrimination by a private employer in making hiring decisions is prohibited under the law. This case clarified that section 1981 affords a federal remedy against discrimination in private employment on the basis of race.

Subsequent History: The Supreme Court in *International Union of Elec., Radio and Mach. Workers, AFL-CIO, Local 790 v. Robbins & Myers, Inc.* (1976) 429 U.S. 229 later held that the existence and utilization of grievance or arbitration procedures under a collective bargaining contract also does not toll running of limitations period for filing charge of discriminatory employment practices with the Equal Employment Opportunity Commission, since Civil Rights Act remedies are independent of other preexisting remedies available to an aggrieved employee.[97]

Albemarle Paper Co. v. Moody 422 U.S. 405

Summary of Facts and Issues: A class of African American employees at a paper mill sued the mill under title VII asking the district court to enjoin every employment practice, policy, and custom that violated title VII.[98] The key issues at trial were the "plant's seniority system, its program of employment testing, and the question of [back pay]."[99] The plant also required a high school diploma for certain positions.[100] The district court found the seniority system discriminatory and ordered the mill to implement a plant-wide seniority system.[101] Although the district court held the high school diploma requirement invalid, it concluded that the testing requirements were valid.[102] Prior to trial, the mill engaged an industrial psychologist to study job relatedness, and the study found "statistically significant correlation with supervisorial ratings in three job groupings for the Beta Test, in seven job groupings for either Form A or Form B of the Wonderlic Test, and in two job groupings for the required battery of both the Beta and the Wonderlic Tests."[103] The district court concluded that the validation study had proven that the testing requirements were job related and thus valid.[104] The district court also determined that the employees were not entitled to back pay under the job seniority program because there was no evidence of bad faith.[105] The court of appeals reversed, holding that the employees were entitled to back pay and that the testing requirements should have been enjoined.[106] The United States Supreme Court agreed with the court of appeals that the judgment should be vacated.[107] Although the Supreme Court had previously held in *Griggs v. Duke Power Co., supra,* 401 U.S. 424 that an employer could use a test for hiring or promoting employees so long as the test was closely related to the skills and abilities required for the job, the mill in this matter had failed to demonstrate based on its own study that the testing program was sufficiently related to each of the job ranks in question.[108] The Supreme Court returned the case to the district court for it to reconsider the issues of back pay and the job-related testing in light of the Court's clarification of the standards related to those issues.[109]

Impact of Ruling: In employment, employers can implement various tests for hiring or promoting employees. If a test is found to be discriminatory and unnecessary, then it would be illegal to use it. However, if a test is deemed necessary for the specific job, it could still be used. With respect to the other issues decided in this case, the Court resolved a conflict among the circuit courts and held that "given a finding of unlawful discrimination, [back pay]

should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination."[110]

Subsequent History: The Civil Rights Act of 1991 created a right to recover compensatory and punitive damages for certain violations of title VII of the Civil Rights Act of 1964.[111] The Act added additional remedies for a violation, beyond equitable remedies such as back pay.

1976

Brown v. General Services Administration 425 U.S. 820

Summary of Facts and Issues: An African American employed by a federal agency alleged that he was discriminated against because of his race in receiving a promotion.[112] The employee filed a complaint with the agency's equal employment opportunity office and was informed by letter that race was not a factor in the decision not to promote him.[113] The director's letter also informed him that if he chose, he could carry the administrative process further by lodging an appeal with the Board of Appeals and Review of the Civil Service Commission and that, alternatively, he could file suit within 30 days in federal district court.[114] The employee filed suit in federal district court 42 days later and the court dismissed the action because the employee did not file the suit within 30 days.[115] The Supreme Court held that the applicable statute creating the administrative and judicial enforcement mechanism with respect to federal employment was the exclusive judicial remedy for claims of discrimination.[116] Based on that statutory scheme, the employee's complaint was properly dismissed for failure to timely file his complaint.[117]

Impact of Ruling: The Civil Rights Act of 1964 as amended provides the exclusive remedy for claims of discrimination in federal employment. This decision validated the complementary administrative and judicial enforcement mechanism designed to eradicate federal employment discrimination.

Washington v. Davis 426 U.S. 229

Summary of Facts and Issues: Two African American police officers with the District of Columbia Metropolitan Police Department sued alleging that the promotion policies of the Department were racially discriminatory.[118] Two African American applicants joined the complaint alleging that the recruiting testing program also discriminated on the basis of race and disproportionately excluded a high number African American applicants.[119] Both claims challenged the practices under the due process clause of the Fifth Amendment to the United States Constitution, 42 U.S.C. section 1981, and a provision of the District of Columbia Code.[120] The United States Supreme Court held that the police department's hiring practice of a verbal skills test did not discriminate on the basis of race.[121] In so holding, the Court stated that the standard for adjudicating claims of invidious racial discrimination under the due process clause of the Fifth Amendment is not identical to the standards applicable under the Equal Employment Opportunity Act.[122] The Court further held that when evaluating a claim for discrimination under the equal protection clause, disproportionate impact alone, even with respect to race, does not trigger strict scrutiny.[123]

Impact of Ruling: This ruling has had a significant impact in employment discrimination actions because it has made it more difficult for plaintiffs to challenge policies or actions that have a discriminatory impact but may not have been intentionally discriminatory. This is because plaintiffs must now prove discriminatory intent, which can be difficult to demonstrate.

1977

International Broth. of Teamsters v. U.S. 431 U.S. 324

Summary of Facts and Issues: The United States as plaintiff brought an action against an employer under provisions of the Civil Rights Act of 1964 alleging that the employer followed hiring, assignment, and promotion policies that discriminated against African American employees and employees with Spanish surnames.[124] The trial court found that the employer had indeed engaged in a plan and practice of discrimination and that the seniority system violated title VII of the Act.[125] The trial court then fashioned relief by dividing the group of harmed plaintiffs into groups based on degree of harm and when the harm took place in relation to the effective date of title VII.[126] The appellate court rejected the trial court's attempt at dividing the affected class and held that all affected employees were entitled to additional relief.[127] The Supreme Court agreed that the plaintiffs had met their burden in proving system-wide discrimination and reaffirmed that statistical analyses serve an important role in establishing racial discrimination.[128] With respect to the discriminatory seniority system, the Court reaffirmed its prior holding that retroactive seniority may be awarded as relief from an employer's discriminatory hiring and assignment policies even if the seniority system agreement itself made no provision for such relief.[129] The Court also reaffirmed that under title VII, a practice, procedure, or test that is neutral on its face cannot be maintained if it operates to freeze the status quo of prior discriminatory employment practices.[130] However, "an otherwise

neutral, legitimate seniority system does not become unlawful under Title VII simply because it may perpetuate pre-Act discrimination."[131] The Court concluded that the employer's conduct in this case with respect to the maintenance of the seniority system did not violate the Act because the seniority system did not have its genesis in racial discrimination.[132] The Court further held that an incumbent employee's failure to apply for a job did not necessarily bar the award of retroactive seniority.[133] The Court eventually returned the case to the trial court to make further findings regarding the individual employees' claims.[134]

Impact of Ruling: This case establishes that an otherwise neutral, legitimate seniority system does not become unlawful under title VII because it may perpetuate pre-title VII discrimination, even where the employer has engaged in pre-title VII discriminatory hiring or promotion practices. This case also affirmed the burden shifting framework required in employment discrimination cases and established the principle that a person's failure to submit an application for a job does not inevitably and forever foreclose their entitlement to relief. The example the Court used to illustrate this point is the hypothetical employer who announces a policy of discrimination by a sign reading "Whites Only" on the hiring-office door; victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs.[135] This principle creates a framework for non-applicants to establish employment discrimination. Further, the Court's holding made clear that title VII imposes no requirement that a work force mirror the general population.

Subsequent History: Although the Court in *Teamsters* held that title VII does not require an employer to mirror the demographics of their work force with the general population, it later held in *United Steelworkers of America, AFL-CIO-CLC v. Weber* (1979) 443 U.S. 193 that private sector employers have the discretion under title VII to voluntarily adopt affirmative action plans designed to eliminate a conspicuous racial imbalance in traditionally segregated job categories.[136] In *Weber*, the court was confronted with a collective bargaining scheme that reserved for African American employees 50 percent of the openings in an in-plant craft training program.[137] There, the Court held against the white plaintiff employees because the plan did not unnecessarily trammel the interests of the white employees nor did it require the discharge of white workers and their replacement with new African American trainees.[138] Instead, the plan was a temporary measure that was not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance designed to end as soon as the percentage of African American skilled craft workers in the plant approximated the percentage of African Americans in the local labor force.[139] The 1991 amendments to the Civil Rights Act codified the burden of proof required in disparate impact cases.[140] Under this section, an unlawful employment practice based on disparate impact is established only if (1) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or (2) the complaining party makes a demonstration that there was an alternative employment practice that the respondent refused to adopt (based on the laws as they existed on June 4, 1989).[141]

Hazelwood Sch. Dist. v. United States 433 U.S. 299

Summary of Facts and Issues: The U.S. Attorney General sued a school district, alleging employment discrimination in violation of the Civil Rights Act of 1964.[142] The trial court found that the government had failed to establish a pattern or practice of discrimination and entered judgment for the district.[143] The appellate court reversed, rejecting the trial court's analysis of the statistical data used and instead relying on a comparison of 1970 census figures, showing that 15.4 percent of teachers in that area were African American, while less than 2 percent of Hazelwood's teachers were African American.[144] The Supreme Court reversed and returned the case to the trial court, holding that an employer that makes its employment decisions in a wholly nondiscriminatory way does not violate the Act, even if it previously maintained an all-white work force by purposefully excluding African Americans.[145] The Court reasoned that the government and appellate court relied on statistics that included an exceptional school district whose policy attempted to maintain a 50 percent African American staff, which distorted the comparison with respect to the relevant market.[146] As a result, the trial court's comparison of Hazelwood's teacher work force to its student population fundamentally misconceived the role of statistics in employment discrimination cases.[147] The Court remanded the case to the district court to determine whether to compare the percentage of African American teachers in the school district with the percentage of African American teachers in other school districts in the county, or with the percentage of African American teachers in other school districts in the County and the City of St. Louis combined.[148]

Impact of Ruling: An employer that excluded applicants based on race prior to the Civil Rights Act of 1964 can rebut a plaintiff's prima facie case of discrimination by proving that the racial statistics for the current workforce is a product of pre-title VII hiring.

1982

Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania 458 U.S. 375

Summary of Facts and Issues: Pennsylvania and a group of 12 African American plaintiffs representing a class of minority groups challenged a union's hiring hall system, which originated from a collective bargaining agreement negotiated by the union and local construction trade organizations.149 Under the terms of the agreement, the contracting companies were required to hire engineers from a union referral list.[150] To join the list, an engineer went through a program administered by the union.151 The suit charged that the union systematically denied African American workers access to the referral list and training program, and only referred them for jobs with short hours and low pay.152

Impact of Ruling: The Court ruled that liability cannot be imposed through section 1981 of the Civil Rights Act of 1866 without proof of intentional discrimination, and that a showing of a disparate impact of a race-neutral policy on a racial minority is not sufficient to establish a claim.153 The Court reasoned that since the law was passed to protect freedmen from intentional discrimination by whites who sought to "make their former slaves dependent serfs [and] victims of unjust laws," race-neutral policies were not liable under the Act.154 This holding raised the standard for a plaintiff alleging racial discrimination. If an employer (or union) imposes policies that have a negative effect on a racial minority, such as an exam or referral system, they are not liable under section 1981, unless the employee can produce evidence of intentional discrimination.[155]

1986

Local 28 of the Sheet Metal Workers' International Association v. Equal Employment Opportunity Commission 478 U.S. 421

Summary of Facts and Issues: A union was found culpable of "engaging in a pattern and practice of discrimination against black and Hispanic individuals . . . in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and ordered to end their discriminatory practices, and to admit a certain percentage of nonwhites to union membership by July 1981."[156] The trial court established a quota goal of 29 percent nonwhite membership, based on the percentage of nonwhites in the relevant labor pool in New York City, and ordered the union to meet the goal by July 1, 1981.[157] In 1982 and 1983, the union had not met the goal as ordered by the trial court and the court subsequently found the union guilty of contempt for disobeying the court's earlier order.[158] The trial court then established a new quota of 29.23 percent nonwhite membership based on labor pool covered by the newly expanded union, with a compliance deadline of August 31 1987.[159] Among the issues decided by the Supreme Court was whether contempt was the appropriate remedy and whether the trial court's quota goal was an available remedy under title VII of the Civil Rights Act of 1964.[160] The Supreme Court held that section 706(g) of the Act does not foreclose a district court from instituting some sort of racial preference where necessary to remedy past discrimination, although such relief is not always proper.[161] In so holding, the Court concluded that the contempt fines and special fund orders were proper remedies for civil contempt and that the trial court properly appointed an administrator to supervise the union's compliance with the court's orders.[162]

Impact of Ruling: Although the Court did not determine the proper test to be applied in analyzing the constitutionality of race-conscious remedial measures, the Court did agree that a district court may, in appropriate circumstances, order preferential relief benefitting individuals who are not the actual victims of discrimination, as a remedy for violations of title VII.[163]

1989

Wards Cove Packing Co. v. Atonio 490 U.S. 642

Summary of Facts and Issues: Defendant owned salmon canneries and placed nonwhite Filipinos and Alaska Natives in its unskilled cannery positions and whites in its skilled cannery positions.[164] "Virtually all of the noncannery jobs pay more than cannery positions. The predominantly white noncannery workers and the predominantly nonwhite cannery employees live in separate dormitories and eat in separate mess halls."[165] Plaintiffs, a class of nonwhite cannery workers, sued the company alleging racial discrimination and discriminatory hiring practices.[166] The Supreme Court held that in this case, statistical evidence of a disproportionate race ratio itself did not establish a sufficient case of disparate impact in violation of title VII.[167] The Court held that the courts below relied on a flawed comparison between the racial composition of the cannery work force and that of the noncannery work force as being probative of a prima facie case of disparate impact in the selection of noncannery workers, when the cannery work force in no way reflected the pool of qualified job applicants or the qualified population in the labor force.[168] In so holding, the Court reasoned that "[m]easuring alleged discrimination in the selection of accountants, managers, boat captains, electricians, doctors, and engineers—and the long list of other 'skilled' noncannery positions found to exist by the District Court . . . by comparing the number of nonwhites occupying these jobs to the number of nonwhites filling

cannery worker positions is nonsensical. If the absence of minorities holding such skilled positions is due to a dearth of qualified nonwhite applicants (for reasons that are not petitioners' fault), petitioners' selection methods or employment practices cannot be said to have had a 'disparate impact' on nonwhites."[169]

Impact of Ruling: A statistical imbalance between white and nonwhite employees, by itself, does not amount to a solid and sufficient showing of violating title VII. A title VII plaintiff does not make out a case of disparate impact simply by showing that, "at the bottom line," there is racial imbalance in the work force.[170] As a general matter, a plaintiff must demonstrate that it is the application of a specific or particular employment practice that has created the disparate impact under attack.

Subsequent History: Title 42 U.S.C. section 2000e-2(k) codified the burden of proof required in disparate impact cases. Under this section, an unlawful employment practice based on disparate impact is established only if (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or (ii) the complaining party makes a demonstration that there was an alternative employment practice that the respondent refused to adopt (based on the laws as they existed on June 4, 1989).[171]

1993

Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla. 508 U.S. 656

Summary of Facts and Issues: A Florida city ordinance granted preferential treatment to certain minority-owned businesses in the award of city contracts.[172] An association of individuals and firms in the construction industry who did business in the city sued under 42 U.S.C. section 1983 to enjoin enforcement of the ordinance, claiming that the ordinance violated the equal protection clause of the Fourteenth Amendment[173] This raised the issue of whether the association and other similarly situated persons had standing to sue when they had not demonstrated that, but for the program, any member would have bid successfully for any of the contracts. The Supreme Court held that "[t]he 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit."[174] In so holding, the Court concluded that the association had standing to sue even though they did not show that one of its members would have received a contract but for the city ordinance.[175]

Impact of Ruling: This case coalesced the principle that when the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing.

2009

Ricci v. DeStefano 557 U.S. 557

Summary of Facts and Issues: White firefighters and one Hispanic firefighter sued New Haven, Connecticut and city officials, alleging that the city violated title VII by refusing to certify the results of a promotional examination, due to the city's belief that the test results would have a disparate impact on non-white firefighters.[176]

Impact of Ruling: The Court held that the city's refusal to certify the results violated title VII because its decision was expressly motivated by race, i.e., the city rejected the test results because "too many whites and not enough minorities would be promoted[.]"[177] Though the city justified its decision as seeking to avoid disparate impact on racial minorities—which title VII also requires—the Court held that the city lacked a strong basis in evidence to support its fear of liability for violating the disparate impact provision.[178]

2010

Lewis v. City of Chicago 560 U.S. 205

Summary of Facts and Issues: The City of Chicago implemented a written test for firefighter applicants, and used scores to sort applicants into well-qualified, qualified, and not qualified buckets, then pulled applicants first from only those "well-qualified" applicants that scored above the cutoff point.[179] Several African American applicants who scored "qualified" on the exam filed complaints with the Equal Opportunity Employment Commission, received right to sue letters, and brought suit against the city, alleging the practice of selecting candidates only from the pool above a certain cut-off had a disparate impact on African Americans in violation of title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-2(k)(1)(A)(i).[180] Title VII requires a person to file their claim within 300 days of an employer executing the alleged unlawful practice.[181] The city claimed plaintiffs' action was untimely since the only practice was the development of the lists in the first place, while plaintiffs' alleged that each round of

selection based on the lists constituted a discriminatory employment practice.[182]

Impact of Ruling: The Supreme Court held that a prima facie disparate impact claim is established by showing the employer "*uses* a particular employment practice that causes a disparate impact" based on race.[183] The city "made use of the practice of excluding those who scored 88 or below each time it filled a new class of firefighters," such that plaintiffs' stated a prima facie claim.[184] And it "use[d] that practice in each round of selection."[185] This expanded the ability of African Americans to challenge employment practices on a disparate impact theory beyond the date of the implementation of the practice. Instead, they can be challenged each time the practice is used.

II. State Statutes and Case Law

1944

James v. Marinship Corp. 25 Cal.2d 721

Summary of Facts and Issues: African American employees sued their employer and labor unions for requiring membership in unions that did not accept African Americans and only provided auxiliary union membership, which lacked the same benefits and privileges of the main union.[186]

Impact of Ruling: The court found "substantial discrimination" in the treatment of those who did accept membership in the auxiliary local, in the lack of similar benefits and privileges, rendering the lack of equality the "same as if they were wholly denied the privilege of membership," resulting in discrimination contrary to the public policy of the United States and California.[187]

Subsequent History: The holding and rationale in *Marinship* developed a common law doctrine known as the "right of fair procedure," seen through its progeny of cases *Pinsker v. Pac. Coast Soc. Of Orthodontists* (1969) 1 Cal.3d 160, *Ezekial v. Winkley* (1977) 20 Cal.3d 267, and *Potvin v. Metro. Life Ins. Co.* (2000) 22 Cal.4th 1060. The cases address the exclusion or expulsion from membership in gatekeeper organizations (such as labor unions, professional societies and associations, and access to staff privileges at hospitals). The right of a fair procedure applies to private decisions which can effectively deprive an individual of the ability to practice a trade and profession, and the "right to practice a lawful trade or profession is sufficiently 'fundamental' to require substantial protection against arbitrary administrative interference."[188] Therefore, any "decision-making must be both substantively rational and procedurally fair."[189]

1970

Alcorn v. Anbro Engineering, Inc. 2 Cal.3d 493

Summary of Facts and Issues: Plaintiff, an African American truck driver, sought damages for intentional infliction of emotional distress and Unruh Act violations. The claims arose from an incident during which plaintiff informed a white field superintendent and foreman that plaintiff had informed other drivers not to drive a certain truck on the job site.[190] The response from a white employee was "rude, violent and insolent," including phrases: "you goddam 'niggers' are not going to tell me about the rules. I don't want any 'niggers' working for me. I am getting rid of all the 'niggers' . . . you're fired."[191]

Impact of Ruling: The Court found plaintiff sufficiently plead a cause of action for damages by pleading the special employer-employee relationship, his particular susceptibility to emotional distress, and his firing without cause.[192] However, the Court also found that "discrimination in employment" was not covered by the Unruh Act.[193]

Subsequent History: In *Isbister v. Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, the Court, reading Unruh broadly, found the term "business establishments" means all private and public groups or organizations and places that provide public accommodations.[194] Then in *Payne v. Anaheim Mem'l Med. Ctr., Inc.* (2005) 130 Cal.App.4th 729, the court found a doctor could sue a hospital under the Unruh Act since the hospital operates as a business which offers its facilities to qualified physicians, who are not its employees, in exchange for fees and other considerations.[195]

1980

Price v. Civil Service Com. 26 Cal.3d 257

Summary of Facts and Issues: The Supreme Court held that the Civil Service Commission of Sacramento County was authorized under the county charter to adopt a general remedial affirmative action program to overcome the effects of its past discriminatory employment practices, and the race-conscious hiring ratios did not violate the county charter, the Fair Employment Practice Act, the federal Civil Rights Act of 1964, or either the federal or state equal protection clauses.[196] The Supreme Court remanded the case to the trial court for a determination as to whether the evidence presented at the hearing of the civil service commission was sufficient to support

the remedial order under the requirements of the commission's rule establishing quota hiring systems where necessary to remedy imbalances.[197]

Impact of Ruling: This case upheld the validity of affirmative action programs in employment, under the state and federal Constitutions.

Subsequent History: However, in *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537 the Court held that Proposition 209 changed the constitutional standard reflected in *Price*, as cited in *Strauss v. Horton* (2009) 46 Cal.4th 364, and found that a municipal program requiring contractors bidding on city projects to utilize a certain percentage of non-white and women subcontractors violated the California Constitution.[198] Proposition 209, a constitutional amendment adopted in 1996, prohibited certain types of affirmative action in public employment, public education, and public contracting.[199] Further, in *Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, after directly violating section 31 of the California Constitution (Proposition 209) through preferential treatment in awarding public contracts to non-white and women owned business, the City challenged the validity of Proposition 209 under the political structure doctrine, an argument under the federal equal protection clause.[200] But in upholding Proposition 209, the Court found that instead of burdening equal treatment, Proposition 209 "directly serves the principle that all government use of race must have a logical end point."

1982[201]

Commodore Home Systems, Inc. v. Superior Court 32 Cal.3d 211

Summary of Facts and Issues: Two African American former employees alleging job discrimination sought punitive damages under Fair Employment and Housing Act (FEHA).[202] The Court stated that *Alcorn* "recognized a right independent of the FEPA to seek emotional-distress and punitive damages when overt racial malice is the motive for a discharge."[203] It then went on to find that all relief generally available in non-contractual actions, including punitive damages, is available under FEHA.[204]

Impact of Ruling: This case established that, in a FEHA civil action, punitive damages and all relief generally available in non-contractual actions may be obtained by the plaintiff.

Subsequent History: In *Dyna-Med, Inc. v. Fair Employment Housing Com.* (1987) 43 Cal.3d 1379, a sex-discrimination case, the Supreme Court held that the FEHA did not authorize the Commission to award punitive damages.[205]

Endnotes

[1] U.S. Const., art IV, § 2, cl. 3.

[2] *Strader v. Graham* (1850) 51 U.S. 82, 93.

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*

[6] *Id.* at pp. 93-94.

[7] *Id.* at p. 94.

[8] U.S. Const., 13th Amend.

[9] *Slaughter-House Cases* (1872) 83 U.S. 36, 59.

[10] *Ibid.*

[11] *Id.* at pp 59-60.

[12] *Id.* at pp. 36-38.

[13] *Id.* at pp. 62-63.

[14] *Id.* at p. 64.

[15] *Id.* at pp. 73-74.

[16] *Id.* at p. 77.

[17] *Id.* at p. 37.

[18] *Id.* at pp. 71-72.

[19] *Clyatt v. U.S.* (1905) 197 U.S. 207, 208.

[20] *Id.* at p. 222.

[21] *Ibid.*

[22] *Hodges v. U.S.* (1906) 203 U.S. 1, 2 overruled in *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409.

[23] *Id.* at pp. 2-3.

[24] *Id.* at p. 4.

[25] *Id.* at pp. 16-17.

[26] *Id.* at p. 20.

[27] See *id.* at pp. 17-18.

[28] *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 441, fn. 78.

[29] *Id.* at p. 440.

[30] *New Negro Alliance v. Sanitary Grocery Co.* (1938) 303 U.S. 552, 559.

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

[34] *Ibid.*

[35] *Id.* at pp. 562-563.

[36] *Id.* at pp. 560-561.

[37] *Id.* at p. 561.

[38] *Mitchell v. U.S.* (1941) 313 U.S. 80, 91–92.

[39] *Id.* at p. 89.

[40] *Id.* at p. 90.

[41] *Id.* at pp. 94-95.

[42] *Id.* at pp. 96-97.

[43] See *id.* at p. 96.

[44] *Id.* at pp. 94-95.

[45] *Id.* at pp. 92-93.

[46] *Id.* at p. 94.

[47] *Taylor v. State of Georgia* (1942) 315 U.S. 25, 29.

[48] *Ibid.*

[49] *Pollock v. Williams* (1944) 322 U.S. 4, 6.

[50] *Id.* at p. 5.

[51] *Id.* at p. 17.

[52] See *id.* at pp. 15-16.

[53] *Id.* at pp. 7, 12-13.

[54] *Steele v. Louisville & N.R. Co.* (1944) 323 U.S. 192, 194–195.

[55] *Ibid.*

[56] *Id.* at p. 195.

[57] *Ibid.*

[58] *Ibid.*

[59] *Id.* at p. 202.

[60] *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76* (1944) 323 U.S. 210, 213.

[61] *Graham v. Brotherhood of Locomotive Firemen and Enginemen* (1949) 338 U.S. 232, 239.

[62] *Ibid.*

[63] *Brotherhood of R. R. Trainmen v. Howard* (1952) 343 U.S. 768, 770.

[64] *Id.* at pp. 774-775.

[65] *Glover v. St. Louis-San Francisco Ry. Co.* (1969) 393 U.S. 324, 325.

[66] *Ibid.*

[67] *Id.* at pp. 328–329.

[68] *Id.* at p. 326.

[69] *Ibid.*

[70] *Id.* at p. 329.

[71] *Id.* at pp. 330-331.

[72] *Griggs v. Duke Power Co.* (1971) 401 U.S. 424, 427-428.

[73] *Id.* at pp. 431-432.

[74] See *id.* at p. 430.

[75] *Id.* at pp. 430-431.

[76] *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 794, modified by *Hazen Paper Co. v. Biggins* (1993) 507 U.S. 604.

[77] *Ibid.*

[78] *Ibid.*

[79] *Id.* at p. 796.

[80] *Ibid.*

[81] *Ibid.*

[82] *Id.* at p. 797.

[83] *Id.* at pp. 798-800.

[84] *Id.* at p. 802.

[85] *Ibid.*

[86] *Id.* at p. 804.

[87] *Id.* at p. 801.

[88] *Hazen Paper Co. v. Biggins* (1993) 507 U.S. 604, 610, 612.

[89] *Johnson v. Railway Exp. Agency, Inc.* (1975) 421 U.S. 454, 455.

[90] *Ibid.*

[91] *Ibid.*

[92] *Id.* at pp. 455-456.

[93] *Id.* at p. 456.

[94] *Id.* at p. 459.

[95] *Id.* at pp. 459-460.

[96] *Id.* at pp. 462-463.

[97] *International Union of Elec., Radio and Mach. Workers, AFL-CIO, Local 790 v. Robbins & Myers, Inc.* (1976) 429 U.S. 229, 236.

[98] *Albemarle Paper Co. v. Moody* (1975) 422 U.S. 405, 408-409.

[99] *Id.* at p. 409.

[100] *Id.* at p. 410.

[101] *Id.* at p. 409.

[102] *Id.* at p. 411.

[103] *Ibid.*

[104] *Ibid.*

[105] *Id.* at p. 410.

[106] *Id.* at pp. 411-412.

[107] *Id.* at p. 436.

[108] *Id.* at pp. 431-432.

[109] *Id.* at p. 436.

[110] *Id.* at p. 421, fn. omitted.

[111] 42 U.S.C. § 1981a(a).

[112] *Brown v. General Services Administration* (1976) 425 U.S. 820, 822.

[113] *Id.* at pp. 822-823.

[114] *Id.* at p. 823.

[115] *Id.* at p. 824.

[116] *Id.* at p. 835.

[117] *Ibid.*

[118] *Washington v. Davis* (1976) 426 U.S. 229, 232.

[119] *Id.* at p. 233.

[120] *Ibid.*

[121] *Id.* at p. 246.

[122] *Id.* at p. 238.

[123] *Id.* at p. 242.

[124] *International Broth. of Teamsters v. U.S.* (1977) 431 U.S. 324, 329.

[125] *Ibid.*

[126] *Id.* at p. 332.

[127] *Id.* at p. 333.

[128] *Id.* at p. 339.

[129] *Id.* at p. 347.

[130] *Id.* at p. 349.

[131] *Id.* at pp. 353-354.

[132] *Id.* at p. 356.

[133] *Id.* at pp. 365-366.

[134] *Id.* at pp. 376-377.

[135] *Id.* at pp. 365-366.

[136] *United Steelworkers of America, AFL-CIO-CLC v. Weber* (1979) 443 U.S. 193, 208.

[137] *Id.* at p. 197.

[138] *Id.* at p. 208.

[139] *Id.* at pp. 208–209; see also *id.* at p. 216 (conc. opn. of Blackmun, J.).

[140] 42 U.S.C. § 2000e-2(k).

[141] *Ibid.*

[142] *Hazelwood School Dist. v. U.S.* (1977) 433 U.S. 299, 301.

[143] *Id.* at p. 304.

[144] *Id.* at pp. 304-305.

[145] *Id.* at p. 307.

[146] See *id.* at p. 303.

[147] *Id.* at p. 308.

[148] *Id.* at p. 313.

[149] *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania* (1982) 458 U.S. 375, 378-380.

[150] *Id.* at p. 379.

[151] *Ibid.*

[152] *Id.* at p. 380.

[153] *Id.* at p. 391.

[154] *Id.* at p. 388.

[155] *Id.* at p. 391.

[156] *Local 28 of Sheet Metal Workers' Intern. Ass'n v. E.E.O.C.* (1986) 478 U.S. 421, 426.

[157] *Id.* at p. 432.

[158] *Id.* at p. 426.

[159] *Id.* at p. 437.

[160] *Id.* at p. 442.

[161] *Id.* at pp. 474-475.

[162] *Id.* at pp. 443-444, 482-483.

[163] *Id.* at p. 475.

[164] *Wards Cove Packing Co., Inc. v. Atonio* (1989) 490 U.S. 642, 647.

[165] *Ibid.*

[166] *Id.* at pp. 647-648.

[167] *Id.* at p. 650.

[168] *Id.* at p. 651.

[169] *Id.* at pp. 651-652, fn. omitted.

[170] *Id.* at p. 657.

[171] 42 U.S.C. § 2000e-2(k).

[172] *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla.* (1993) 508 U.S. 656, 658.

[173] *Id.* at p. 659.

[174] *Id.* at p. 666.

[175] See *id.* at pp. 668-669.

[176] *Ricci v. DeStefano* (2009) 557 U.S. 557, 574-575.

[177] *Id.* at p. 579.

[178] *Id.* at p. 592.

[179] *Lewis v. City of Chicago* (2010) 650 U.S. 205, 208-209.

[180] *Id.* at p. 209.

[181] *Id.* at p. 210.

[182] *Ibid.*

[183] *Id.* at p. 212.

[184] *Ibid.*

[185] *Ibid.*

[186] *James v. Marinship Corp.* (1944) 25 Cal.2d 721, 726.

[187] *Id.* at p. 739.

[188] *Ezekial v. Winkley* (1977) 20 Cal.3d 267, 272.

[189] *Potvin v. Metro. Life Ins. Co.* (2000) 22 Cal.4th 1060, 1066.

[190] *Alcorn v. Anbro Eng'g, Inc.* (1970) 2 Cal.3d 493, 496.

[191] *Id.* at p. 497.

[192] *Id.* at pp. 498-499.

[193] *Id.* at p. 500.

[194] *Isbister v. Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 79.

[195] *Payne v. Anaheim Mem'l Med. Ctr., Inc.* (2005) 130 Cal.App.4th 729, 748-749.

[196] *Price v. Civ. Serv. Com.* (1980) 26 Cal.3d 257, 277, 283.

[197] See *id.* at p. 286.

[198] *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 541–542.

[199] *Id.* at p. 541.

[200] *Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 326.

[201] *Id.* at p. 332.

[202] *Commodore Home Sys., Inc. v. Superior Ct.* (1982) 32 Cal.3d 211, 215.

[203] *Id.* at p. 220.

[204] *Id.* at p. 221.

[205] *Dyna-Med, Inc. v. Fair Employment Housing Com* (1987) 43 Cal.3d 1379, 1383.

CHAPTER 37 Education: Federal Statutes & Case Law

COURTESY OF BETTMANN VIA GETTY IMAGES

I. Federal Statutes and Case Law

1899

***Cummings v. Board of Education of Richmond County* 175 U.S. 528**

Summary of Facts and Issues: African American taxpayers in Richmond County, Georgia, challenged the county's use of their taxes to fund high schools exclusively for white students, arguing it violated the Fourteenth Amendment.[1]

Impact of the Ruling: The Supreme Court rejected the challenge, claiming that there was no "evidence in the record" of "any desire or purpose . . . to discriminate against any of the colored school children[,]" and stated that the administration of state schools was a "matter belonging to the respective states," such that "any interference on the part of Federal authority . . . cannot be justified except in the case of a clear unmistakable disregard of [constitutional] rights."[2] This maintained the ability of states in the South and elsewhere to exclude African Americans from educational opportunities.

Subsequent History: This system of express racial exclusion and segregation in schools would eventually be ruled unconstitutional in *Brown v. Board of Education* (1954) 347 U.S. 483.

1927

***Gong Lum v. Rice* 275 U.S. 78**

Summary of Facts and Issues: In Rosedale, Mississippi, Gong Lum challenged a whites-only public high school's refusal to accept his daughter—who was of Chinese descent—due to her race.[3]

Impact of the Ruling: The Supreme Court rejected that challenge, affirming *Plessy v. Ferguson* (1896) 163 U.S. 537, and the idea that school segregation was legal so long as the state provided a school for all non-white people—whether Chinese American or African American.[4]

Subsequent History: This system of express racial exclusion and segregation in schools would eventually be ruled unconstitutional in *Brown v. Board of Education* (1954) 347 U.S. 483.

Nettie Hunt and her daughter Nickie sit on the steps of the U.S. Supreme Court. (1954)

1938

State of Missouri ex rel. Gaines v. Canada 305 U.S. 337

Summary of Facts and Issues: An African American man challenged Missouri's refusal to admit him to the state university's school of law, arguing that it violated the Fourteenth Amendment's equal protection clause.[5]

Impact of the Ruling: The Court ruled that where a state provides a law school for white students within its borders, then the Fourteenth Amendment's equal protection clause requires that it also provide a law school for African American students.[6] This ruling had the effect of requiring states to either admit African Americans into their law schools or to build a new law school of equal status for African Americans.

1948

Sipuel v. Board of Regents of University of Oklahoma 332 U.S. 631

Summary of Facts and Issues: An African American woman challenged the University of Oklahoma's refusal to admit her to its law school based on her race as a violation of the Fourteenth Amendment's equal protection clause, citing *State of Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337.[7]

Impact of the Ruling: The Supreme Court agreed that the school's refusal to admit her due to race was unconstitutional.[8] The Supreme Court affirmed its decision in *State of Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337, holding that under the Fourteenth Amendment's equal protection clause, the state must provide a law school education for African Americans, just as it does for any other group.[9]

Fisher v. Hurst 333 U.S. 147

Summary of Facts and Issues: Following the Supreme Court's decision in *Sipuel v. Board of Regents of University of Oklahoma* (1948) 332 U.S. 631, the case was remanded to the trial court with directions to issue an order consistent with the Court's ruling.[10] The trial court issued an order stating that, until Oklahoma establishes a separate but equal law school for African Americans, it must admit petitioner into the University of Oklahoma School of Law or refuse to enroll any applicants to the law school.[11] Ada Sipuel Fisher argued that the second part of the order was inconsistent with the Supreme Court's decision, and asked the Supreme Court for a writ of mandamus to force the trial court to act consistent with the Supreme Court's ruling.[12]

Impact of the Ruling: The Supreme Court denied Fisher's request for a writ, holding that the trial court's order was consistent with the Supreme Court's decision.[13] In doing so, the Court endorsed efforts to resist rulings requiring integration; it endorsed the possibility that states could refuse any students admission rather than accept the admission and integration of African Americans into the same schools. As the dissenting Justice Rutledge observed, "the equality required" in the Court's *Sipuel* decision "was equality in fact, not in legal fiction."[14] But the Court's decision did not enforce that equality in fact, as it permitted discriminating states to refuse integration by not providing any public services at all.

Subsequent History: The Court never reversed its decision in *Fisher*, and the course of action it endorsed—denying admissions to all, rather than admitting African Americans—would become the playbook for discriminatory states and communities to resist further laws or rulings requiring integration.[15]

1950

Sweatt v. Painter 339 U.S. 629

Summary of Facts and Issues: Sweatt, an African American man, was denied admission to the University of Texas Law School solely because of his race.[16] He challenged the denial as a violation of the Fourteenth Amendment's equal protection clause.[17] Though Texas eventually created a separate law school for African Americans during the litigation, Sweatt maintained that the separate law school for African Americans could not satisfy the equal protection clause because the separate school was not equal in quality to the University of Texas Law School.[18]

Impact of the Ruling: The Supreme Court ruled that the equal protection clause required Texas to admit Sweatt to the University of Texas Law School.[19] This case further undermined the doctrine of "separate but equal" from *Plessy v. Ferguson* (1896) 163 U.S. 537, acknowledging that the segregated schools for African Americans were, in fact, not equal to schools for white students. Nevertheless, the Supreme Court declined to reexamine the doctrine of "separate but equal" in its decision.[20]

McLaurin v. Oklahoma. State Regents for Higher Education 339 U.S. 637

Summary of Facts and Issues: After the Supreme Court's decisions in *Gaines v. Canada* (1938) 305 U.S. 337 and *Sipuel v. Board of Regents* (1948) 332 U.S. 631, McLaurin was admitted to University of Oklahoma—a white-only university—for a doctorate in education.[21] However, while enrolled, he was assigned to segregated classroom rows, library desks, and lunch tables, separated from the rest of other students.[22] He challenged this segregation as a violation of the equal protection clause.[23]

Impact of the Ruling: The Court ruled this treatment a violation of the equal protection clause.[24] Rejecting the state's arguments that these forms of separation and segregation were "nominal," the Court recognized that such segregation "sets McLaurin apart from the other students," and that "[s]uch restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."[25]

Subsequent History: This case represented one of the several challenges to educational segregation that eventually led to the decision in *Brown v. Board of Education* (1954) 347 U.S. 483.

1952

Briggs v. Elliott 342 U.S. 350

Summary of Facts and Issues: African American school children in Clarendon County, South Carolina brought a suit challenging racial school segregation.[26] The district court held that the statute requiring segregation was valid but that the state had failed to provide equal school facilities for African American children; it thus ordered the state to provide equal facilities and to report within six months on actions taken.[27] The African American children challenged the district court's relief as inadequate, and the state filed its report while the appeal was pending.[28]

Impact of the Ruling: The Supreme Court declined to rule on their constitutional challenge, instead remanding the case to the district court to "be afforded the opportunity to take whatever action it may deem appropriate in light of that report."[29] As the dissenting justices observed, the state's report had no relevance to the constitutionality of segregation,[30] and the Court's ruling delayed its consideration of segregation's constitutionality.

1954

Brown v. Board of Education of Topeka, Shawnee County, Kansas 347 U.S. 483

Summary of Facts and Issues: African American children in Kansas, South Carolina, Virginia, and Delaware challenged racial school segregation as inherently unequal under the Fourteenth Amendment's equal protection clause.[31]

Impact of the Ruling: The United States Supreme Court overruled *Plessy v. Ferguson* (1896) 163 U.S. 537, and its doctrine of "separate but equal," and declared racial school segregation a violation of the equal protection clause.[32]

The Court held that racial segregation in public schools "has a detrimental effect upon the colored children," and "[t]he impact is greater when it has the sanction of the law[.]"[33] Segregation stamps a "sense of inferiority" which sabotages "the motivation of a child to learn[.]"[34] Thus, the Court ruled segregation "inherently unequal" under the equal protection clause, though the Court stated that the precise court-ordered remedy "presents problems of considerable complexity," and ordered a subsequent hearing the next year to decide the remedy.[35]

Subsequent History: In its subsequent rehearing to decide appropriate remedies, the Court, in *Brown v. Board of Education II,* instructed states to "make a prompt and reasonable start" toward compliance and to end segregation with "all deliberate speed."[36] Decades of protracted litigation would follow, as states resisted or delayed efforts to integrate, and African Americans continued to challenge these policies as unconstitutional in cases such as *Milliken v. Bradley* (1974) 418 U.S. 717. Other suits also raised the challenge of how schools would be integrated, including through bussing programs.[37] In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial integration in schools—a violation of the equal protection clause.

Bolling v. Sharpe 347 U.S. 497

Summary of Facts and Issues: African American children filed a class action challenging school segregation within the District of Columbia as a violation of the due process clause of the Fifth Amendment.[38] This case was a companion case, consolidated with *Brown v. Board of Education* (1954) 347 U.S. 483, and both cases were decided the same day.

Impact of the Ruling: The Court ruled that racial segregation in public schools violated the Fifth Amendment's due process clause.[39] The Court noted that even though the Fifth Amendment does not contain an equal protection provision, it does prohibit the arbitrary deprivation of liberty without due process.[40] The Court concluded that racial segregation amounted to such a denial "not reasonably related to any proper governmental objective[.]"[41] The Court also observed that if the Fourteenth Amendment prohibited states from racially segregating schools, "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government."[42]

Subsequent History: Though *Bolling* and its companion case, *Brown v. Board of Education* (1954) 347 U.S. 483, sought the end of racial segregation in schools, subsequent cases discussed throughout this chapter illustrate courts' struggle to enforce that mandate and the Supreme Court's eventual decisions retreating from the efforts to oversee desegregation in cases like *Board of Education of Oklahoma City Public Schools, Independent School Dist. No. 89 v. Dowell* (1991) 498 U.S. 237.

1958

Cooper v. Aaron 358 U.S. 1

Summary of Facts and Issues: After the Supreme Court's decision in *Brown v. Board of Education* (1954) 347 U.S. 4831961, the superintendent and school board of Little Rock, Arkansas, created a desegregation plan to admit African American students to previously all-white schools.[43] However, the state enacted a constitutional amendment commanding the legislature to oppose the Court's desegregation orders, and in the fall of 1957 the Governor of Arkansas dispatched the state's national guard to Little Rock, Arkansas, where the guard "stood shoulder to shoulder . . . and thereby forcibly prevented" African American students from attending the local high school.[44] The United States filed suit, and the district court issued an injunction enjoining the Arkansas governor and state National Guard from preventing African American students from attending the school.[45] The state National Guard withdrew, but when African American children tried to attend the school, Little Rock Police Department and Arkansas State Police officers had to remove the children due to difficulty controlling the hostile white mob that gathered at the school.[46] The President then dispatched federal troops to the high school to allow the African American students to attend throughout the year.[47]

The superintendent and school board of the school district filed a petition seeking to postpone their segregation plan for two and a half years due to the extreme hostility of both the public, the Arkansas Governor, and the state legislature.[48]

Impact of the Ruling: The Court rejected the petition, ruling that "constitutional rights" are "not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature."[49] In doing so, the Court reaffirmed that the school board—along with the governor and legislature—were bound by the federal constitution and the Supreme Court's rulings in *Brown* to make the "constitutional ideal of equal justice under law" a "living truth."[50]

Board of Education of City School District of City of New Rochelle v. Taylor 82 S.Ct. 10

Summary of Facts and Issues: The superintendent and school board of the New Rochelle School District in New York petitioned the Supreme Court to stay a court judgment requiring the school district to immediately desegregate its public elementary school.[51]

Impact of the Ruling: The Supreme Court rejected the petition to stay the desegregation order. The Court held that there was no basis for justifying a stay of the desegregation order, noting the district court's finding that the school board had "deliberately created and purposely maintained" a racially segregated elementary school.[52]

1963

Goss v. Board of Education of City of Knoxville, Tennessee 373 U.S. 683

Summary of Facts and Issues: African American students and their parents brought a class action suit against the public school systems of Knoxville and Davidson County, Tennessee, challenging several aspects of the schools' desegregation plans, including provisions that permitted students to transfer, upon request, from a desegregated school in which he or she was the racial minority, to a school in which he or she was in the racial majority.[53]

Impact of the Ruling: Limiting review solely to the school transfer provision in the school desegregation plans, the Court held that transfer provision violated the Fourteenth Amendment.[54] The Court noted: "It is readily apparent that the transfer system proposed lends itself to perpetuation of segregation," and "no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment."[55]

Subsequent History: The Court reaffirmed *Goss* in *Monroe v. Board of Commissioners of City of Jackson, Tennessee* (1968) 391 U.S. 450, 459-460, when ruling that free transfer policies, to the extent they furthered segregation, were inadequate to satisfy the desegregation requirements of the Fourteenth Amendment and *Brown v. Board of Education* (1954) 347 U.S. 483.

1968

Green v. County School Board of New Kent County 391 U.S. 430

Summary of Facts and Issues: African American students challenged a Virginia statute that divested local school boards of the authority to assign children to particular schools and placed that power in a state board.[56] After the suit was filed, the state adopted a "freedom-of-choice" plan that allowed each student to choose their school or be assigned to the one previously attended if they did not so choose.[57]

Impact of the Ruling: The Supreme Court ruled the "freedom-of-choice" plan inadequate to remedy segregation.[58] In three years of operation, "not a single white child" had chosen to attend the all-African American school, and 85 percent of African Americans in the county still attended the all-African American school.[59] In ruling the plan inadequate, the Court noted that the county's "first step" to desegregate "did not come until some 11

years after *Brown I* was decided," and "[s]uch delays are no longer tolerable."[60]

Subsequent History: Subsequent cases, like *Raney v. Board of Education of Gould School District* (1968) 391 U.S. 443, 447-449, would reaffirm that school "freedom of choice" plans were inadequate to combat school segregation.

Raney v. Board of Ed. of Gould School Dist. 391 U.S. 443

Summary of Facts and Issues: Following *Brown v. Board of Education*, an Arkansas county instituted a "freedom of choice" plan that resulted in racially segregated schools; not a single white student sought to enroll in the all-African American school, and over 85 percent of African American children in the school system attended the all-African American school.[61] Several African American students were denied applications to transfer to the formerly all-white school and brought suit, challenging the school system as unconstitutional.[62]

Impact of the Ruling: The Court held the freedom of choice system inadequate to remedy school segregation.[63] Quoting the Court's decision in the related case *Green v. County School Board of New Kent County* (1968) 391 U.S. 430, the Court observed that "[r]ather than further the dismantling" of segregation, the freedom of choice plan "has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board."[64] The Court ordered the board to formulate a new plan that promised to "realistically" end school segregation.[65]

Monroe v. Bd. of Commissioners of City of Jackson 391 U.S. 450

Summary of Facts and Issues: After a court order to desegregate schools in Jackson, Mississippi, the local school board created a desegregation plan, drawing new school zones and including a transfer provision that allowed any student to transfer to another school with capacity.[66] African American students challenged the provisions, arguing that the new school zones were racially gerrymandered and that the transfer provision maintained and perpetuated segregation.[67]

Impact of the Ruling: The Supreme Court ruled the desegregation plan unconstitutional under the Fourteenth Amendment.[68] Citing the district court's findings, the Court observed that "[b]ecause the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race," will result in segregation.[69] The Court further held that the "free transfer" policy exacerbated (rather than remedied) school segregation, and that the school board's intent to resist desegregation was "evident from its long delay in making any effort whatsoever to desegregate, and the deliberately discriminatory manner in which the Board administered the plan," including that the board granted transfer requests for white students but not African American students.[70]

Subsequent History: Subsequent cases, like *North Carolina State Board of Education v. Swann* (1971) 402 U.S. 43, 45-47, would clarify that school districts would often need to take race-conscious measures to demonstrate adequate efforts to rectify racial segregation. Decades later, however, in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 710-711, 747-748, the Supreme Court ruled that school districts could not use school assignment and transfer policies based on the individual race of students if that school district had not had a former racial segregation policy.

1969

United States v. Montgomery County Board of Education 395 U.S. 225

Summary of Facts and Issue: A federal district court had ordered the Montgomery County Board of Education to desegregate school faculty and staff in the 1966-1967 school year.[71] Finding the board's failure to make adequate progress, in 1968, the court ordered the board to have a certain ratio of white to African American faculty members in each public school.[72] The board appealed the court's order.[73]

Impact of the Ruling: The Supreme Court affirmed the district court's order as a plan that "promises realistically to work" to secure prompt desegregation.[74] The Court also rejected the court of appeals' decision to strike the ratio requirements from the district court order, as a less specific order would lose its efficacy, and the record showed that the district court diligently attempted to tailor its orders to avoid inflicting unnecessary burdens on the county.[75]

Subsequent History: In *Regents of the University of California v. Bakke* (1978) 438 U.S. 265, the Court struck down the university's special admissions program under the Fourteenth Amendment, but held that the state "has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin."[76] In *Gratz v. Bollinger* (2003) 539 U.S. 244, the Court rejected the argument that diversity cannot constitute a compelling state interest, but held that the university's use of race in its current freshman admissions policy was not narrowly tailored to achieve its asserted interest in diversity.[77]

1970

Turner v. Fouche 396 U.S. 346

Summary of Facts and Issues: An African American schoolchild and her father challenged the county's system for selecting school board members, both on its face and as applied.[78] In Taliaferro County, Georgia, the county school board members were selected by a grand jury.[79] The grand jury's members, in turn, were drawn from a jury list selected by a six-member county jury commission.[80] Under state constitutional and statutory provisions, jury commissioners were given discretion to eliminate from grand jury service anyone they found not "upright" or "intelligent."[81] Additionally, the state required a citizen to own real property to be eligible to serve on the board.[82]

Impact of the Ruling: The Supreme Court rejected the facial challenge to the appointment scheme, stating that the system "is not inherently unfair" as the "challenged provisions do not refer to race[.]"[83] However, the Court agreed that the property qualification and the discretionary disqualification system, as applied, violated the equal protection clause.[84] As for the property qualification, the Court ruled it "invidious discrimination" because it presented an arbitrary limitation that bore no connection to educational qualifications.[85] As for the application of the discretionary disqualifications, the Court ruled it a violation of equal protection because there was "a substantial disparity" between the percentage of African American residents in the county and on the jury list, and "the disparity originated, at least in part . . . in the selection process where the jury commissioners invoked their subjective judgment . . . ."[86] For example, 96 percent of those rejected as unintelligent or not upright were African American.[87]

Subsequent History: The Court reaffirmed that a real property ownership requirement to serve on a government board is an unconstitutional limitation, borne of invidious discrimination, in *Quinn v. Millsap* (1989) 491 U.S. 95, 106-107. The Court also acknowledged the importance of statistical disparities as a basis for race-conscious remedies in cases such as *City of Richmond v. J.A. Croson Co.* (1989) 488 U.S. 469, 503.

1971

Davis v. Bd. of School Comrs. of Mobile County 402 U.S. 33

Summary of Facts and Issues: Petitioners challenged the school plan for Mobile County, Alabama, as inadequate to redress racial segregation.[88] The plan treated the eastern part of the metropolitan area, which was separated from the rest of the metropolitan area by a major highway, as isolated from the rest of the school system, and the petitioners challenged the plan as giving inadequate consideration to the possible use of bus transportation and split zoning.[89] Ninety-four percent of the area's African American students lived in the eastern section, and schools in the eastern section were 65 percent African American and 35 percent white, with nine elementary schools in the eastern section attended by 64 percent of all African American elementary school pupils in the metropolitan areas, and having over 90 percent African American enrollment, and over half of African American junior and senior high school students attending all-African American or nearly all-African American schools.[90]

Impact of the Ruling: The Court agreed that Mobile's plan was inadequate, stating that "neighborhood school zoning" alone is not "per se adequate to meet the remedial responsibilities of local boards," and that "the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."[91] The Court observed that "inadequate consideration was given to the possible use of bus transportation and split zoning."[92]

Subsequent History: In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 747-748, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial diversity in schools—a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

McDaniel v. Barresi 402 U.S. 39

Summary of Facts and Issues: White parents challenged the Clarke County, Georgia school desegregation plan and its provisions assigning students to elementary schools.[93] Specifically, the desegregation plan relied upon geographic attendance zones, but also enabled students in five heavily African American zones to attend schools in other attendance zones to ensure the integration of schools—including free transportation where a student had to travel more than 1.5 miles.[94] The parents claimed that the desegregation plan's treatment of students based on their race violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution and title IV of the Civil Rights Act of 1964.[95]

Impact of the Ruling: The Court upheld the desegregation plan as consistent with both the equal protection clause and title IV.[96] It stated that the school board "properly took into account the race of its elementary school children in drawing attendance lines" as "part of its affirmative duty to" end segregation, and that "[a]ny other approach would freeze the status quo that is the very target of all desegregation processes."[97] In so holding, the

Court recognized that race-conscious remedies would be necessary to undo racial discrimination.[98] The Court also noted that the petitioners cited portions of title IV that applied only to federal officials that had no relevance to this suit.[99]

Subsequent History: In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 747-748, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial diversity in schools—a violation of the equal protection clause.

North Carolina State Bd. of Ed. v. Swann 402 U.S. 43

Summary of Facts and Issues: North Carolina enacted the Anti-Busing Law, which prohibited the consideration of a student's race in school assignments or bussing for the purpose of ensuring a racial balance or ratio in the state's public schools.[100] Plaintiffs challenged the law as unconstitutional under the Fourteenth Amendment's equal protection clause.[101]

Impact of the Ruling: The Court ruled the Anti-Busing Law unconstitutional.[102] It recognized that the statute "exploits an apparently neutral form" of "color blind" requirements that in effect "would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing [segregation]."[103] Just as "the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy."[104] Similarly, the Court observed that while "the Constitution does not compel any particular degree of racial balance or mixing," when "past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy," and that an "absolute prohibition against use of such a device" contravenes the Court's commands that "all reasonable methods be available" to remedy discrimination.[105]

Swann v. Charlotte-Mecklenberg Bd. of Ed. 402 U.S. 1

Summary of Facts and Issues: The Charlotte-Mecklenberg school board challenged a federal district court desegregation plan.[106] In addressing the challenge, the Supreme Court addressed four questions: (1) to what extent "racial balance or racial quotas may be used" to remedy a previously segregated system; (2) whether "every all-[African American] and all-white school must be eliminated" before desegregation is achieved; (3) "what the limits are, if any, on the rearrangement of school districts and attendance zones" as a remedial measure; and (4) what the limits are, if any, on the use of transportation to remedy segregation.[107]

Impact of the Ruling: The Court upheld the court-ordered desegregation plan. First, it observed that the district court's use of "mathematical ratios" as "a starting point in the process of shaping a remedy, rather than an inflexible requirement," was permissible.[108] Second, it upheld the court-ordered plan over the school board's alternative, declaring a presumption that school board plans that included schools "substantially disproportionate in their racial composition"—or are "all or predominantly of one race"—are inadequate to remedy segregation.[109] In doing so, the Court also observed that an "optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan."[110] Third, the Court noted that courts had the power to order the creation of non-contiguous or non-compact school attendance zones to remedy segregation, as "'[r]acially neutral' assignment plans . . . may be inadequate . . . to counteract the continuing effects of past school segregation."[111] Fourth, the Court held that "bus transportation" may be used "as one tool of school desegregation," though the Court noted that courts should consider practical considerations, such as time or travel distance.[112]

Subsequent History: In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 747-748, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial integration in schools—a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

1972

Wright v. Council of City of Emporia 407 U.S. 451

Summary of Facts and Issues: The City of Emporia had long contracted to have its schools operated as part of Greenville County's school system.[113] But two weeks after a federal court ordered a desegregation plan to apply to Greensville's schools, the City of Emporia announced its intent to operate a separate school system.[114] Plaintiffs sought an injunction to prevent Emporia from withdrawing its children from county schools on the grounds that the separate school system would interfere with the court's Greensville desegregation order.[115]

Impact of the Ruling: The Court reversed the court of appeals' decision and affirmed the district court's decision to enjoin the City of Emporia from forming a separate school system, as doing so would harm the desegregation of the county's schools.[116] The Court observed that Emporia's separate school system would create a "substantial increase in the proportion of whites in the schools attended by city residents," that the two formerly

all-white schools (with better facilities and equipment than the formerly all-African American schools in the surrounding county) had been located within Emporia, and that Emporia announced its decision two weeks after the court's desegregation order—admitting that the decision to create a separate school system came in response to the desegregation order.[117]

1973

Keyes v. School Dist. No. 1, Denver 413 U.S. 189

Summary of Facts and Issues: Plaintiffs challenged Denver's school system—which "ha[d] never been operated under a constitutional or statutory provision that mandated or permitted racial segregation"— as having implemented a system of de facto segregation sufficient to require a court-ordered desegregation plan.[118]

Impact of the Ruling: The Court held that the plaintiffs had presented a prima facie case of racial segregation in Denver's school system sufficient to justify a court-ordered desegregation plan.[119] It noted the district court's findings that Denver's school board policies "'show an undeviating purpose to isolate [African American] students' in segregated schools 'while preserving the Anglo character of (other) schools.'"[120] Though the discriminatory policies were targeted at Park Hill schools—only a portion of the overall Denver system, the Court rejected the idea that "a substantial portion of the school system can be viewed in isolation from the rest of the district."[121] The Court stated that a finding of intentionally segregative school board actions in a meaningful portion of a school system "creates a presumption" of unlawful segregation requiring a court remedy.[122]

Subsequent History: In *Milliken v. Bradley* (1974) 418 U.S. 717, 752-753 and *Missouri v. Jenkins* (1995) 515 U.S. 70, 102 (*Jenkins II*), the Court would sharply limit its view of segregation to the boundaries of single districts, rejecting remedies that recognized a need to address segregation between school districts as well.

1974

Bob Jones University v. Simon 416 U.S. 725

Summary of Facts and Issues: Bob Jones University was a private university that taught fundamentalist religious beliefs, including the belief that "God intended segregation of the races."[123] In 1970, the IRS announced it would no longer give 501(c)(3) tax-exempt status to private schools with racially discriminatory admissions policies.[124] When the IRS proceeded to commence administrative proceedings to revoke the university's tax-exempt status, the university filed suit seeking an injunction to prevent the IRS from revoking its status, arguing that the IRS's action was beyond its authority and a violation of the university's free exercise, free association, due process, and equal protection rights.[125]

Impact of the Ruling: The Supreme Court held that the Anti-Injunction Act—which barred any lawsuit "for the purpose of restraining the assessment or collection of any tax"—barred the university's lawsuit.[126]

Milliken v. Bradley 418 U.S. 717

Summary of Facts and Issues: Plaintiffs brought a class action suit alleging that the Detroit public school system was racially segregated as a result of the official policies and actions of the state and city officials, and seeking a court-ordered plan to eliminate segregation.[127] Here, the district court determined that a remedy limited to Detroit would fail to end segregation, as the segregation fell between districts, rather than within a single district.[128] The issue in this case was whether—when confronted with segregation between school districts—a federal court could order a desegregation plan cutting across multiple different school districts.[129]

Impact of the Ruling: The Supreme Court ruled that the district court lacked the authority to fashion a desegregation plan beyond the Detroit school district to extend to the suburbs surrounding it.[130] Doing so ignored the way in which segregation cuts across district lines, and marked the Supreme Court's retreat from the commitment to desegregating schools that it articulated in *Brown v. Board of Education* (1954) 347 U.S. 483, 495.

Subsequent History: In *Missouri v. Jenkins* (1995) 515 U.S. 70, 102 (*Jenkins II*), the Court would again constrain its view of segregation to the boundaries of a single district, rejecting remedies that recognized a need to address segregation between school districts as well.

1976

Runyon v. McCrary 427 U.S. 160

Summary of Facts and Issues: Parents of African American children brought suit after their children were denied admission to private schools based solely on race, arguing that such denial violated 42 United States Code section 1981's requirement that all persons "have the same right in every State . . . to make and enforce contracts . . . as is enjoyed by white citizens."[131]

Impact of the Ruling: The Court held that section 1981 prohibits a private school from denying admission to a student because of his or her race.[132] The Court also held that section 1981, as applied here, did not violate the rights of free association or privacy, or a parent's right to direct the education of their children.[133]

Pasadena City Bd. of Education v. Spangler 427 U.S. 424

Summary of Facts and Issues: Following a lawsuit by parents and students seeking to end unconstitutional school segregation in Pasadena, California, a federal court issued an injunction ordering Pasadena, in 1970, to implement a desegregation plan to ensure that there would be no school "with a majority of any minority students."[134] Four years later, school officials filed suit to eliminate the "no majority" requirement and end the court injunction.[135]

Impact of the Ruling: The Court granted the petition and dissolved the court desegregation plan.[136] Because the school district had accomplished the "no majority" requirement in its first year of implementing the plan, the Court ruled that the district court had no further power to police the district's desegregation efforts or require "annual readjustment," even though the district failed to meet that court's requirement in each of the three years after, and even though it "may well be that petitioners have not yet totally achieved" desegregation.[137] This decision further limited the ability of courts to ensure that school districts fully remedied discrimination.

1978

Regents of University of California v. Bakke 438 U.S. 265

Summary of Facts and Issues: A white person who was denied admission to the University of California at Davis Medical School challenged its admissions program, which offered a "special admissions program" for disadvantaged minority students, as a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.[138]

Impact of the Ruling: The Court held that UC Davis's special program violated the equal protection clause.[139] Justice Powell's plurality opinion held that any program using racial classifications, including affirmative action, should be subject to the same strict scrutiny used to strike down invidious statutes.[140] While Justice Powell recognized that race-conscious remedies may be appropriate to remedy discrimination, the opinion determined that no court or legislative body had made findings of discrimination to justify this particular program.[141] And while Justice Powell recognized that educational diversity may represent a compelling interest that could justify a race-conscious program, in this case the program lacked the narrow tailoring necessary to achieve the educational benefits of diversity.[142] Justice Powell suggested, however, that the consideration of race as a "plus factor" might be a constitutionally permissible means of achieving educational diversity.[143]

Subsequent History: The Supreme Court adopted Justice Powell's opinion in *Bakke*—recognizing racial diversity as a compelling interest in education, to be achieved by treating race as one "plus factor" among many—in *Grutter v. Bollinger* (2003) 539 U.S. 306.

1979

Columbus Board of Education v. Penick 443 U.S. 449

Summary of Facts and Issues: In 1973, African American students in the Columbus, Ohio school system alleged that the Columbus Board of Education and its officials created and maintained racial segregation in the district's public schools, in violation of the Fourteenth Amendment to the U.S. Constitution.[144] The district court agreed, and ordered a desegregation plan that included system wide changes, including bussing.[145]

Impact of the Ruling: The Court affirmed the district court's findings that Columbus had taken actions to officially create and maintain segregated schools in its district, even if "segregated schooling was not commanded by state law."[146] The Court also upheld a lower court's order mandating "systemwide" remedies throughout the school district, including a "massive [bus] transportation program," as necessary to respond to "purposefully segregative practices with current, systemwide impact."[147]

Dayton Board of Education v. Brinkman 443 U.S. 526

Summary of Facts and Issues: Students in the Dayton, Ohio, school system, through their parents, filed suit in 1972, alleging that the Dayton Board of Education, the State Board of Education, and various local and state officials were operating a racially segregated school system in violation of the equal protection clause of the Fourteenth Amendment.[148]

Impact of the Ruling: The Court held that the defendants created and maintained a segregated school system, both in 1954 and in 1972—through policies like optional attendance zones and the district's pattern of school construction and site selection, with clearly discriminatory purposes—which required the school district to affirmatively undo the desegregation.[149] The Court also affirmed the court of appeals' citation of the school board's total failure to fulfill its affirmative duty—and its policies that resulted in increased segregation—as further evidence of the system wide discrimination in the district.[150] The Court held that the district had conducted purposeful discrimination in a sufficiently substantial part of a school system to provide sufficient basis for finding system wide discrimination, requiring a remedy of similar scope.[151]

1982

Patsy v. Bd. of Regents of State of Fla. 457 U.S. 496

Summary of Facts and Issues: An applicant for employment with a state university brought suit under 42 U.S.C. section 1983, alleging that the employer had denied her employment opportunities solely on the basis of her race and sex.[152] The district court dismissed her complaint for failure to exhaust available state administrative remedies.[153]

Impact of the Ruling: The Court ruled that exhaustion of state administrative remedies was not a prerequisite to an action under 42 U.S.C. section 1983, based on prior Supreme Court precedent rejecting an exhaustion requirement, as well as the act's purpose, legislative history, historical context, and text.[154] As a result, the Court lessened the burden of a plaintiff seeking to bring a section 1983 case on the basis of race or sex.

Subsequent History: In **Felder v. Casey (1988) 487 U.S. 131, 153,** the Court extended *Patsy* to invalidate a state court procedural rule that had the effect of limiting plaintiffs from vindicating their federal constitutional rights in state court.

Crawford v. L.A. Bd. of Ed. 458 U.S. 527

Summary of Facts and Issues: In 1979, California voters ratified Proposition 1, an amendment to the due process and equal protection clauses of the California Constitution that restricted the power of state courts to impose pupil school reassignment and transportation to integrate schools.[155] Before the proposition passed, California state courts had been able to mandate desegregation via busing under the state Constitution.[156] Proposition 1 brought the power of state courts into alignment with the power of federal courts.[157] Petitioners argued that Proposition 1 used an explicit racial classification that limited the remedies available to African American students seeking to desegregate schools.[158]

Impact of the Ruling: The Supreme Court upheld the amendment to the California Constitution barring the state judiciary from imposing busing to integrate schools.[159] The Court concluded that Proposition 1 did not use a racial classification and the previous standard required by California went beyond what was required by the Fourteenth Amendment.[160]

1984

Grove City Coll. v. Bell 465 U.S. 555

Summary of Facts and Issues: A private college and four of its students filed suit challenging the Department of Education's termination of students' financial assistance based on the college's failure to execute an assurance of compliance with title IX, which prohibited sex discrimination in any educational program receiving federal financial assistance.[161]

Impact of the Ruling: The Court ruled: (1) the college was subject to the statute prohibiting sex discrimination in programs receiving federal financial assistance where some of its students received basic educational opportunity grants, even though the college did not receive any direct federal financial assistance, and (2) the assurance of compliance did not require every part of the college to comply with title IX, only the specific educational program which received federal financial assistance (i.e., the financial aid program).[162]

Subsequent History: In March 1988, Congress enacted the Civil Rights Act of 1987—a part of the act amended title IX to override the Supreme Court's ruling in *Grove* and broaden the application of title IX (and title VI) to the entirety of the educational institution that receives federal funding and not just the specific program that receives it.[163]

1986

Bazemore v. Friday 478 U.S. 385

Summary of Facts and Issues: African American plaintiffs alleged racial discrimination in employment and the provision of services by the North Carolina Agricultural Extension Service, a division of the School of Agriculture and Life Sciences at North Carolina State University.[164] The Plaintiffs alleged discrimination through both the Extension Service's discriminatory pay to African American, as opposed to white, participants, as well as the Extension Service's failure to desegregate the clubs it had established to educate members in home economics and other practical skills.[165]

Impact of the Ruling: The Court held that the lower courts had erred by rejecting plaintiffs' proof of discrimination through statistical disparities in pay.[166] However, the Court rejected the claim that the Extension Service discriminated through the racial segregation in its clubs, because the service had ended its segregated club policy and opened any club to any person, even if the clubs remained racially segregated in fact.[167]

1990

Missouri v. Jenkins 495 U.S. 33

Jenkins I

Summary of Facts and Issues: The Kansas City School District and a group of students sued Missouri for maintaining a segregated school system in the Kansas City metropolitan area.[168] The district court found that the school district and state had maintained a segregated

school system, including substandard educational services to its African American students.[169] The district court issued several desegregation orders, including the financing necessary to implement those remedies.[170] When the district court observed that state law prevented the district from raising property taxes to pay for the desegregation efforts, it first enjoined that law to allow the district to raise additional money to fund the desegregation efforts.[171] When the school district failed to convince voters to approve a tax increase (or secure funding elsewhere), the court eventually issued an injunction raising the school district property's taxes to fund the desegregation efforts.[172]

Impact of the Ruling: The Supreme Court held that the district court lacked the authority to directly order increased taxes; nevertheless, the Court declared that the district court had the power to issue an order authorizing or requiring the school district itself to raise property taxes.[173] The Court reasoned that this approach "protects the function of" local government institutions while also "plac[ing] the responsibility for solutions to the problems of segregation upon those who have themselves created the problems."[174]

Subsequent History: The case would return to the Supreme Court in *Missouri v. Jenkins* (1995) 515 U.S. 70, 100-101 (*Jenkins II*), where the Supreme Court would hold that the additional remedies ordered by the district court went beyond the court's remedial authority.

1991

Bd. of Education of Okla. City Public Schools, Independent School Dist. No. 89 v. Dowell 498 U.S. 237

Summary of Facts and Issues: In 1963, a federal court issued a desegregation order to end racial segregation in Oklahoma City's public schools.[175] In 1977, the court declared that the desegregation plan had achieved "substantial compliance" and closed the case.[176] In 1985, parents of African American children sought to reactivate the court's desegregation order, arguing that the school district had not eliminated desegregation, and that the school board's student reassignment plan based on neighborhoods would cause schools to return to being primarily one-race schools, reproducing segregation.[177]

Impact of the Ruling: The Court held that the district court could properly end its desegregation order if it had found the school district to have previously complied with the order.[178] It held that federal supervision was "intended as a temporary measure to remedy past desegregation" and was "not intended to operate in perpetuity."[179] The Court ruled it proper to dissolve the desegregation order if the school district had complied with it, and remanded for the district court to decide whether the school board made a sufficient showing of compliance.[180] This decision opened the door for courts to withdraw or dissolve the desegregation orders used throughout the country to end segregation in schools.

1992

Freeman v. Pitts 503 U.S. 467

Summary of Facts and Issues: DeKalb County, Georgia, had been subject to a court-ordered desegregation plan since 1969.[181] In 1986, the county school system filed a motion to end the court-supervised plan, seeking a declaration that the school district had ended segregation.[182] Though the district court observed that the school district had largely ended segregation with regard to student assignments, transportation, physical facilities, and extracurricular activities, ending its desegregation orders with respect to those elements, the court declined to end its supervision of desegregation in faculty assignments and resource allocation, including the quality of education offered to white residents versus African Americans.[183]

Impact of the Ruling: The Court affirmed that a federal court in a school desegregation case has discretion to order an incremental or partial withdrawal of its supervision and control before full compliance has been achieved in every area of school operations.[184] This ruling gave courts further discretion to withdraw their supervision of desegregation efforts.

U.S. v. Fordice 505 U.S. 717

Summary of Facts and Issues: In 1975, African American citizens filed suit alleging that Mississippi had maintained a racially segregated university system.[185] After the lawsuit was filed, the parties attempted for 12 years to voluntarily end segregation.[186] By the mid-1980s, more than 99 percent of the state's white students were enrolled at five state universities, and the student bodies at these universities averaged between 80 and 91 percent white.[187] The case proceeded to trial in 1987 to determine whether Mississippi had met its affirmative duty to dismantle its segregated university system.[188]

Impact of the Ruling: The Court ruled that Mississippi implementing "race-neutral" and "free choice" policies (that gave any student the "real freedom" to choose the university they attended) were "not enough" to meet its affirmative duty to dismantle segregation.[189] Even where students have "free choice," that choice may be influenced by "state action that is traceable to the State's prior *de jure* segregation," such as policies "influencing student enrollment decisions or . . . fostering segregation in other facets of the university system."[190] In other words, a segregated school system must do more than end the formal policy of segregation to remedy

that discrimination; it must examine other lingering aspects of the school system that contribute to or perpetuate racial segregation among schools.

1995

Missouri v. Jenkins 515 U.S. 70
Jenkins II

Summary of Facts and Issues: This case arose from the same set of facts as *Jenkins I*, described earlier in this chapter.[191] After that case, Missouri challenged the district court's subsequent orders requiring the state to increase school staff salaries within the Kansas City School District and to continue funding remedial quality education programs.[192]

Impact of the Ruling: The Supreme Court held that the ordered remedies went beyond the court's remedial authority.[193] The Court viewed both the salary increases and funding for remedial quality education programs as seeking to redress racial disparities in school populations through an inter-district tool, by seeking to attract students from surrounding districts to correct racial imbalances rather than a tool using means focused solely within the district where the court identified segregation.[194] This decision further limited the ability of courts to redress racial segregation in schools.

2003

Gratz v. Bollinger 539 U.S. 244

Summary of Facts and Issues: White applicants rejected by the University of Michigan filed suit, arguing that the university's use of racial affirmative action in undergraduate admissions violated the equal protection clause.[195] The University of Michigan used a point system to grade and admit applicants, and automatically assigned bonus points to applicants of a minority race.[196]

Impact of the Ruling: The Court struck down the University of Michigan's mechanical points system as a violation of the equal protection clause.[197] The Court harkened back to *Regents of University of California v. Bakke*, declaring that a rigid and "decisive" racial preference denied applicants individual consideration, making it unconstitutional.[198]

Grutter v. Bollinger 539 U.S. 306

Summary of Facts and Issues: A white applicant denied admission to the University of Michigan Law School challenged the law school's admissions process, which considered racial diversity as a one of many factors in favor of admission, as a violation of title VI and the equal protection clause.[199]

Impact of the Ruling: The Supreme Court rejected the challenge, holding that a school could consider racial diversity as one soft factor among many in deciding whether to admit applicants.[200] The Court endorsed Justice Powell's reasoning in *Bakke*, observing that achieving educational diversity in universities represented a compelling state interest[201] and that consideration of race as one soft factor among many was a flexible, non-mechanical way to achieve that interest while still providing "individualized consideration" to each applicant.[202]

2007

Parents Involved in Community Schools v. Seattle School Dist. No. 1 551 U.S. 701

Summary of Facts and Issues: A Seattle school district adopted a school assignment plan allowing students to apply to whichever district high school they wished to attend, ranking their schools in order of preference.[203] If too many students listed the same school as their first choice, the district used "tiebreakers," including the racial composition of the particular school and the race of the individual student, breaking the tie in favor of admitting the student if doing so would bring the racial balance of the school closer to the district's overall racial balance.[204] A nonprofit organization comprised of parents challenged the school assignment system as a violation of the equal protection clause.[205]

Impact of the Ruling: In a plurality opinion, the Court held that the school assignment system violated the equal protection clause.[206] The Court first observed that the school district did not defend its program as remedying discrimination, as Seattle public schools had not been segregated by law or subject to court-ordered desegregation decrees.[207] The Court then rejected the school district's argument that the program was narrowly tailored to achieve a compelling interest in educational diversity.[208] The Court declared that the program was not narrowly tailored because the school district's plan made race a "decisive" factor when considered as a tiebreaker, rather than "one factor weighed with others."[209] Additionally, the Court suggested that the compelling interest in educational diversity that it recognized in *Grutter* might be limited to the "unique context of higher education."[210]

2014

Schuette v. Coalition to Defend Affirmative Action 572 U.S. 291

Summary of Facts and Issues: In 2006, Michigan voters approved a ballot measure prohibiting race-based preferences in state university enrollment.[211] A coalition of groups challenged the measure, and the lower court

agreed, ruling that the issue of racial preferences in admissions could not be regulated by voter initiative since it divested authority from universities in a way that burdened minority interests.[212]

Impact of Ruling: The United States Supreme Court upheld the affirmative action prohibition. Central to its holding was the notion that voters were authorized to make decisions regarding affirmative action policies, and that the federal judiciary could not (and should not) intrude on that decision-making process.[213] Ultimately, the ruling opened the door for other states to pass similar measures barring affirmative action.

2016

Fisher v. Univ. of Texas 579 U.S. 365

Summary of Facts and Issues: A white applicant denied admission to the University of Texas at Austin challenged the University of Texas's admissions process as a violation of the equal protection clause.[214] The University of Texas had a rule automatically admitting certain students in the top ten percent of a Texas high school.[215] In addition, the University of Texas considers, for other applicants, race as a non-numerical but "meaningful factor" as a component of a student's "Personal Achievement Index," a holistic index measuring a student's leadership, work experience, awards, activities, and other circumstances.[216]

Impact of the Ruling: The Court held that the university's admissions process was constitutional.[217] *Fisher* relied upon the Supreme Court's ruling in *Grutter v. Bollinger* (2003) 539 U.S. 306, which permitted race to be considered as one factor among many in school admissions. Applying *Grutter*, the *Fisher* Court stated that the process was narrowly tailored to achieve a compelling interest in achieving diversity in higher education.[218]

II. State Statutory and Case Law

1874

Ward v. Flood 48 Cal. 36

Summary of Facts and Issues: A writ of mandamus action was brought, seeking admission of an African American child into a public school where white children were taught, even though a separate school for African Americans had been established.

Impact of Ruling: In conceding that African Americans were entitled to equal rights, the Court held that separate schools for African American and Native American children did not violate those rights as long as those separate schools were actually maintained in an appropriate condition. If not, then children would have the right to attend any school in the district.

1971

Serrano v. Priest 5 Cal.3d 584

Summary of Facts and Issues: Los Angeles County public school children and their parents sued over the state's public school financing system which based school funding on local property taxes.

Impact of Ruling: The Court found the program tied school funding, and thus the quality of a child's education, to the wealth of their parents and neighbors, leading to wide disparities in school revenue, which violated equal protection since the state could not identify a compelling interest that could withstand a constitutional challenge.

1975

Santa Barbara School Dist. v. Super. Ct. 13 Cal.3d 315

Summary of Facts and Issues: This case involved an appeal from an injunction which prevented the implementation of a desegregation plan in elementary schools based in part on state initiatives that prohibited all busing based on race in order to attain racial integration, and which repealed several statutory and administrative provisions requiring school districts to achieve specific racial balances.

Impact of Ruling: The Court reversed an injunction, allowing the implementation plan to move forward, and the Court found unconstitutional the state antibusing proposition that barred the assignment of public school children by race as applied to segregated school districts.

Subsequent History: In *Crawford v. Bd. of Education* (1976) 17 Cal.3d 280, following a challenge by the Los Angeles Unified School District of a lower court's order to prepare and implement a desegregation plan, the Court held that school boards have a constitutional obligation to undertake reasonably feasible steps to alleviate racial segregation in public schools, although racial or ethnic percentages may not be established to determine whether a school is segregated. In extending both cases, the Court in *Nat. Assn. for Advancement of Colored People v. San Bernardino City Unified School Dist.* (1976) 17 Cal.3d 311, after finding segregation existed, found the district had a constitutional

obligation to alleviate that segregation, but that no obligation to achieve racially balanced schools exists. The Court furthered this holding in *McKinny v. Oxnard Union High School Dist. Bd. of Trustees* (1982) 31 Cal.3d 79, where it stated that implementation plans are quasi-legislative actions and districts are allowed to determine whether a particular school is segregated, as long as the district's actions are not arbitrary, capricious, or lacking evidentiary support. The Court also stated school boards must consider several criteria to determine whether segregation exists, such as racial imbalances in the student body and attitudes of the community, administration, and staff. In *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, the Court reiterated that the standard of review of a school district's plan is whether the school board acted arbitrarily, capriciously, or without evidentiary support in finding that its plan would not promote racial or ethnic discrimination or segregation.

1976

Bakke v. Regents of Univ. of Cal. 18 Cal.3d 34

Summary of Facts and Issues: White males whose applications to a state medical school were rejected brought an action challenging the legality of the school's special admissions program, under which 16 of the 100 positions in the class were reserved for "disadvantaged" minority students.

Impact of Ruling: The Court found that a deprivation based on race is not subject to a less demanding standard of review because it involves the majority race, and thus a compelling interest must be demonstrated, and here the program failed to carry that burden.

Subsequent History: In *Regents of Univ. of Cal. v. Bakke* (1978) 438 U.S. 265, the United States Supreme Court found race could be one of the factors considered in admissions, but a state must show the challenged classification is necessary to promote a substantial state interest. Additionally, in *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, the Court held that Proposition 209 superseded *DeRonde v. Regents of Univ. of Cal.* (1981) 28 Cal.3d 875, which had approved of a state law school system that considered ethnic minority status as a factor in admission, since Proposition 209 prohibited the type of affirmative action plan approved of in the case.

1996

California Proposition 209 (Cal. Const., art. I, § 31) (1996)

Result of the Proposition Vote: Voters approved the proposition, which created a constitutional amendment to end affirmative action programs in California. Proposition 209 added article I, section 31 to the Constitution: "The State shall not . . . grant preferential treatment to[] any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."[219]

Impact of the Law: The constitutional amendment approved by California voters in 1996 ended affirmative action programs in California. By voting in favor of Proposition 209, California voters essentially removed decision-making authority on affirmative action from government agencies and public schools.

1998

California Education Code Section 200

Summary of Provision: "It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, equal rights, and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor."

California Education Code Section 201

Summary of Provisions: All pupils have the right to participate fully in the educational process, free from discrimination and harassment. California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity. The statute also declares that harassment based on personal characteristics or status creates a hostile environment, and that there is an urgent need to prevent and respond to acts of hate violence and bias-related incidents, and to inform pupils of their rights. It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds.

California Education Code Section 212.1

Summary of Provisions: "Race or ethnicity" includes ancestry, color, ethnic group identification, and ethnic background. "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locs, and twists.

California Education Code Section 220

Summary of Provisions: "No person shall be subjected to discrimination on the basis of disability, gender, gender

identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid."

Endnotes

[1] *Cumming v. Bd. of Ed. of Richmond Cnty.* (1899) 175 U.S. 528, 529.

[2] *Id.* at pp. 544-545.

[3] *Gong Lum v. Rice* (1927) 275 U.S. 78, 80-81.

[4] *Id.* at pp. 85-87.

[5] *State of Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337, 342.

[6] *Id.* at pp. 349-352.

[7] *Sipuel v. Bd. of Regents of Univ. of Okl.* (1948) 332 U.S. 631, 631-633.

[8] *Ibid.*

[9] *Id.* at p. 633.

[10] *Fisher v. Hurst* (1948) 333 U.S. 147, 148.

[11] *Id.* at p. 149.

[12] *Id.* at pp. 147, 150.

[13] *Id.* at pp. 150-151.

[14] *Id.* at pp. 151-152 (dis. opn. of Rutledge, J.).

[15] See, e.g., Smith-Richardson and Burke, *In the 1950s, Rather than Integrate the Public Schools, Virginia Closed Them*, The Guardian (Nov. 27, 2021) (as of Apr. 21, 2023); June-Friesen, *Massive Resistance in a Small Town* (2013) 34 Humanities 5 (as of Apr. 21, 2023); Gershon, *When Cities Closed Pools to Avoid Integration*, JSTOR Daily (June 21, 2019) (as of Apr. 21, 2023).

[16] *Sweatt v. Painter* (1950) 339 U.S. 629, 631.

[17] *Id. at pp. 631-632.*

[18] *Id.* at pp. 632-635.

[19] *Id.* at pp. 635-636.

[20] *Id.* at p. 636.

[21] *McLaurin v. Oklahoma State Regents for Higher Ed.* (1950) 339 U.S. 637, 639-640.

[22] *Id.* at p. 640.

[23] *Ibid.*

[24] *Id.* at pp. 641-642.

[25] *Id.* at p. 641.

[26] *Briggs v. Elliott* (1952) 342 U.S. 350.

[27] *Id.* at p. 351.

[28] *Ibid.*

[29] *Id.* at pp. 351-352.

[30] *Id.* at pp. 352 (dis. opn. of Black, J. and Douglas, J.).

[31] *Brown v. Board of Education* (1954) 347 U.S. 483, 486-488.

[32] *Id.* at pp. 494-495.

[33] *Id.* at p. 494.

[34] *Ibid.*

[35] *Id.* at p. 495.

[36] *Brown v. Bd. of Ed. of Topeka, Kan.* (1955) 349 U.S. 294, 300-301.

[37] See, e,g,, *Swann v. Charlotte-Mecklenburg Bd. of Ed.* (1971) 402 U.S. 1.

[38] *Bolling v. Sharpe* (1954) 347 U.S. 497, 498.

[39] *Id.* at pp. 499-500.

[40] *Id.* at p. 500.

[41] *Ibid.*

[42] *Ibid.*

[43] *Cooper v. Aaron* (1958) 358 U.S. 1, 5-8.

[44] *Id.* at pp. 8-11.

[45] *Id.* at pp. 11-12.

[46] *Id.* at p. 12.

[47] *Ibid.*

[48] *Ibid.*

[49] *Id.* at p. 16.

[50] *Id.* at pp. 19-20.

[51] *Bd. of Ed. of City School District of City of New Rochelle v. Taylor, supra*, 82 S.Ct. at p. 10.

[52] *Id.* at p. 11.

[53] *Goss v. Bd. of Ed. of City of Knoxville* (1963) 373 U.S. 683, 684-686.

[54] *Id.* at pp. 686-689.

[55] *Id.* at pp. 686, 689.

[56] *Green v. Cnty. Sch. Bd. of New Kent Cnty.* (1968) 391 U.S. 430, 432-433.

[57] *Id.* at pp. 433-434.

[58] *Id.* at pp. 440-442.

[59] *Ibid.*

[60] *Id.* at p. 438.

[61] *Raney v. Board of Ed. of Gould Sch. Dist.* (1968) 391 U.S. 443, 445-446.

[62] *Id.* at p. 446.

[63] *Id.* at pp. 447-449.

[64] *Id.* at p. 447-448.

[65] *Id.* at p. 448.

[66] *Monroe v. Bd. of Comm'rs of City of Jackson* (1968) 391 U.S. 450, 453-454.

[67] *Id.* at p. 454.

[68] *Id.* at pp. 459-460.

[69] *Id.* at p. 458.

[70] *Id.* at pp. 458-459.

[71] *United States v. Montgomery County Bd. of Ed.* (1969) 395 U.S. 225, 225-226.

[72] *Id.* at pp. 231-233.

[73] *Ibid.*

[74] *Id.* at pp. 235-237.

[75] *Id.* at pp. 234-235.

[76] *Id.* at p. 320.

[77] *Id.* at pp. 268-272.

[78] *Turner v. Fouche* (1970) 396 U.S. 346, 349.

[79] *Id.* at p. 348.

[80] *Ibid.*

[81] *Id.* at pp. 353-354.

[82] *Id.* at pp. 361-365.

[83] *Id.* at p. 355.

[84] *Id.* at pp. 356-361.

[85] *Id.* at pp. 361-364.

[86] *Id.* at p. 360.

[87] *Id.* at p. 358.

[88] *Davis v. Bd. of School Comrs. of Mobile County* (1971) 402 U.S. 33, 34.

[89] *Id.* at pp. 35-36.

[90] *Id.* at pp. 36-37.

[91] *Id.* at p. 37.

[92] *Id.* at p. 38.

[93] *McDaniel v. Barresi* (1971) 402 U.S. 39, 40.

[94] *Ibid.*

[95] *Id.* at p. 41.

[96] *Ibid.*

[97] *Ibid.*

[98] *Ibid.*

[99] *Id.* at pp. 41-42.

[100] *North Carolina State Bd. of Ed. v. Swann* (1971) 402 U.S. 43, 44-45 & fn. 1.

[101] *Id.* at pp. 43-45.

[102] *Id.* at pp. 45-46.

[103] *Ibid.*

[104] *Id.* at p. 46.

[105] *Ibid.*

[106] *Swann v. Charlotte-Mecklenberg Bd. of Ed.* (1971) 402 US 1 , 11.

[107] *Id.* at p. 22.

[108] *Id.* at pp. 22-25.

[109] *Id.* at pp. 25-27.

[110] *Id.* at p. 26.

[111] *Id.* at pp. 27-29.

[112] *Id.* at pp. 29-31.

[113] *Wright v. Council of City of Emporia* (1972) 407 U.S. 451, 454-455.

[114] *Id.* at p. 456.

[115] *Id.* at p. 458.

[116] *Id.* at p. 453.

[117] *Id.* at pp. 463-466.

[118] *Keyes v. School Dist. No. 1, Denver, Colo.* (1973) 413 U.S. 189, 191.

[119] *Id.* at p. 208.

[120] *Id.* at pp. 198-200.

[121] *Id.* at pp. 200-203.

[122] *Id.* at pp. 208, 213.

[123] *Bob Jones University v. Simon* (1974) 416 U.S. 725, 734-735.

[124] *Id.* at p. 735.

[125] *Id.* at pp. 735-736.

[126] *Id.* at pp. 736-746.

[127] *Milliken v. Bradley* (1974) 418 U.S. 717, 723-724.

[128] *Id.* at pp. 725-735.

[129] *Id.* at pp. 739-740.

[130] *Id.* at pp. 752-753.

[131] *Runyon v. McCrary* (1976) 427 U.S. 160, 163-164.

[132] *Id.* at pp. 172-175.

[133] *Id.* at pp. 175-179.

[134] *Pasadena City Bd. of Education v. Spangler* (1976) 427 U.S. 424, 427-428.

[135] *Id.* at pp. 428-432.

[136] *Id.* at pp. 431-436.

[137] *Id.* at pp. 434-436.

[138] *Regents of University of California v. Bakke* (1978) 438 U.S. 265, 274.

[139] *Id.* at p. 319.

[140] *Id.* at pp. 287-299.

[141] *Id.* at pp. 300-302, 307-310.

[142] *Id.* at pp. 311-320.

[143] *Id.* at pp. 315-320.

[144] *Columbus Bd. of Ed. v. Penick* (1979) 443 U.S. 449, 452.

[145] *Id.* at p. 454; *see also id.* at p. 469 (conc. opn. of Burger, C. J.).

[146] *Id.* at pp. 455-457.

[147] *Id.* at pp. 454, 465-468; see also *id.* at p. 469 (conc. opn. of Burger, C. J.).

[148] *Dayton Board of Education v. Brinkman* (1979) 443 U.S. 526, 530.

[149] *Id.* at pp. 534-540.

[150] *Id.* at p. 541.

[151] *Id.* at pp. 540-542.

[152] *Patsy v. Bd. of Regents of State of Fla.* (1982) 457 U.S. 496, 498.

[153] *Id.* at pp. 498-499.

[154] *Id.* at pp. 502-516.

[155] *Crawford v. L.A. Bd. of Ed.* (1982) 458 U.S. 527, 531-533.

[156] *Id.* at pp. 530-531.

[157] *Id.* at p. 532.

[158] *Id.* at p. 536.

[159] *Id.* at p. 545.

[160] *Id.* at pp. 537-545.

[161] *Grove City College v. Bell* (1984) 465 U.S. 555, 561.

[162] *Id.* at pp. 564-574.

[163] See *Nat'l Collegiate Athletic Ass'n v. Smith* (1999) 525 U.S. 459, 466, fn. 4.

[164] *Bazemore v. Friday* (1986) 478 US 385, 388-391 (conc. opn. of Brennan, J.).

[165] *Ibid.*

[166] *Id.* at pp. 394-404 (conc. opn. of Brennan, J.)

[167] *Id.* at pp. 387-388; see also *id.* at pp. 407-409 (conc. opn. of White, J.).

[168] *Missouri v. Jenkins* (1990) 495 U.S. 33, 37.

[169] *Ibid.*

[170] *Id.* at pp. 38-40.

[171] *Id.* at p. 39.

[172] *Id.* at pp. 39-40.

[173] *Id.* at pp. 50-58.

[174] *Id.* at p. 51.

[175] *Bd. of Education of Okla. City Public Schools, Independent School Dist. No. 89 v. Dowell* (1991) 498 US 237, 240.

[176] *Id.* at pp. 241-242.

[177] *Id.* at p. 242.

[178] *Id.* at pp. 250-251.

[179] *Id.* at pp. 247-248.

[180] *Id.* at pp. 250-251.

[181] *Freeman v. Pitts* (1992) 503 U.S. 467, 471.

[182] *Ibid.*

[183] *Id.* at pp. 480-484.

[184] *Id.* at pp. 485-492.

[185] *United States v. Fordice* (1992) 505 US 717, 723.

[186] *Id.* at p. 724.

[187] *Id.* at pp. 724-725.

[188] *Id.* at p. 725.

[189] *Id.* at pp. 728-732.

[190] *Id.* at pp. 729-732.

[191] *Missouri v. Jenkins* (1995) 515 U.S. 70, 74 (*Jenkins II*).

[192] *Id.* at p. 73.

[193] *Id.* at pp. 89-102.

[194] *Ibid.*

[195] *Gratz v. Bollinger* (2003) 539 U.S. 244, 251-252.

[196] *Id.* at pp. 255-257.

[197] *Id.* at pp 271-276.

[198] *Ibid.*

[199] *Grutter v. Bollinger* (2003) 539 U.S. 306, 316-317.

[200] *Id.* at pp. 335-344.

[201] *Id.* at pp. 325, 327-333.

[202] *Id.* at pp. 334-335.

[203] *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007) 551 U.S. 701, 709-719.

[204] *Ibid.*

[205] *Id.* at pp. 710-711.

[206] *Id.* at pp. 748-749.

[207] *Id.* at pp. 720-721.

[208] *Id.* at pp. 723-725.

[209] *Id.* at p. 723.

[210] *Id.* at pp. 724-726.

[211] *Schuette v. Coalition to Defend Affirmative Action* (2014) 572 U.S. 291, 298-299.

[212] *Id.* at p. 307.

[213] *Id.* at pp. 309-10.

[214] *Fisher v. Univ. of Texas* (2016) 579 U.S. 365, 375.

[215] *Id.* at p. 373.

[216] *Id.* at pp. 371-374.

[217] *Id.* at pp. 377-380.

[218] *Ibid.*

[219] (Cal. Const., art. I, § 231, subd. (a).)

CHAPTER 38 Political Participation: Federal Statutes & Case Law

COURTESY OF UNDERWOOD ARCHIVES VIA GETTY IMAGES

I. Federal Statutes and Case Law

1879

***Strauder v. West Virginia* 100 U.S. 303**

Summary of Facts and Issues: A West Virginia statute provided that only white male persons who were 21 years of age and citizens of the state were eligible to serve as jurors.[1]

Impact of Ruling: The U. S. Supreme Court ruled that a statute denying, on the basis of race, an otherwise qualified person the right and privilege of serving as a juror impermissibly discriminated on the basis of race in violation of the Fourteenth Amendment.[2]

1884

***Ex Parte Yarbrough* 110 U.S. 651**

The Ku Klux Cases

Summary of Facts and Issues: Several members of the Ku Klux Klan were charged under various federal criminal statutes (passed specifically to address expansion of the Ku Klux Klan) with conspiring to intimidate and threaten African Americans, including for the purpose of voter suppression.[3] The defendants challenged the constitutionality of the criminal statutes, arguing that they were beyond the scope of federal authority.

Impact of the Ruling: The U.S. Supreme Court upheld the criminal statutes, finding that the federal government clearly had authority to "protect the elections of which its existence depends."[4] The Court also held that, although the Fifteenth Amendment does not expressly grant the right to vote to African Americans, it effectively did so in states that previously denied them the right to vote.[5]

1903

***Giles v. Harris* 189 U.S. 475**

Summary of Facts and Issues: The plaintiff argued that several Alabama laws related to voter registration and qualifications effectively barred African Americans from voting, albeit not explicitly.[6] The voting laws included a "grandfather clause" that automatically qualified previously registered white voters, but excluded African

A policeman applies an arm lock on comedian Dick Gregory after he left the Leflore County Court House to help Negroes register to vote, Greenwood, MS. (1963)

American voters and subjected them to stringent qualification tests.[7] The plaintiff asserted that these laws were unconstitutional under the Fourteenth and Fifteenth Amendments to the United States Constitution.

Impact of Ruling: The U.S. Supreme Court ruled that it lacked jurisdiction and authority to grant the requested relief. Specifically, the Court held that the requested relief—enrolling the plaintiff as a registered voter—would not remedy the wrong alleged (i.e., that the voting procedures were discriminatory and therefore unconstitutional).[8] The Court also held that it did not have jurisdiction to supervise and rule upon state court voting procedures.[9] This holding essentially gave states permission to pass discriminatory voting procedures and signaled that the federal courts would not intervene.

Subsequent History: Although it does not appear that *Giles v. Harris* has ever been explicitly overturned, the Supreme Court later issued several rulings striking down similar voting restrictions and "grandfather clauses."[10]

1915

Myers v. Anderson 238 U.S. 368

Summary of Facts and Issues: A municipal voter registration and qualification ordinance required that a prospective voter fall into one of three categories: (1) own property; (2) be a naturalized citizen or the son of a naturalized citizen (versus a native-born citizen); or (3) have been registered to vote prior to January 1, 1868.[11] The last requirement, commonly known as a "grandfather clause,"[12] effectively barred all African Americans from voting (unless they owned property or were naturalized citizens), because the cutoff date was prior to ratification of the Fifteenth Amendment to the United States Constitution, while allowing white citizens to vote without meeting those requirements, as they or their forebears were allowed to vote prior to the Fifteenth Amendment.

Impact of Ruling: The U.S. Supreme Court held that the grandfather clause violated the Fifteenth Amendment because it "re-creat[ed] and re-establish[ed] a condition which the Amendment prohibits . . . ."[13] Although the Court observed that the property and citizenship requirements appeared to be constitutional, it held that they too must be struck down since they were intertwined with the unconstitutional provision.[14]

1927

Nixon v. Herndon 273 U.S. 536

Summary of Facts and Issues: A Texas statute stated that, "'in no event shall a negro be eligible to participate in a Democratic party primary election held in the State of Texas . . . .'"[15] Plaintiffs filed suit, arguing that it violated the Fourteenth Amendment.

Impact of Ruling: The U.S. Supreme Court struck down the statute. The Court first held that it had jurisdiction to hear the matter and to award damages, thus rejecting the defendants' claim that the suit raised a non-justiciable political question.[16] The Court then held that the voting restriction clearly violated the Fourteenth Amendment since it discriminated on the basis of race.[17]

1932

Nixon v. Condon 286 U.S. 73

Summary of Facts and Issues: A Texas law allowed political parties to establish "State Executive Committees" with the authority to set voter qualifications.[18] The committee for the Texas Democratic Party adopted a resolution stating that only white individuals could be qualified to vote in primary elections.[19] The law and resolution were challenged under the Fourteenth Amendment to the United States Constitution.

Impact of Ruling: The U.S. Supreme Court held that the committee in question derived its authority from the state and acted on behalf of the state.[20] As the Court stated: "Delegates of the state's power have discharged their official functions in such a way as to discriminate invidiously between white citizens and black."[21] Its conduct was therefore subject to the Fourteenth Amendment, and the provision in question was held unconstitutional.[22]

1935

Grovey v. Townsend 295 U.S. 45

Summary of Facts and Issues: The Texas Democratic Party, at its convention, adopted a resolution permitting only white individuals to vote in its primary.[23] The plaintiff, an African American, was denied the right to vote based on this resolution.[24] He filed suit, arguing that his rights had been violated under the Fourteenth and Fifteenth Amendments to the United States Constitution.

Impact of Ruling: The U.S. Supreme Court held that the voting limitation was not the result of state action. Specifically, it ruled that "the qualifications of citizens to . . . vote at party primaries have been declared by the representatives of the party in convention assembled, and this action upon its face is not state action."[25] Accordingly, the Fourteenth and Fifteenth Amendments did not apply to the restriction, and the dismissal of the suit was affirmed.[26] Until it was overruled, this ruling effectively allowed states, through their political parties, to explicitly discriminate against African Americans by precluding them from participating in the selection of candidates for office.

Subsequent History: In *Smith v. Allwright*, the U.S. Supreme Court relied upon intervening case law holding the Constitution authorized Congress to regulate primary as well as general elections, *U.S. v. Classic* (1941) 313 U.S. 299, to overrule *Grovey v. Townsend*.[27]

1939

Lane v. Wilson 307 U.S. 268

Summary of Facts and Issues: An Oklahoma voter registration scheme set two primary voting criteria: (1) automatic qualification for those who had voted in the general election of 1914, and (2) a 12-day registration period for any prospective voter who had not voted in 1914.[28] Only white individuals had voted in the 1914 election through operation of a "grandfather clause" that had been deemed unconstitutional in a prior case.[29] Any individual who did not register during the 12-day window was permanently barred from voting.

Impact of Ruling: The United States Supreme Court struck down the registration scheme and held that the Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination."[30] The Court reasoned that the registration scheme was merely a perpetuation of the unconstitutional grandfather clause, and that the 12-day period was "too cabined and confined" to undo its harms.[31]

1942

Hill v. Texas 316 U.S. 400

Summary of Facts and Issues: A Texas law set criteria to serve on a grand jury that included, among other requirements, the prior payment of a poll tax, the ownership of property, and the ability to read and write.[32] An African American charged with a crime moved to quash the indictment on the grounds that African Americans had been systematically excluded from the grand jury, in keeping with a years-long scheme to exclude African Americans from serving on grand juries.[33] Evidence adduced at the hearing revealed that an African American had not served on a grand jury for at least the preceding 16 years.[34]

Impact of Ruling: The U.S. Supreme Court held that the petitioner had made out a prima facie case of racial discrimination in the selection of grand jurors.[35] It reasoned that the "continuous omission" of African American jurors could not have been by chance or accident, and that the record showed that the jury commissioners had "made no effort to ascertain whether there were within the county members of the colored race qualified to serve as jurors."[36]

1944

Smith v. Allwright 321 U.S. 649

Summary of Facts and Issues: An African American man sued election judges in Harris County, Texas for their refusal to give him a ballot or to permit him to cast a ballot in the primary election of July 1940, for the nomination of Democratic candidates for the United States Senate and House of Representatives, Governor, and other state officers.[37] The refusal was alleged to have been solely because of the race and color of the proposed voter. The judges argued that the Constitution did not prohibit their conduct, since political primaries were political party affairs, handled by the party and not governmental officers.

Impact of Ruling: The U.S. Supreme Court relied on *U.S. v.* Classic (1941) 313 U.S. 299 to overrule *Grovey v. Townsend* and hold that "state delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party's action the action of the state."[38] The Court found that the state "statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party."[39]

1960

United States v. Raines 362 U.S. 17

Summary of Facts and Issues: The Civil Rights Act of 1957 guaranteed, among other rights, the right to vote regardless of race; it also empowered the U.S. Attorney General to seek an injunction against any conduct deemed to violate that right.[40] The Attorney General used these provisions to file suit against various election officials in Terrell County, Georgia, alleging that the officials had conspired to discriminate against African Americans who sought to register to vote.[41] The defendants challenged the statute under which the Attorney General had filed suit.[42]

Impact of the Ruling: The U.S. Supreme Court held that the statute, as applied in this case, was "clearly" constitutional because the defendants were engaged in state action that violated the Fifteenth Amendment, and thus the Civil Rights Act was "appropriate legislation" to enforce the Fifteenth Amendment.[43] *Raines*, accordingly, was another in the line of cases that reaffirmed federal authority to seek injunctions and criminal prosecutions against state officials who violate African Americans' civil rights.

Gomillion v. Lightfoot 364 U.S. 339

Summary of Facts and Issues: An Alabama redistricting law redefined boundaries of the City of Tuskegee from a square to a 28-sided figure that resulted in exclusion of nearly all African American residents, but that retained all white residents.[44] The redistricting scheme was challenged in court on the basis that it violated the Fifteenth Amendment. The State of Alabama argued that federal courts lacked jurisdiction to address the constitutionality of the law, claiming that states have unfettered rights to reorganize local political subdivisions.[45]

Impact of Ruling: The U.S. Supreme Court rejected Alabama's arguments, holding that federal judicial review is appropriate where "state power is used as an instrument for circumventing a federally protected right,"[46] in this case the Fifteenth Amendment. The matter was remanded to the lower court, where the law in question was struck down.[47]

1961

Gremillion v. Nat. Ass'n for the Advancement of Colored People 366 U.S. 293

Summary of Facts and Issues: A set of Louisiana laws prohibited organizations from doing business in Louisiana if the organization was affiliated with any out-of-state organization whose officers or members were members of the Communist Party or related organizations.[48] The laws also required various filings and affidavits disclosing the organization's membership, and they imposed criminal penalties for failure to do so.[49] The National Association for the Advancement of Colored People (NAACP) challenged the laws, arguing that the provisions violated the First Amendment right to freedom of association.[50]

Impact of Ruling: The U.S. Supreme Court struck down the affiliation law because "it is not consonant with due process to require a person to swear to a fact that he cannot be expected to know . . . or alternatively to refrain from a wholly lawful activity."[51] The Court struck down the disclosure law as violating the First Amendment.[52]

1962

Wood v. Georgia 370 U.S. 375

Summary of Facts and Issues: A Georgia grand jury was empaneled and instructed by a judge to investigate allegations of "bloc voting" by African Americans in Bibb County, Georgia. It was specifically alleged that candidates had paid large sums of money to obtain African American votes.[53] An elected sheriff in the county issued a press release criticizing the judge's actions and arguing that it was a "deplorable example[] of race agitation."[54] The sheriff was charged and convicted of contempt of court, and he appealed the conviction. The Georgia Court of Appeals largely affirmed the conviction.[55]

Impact of Ruling: The U.S. Supreme Court reversed the conviction as violating the First Amendment, holding that "in the absence of some . . . showing of a substantive evil actually designed to impede the course of justice in justification of the exercise of the contempt power to silence the petitioner, his utterances are entitled to be protected."[56]

1964

Henry v. City of Rock Hill 376 U.S. 776

Summary of Facts and Issues: African American protestors assembled to peacefully protest segregation, and they failed to disperse when ordered.[57] They were arrested and later convicted of breach of the peace.[58] On appeal, the South Carolina Supreme Court affirmed the convictions, holding that there was "ample evidence here to support the conclusion that the police acted in good faith to maintain the public peace, to assure the availability of the streets for their primary purpose of usage by the public, and to maintain order in the community."[59]

Impact of Ruling: The U.S. Supreme Court vacated the convictions, finding that they had been charged with an offense "so generalized as to be . . . not susceptible of exact definition."[60] Under the Court's precedent, the Fourteenth Amendment "does not permit a State to make criminal the peaceful expression of unpopular views."[61]

Civil Rights Act of 1964

Summary of Law: The Act generally prohibits discrimination on the basis of race, color, religion, sex, or national origin. For example, the Act requires that voting rules be applied equally across races[62] and it forbids discrimination by private businesses open to the public (e.g., restaurants and hotels).[63] The Act also mandates desegregation of public facilities[64] and public schools,[65] and prohibits discrimination in employment.[66] Finally, the Act forbids discrimination in public federally funded programs, and also established the Equal Employment Opportunity Commission.[67]

Impact of Law: The Act dramatically strengthened civil rights protections in the United States. It sought to prohibit and undo the harms imposed by legal segregation,[68] and also gave the federal government power to enforce and implement the promises of *Brown v. Board of Education* (1954) 347 U.S. 483.[69] Title II, addressing discrimination in public accommodations, was perhaps the most immediately transformative aspect of the Act given the persistence of segregation (particularly in the South) at restaurants, motels, and other businesses.[70]

Subsequent History: The Civil Rights Act of 1964 led to several other pieces of major civil rights legislation, including the Voting Rights Act of 1965 and the Fair Housing Act of 1968. This subsequent legislation was designed to "complement and reinforce" the 1964 Act,[71] and together these and other statutes made significant progress in the struggle toward racial equality, though as reflected in this report, that progress has been uneven.

1965

Voting Rights Act of 1965

Summary of Law: The Voting Rights Act of 1965 was designed to strengthen and implement the protections of the Fifteenth Amendment. The Act, in section 2, forbids all states from implementing any voting procedure that curtails voting rights on the basis of race.[72] Sections 4 and 5 of the Act applied to "covered" jurisdictions with histories of imposing discriminatory voting procedures.[73] Such covered jurisdictions were barred from implementing various forms of voter qualification procedures absent approval by federal authorities. Sections 4 and 5 were initially set to be temporary, but were repeatedly extended by Congress.

Impact of Law: The Voting Rights Act, and particularly section 5 of the Act, was "one of the nation's most effective tools to eradicate racial discrimination in voting."[74] Prior to the Act, the primary approach to combatting racially discriminatory voting laws was through case-by-case litigation, which was resource-intensive and slow; even where plaintiffs prevailed, the success was often fleeting as jurisdictions would then enact new discriminatory policies.[75] The Act, by contrast, successfully halted voting discrimination before it could harm voters.[76]

Subsequent History: In *Shelby County v. Holder* (2013) 570 U.S. 529, discussed below, the U.S. Supreme Court struck down section 5 of the Act, essentially holding that the preclearance formula was no longer needed given the national progress made to limit voting discrimination.[77] *Shelby County* "opened the floodgates to laws restricting voting throughout the United States," including, for example, strict voter identification laws in Texas, Mississippi, and Alabama.[78]

Cox v. Louisiana 379 U.S. 559

Summary of Facts and Issues: A Louisiana statute prohibited picketing or parading in front of a courthouse with the intent to obstruct court proceedings.[79] A minister and others were charged and convicted under the statute for leading protests against racial discrimination and segregation.[80]

Subsequent History: The U.S. Supreme Court considered whether the convictions were constitutional. Although the Court held that the statute was constitutional on its face, it also held that the conviction violated the rights to due process and freedom of speech because the highest police officials of the city, in the presence of the sheriff and mayor, in effect told the demonstrators that they could meet across the street from courthouse, 101 feet from the courthouse steps.[81]

1966

Brown v. Louisiana 383 U.S. 131

Summary of Facts and Issues: Five African Americans sought to protest segregationist policies at a public library in Louisiana that effectively required African Americans to use a bookmobile rather than the library itself.[82] The protestors entered the library and declined to leave upon request.[83] They were subsequently arrested, and were later convicted of breach of the peace.[84]

Impact of Ruling: The U.S. Supreme Court reversed the convictions, noting that the individuals did nothing more than "stage a peaceful and orderly protest demonstration . . . ."[85] Its ruling was premised on the First and Fourteenth Amendment rights to freedom of speech, assembly, and the right to petition the government to redress grievances.[86] The Court further held that the breach of the peace statute had been used as a pretext to punish those engaging in protected and fundamental rights.[87]

1967

Kilgarlin v. Hill 386 U.S. 120

Summary of Facts and Issues: In 1965, the State of Texas passed a reapportionment plan for both the House and Senate of the Texas Legislature.[88] Appellants challenged the scheme and argued, among other assertions, that the scheme amounted to a racial gerrymander in violation of the Fourteenth Amendment.[89] Specifically, the appellants argued that the reapportionment plan was intended to, and had the effect of, minimizing the voting strength of African Americans in violation of the equal protection clause of the Fourteenth Amendment.[90]

Impact of Ruling: The U.S. Supreme Court upheld much of the plan, but struck down one portion that diluted the voting power of voters in certain districts. The Court relied on the "equal population principle," set out in *Reynolds v. Sims* (1964) 377 U.S. 533, which requires that the population per representative be substantially equal.[91] In this case, a portion of the redistricting scheme resulted in substantial variation among districts in population per representative, and so those provisions were struck down.[92]

Walker v. City of Birmingham 388 U.S. 307

Summary of Facts and Issues: City officials in Birmingham, Alabama obtained an injunction prohibiting certain civil rights activists from leading or participating in unpermitted street protests and marches.[93] After the protestors deliberately violated the injunction, city officials sought to hold them in contempt of court.[94] In response, the protestors argued that the underlying injunction was unconstitutional, but the state court declined to consider the constitutionality of the injunction. The protestors were held in contempt and sentenced to several days in jail.[95]

Impact of Ruling: The U.S. Supreme Court upheld the contempt convictions.[96] It acknowledged that the injunction might well have been unconstitutional, but ultimately held that the protestors could not first violate an injunction and then challenge its constitutionality.[97]

Subsequent History: In *Shuttlesworth v. City of Birmingham* (1969) 394 U.S. 147, the U.S. Supreme Court addressed the claims of another individual associated with the same protest as in *Walker*. Specifically, Mr. Shuttlesworth, an African American minister, had been convicted of violating a Birmingham ordinance prohibiting unpermitted parades or other demonstrations.[98] Mr. Shuttlesworth attempted several times to get a permit under the ordinance, as required by the injunction, and was rejected in terms demonstrating that "under no circumstances would he and his group be permitted to demonstrate in Birmingham."[99] The Court reversed the conviction, holding that the ordinance, and the way it was implemented, was so broad that it violated the First Amendment right to freedom of speech.[100]

1968

Cameron v. Johnson 390 U.S. 611

Summary of Facts and Issues: The U.S. Supreme Court addressed the constitutionality of Mississippi's Anti-Picketing Law.[101] The law was passed in response to a group of civil rights organizations that had organized pickets in front of a Mississippi courthouse, and it forbade picketing that interfered with entry into and exits from courthouses.[102] The law was passed during an extended, months-long daily protest against voter suppression, and it was used to halt the protest.[103] The petitioners argued, in part, that the statute was vague, overbroad, and that it was passed with the discriminatory intent to halt African American protestors.[104]

Impact of Ruling: The U.S. Supreme Court upheld the constitutionality of the law. It held that the law was not unduly vague nor overly broad.[105] It also rejected the claim that the law was selectively enforced against the picketers, finding that law enforcement had a duty to enforce the law once it was passed.[106]

1969

Gaston County v. United States 395 U.S. 285

Summary of Facts and Issues: Gaston County, North Carolina was subject to the pre-clearance requirements of the Voting Rights Act of 1965 due to its history of using a test or other means of restricting voter registration.[107] The County's status resulted in the suspension of a literacy test that it imposed as a qualification for voting.[108] The County filed suit seeking to reinstate its literacy test.

Impact of Ruling: The U.S. Supreme Court denied the request to reinstate the literacy test. In order to reinstate the test, the County would have had to show that the test did not discriminatorily disenfranchise African Americans.[109] The Court observed that the County's schools were racially segregated and that the County deprived African American students of equal educational opportunities.[110] For example, 98 percent of white teachers, but only 5 percent of African American teachers, held regular state teaching certificates, and a much higher proportion of African American students "attended one-room, one-teacher, wooden schoolhouses which contained no desks."[111] The Court thus concluded that because African American children were "compelled to endure a segregated and inferior education, fewer will achieve any given degree of literacy than will their better-educated white contemporaries."[112]

Subsequent History: *Shelby County v. Holder* (2013) 570 U.S. 529 struck down the pre-clearance requirements of the Voting Rights Act that prevented the use of Gaston County's literacy test.

1971

Boyle v. Landry 401 U.S. 77

Summary of Facts and Issues: African American individuals and civil rights groups in Chicago filed a class action against several government officials and agencies, asserting that the officials sought to intimidate them and prevent them from exercising their First Amendment rights.[113] The groups were specifically focused on working to end racial segregation and discrimination.[114] They argued that several criminal statutes were being used to prosecute African Americans disproportionately, and that African Americans were being arrested without probable cause and were being held on exorbitant bail.[115]

Impact of the ruling: The lower court upheld all of the challenged statutes except one, which prohibited intimidating someone with a threat to commit a criminal offense.[116] But the Supreme Court denied relief as to the intimidation statute as well, finding that the plaintiffs had failed to show any irreparable injury from actual or potential prosecutions under that statute.[117] The *Boyle* ruling undercut the ability of plaintiffs to challenge the use of discriminatory criminal prosecutions, including those that are used disproportionately and purposefully against African Americans.

Whitcomb v. Chavis 403 U.S. 124

Summary of Facts and Issues: The State of Indiana passed various redistricting statutes, including provisions related to Marion County.[118] After redistricting, Marion County was represented by eight senators and 15 members of the legislative house.[119] The plaintiffs alleged that the redistricting in Marion County diluted the vote of African Americans, many of whom lived in a "ghetto area," and that the new laws left them with "almost no political force."[120]

Impact of the ruling: The United States Supreme Court upheld the Marion County redistricting scheme.[121] It held that the plaintiffs had failed to show that their voting power had been sufficiently impacted and that there was no evidence of intentional racial discrimination.[122]

1973

White v Regester 412 U.S. 755

Summary of Facts and Issues: In 1970, the Texas House of Representatives passed redistricting measures for both the House and the Senate.[123] The plaintiffs argued that aspects of the plan violated the equal protection clause because of the variation in population per representative across districts.[124] Specifically, certain districts had considerably more residents than others, yet were apportioned the same number of representatives.[125] The plaintiffs also argued that two particular multimember districts were being used invidiously to dilute the voting strength of African Americans and other groups.[126]

Impact of Ruling: The United States Supreme Court first held that the population-per-representative disparities were insufficient to establish an equal protection violation.[127] As to the vote dilution claims associated with the two multi-member districts, the Court affirmed the lower court's finding that the redistricting scheme violated the plaintiffs' equal protection rights.[128] The Court specifically focused on Texas's long history of official racial discrimination, including its efforts to suppress the African American vote, and the very few African Americans elected to the Texas legislature.[129] It also stressed the persistence of racial discrimination in the two specific counties at issue.[130]

1975

City of Richmond, Virginia v. United States 422 U.S. 358

Summary of Facts and Issues: The City of Richmond, Virginia was subject to the pre-clearance requirements of section 5 of the Voting Rights Act of 1965, which required that Richmond obtain a judgment decreeing that any change it made in voting qualifications or prerequisites to voting did not have the purpose or effect of denying or abridging the right to vote on account of a voter's race or color.[131] Accordingly, Richmond sought federal court approval for a plan to annex approximately 23 square miles of adjacent land.[132] The primary question was whether the annexation had the purpose or effect of abridging the African American vote in Richmond; plaintiffs argued that the expansion of the city limits substantially increased the proportion of white voters and decreased the proportion of African American voters, diluting their voting power.[133]

Impact of Ruling: The Court ruled that the annexation's impact on the African American vote was insufficient to render it unlawful.[134] The Court conceded that the African American population would decline considerably post-annexation, and that the African American community would (assuming racial bloc voting) have fewer seats on the city council; however, because the African American population would still be proportionately represented after new council districts were drawn, the Court ruled that the plan was not unlawful.[135] The Court then accepted the lower court's finding that the annexation had the purpose of diluting the African American vote, yet the Court let the annexation stand subject to further proceedings to determine whether there were objectively legitimate reasons for the annexation.[136]

Subsequent History: The Court in *Shelby County v. Holder* (2013) 570 U.S. 529 struck down the pre-clearance requirements of section 5 of the Voting Rights Act that applied to Richmond's annexation.[137]

1976

Beer v. United States 425 U.S. 130

Summary of Facts and Issues: The City of New Orleans was subject to the pre-clearance requirements of section 5 of the Voting Rights Act of 1965, and it sought authorization to implement a reapportionment of its city council districts.[138]

Under its proposed plan, African Americans would become a majority in two of the new districts when they had previously been the majority in only one district.[139] However, the new plan would not (assuming bloc voting) result in African Americans being able to elect council members in proportion to their population, because they were a majority of registered voters in only one district.[140]

Impact of Ruling: The Court held that the scheme was permissible since it arguably increased the voting power of African Americans, even though the African American vote was diluted relative to white voters.[141]

Subsequent History: *Shelby County v. Holder* (2013) 570 U.S. 529, struck down the pre-clearance requirements of section 5 of the Voting Rights Act that applied to the New Orleans scheme.[142]

1977

Connor v. Finch 431 U.S. 407

Summary of Facts and Issues: Mississippi was subject to the pre-clearance requirements of section 5 of the Voting Rights Act of 1965.[143] In 1975, the Attorney General objected to the state's proposed reapportionment plan, and the federal district court then devised a new plan.[144] The plaintiffs argued that the new plan violated the equal protection clause's guarantee that legislative districts be of nearly equal population, so that each person's vote be given equal weight in the election of representatives.[145]

Impact of Ruling: The United States Supreme Court struck down the reapportionment plan, finding that the variation in population among districts was "substantial" and "cannot be tolerated . . . in the absence of some compelling justification."[146] The Court rejected the proffered justification of the need to maintain historical county lines, and the new plan was struck down.[147] Finally, the Court concluded that the reapportionment plan improperly diluted the voting power of African Americans.[148]

Subsequent History: *Shelby County v. Holder* (2013) 570 U.S. 529 struck down the pre-clearance requirements of the Voting Rights Act that applied to the Mississippi scheme.

1980

City of Mobile v. Bolden 446 U.S. 55

Summary of Facts and Issues: African American voters sued the City of Mobile, Alabama, which was governed by a city commission, arguing that the at-large system of municipal elections violated the Fourteenth and Fifteenth Amendments to the United States Constitution.[149] Under Mobile's system, three city commissioners were elected at-large, and shared legislative, executive, and administrative power in the municipality.[150] The result was that African Americans, who constituted 35 percent of the population, could never elect their preferred candidate.[151]

Impact of Ruling: The United States Supreme Court upheld the constitutionality of the at-large voting system.[152] It rejected both the Fourteenth and Fifteenth Amendment claims because there had been no showing of purposeful discrimination against African Americans in maintaining the scheme.[153] In so ruling, the Court found that evidence demonstrating that (1) no African American had ever been elected to the commission; (2) the commissioners had discriminated against African Americans in municipal employment and services; (3) the state had historically and persistently discriminated against African Americans; and (4) African Americans' minority status necessarily resulted in dilution of power under the at-large system, was irrelevant.[154]

Subsequent History: In response to *City of Mobile v. Bolden*, Congress amended the Voting Rights Act to make clear that a voting scheme could be deemed unlawful if shown to have a discriminatory impact, even without a showing of discriminatory intent.[155]

2009

Northwest Austin Municipal Utility District No. 1 v. Holder 557 U.S. 193

Summary of Facts and Issues: A small utility district in Texas sought to be released from the pre-clearance requirements associated with the Voting Rights Act of 1965, and argued that section 5 was unconstitutional.[156] There was no evidence that the district itself had previously discriminated in its voting systems, but it was subject to section 5 because it was a political subdivision in Texas, which was subject to section 5.[157]

Impact of Ruling: The United States Supreme Court ruled that the district could qualify to "bail out" of the pre-clearance requirements, even though it is not a state.[158] In so ruling, the Court avoided addressing the larger question of section 5's constitutionality.[159]

2013

Shelby County v. Holder 570 U.S. 529

Summary of Facts and Issues: Shelby County, Alabama was subject to the pre-clearance requirements of sections 4 and 5 of the Voting Rights Act of 1965.[160] Sections 4 and 5 of the Act applied to "covered" jurisdictions with histories of imposing discriminatory voting procedures.[161] Such covered jurisdictions were barred from

implementing various forms of voter qualification procedures absent approval by federal authorities.[162] Sections 4 and 5 were initially set to be temporary, but were repeatedly extended by Congress.[163] After the Attorney General objected to certain proposed voting changes, the county filed suit and challenged the constitutionality of the pre-clearance requirements.[164]

Impact of Ruling: The United States Supreme Court struck down section 5 of the Act, essentially holding that the preclearance formula was no longer needed given what the Court found to have been national progress made to limit voting discrimination.[165] The Court stressed the "substantial" federalism concerns associated with section 5, particularly that different criteria apply to different states under the Act.[166] The *Shelby* ruling "opened the floodgates to laws restricting voting throughout the United States," including, for example, subsequently-enacted strict voter identification laws in Texas, Mississippi, and Alabama.[167]

II. State Statutes and Case Law

1849

California Constitution of 1849, Article 2, Section 1

Summary of Facts and Issues: The first California Constitution severely limited the right to vote: "Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848 of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper."[168]

Subsequent History: The section was amended in 1879, and then again from 1970-1974.[169] The 1879 version removed "white" but also included that "no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State."[170] The current Constitution reads: "A United States citizen 18 years of age and resident in this State may vote. [] An elector disqualified from voting while serving a state or federal prison term . . . shall have their right to vote restored upon completion of their prison term."[171]

1971

Calderon v. City of Los Angeles 4 Cal.3d 251

Summary of Facts and Issues: Residents of the City of Los Angeles sued based on the city charter's requirement to redistrict its council districts based on the number of registered voters.[172]

Impact of Ruling: The Court ruled that apportionment on a "one voter, one vote" basis rather than on "one person, one vote" basis denied equal protection where apportionment on such basis resulted in the largest district having nearly 70 percent more people than the smallest.[173]

2001

Elections Code Section 14025 et seq., The California Voting Rights Act of 2001

Summary of Provisions: The California Voting Rights Act addresses vote dilution and voter discrimination by providing a private right of action and other remedies for the use of any at-large voting systems, and any other voting systems in which racially polarized voting occurs.[174]

Subsequent History: In *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, the California Court of Appeal found that the applicability of the Act did not unlawfully impinge on a city's plenary authority to control the manner and method of electing its officers.[175] In 2019, the California Legislature enacted Assembly Bill No. 849, the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act, that requires each local jurisdiction to adopt new district boundaries after each federal decennial census, specifies redistricting criteria and deadlines for the adoption of new boundaries by the governing body, specifies hearing procedures that would allow the public to provide input on the placement of boundaries and on proposed boundary maps, and requires the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process.[176]

Endnotes

[1] *Strauder v. West Virginia* (1879) 100 U.S. 303, 305.

[2] *Id.* at p. 310.

[3] *Ex Parte Yarbrough* (1884) 110 U.S. 651, 654-655.

[4] *Id.* at p. 658.

[5] *Id.* at p. 665.

[6] *Giles v. Harris* (1903) 189 U.S. 475, 483-484.

[7] *Id.* at pp. 482-483.

[8] *Id.* at p. 487.

[9] *Id.* at pp. 487-488.

[10] See, e.g., *Myers v. Anderson* (1915) 238 U.S. 368; *Nixon v. Herndon* (1927) 273 U.S. 536.

[11] *Myers*, *supra*, 238 U.S. at p. 377.

[12] Greenblatt, *The Racial History of the "Grandfather Clause"* Code Switch, Nat. Public Radio (Oct. 22, 2013) (as of May 22, 2023).

[13] *Myers*, *supra*, 238 U.S. at p. 380.

[14] *Id.* at pp. 381-382.

[15] *Nixon*, *supra, 273 U.S. at p. 540.*

[16] *Ibid.*

[17] *Id.* at pp. 540-541.

[18] *Nixon v. Condon* (1932) 286 U.S. 73, 82.

[19] *Ibid.*

[20] *Id.* at pp. 84-85.

[21] *Id.* at p. 89.

[22] *Ibid.*

[23] *Grovey v. Townsend* (1935) 295 U.S. 45, 47.

[24] *Id.* at pp. 46-47.

[25] *Id.* at p. 48.

[26] *Id.* at p. 55.

[27] *Smith v. Allwright* (1944) 321 U.S. 649, 659-262.

[28] *Lane v. Wilson* (1939) 307 U.S. 268, 270-271.

[29] *Id.* at p. 269.

[30] *Id.* at p. 275.

[31] *Id.* at p. 276.

[32] *Hill v. Texas* (1942) 316 U.S. 400, 401.

[33] *Id.* at pp. 400-401.

[34] *Id.* at p. 404.

[35] *Ibid.*

[36] *Ibid.*

[37] *Smith v. Allwright (1944) 321 U.S. 649, 650-651.*

[38] *Id.* at p. 660.

[39] *Id.* at p. 663.

[40] *United States v. Raines* (1960) 362 U.S. 17, 19-20.

[41] *Id.* at p. 19.

[42] *Id. at p. 20.*

[43] *Id.* at pp. 24-25.

[44] *Gomillion v. Lightfoot* (1960) 364 U.S. 339, 341.

[45] *Id.* at p. 342.

[46] *Id.* at p. 347.

[47] Mendenhall, *Gomillion v. Lightfoot* (May 2, 2011) Encyclopedia of Ala. (as of May 23, 2023).

[48] *Gremillion v. Nat. Ass'n for the Advancement of Colored People* (1961) 366 U.S. 293, 294-295.

[49] *Ibid.*

[50] *Id. at p. 296.*

[51] *Id.* at p. 295, internal citation omitted.

[52] *Id.* at p. 297.

[53] *Wood v. Georgia* (1962) 370 U.S. 375, 376.

[54] *Id.* at p. 379.

[55] *Id.* at p. 383.

[56] *Id.* at p. 389.

[57] *Henry v. City of Rock Hill* (1964) 376 U.S. 776, 777.

[58] *Id.* at p. 776.

[59] *City of Rock Hill v. Henry* (S.C. 1962) 128 S.E.2d 775, 776.

[60] *Henry*, *supra*, 376 U.S. at p. 777, internal quotation marks omitted.

[61] *Id.* at p. 778, internal quotation marks omitted.

[62] Civil Rights Act of 1964, § 101 et seq.; 52 U.S.C. § 10101 et seq.

[63] Civil Rights Act of 1964, § 201 et seq.; 42 U.S.C. § 2000a et seq.

[64] Civil Rights Act of 1964, § 301 et seq.; 42 U.S.C. § 2000b et seq.

[65] Civil Rights Act of 1964, § 401 et seq.; 42 U.S.C. § 2000c et seq.

[66] Civil Rights Act of 1964, § 701 et seq.; 42 U.S.C. § 2000e et seq.

[67] Civil Rights Act of 1964, § 705 et seq.; 42 U.S.C. § 2000e-4 et seq.

[68] Goldstein, *Constitutional Dialogue and the Civil Rights Act of 1964* (2005) 49 Saint Louis Univ. Law J. 1095, 1095 (as of May 23, 2023).

[69] *Ibid.*

[70] *Id.* at p. 1096.

[71] Days, *"Feedback Loop": The Civil Rights Act of 1964 and Its Progeny* (2005) 49 Saint Louis Univ. Law J. 981, 981 (as of May 23, 2023).

[72] Voting Rights Act of 1965, § 2; 52 U.S.C. § 10301.

[73] Voting Rights Act of 1965, §§ 4, 5; 52 U.S.C. §§ 10303-04.

[74] Pérez & Agraharkar, *If Section 5 Falls: New Voting Implications* (2013) Brennan Center for J., p. 1 (as of May 23, 2023).

[75] *Id.* at p. 2.

[76] *Ibid.*

[77] *Shelby County v. Holder* (2013) 570 U.S. 529, 549-551.

[78] *The Effects of Shelby County v. Holder* (Aug. 6, 2018) Brennan Center for J. (as of May 23, 2023).

[79] *Cox v. Louisiana* (1965) 379 U.S. 559, 560.

[80] *Cox v. Louisiana* (1965) 379 U.S. 536, 538-539 (companion case involving same facts where minister and others were charged under separate state statutes for disturbing the peace and

obstructing public passages, and the court overturned the convictions).

[81] *Cox v. Louisiana, supra,* 379 U.S. at pp. 572-573.

[82] *Brown v. Louisiana* (1966) 383 U.S. 131, 136.

[83] *Id.* at pp. 136-137.

[84] *Ibid.*

[85] *Id.* at p. 140.

[86] *Id.* at pp. 141-142.

[87] *Id.* at p. 143.

[88] *Kilgarlin v. Hill* (1967) 386 U.S. 120, 120.

[89] *Id.* at pp. 121-122.

[90] *Kilgarlin v. Martin* (S.D. Tex. 1966) 252 F.Supp. 404, 434-435.

[91] *Kilgarlin v. Hill* (1967) 386 U.S. 120, 121-122.

[92] *Ibid.*

[93] *Walker v. City of Birmingham* (1967) 388 U.S. 307, 308-309.

[94] *Id.* at p. 311.

[95] *Id.* at pp. 311-312.

[96] *Id.* at pp. 320-321.

[97] *Ibid.*

[98] *Shuttlesworth v. City of Birmingham* (1969) 394 U.S. 147, 148-50.

[99] *Id.* at pp. 157-58.

[100] *Id.* at pp. 158-59.

[101] *Cameron v. Johnson* (1968) 390 U.S. 611, 612-613.

[102] *Id.* at pp. 614-617.

[103] *Ibid.*

[104] *Ibid.*

[105] *Id.* at pp. 615-617.

[106] *Id.* at pp. 620-622.

[107] *Gaston County v. United States* (1969) 395 U.S. 285, 286-287.

[108] *Id.*

[109] *Id.* at p. 293.

[110] *Id.* at pp. 293-294.

[111] *Id.* at p. 294.

[112] *Id.* at p. 295.

[113] *Boyle v. Landry* (1971) 401 U.S. 77, 78-79.

[114] See *Landry v. Daley* (N.D.Ill. 1968) 280 F.Supp. 938, 944.

[115] *Boyle v. Landry*, *supra*, 401 U.S. at pp. 78-79.

[116] *Id.* at p. 80.

[117] *Id. at pp. 80-81.*

[118] *Whitcomb v. Chavis* (1971) 403 U.S. 124, 127.

[119] *Id.* at pp. 127-128.

[120] *Id.* at pp. 128-129.

[121] *Id.* at pp. 159-160

[122] *Id.* at pp. 145-146, 153-155.

[123] *White v Regester* (1973) 412 U.S. 755, 757-758.

[124] *Id.* at pp. 758-759.

[125] *Id.* at p. 761.

[126] *Id.* at p. 765.

[127] *Id.* at pp. 763-764.

[128] *Id.* at pp. 765-767.

[129] *Ibid.*

[130] *Ibid.*

[131] *City of Richmond, Virginia v. United States* (1975) 422 U.S. 358, 361-362.

[132] *Id.* at pp. 362-363.

[133] *Id.* at pp. 362-364.

[134] *Id.* at pp. 370-371.

[135] *Id.* at p. 371.

[136] *Id.* at pp. 374-375.

[137] *Shelby County v. Holder* (2013) 570 U.S. 529, 557.

[138] *Beer v. United States* (1976) 425 U.S. 130, 132-133.

[139] *Id.* at pp. 135-137.

[140] *Ibid.*

[141] *Id.* at pp. 141-142.

[142] *Shelby County v. Holder, supra,* 570 U.S. at p. 557.

[143] *Connor v. Finch* (1977) 431 U.S. 407, 410-412.

[144] *Id.* at pp. 412-413.

[145] *Id.* at p. 416.

[146] *Id.* at p. 417.

[147] *Id.* at pp. 418-419.

[148] *Id.* at pp. 424-426.

[149] *City of Mobile v. Bolden* (1980) 446 U.S. 55, 58-59.

[150] *Id.* at pp. 59-60.

[151] *Id.* at pp. 58-59.

[152] *Id.* at pp. 65, 74.

[153] *Id.* at pp. 61-65, 70-75.

[154] *Id.* at pp. 73-75.

[155] See generally *Thornburg v. Gingles* (1986) 478 U.S. 30, 35.

[156] *Northwest Austin Municipal Utility District No. 1 v. Holder* (2009) 557 U.S. 193, 196-197.

[157] *Id.* at pp. 200-201.

[158] *Id.* at pp. 210-211.

[159] *Id.* at pp. 204-206.

[160] *Shelby County v. Holder* (2013) 570 U.S. 529, 540.

[161] *Id.* at pp. 534-536.

[162] *Ibid.*

[163] *Id.* at p. 538.

[164] *Id.* at pp. 540-541.

[165] *Id.* at pp. 549-551.

[166] *Id.* at pp. 543-544.

[167] Brennan Center for Justice, *The Effects of Shelby County v. Holder* (Aug. 2018) (as of May 26, 2023).

[168] Cal. Const. of 1849, art. II, § 1.

[169] See Cal. Const. of 1879, art. II, § 1; Cal. Const., art. II, § 2.

[170] Cal. Const. of 1879, art. II, § 1.

[171] Cal. Const., art. II, § 2.

[172] *Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 254-255.

[173] *Id.* at pp. 263-265.

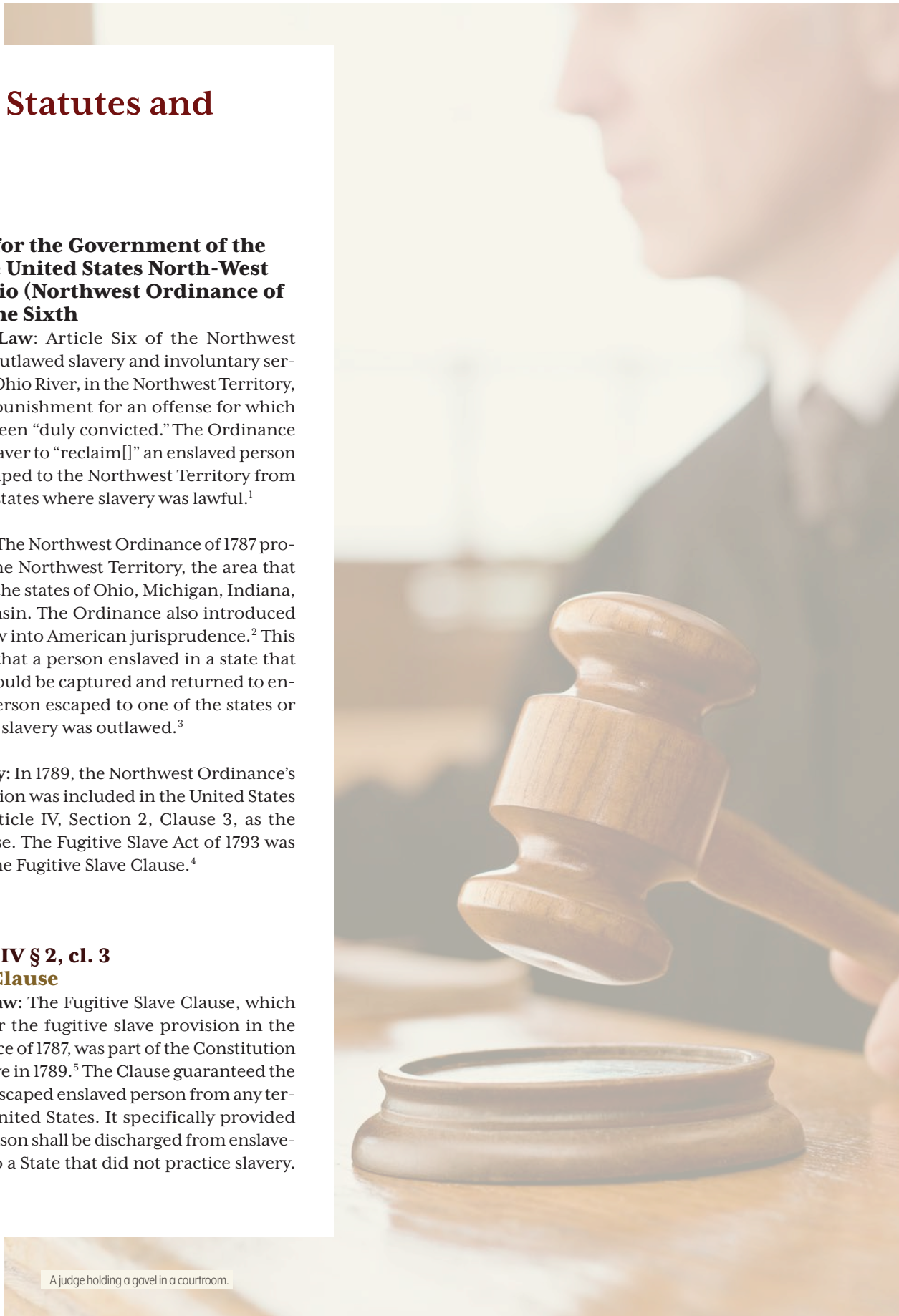
[174] Elec. Code, § 14025 et seq.

[175] *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 431.

[176] Assem. Bill No. No. 849 (2019-2020 Reg. Sess.), codified at Elec. Code, § 21500 et seq.

CHAPTER 39 Unjust Legal System: Statutes and Case Law

COURTESY OF CHRIS RYAN/OJO IMAGES VIA GETTY IMAGES



A judge holding a gavel in a courtroom.

I. Federal Statutes and Case Law

1787

An Ordinance for the Government of the Territory of the United States North-West of the River Ohio (Northwest Ordinance of 1787), Article the Sixth

Summary of the Law: Article Six of the Northwest Ordinance of 1787 outlawed slavery and involuntary servitude north of the Ohio River, in the Northwest Territory, unless imposed as punishment for an offense for which an individual had been "duly convicted." The Ordinance also allowed an enslaver to "reclaim[]" an enslaved person or fugitive who escaped to the Northwest Territory from one of the original states where slavery was lawful.[1]

Impact of the Law: The Northwest Ordinance of 1787 prohibited slavery in the Northwest Territory, the area that eventually became the states of Ohio, Michigan, Indiana, Illinois, and Wisconsin. The Ordinance also introduced the fugitive slave law into American jurisprudence.[2] This provision ensured that a person enslaved in a state that permitted slavery could be captured and returned to enslavement if that person escaped to one of the states or territories in which slavery was outlawed.[3]

Subsequent History: In 1789, the Northwest Ordinance's fugitive slave provision was included in the United States Constitution in Article IV, Section 2, Clause 3, as the Fugitive Slave Clause. The Fugitive Slave Act of 1793 was passed to enforce the Fugitive Slave Clause.[4]

1789

U.S. Const., art IV § 2, cl. 3

Fugitive Slave Clause

Summary of the Law: The Fugitive Slave Clause, which was patterned after the fugitive slave provision in the Northwest Ordinance of 1787, was part of the Constitution that became effective in 1789.[5] The Clause guaranteed the right to reclaim an escaped enslaved person from any territory within the United States. It specifically provided that no enslaved person shall be discharged from enslavement by escaping to a State that did not practice slavery.

It also guaranteed the right of an enslaver to reclaim the fugitive enslaved person.[6]

Impact of the Law: The Fugitive Slave Clause elevated the right to own and enslave human beings to a property right protected by the Constitution and enforceable by the federal government. The Clause authorized enslavers to pursue and reclaim any enslaved person who escaped even when they escaped to a state that prohibited slavery. States were prohibited from interfering with the right to pursue and reclaim, ensuring that a person who was enslaved in one state was enslaved everywhere in the United States.[7]

Subsequent History: Congress passed the Fugitive Slave Act of 1793 to enforce the rights granted by the Fugitive Slave Clause. The 1793 Act allowed federal judges and state magistrates to decide, without a jury trial, whether an individual was a fugitive enslaved person. Congress later passed the Fugitive Slave Act of 1850, which imposed harsh penalties for failure to enforce the Fugitive Slave laws and for assisting a fugitive.[8]

1790

The Naturalization Act of 1790 1 Stat. 103

Summary of the Law: The 1790 Act created a process for granting citizenship to immigrants who were "free white person[s]" and had resided within the jurisdiction of the United States. The residency requirement was two years and the application could be made to any common law court in any state where the person resided for at least one year. The other requirements were proof to the satisfaction of the court that the immigrant was a person of good moral character and the taking of an oath to support the Constitution of the United States. The children of the person who became a citizen who were residing in the United States and were under the age of 21 at the time the court approved the application automatically became citizens. Children of U.S. citizens born outside of the United States were deemed natural born citizens of the United States.[9]

Impact of the Law: The 1790 Act created a process to allow "free" white immigrants to become citizens of the United States. The law also granted automatic citizenship to their children. At that time, African Americans could not become American citizens.[10]

Subsequent History: The 1790 Act was repealed and replaced by the 1795 Act to Establish a Rule of Uniform Naturalization, which increased the length of the United States residency requirement to five years.[11]

1793

An Act Respecting Fugitives from Justice, and Persons Escaping from the Service of Their Masters of 1793

Fugitive Slave Act of 1793

Summary of the Law: Congress enacted the Fugitive Slave Act of 1793 to enforce rights guaranteed by the Fugitive Slave Clause. The Act authorized federal judges and magistrates to hold summary proceedings to determine the status of an alleged fugitive enslaved person. In these proceedings, the alleged enslaved fugitive had no right to a jury trial. In addition to proceedings to reclaim their "property," the 1793 Act also authorized enslavers to bring private suits in federal and state courts to recover damages from anyone who interfered with the right to reclaim or who assisted an escaped enslaved person.[12]

Impact of the Law: The 1793 Act ensured that the constitutional right of enslavers to own other human beings was enforced by the national government. A person enslaved in a "slave" state remained an enslaved person even if they escaped to a state that prohibited slavery.[13]

Subsequent History: The 1793 Act was repealed when Congress passed the Fugitive Slave Act of 1850. The 1850 Act imposed harsh penalties for those who did not enforce the law or assisted an alleged fugitive. The Fugitive Slave Acts were repealed on June 28, 1864.[14]

1798

An Act in Addition to the Naturalization Laws of the United States (1798) 1 Stat. 566

Summary of the Law: The 1798 Act repealed and replaced the Naturalization Act of 1795. The 1798 Act increased the citizenship residency requirement from 5 years to 14 years for those who became residents after January 29, 1795. Unlike the prior Acts, its text did not explicitly limit application for citizenship to "free white persons." It prohibited immigrants from enemy countries from becoming citizens. It also required white immigrants residing in the United States to register with the nearest place authorized to register immigrants within 48 hours of entering the United States.[15]

Impact of the Law: The law was passed in conjunction with several other laws in anticipation of the United States going to war with France.[16] Its immediate impact was to discourage immigration into the United States. [17] It also created a registry of foreign white nationals within the United States.[18]

Subsequent History: The 1798 Act was repealed by The Act to Establish a Uniform Rule of Naturalization of 1802.[19]

1802

An Act in Addition to the Naturalization Laws of the United States 2 Stat. 153

Summary of Facts and Issues: The Act to Establish a Uniform Rule of Naturalization of 1802 repealed the 1798 Act and re-established the five-year residency requirement from the 1795 Act. Like the 1790 and the 1795 Acts, the 1802 Act explicitly limited the application for citizenship to "free white person[s]."[20]

Impact of the Law: The 1802 Act repealed the 1798 Act. The 1802 Act explicitly restored language from the 1795 Act that only immigrants who were "free white persons" could apply for citizenship. This language preserved the constitutional understanding of citizens as white persons and the exclusion of African Americans and "Indians not taxed" from citizenship.[21] The Act also decreased the residency requirement to apply for citizenship from 14 years to 5 years.[22]

Subsequent History: The 14th Amendment granted citizenship to all persons born within the United States, including African Americans.

1820

Missouri Compromise

Summary of the Law: In 1803, France sold the Louisiana Territory to the United States. Missouri was part of the Territory and later sought admission into the Union as a "slave" state. The Missouri Compromise sought to keep the balance in the Union between enslaving and free states equal and therefore simultaneously admitted Missouri as a slave state and Maine as a non-slave state. The Compromise also prohibited slavery above the 36°30' latitude in the rest of the Louisiana Territory.[23]

Impact of the Law: The immediate impact of the Missouri Compromise was that Missouri, a territory that practiced the enslavement of human beings, and Maine, a free state, were admitted at the same time. The Compromise kept the balance between the number of states that practiced the enslavement of human beings and those that did not. It also reinforced the enslavement of human beings as a valid institution future states could adopt and still be admitted into the Union.[24]

Subsequent History: In *Dred Scott v. Sandford* (1857) 60 U.S. 393 the U.S. Supreme Court ruled that the part of the Missouri Compromise that prohibited slavery in parts of the Louisiana Territory was unconstitutional because Congress had no authority to ban slavery from a federal territory. The Court found that a right to traffic in slavery, "like an ordinary article of merchandise and property [was guaranteed] to the citizens of the United States, in every State that might desire it. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner." The Constitution did not give "Congress a greater power over slave property, or which entitles property of that kind to less protection that [sic] property of any other description."[25] Congress also repealed that part of the Missouri Compromise in the Kansas Nebraska Act of 1854.[26]

The Josefa Segunda 18 U.S. 338

Summary of Facts and Issues: In 1807, the United States outlawed the importation of enslaved people into the United States. Violations of the 1807 Act[27] resulted in forfeiture of the vessel to the United States and any persons found on the vessel that were intended to be sold into slavery would be delivered to parties within the respective state designated to receive them. During the war between Spain and its colonies, the Josefa Segunda was seized by the United States in the Mississippi River with enslaved captives on board. The registered owners brought a claim for return of the ship and the people on board. They claimed that the ship was pirated and was only in U.S. waters because of necessity or distress. The Court held that the plaintiffs' claims of necessity and that the ship was pirated did not meet the required level of proof. It upheld the lower court's order finding that the vessel was forfeited and ordering the delivery of the enslaved captives to the appropriate person within Louisiana.[28]

Impact of Ruling: The ruling affirmed the 1807 Act outlawing the importation of enslaved people into the United States. But even though the 1807 Act outlawed the importation of enslaved people, when ships were confiscated under the Act, the passengers were often sold into slavery within the United States. Thus, not only did the 1807 Act not end slavery, it created an avenue for the domestic slave trade to persist.[29]

Subsequent History: In *United States v. Preston* (1830) 28 U.S. 57, a subsequent related proceeding, Louisiana filed a claim to the proceeds from the sale of the enslaved persons found aboard the Josefa Segunda. The United States government opposed Louisiana's claim. The district court awarded the proceeds to Louisiana and the United States appealed. The Supreme Court reversed. It held that an 1819 law, which was passed while the first appeal was pending and prohibited the sale of enslaved persons illegally imported into the United States, applied to Louisiana's claim. Therefore, Louisiana was not entitled to the proceeds from the sale of the enslaved captives.[30]

1824

The Merino 22 U.S. 391

Summary of Facts and Issues: Congress enacted three laws that prohibited the international slave trade. The first, the Act of 1794, prohibited the building and commissioning of vessels within the United States that would be used to procure free persons to be trafficked as slaves or would be used to traffic persons who were already held in slavery. The acts of 1800 and 1818 prohibited citizens of the United States from facilitating the slave trade by allowing their vessels to be used in service of the trade between different countries. Three American ships carrying enslaved people, the Constitution, the Merino, and the Louisa, were captured by American officers while traveling from Havana, Cuba to Pensacola, Florida, which at the time was under Spain's control. The Constitution was later seized a second time off the coast of Mobile, Alabama by a revenue officer of the United States. The United States brought an action to condemn all three of the vessels and acquire custody of the enslaved persons based on the Acts of 1794, 1800, and 1818. The district court condemned the vessels and the enslaved people found aboard the vessels to the United States.[31]

On appeal, the United States Supreme Court affirmed in part and reversed in part. As to the Constitution, the Court affirmed the condemnation of the vessel and the cargo onboard, not including the enslaved persons found on board. As to the enslaved persons, the enslavers were entitled to make a claim for restitution because at the time of the second seizure, the vessel was not engaged in the traffic of enslaved persons. It was being transported for the proceeding. The Court also reversed that part of order condemning the Merino and the Louisa because the information alleged only that the persons on board were being held as "slaves," which the evidence did not prove. Instead, the evidence proved that they were being transported to be "held to service," which the 1818 Act also prohibited. And because the evidence would support that finding, the Court remanded for the United States to amend the information to state "held to service" and for further proceedings.[32]

Impact of Ruling: The Court's decision made clear that transporting people of African descent to be held to service, even if they were not to be held in slavery, violated the 1818 Act. The Court's decision also exposed a loophole in the 1800 Act, which allowed a person holding an interest in enslaved people aboard a condemned vessel to make a claim for restitution if the vessel was in the possession of a noncommissioned captor at the time it was captured by the United States. Here, the decision held that the enslavers could make a claim because at the time of the second seizure the vessel was not being used to traffic people for slavery. Eighty-four enslaved people were thus returned to slave owners by the United States government.[33]

The St. Jago de Cuba 22 U.S. 409

Summary of Facts and Issues: Several sailors and individuals with financial interests in an American vessel that was condemned by the United States for participating in the slave trade brought claims for wages and materials and labor used to repair the vessel. The district court held that the interest in the cargo was not forfeited and sustained the claim for wages of one seaman and claims for repairs by some of the material men. The Supreme Court reversed. The Court held that the facts that supported condemnation of the vessel also supported condemnation of the cargo. Specifically, the ship was "fitted out" for the slave trade. The Court also reversed the claims of the claimants for wages and repairs because the record did not establish that the claimants were unaware that the ship was an American ship engaging in the slave trade.[34]

Impact of Ruling: The Supreme Court's decision made clear that no one involved in the preparation of an American vessel for the slave trade or involved in operating the vessel would receive compensation from the sale of a vessel after it has been condemned if they were placed on notice of the vessel's involvement in the slave trade. "The general policy of the law is, to discountenance every contribution, even of the minutest kind, to this traffic in our ports; and the act of engaging seamen, is an unequivocal preparatory measure for such an enterprise."[35]

1825

The Antelope 23 U.S. 66

Summary of Facts and Issues: The Vice-Consuls of Spain and Portugal brought claims to recover enslaved persons that an American vessel pirated from ships belonging to both countries. The owner of the alleged pirate vessel also filed a claim to recover the enslaved persons, as did the United States. The United States argued that because the enslaved persons had been transported from "foreign parts by American citizens, in contravention to the laws of the United States," based on the laws of the United States, the enslaved persons were entitled to their freedom. The lower court dismissed the claim of the owner of the American vessel and sustained the claim of the United States as to the enslaved persons found on the American vessel. The remaining enslaved persons would be divided between the Portugal and Spain. The United States appealed. The Supreme Court held that the right to restitution of the enslaved people on a vessel depended on whether the law of the country to which the vessel belonged sanctioned the slave trade. "If that law gives its sanction to the trade, restitution will be decreed; if that law prohibits it, the vessel and cargo will be condemned as good prize." In this case, because no owner from Portugal came forward to prove ownership of any of the enslaved persons and owners from Spain were able to do so, the

enslaved people would be divided between the United States and Spain.[36]

Impact of Ruling: The Court declared that the international slave trade does not violate either the principles of international law nor—unless proscribed by some treaty—positive international law. Accordingly, only domestic law regulates the international slave trade in the United States, and that law prohibits seizing property outside of domestic waters. Any property so seized, including enslaved people, must be returned to their owners. However, the Court also adopted a presumption that people were free unless a claimant could prove a property right in them—in other words, that they have been lawfully enslaved by the laws of a country. Because Spain permitted the slave trade, the enslaved persons pirated from Spanish ships had to be returned to the owners. The remainder were relegated to the custody of the United States, and because the United States prohibited the slave trade, those individuals would be freed and returned to Africa.[37]

1841

The Amistad 40 U.S. 518

Summary of Facts and Issues: The L'Amistad was a Spanish vessel that set sail from Havana, Cuba to Puerto Principe, another port on the island of Cuba, with 49 African captives and two Spanish nationals who claimed to own the captives on board. During the voyage, the African captives mutinied, killing the captain and taking control of the vessel. The vessel was captured by an American ship off the coast of Long Island. The Spanish nationals filed a claim of restitution, claiming that the Africans were their property. The Attorney General filed a claim on behalf of Spain for restitution of the Africans. The 49 Africans filed an answer claiming that they were native-born Africans who had been kidnapped. They were not slaves. The district court denied the Spanish nationals' claim. It ordered the captives to be delivered to the President of the United States so that he could return them to Africa. The Court of Appeal affirmed the decree. The Supreme Court affirmed in part and reversed in part. It agreed that neither the Spanish nationals nor Spain had a right to restitution because the 49 Africans were free persons who had been kidnapped and brought to Cuba to be sold into slavery. The Court rejected as fraudulent the documents the Spanish nationals produced to prove that the African captives had been sold to them. It reversed that part of the decree that required the African captives to be delivered to the President so that they could be returned to Africa. Because they were the ones in control of the vessel when it was captured, the African captives were not brought to the United States in violation of any of the anti-slave trade laws. They were free foreign nationals, and as such, they were entitled to an immediate release.[38]

Impact of the Ruling: The Court's decision recognized the inherent right of human beings to be free. It also recognized the lawfulness of the mutiny because the African captives had the right to preserve their freedom and prevent their captors from selling them into slavery.[39] And the decision ordering the immediate release of the African captives without requiring them to be transported back to Africa also recognized their rights to be present in the United States as any other foreign national. They were eventually returned to their homeland.[40]

1842

Prigg v. Pennsylvania 41 U.S. 539

Summary of Facts and Issues: The petitioner filed a post-conviction petition challenging his conviction for kidnapping a woman and her children from Pennsylvania and returning them to Maryland where the woman had been enslaved. He pursued and captured the fugitive enslaved woman as the agent of the woman who claimed to own her. He was arrested and charged under a Pennsylvania law that prohibited people from kidnapping an African American and selling them into slavery or holding them as a slave. The Supreme Court held that the kidnapping statute was unconstitutional because it interfered with an enslaver's constitutionally protected right to reclaim a fugitive enslaved person from any jurisdiction within the United States where that person may be found. "The [fugitive slave] clause manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law or regulation can in any way qualify, regulate, control or restrain. The slave is not to be discharged from service or labor, in consequence of any state law or regulation."[41]

Impact of Ruling: The Supreme Court's decision established that the Fugitive Slave Clause and the Fugitive Slave Act 1793 protected an enslaver's constitutional right to own another human being by affirming that an enslaver had the right to seize and reclaim an escaped enslaved person wherever that escaped person may be found. The Court's decision also affirmed that a state, even one where the enslavement of human beings was prohibited, had an obligation not to interfere with or punish an enslaver's exercise of their constitutional right to reclaim a fugitive enslaved person.[42]

Subsequent History: Congress enacted the Fugitive Slave Act of 1850, which imposed harsh penalties for assisting an enslaved person in escaping or interfering with the right to reclaim a fugitive enslaved person. The Fugitive Slave Acts were repealed on June 28, 1864.[43]

1848

Treaty of Guadalupe Hidalgo 1848

Summary of the Law: The Treaty, which was signed on February 2, 1848, officially ended the Mexican-American War.[44] In the Treaty, Mexico agreed to cede territory to the United States, territory which eventually became the states of California, Nevada, Utah, and New Mexico, and parts of Arizona, Colorado, Oklahoma, Kansas, and Wyoming. Mexico also agreed to relinquish claims to Texas. The Treaty recognized the Rio Grande River as the border between Mexico and the United States. Articles VIII and IX also gave Mexican citizens within the ceded territory the option of becoming American citizens.[45]

Impact of the Law: The Treaty ended the war between the United States and Mexico, allowing the United States to expand its territory in the West. The Treaty offered American citizenship to Mexicans within the ceded territory.[46] African Americans who had been in the United States since its founding remained ineligible for citizenship.[47] Until 1930, people of Mexican descent in the United States were considered white for purposes of the census.[48]

Subsequent History: The territory ceded by Mexico to the United States as a result of the Treaty reignited concerns about the balance between free states and enslaving states.[49] These tensions led to the enactment of two additional laws that would govern the future admission of slave and free states into the Union: 1) The Compromise of 1850, which admitted California as a free state and allowed for the admission of Utah and New Mexico without a designation as free or enslaving states; and 2) The Kansas-Nebraska Act of 1854, which allowed citizens in both territories to decide the inclusion or exclusion of slavery within their boundaries by popular vote.[50]

1850

Compromise of 1850

Summary of the Law: The Compromise of 1850 consisted of five bills aimed at easing the tensions created between the Northern and Southern states by the acquisition of new territory following the Treaty of Guadalupe-Hidalgo. The five bills that made up the Compromise included a bill that required California to be accepted into the Union as a free state, a bill that required Texas to give up some of its land in exchange for a $10 million debt assumption by the federal government, a bill that created the states of New Mexico and Utah using some of the land that Texas relinquished and that organized those states without mentioning slavery, a bill abolishing the slave trade in Washington D.C. (even though slavery continued within the jurisdiction), and an amendment to the Fugitive Slave Act that increased penalties for those who helped enslaved people escape or interfered with the right to recapture an enslaved person.[51]

Impact of the Law: California was admitted as a free state and Texas's borders were reconfigured to its current boundaries.[52] Several of the measures included in the Fugitive Slave Act of 1850 made it easier for enslavers to claim that an African American was an escaped fugitive person. The 1850 Act only required a sworn statement alleging ownership to trigger the arrest of an alleged fugitive enslaved person.[53] Building on the 1793 Act's denial of the right to a jury trial for an alleged fugitive in these proceedings, the 1850 Act prohibited an alleged fugitive from even testifying on their own behalf.[54] These new measures spurred an increase in the kidnapping of "free" African Americans who would then be sold into enslavement.[55] African Americans who were free had to carry papers with them to prove their status. The 1850 Act also imposed harsh penalties, including heavy fines and imprisonment for those who refused to enforce the Fugitive Slave Act or assisted an enslaved person in escaping.[56]

Bennett v. Butterworth 49 U.S. 124

Summary of Facts and Issues: The plaintiff filed an action to recover four enslaved persons from the defendant. In his pleadings, the plaintiff alleged that the value of the enslaved persons was $2,700 but at trial the jury awarded plaintiff $1,200. Plaintiff released the judgment and defendant appealed to the Supreme Court. Plaintiff moved to dismiss on the grounds that the $1,200 in controversy did not meet the Supreme Court's threshold for jurisdiction. The Supreme Court denied the motion to dismiss the appeal because the plaintiff's own complaint alleged the value of the slaves to be $2,700, so he could not deprive the defendant of a writ of error where he has released the judgment of an amount below the amount in controversy threshold.[57]

Impact of Ruling: The Supreme Court's decision reinforced the idea of African Americans as property. The value of the human beings was used to determine whether the Court would exercise jurisdiction over disputes involving human beings as property.[58]

Randon v. Toby 52 U.S. 493

Summary of Facts and Issues: Plaintiff brought suit to recover on two promissory notes executed by the defendant. One defense the defendant raised was that the notes were executed for enslaved persons who were imported into the United States in violation of the law. And because the enslaved persons were in the United States unlawfully, he did not receive adequate consideration in exchange for the notes. The Court held that the fact that enslaved people may have been illegally imported

into the United States does not render a subsequent contract for the buying and selling of those enslaved African Americans void, especially in a slave state where color is sufficient presumptive evidence that the person is a slave. "The crime committed by those who introduced the enslaved people into the country does not attach to subsequent purchasers."[59]

Impact of the Ruling: The Court's decision affirmed that a person may receive title to enslaved people imported into the United States in violation of the anti-slave trade laws. If the enslaved people had challenged their enslavement in court, however, the defendant likely would have had a defense against the plaintiff for want of consideration or breach of an implied warranty of title.[60]

The Fugitive Slave Act of 1850

Summary of the Law: The 1850 Act repealed the 1793 Act. It eliminated the right of an alleged fugitive enslaved person to testify on their own behalf in the proceeding to determine their status.[61] And it imposed "[h]eavy penalties" on federal marshals who did not enforce the law and on individuals who aided an alleged fugitive enslaved person.[62] A person who helped an enslaved person by providing shelter and food faced six months' imprisonment and a $1,000 fine.[63] The Act also provided cash incentives for judges and magistrates to find that the person was a proven fugitive.[64]

Impact of the Law: The 1850 Act sought to strengthen the rights of enslavers to reclaim fugitive enslaved persons by limiting the right of the alleged enslaved person to defend themselves during proceedings, by incentivizing judges to rule in favor of finding the person to be a fugitive, and by imposing harsh penalties on those officials who refused to enforce the law and on those who helped an enslaved person escape or avoid recapture.[65] Another significant impact of the 1850 Act was that its provisions precluding alleged fugitives from defending themselves during proceedings spurred the kidnapping and trafficking of "free" African Americans into slavery.[66] African Americans who were free had to carry papers with them to prove their status.

Subsequent History: The Fugitive Slave Acts were repealed on June 28, 1864.[67]

1854

Kansas-Nebraska Act 1854

Summary of the Law: The Kansas-Nebraska Act was enacted to relieve the tension between free states and those states that practiced the enslavement of human beings by establishing rules for admitting states into the Union that kept the balance between free states and "slave" states, and it relieved some of that tension by repealing the part of the Missouri Compromise that prohibited slavery above the 36°30' latitude in the Louisiana Territory.[68]

Impact of the Law: The Act's requirement that Kansas would decide by popular vote whether it would be a slave or a free state led to "a migration of proslavery and antislavery factions," to Kansas seeking to influence the decision about slavery, resulting "in a period of political chaos and bloodshed."[69] During this period, which was known as "Bleeding Kansas," approximately 55 people were killed.[70]

Subsequent History: Eventually Kansas voted to enter the Union as a free state.[71]

1857

Dred Scott v. Sanford 60 U.S. 393

Summary of Facts and Issues: The plaintiff, an enslaved person, filed a petition seeking to be declared a free person because he lived in Illinois, a free state, while his enslaver was stationed there. In a second matter the plaintiff brought a claim for assault based on his new enslaver's assault on plaintiff and plaintiff's family. The Supreme Court held the plaintiff could not bring either claim because he was not a citizen. "[N]either the class of persons who had been imported as slaves, nor their descendants," were included in the group of people that could become citizens of the United States. "They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect." The plaintiff's status as an enslaved person was determined by the laws of Missouri, not Illinois. And as an enslaved person, he could not exercise the rights of a citizen and sue in court for his freedom. The Court also held that the part of the Missouri Compromise that prohibited slavery in parts of the Louisiana territory unconstitutional because Congress did not have the authority under the Constitution to prohibit slavery in any federal territory.[72]

Impact of the Ruling: The decision stated that African Americans were not citizens of the United States, could never become citizens, and did not have the same rights as citizens, such as bringing a claim in the courts. The Court also affirmed that the Fugitive Slave Clause protected an enslaver's right to possess an enslaved person.[73] And because of the Fugitive Slave Clause, once a person was enslaved in one state, they were enslaved everywhere else in the United States.

Subsequent History: The Court's decision was superseded by the passage of the 14th Amendment in 1868, which granted citizenship and other rights to African Americans.[74]

1859

Ableman v. Booth 62 U.S. 506

Summary of Facts and Issues: The defendant was convicted before a commissioner of aiding and abetting an enslaved person to escape from a marshal in violation of the Fugitive Slave Act of 1850. The defendant applied to the state Supreme Court for a writ of habeas corpus on the grounds that the Fugitive Slave Act of 1850 was unconstitutional. The writ was granted the same day. Shortly after the defendant was released, he was indicted by a grand jury in the federal district court for the same act. Following a trial, the defendant was convicted and incarcerated. He filed a petition for writ of habeas corpus in the state Supreme Court. The Court issued the writ and decided that defendant's imprisonment was illegal. The United States Supreme Court reversed both of the state Supreme Court's decisions that declared the Fugitive Slave Act of 1850 unconstitutional. The United States Supreme Court explained that while a state court can issue writs of habeas corpus within its territorial jurisdiction, it cannot issue writs to the federal courts. Moreover, the United States Supreme Court, not a state court, has final authority to interpret and apply federal law.[75]

Impact of the Ruling: The United States Supreme Court's decision upheld the constitutionality of the Fugitive Slave Act of 1850, including the penalties for aiding an alleged enslaved person to avoid being captured. It also affirmed that state tribunals cannot overrule federal courts on matters of federal law. This decision was one of the major cases that supported enslavers' property right in enslaved people leading up to the Civil War.

1866

Act to Protect All Persons in the United States in Their Civil Rights, and Furnish the Means of their Vindication

1866 Civil Rights Act

Summary of the Law: The 1866 Civil Rights Act guaranteed citizenship to everyone born in the United States, not subject to a foreign power, regardless of race or previous condition of slavery or involuntary servitude. It also guaranteed each citizen equal protection under the law and the same civil rights enjoyed by "white citizens." Violations of rights guaranteed by the Act were punishable by fines and imprisonment. The federal courts had exclusive jurisdiction over actions to enforce the rights guaranteed by the Act.[76]

Impact of the Law: The Act was introduced by Senator Lyman Trumbull of Illinois to guarantee equality of citizenship for African Americans. He believed the legislation was needed because "the 'abstract truths and principles' of the Thirteenth Amendment meant nothing 'unless the persons who are to be affected . . . have some means of availing themselves of their benefits.' The Act was vetoed by President Andrew Johnson, but Congress overrode his veto. The Act's citizenship provision was the template for the 14th Amendment that was ratified two years later.[77]

Subsequent History: The 1866 Civil Rights Act was incorporated into the 1870 Civil Rights Act as section 18.[78]

1871

Blyew v. United States 80 U.S. 581

Summary of Facts and Issues: The petitioners, two white men who murdered four members of an African American family in Kentucky, were convicted of the murder of one of the victims in federal court. One of the victims made a dying declaration identifying the killers before dying from his wounds. Another witness, a young girl who escaped the killers, also identified the defendants. Initially, the case was brought in state court, but the matter was removed to the federal court under the Civil Rights Act of 1866. The case was removed because Kentucky law prohibited African Americans from testifying against white people. Therefore, in a state proceeding, the two key witnesses would not be able to testify against petitioners. Because that law precluded the witnesses from testifying because of their race, it affected their civil rights under the 1866 Civil Right Act. Therefore, the matter came within the federal court's jurisdiction under the Act. The petitioners objected, and following their conviction, they filed a petition.[79]

The Supreme Court reversed their convictions. The Court explained that the 1866 Civil Rights Act was not so broad as to allow the federal courts to assume jurisdiction in every matter in which an African American person was involved as a witness. It only applied to matters that affected the rights declared in the 1866 Act, and serving as a witness did not meet the definition of a cause "affecting" a right guaranteed by the 1866 Civil Rights Act.[80]

Impact of the Ruling: The dissenting opinion argued that the application of the 1866 Civil Rights Act to the circumstances of this case was necessary to declare the equality of African Americans and "to counteract those unjust and discriminating laws of some of the States" that deprived African Americans "of rights and privileges enjoyed by

white citizens." The Court's decision deprived a whole class of the community of the right to serve as witnesses in cases where crimes have been committed against members of their community. "[T]o refuse their evidence and their sworn complaints, is to brand them with a badge of slavery." And "[i]t gives unrestricted license and impunity to vindictive outlaws and felons to rush upon these helpless people and kill and slay them at will, as was done in this case." [81]

1875

United States v. Cruikshank 92 U.S. 542

Summary of Facts and Issues: The case arose out the Colfax Massacre where at least 70 African Americans who were protecting the statehouse in Louisiana after a contentious and close gubernatorial election were murdered by a white militia.[82] None of these underlying facts of the massacre were included in the Court's opinion. Rather, the Court's opinion focused only on whether the allegations in the 16-count indictment charging the defendants with depriving African Americans of their rights under the Civil Rights Act of 1870 were sufficient to sustain the defendants' convictions. The Court found none of the allegations were sufficient for a variety of reasons. Specifically, it determined that several of the allegations failed to state an offense for which the defendants could be charged under the 1870 Civil Rights Act because the Fourteenth Amendment did not apply to actions of individuals, only the actions of states. It also found that the First Amendment and the Second Amendment were limits on the national government that did not apply to the states. Additionally, the right to vote was a right afforded by the states, not the federal government, which only guaranteed through the Fifteenth Amendment that the right to vote could not be denied based on race. With regard to the remaining allegations in the indictment, the Court determined that they were too factually vague to provide the defendants with sufficient information to prepare a defense. Therefore, they were too vague to support the convictions.[83]

Impact of the Ruling: The Court's decision rendered the 1870 Civil Rights Act ineffective in stopping violence against African Americans by restricting the federal courts' authority to enforce the rights delineated in the Act. African Americans had to rely on hostile state governmental institutions to enforce and protect their civil rights. The decision also limited the Fourteenth Amendment to state actions, and held that the First, Second, Fifth, Sixth, and the Eighth Amendments only applied to the federal government. It also held that the federal government could only guarantee that the franchise was not denied based on race. States were free to regulate the franchise with facially neutral voting restrictions that were not explicitly based on race.[84] This resulted in a variety of regulations and intimidation campaigns that severely restricted African Americans' right to vote in southern states for decades.[85]

Subsequent History: The court's decision limiting the bill of rights to the federal government was overruled by *Gitlow v. New York* (1925) 268 U.S. 652, which held that the First Amendment applied to the states by incorporation through the Fourteenth Amendment. The Voting Rights Act of 1965 provided specific protection for African Americans against facially neutral regulations that restricted African Americans' voting rights in southern states.

1883

New York v. Compagnie Generale Transatlantique 107 U.S. 59

Summary of Facts and Issues: The City and County of New York filed suit to recover the sum of one dollar tax for each alien passenger brought into New York aboard the defendants' vessels, on the grounds that the passengers were imports to which the tax applied. The plaintiffs argued that the tax was an inspection fee authorized under Article 1, section 9 of the U.S. Constitution. The lower court rejected the claim. The United States Supreme Court affirmed. The Court explained that the passengers on the defendants' vessels were free human beings who immigrated to the United States. They were not enslaved people who were imported into the country. Therefore, they were not imports to which an inspection fee would apply.[86]

Impact of the Ruling: The Court's ruling made clear that the provision of U.S. Constitution, Article 1, section 9, which allowed states to pass inspection laws for imports, applied to the importation of enslaved people because they were not free human beings and were considered property. Because the passengers were free human beings and not property, New York could not impose an inspection fee on the defendants for transporting them.[87]

United States v. Harris 106 U.S. 629

Summary of Facts and Issues: The case arose from an incident involving a group of 20 white men in Tennessee attacking four African American men who had been arrested and charged with unspecified offenses, and killing one of the victims. In a four-count federal indictment, the 20 men were charged with depriving the African American men of their rights to equal protection under the law in violation of the Ku Klux Klan Act. Because the lower court judges had a division of opinion as to the constitutionality of the Ku Klux Klan Act, the prosecuting attorney filed a certificate of division in the U.S. Supreme Court, asking the Court to decide the issue. The Court concluded that the Ku Klux Klan Act, which regulated the

violent conduct of individuals against African Americans, was unconstitutional because there were no provisions in the Constitution that supported the enactment of the statute. Additionally, even if the Ku Klux Klan Act could be supported by the Thirteenth Amendment, because a white citizen could conceivably be prosecuted under the Act for violating the rights of another white person, it went beyond the limits of the Thirteenth Amendment's protection of only African Americans. Because it was overbroad, it was unconstitutional.[88]

Impact of the Ruling: The Court invalidated one of the primary federal laws enacted to protect African Americans from violence by organizations like the Ku Klux Klan. The Court's decision affirmed the holding in *U.S. v. Cruikshank* (1875) 92 U.S. 542, that the Fourteenth Amendment did not apply to private actors, but only to state actors. The Court's decision also meant that any congressional act based on the Thirteenth Amendment had to be limited to African Americans, facially and as applied, to be constitutional. If the congressional act could be applied to acts committed against white people by other white people, it could not be constitutionally grounded in the Thirteenth Amendment.[89]

1886

Yick Wo v. Hopkins 188 U.S. 356

Summary of Facts and Issues: The City and County of San Francisco arrested and imprisoned two of its Chinese residents for violating ordinances that regulated where laundry facilities could be located. One ordinance required laundry operators to obtain permission from the board of supervisors if the laundry facility was located in a building constructed of wood.

The petitioners were charged with violating this ordinance, convicted, and imprisoned. One filed a petition for writ of error asking the Court to determine whether he had been denied his rights under the Constitution. The Court held that the ordinance under which the petitioner was prosecuted violated the Equal Protection Clause of the Fourteenth Amendment because in actual operation it was directed "so exclusively against a particular class of persons as to warrant and require the conclusion that" it amounted to a practical denial of that equal protection of the laws secured by the Fourteenth Amendment. The violation of the Equal Protection Clause required the petitioners' immediate release.[90]

Impact of the Ruling: The Supreme Court's unanimous decision applied the Equal Protection Clause to invalidate a facially neutral law that was being applied in a racially discriminatory manner.[91]

1900

Carter v. Texas 177 U.S. 442

Summary of Facts and Issues: An African American man was indicted by grand jury for the murder of an African American woman. Before he was arraigned, the defendant filed a motion to quash the indictment on the grounds that although African Americans constituted about 25 percent of the voters in the county, the grand jury that returned his indictment was composed exclusively of white people. The defendant sought to introduce witnesses to verify his claims, but the trial court denied his motion. The Supreme Court held that a motion to quash the indictment was the proper vehicle to challenge the grand jury indictment based on the exclusion of African Americans. The defendant duly alleged that African Americans were excluded from the grand jury based on race and the court refused to hear any evidence on the subject. The defendant had no opportunity to challenge the racial makeup of the grand jury before he was indicted, and therefore the defendant's conviction was reversed.[92]

Impact of the Ruling: The Court reaffirmed the prior ruling under *Strauder v. Virginia* (1879) 100 U.S. 303 that a state's systematic exclusion of African Americans from a grand jury violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Where the grand jury was impaneled before the crime was committed, a motion to quash the indictment before the defendant is arraigned is a proper mode of presenting the constitutional objection.[93]

1903

Brownfield v. South Carolina 189 U.S.426

Summary of Facts and Issues: The defendant filed a habeas petition seeking to overturn his conviction on the grounds that the grand jury that returned his indictment was all white and that all African Americans were excluded, violating his right to equal protection. Defendant noted that in a community where 80 percent of the registered voters were African American, no African American served on the grand jury. The Court denied defendant's petition because the record did not support the African American defendant's allegation that African Americans were intentionally excluded from the jury pool.[94]

Impact of the Ruling: The Court's decision did not address the defendant's claim regarding the number of African American voters in the county compared to the number of white voters. The Court seemed to require an offer of proof of the actual exclusion of African Americans from the grand jury to accompany the motion to quash and the challenge to the lower court's refusal to hear that evidence, in order for a defendant to establish

a violation of equal protection. The Court's ruling is an example of judicial restraint and a strict reading of the record and procedural requirements in order to bring discrimination claims.

1904

Rogers v. Alabama 192 U.S. 226

Summary of Facts and Issues: The petitioner, who was indicted for murder, filed a motion to quash the indictment because all African Americans had been excluded from the grand jury that indicted him. The jury commissioners appointed to select the grand jury excluded all African Americans on the grounds that they lacked the right to serve as electors in the state of Alabama by the provisions of the new Constitution of Alabama, and therefore could not serve as grand jurors. The Supreme Court applied its prior decision in *Carter v. Texas* (1900) 177 U.S. 442, which it admonished the state court for not applying, and held that the exclusion of African Americans from a grand jury violates the Equal Protection Clause. It also noted that whether a citizen could serve as a grand juror was not dependent on their qualification as an elector. The petitioner's conviction was reversed.[95]

Impact of the Ruling: The Court reaffirmed its prior ruling in *Carter v. Texas* (1900) 177 U.S. 442, commenting that the State of Alabama should have done so too. In this case, as in *Carter* (decided four years earlier), the Court held that a challenge to a criminal indictment based on racial discrimination could be raised in a motion to quash that indictment.

1906

Martin v. Texas 200 U.S. 316

Summary of Facts and Issues: An African American man accused of murder moved to quash a trial panel on the grounds that all African American jurors had been excluded from his trial jury because of their race. The Court ruled that while the Fourteenth Amendment prohibits state officials, including court administrators, from excluding potential jurors from trial or grand juries solely because of their race, Martin did not provide sufficient specific evidence of a policy of discriminatory exclusion. Evidence that there were no African Americans on the jury was insufficient evidence of affirmative systemic exclusion.[96]

Impact of Ruling: This decision affirmed the right of racial minorities to challenge discriminatory practices in impaneling a jury. However, the Court's requirement of a showing of specific evidence of discriminatory intent set a high bar for a criminal defendant to reach, a standard that was eased in later decisions.

Subsequent History: In *Batson v. Kentucky* (1986) 476 U.S. 79, the Court provided a number of rules regarding whether strikes of racial minority members from trial jury panels are discriminatory, including whether a prosecutor has exercised peremptory challenges to remove members of the defendant's race on account of their race.[97]

1908

Battle v. United States 209 U.S. 36

Summary of Facts and Issues: The petitioner was convicted of murder. He argued that the trial court erred when it interrupted his counsel in making an argument that was based on race. The Supreme Court held that there was no error. In the interests of the administration of justice, judges may interrupt counsel when their argument makes an appeal to racial prejudice.[98]

Impact of the Ruling: Courts have the general discretion to regulate trials to ensure justice. Where an attorney expressly denigrates the testimony of witnesses on the basis of their race, using a racist epithet, the trial judge has discretion to admonish the attorney.

Ex Parte Young 209 U.S. 123

Summary of Facts and Issues: *Ex Parte Young* arose out of a dispute among shareholders in a railway company, the railway company, the attorney general of Minnesota, members of the Warehouse and Railway Commission, and shippers of freight. Two shareholders challenged a new Minnesota law that reduced the shipping rates that railroads could charge for freight. The shareholders claimed that the new rates were unconstitutional and obtained a federal injunction forbidding enforcement of the new rates. Young appeared in the federal court and objected on eleventh Amendment grounds. While the federal injunction was in place, Young, the Attorney General for Minnesota, initiated an enforcement action in state court, seeking a writ of mandamus to publish and enforce the new rates. The state court issued an alternative writ. Upon notification of the state court action, the federal court held Young in contempt and imprisoned him. Young filed a petition for writ of habeas corpus on grounds that Minnesota's sovereign immunity applied and the suit against him was improper based on the Eleventh Amendment. The Supreme Court disagreed. Where a state official uses the name of the state to enforce an unconstitutional act that injures a complainant, and if the act that violates the federal Constitution, the state official is subject to suit in their individual capacity. "The state has no power to impart to him any immunity...."[99]

Impact of the Ruling: If government officials attempt to enforce an unconstitutional law, sovereign immunity

does not protect them from being sued in their individual capacity for harms they cause.[100]

1909

Thomas v. Texas 212 U.S. 278

Summary of Facts and Issues: Thomas, an African American man, was convicted of murder and sentenced to death. He contested the conviction on the basis that, although there were African American members of the jury pool, the commissioners did not pull their names and excluded them from the jury. The Supreme Court upheld the conviction on the bases that there had been no intentional discrimination against, or exclusion of, African Americans from the grand jury indicting, and the trial jury convicting, Thomas, since there was an African American grand juror and there were African American members of the trial jury pool. The Court held that petitioner's argument that African American members of the jury pool were not given equal consideration as white members of the jury pool is not sufficient evidence of discrimination.[101]

Impact of Ruling: The Court reaffirmed that there is no right to a grand or trial jury that includes people of the defendant's race, and that there must be some evidence that the jury commissioners engaged in affirmative discriminatory acts.

1910

Franklin v. South Carolina 218 U.S. 161

Summary of Facts and Issues: South Carolina passed a statute giving the right to jury commissioners to select electors of "good moral character" that they deem qualified to serve as jurors. Defendant was convicted of murder and challenged the indictment on the basis that the statute served to create a biased grand jury. The Court held that a state's action to create new criteria for impaneling juries does not violate the U.S. Constitution, even if the effect is to render different groups of people eligible for jury service, so long as the statute is race-neutral.[102]

Impact of Ruling: The Court upheld South Carolina's change in juror qualifications, which granted large discretion to exclude people who were previously eligible to serve on grand juries, continuing its trend of upholding statutes that could have a discriminatory impact on racial minorities, so long as the statute was race-neutral on its face.[103]

1923

Moore v. Dempsey 261 U.S. 86

Summary of Facts and Issues: A group of white men attacked and fired upon African American churchgoers in Arkansas; in the aftermath of the shooting, several African Americans and a white man were killed. Five African American men were charged with the white man's murder. The Governor appointed a committee to investigate the incident; the committee identified and indicted five African American men for the murder of the white man. The Committee also issued inflammatory statements, describing the incident as a "deliberately planned insurrection" by African Americans for the purpose of killing white people. Shortly after the men's arrest, a mob marched to the jail for the purpose of lynching them; they were only prevented from doing so by federal troops. The committee stated that the men were not lynched only because "the law would be carried out." Witnesses later said that the committee called African American witnesses and tortured them until they would "say what was wanted." The torture of these witnesses provided the "evidence" needed for all-white juries to indict and convict the defendants, after a forty-five minute trial and less than five minutes of jury deliberation. The trial was surrounded by a mob; according to the Court, "no juryman could have voted for an acquittal and continued to live in Phillips County."[104]

Impact of Ruling: The Supreme Court held that since the trial was so influenced by the mob, the defendants were deprived of their due process rights under the Fifth Amendment to the U.S. Constitution, which ensures that the procedure used to convict the defendant satisfies the demands of justice. The Court pointed out that a state court's conviction is not entitled to conclusive weight if a defendant's constitutional rights are being violated in the execution of a trial.[105]

1931

Aldridge v. United States 283 U.S. 308

Summary of Facts and Issues: An African American man was convicted and sentenced to death for murdering a white police officer. The trial court refused to ask prospective jurors during voir dire whether any of them might be prejudiced against the defendant because of his race.[106]

Impact of Ruling: The U.S. Supreme Court overturned the conviction because the trial judge failed to cover the subject of racial prejudice during voir dire. The Court held that such an inquiry should have been made relating to racial prejudice during the examination of potential jurors, but noted the trial judge has broad discretion to determine which specific questions to ask.[107]

Subsequent History: In *Rosales-Lopez v. United States* (1981) 451 U.S. 182, the Court limited when an inquiry into racial or ethnic prejudice is required in crimes involving interracial violence.[108]

1932

Powell v. Alabama 287 U.S. 45

Summary of Facts and Issues: Nine African American boys, described as "young, ignorant, and illiterate," were convicted and sentenced to death for allegedly raping two white women on a freight train to Scottsboro, Alabama. The defendants were tried in a total of three trials that were completed in a single day. The Alabama court did not inquire or provide them with time to secure counsel, and counsel was not secured until the morning of the trial.[109]

Impact of Ruling: The U.S. Supreme Court reversed the convictions of the boys and remanded the cases for further proceedings. The Court held that their due process rights under the Fourteenth Amendment had been violated because the defendants were not given reasonable time and "a fair opportunity to secure counsel of [their] choice."[110]

Subsequent History: A series of retrials followed *Powell*. Two of the boys were reconvicted and sentenced to death in late 1933.[111] The Court again overturned the two verdicts in *Norris v. Alabama,* concluding that the systematic exclusion of African American men from the jury denied them a fair trial.[112] After *Norris*, four of the defendants were again retried and reconvicted, while another four were released after the charges against them were dropped in 1937.[113] The unfair treatment of the African American men in this case helped spur the Civil Rights Movement.[114]

1935

Norris v. Alabama 294 U.S. 587

Summary of Facts and Issues: Norris was one of eight African American boys indicted and convicted of rape. The Supreme Court affirmed the principles it had previously reached in *Carter v. Texas* (1900) 177 U.S. 442, holding that systematic exclusion of African Americans from jury service solely on the basis of their race violates a criminal defendant's equal protection rights. The Court held that the evidence showed that the application of the state statute listing juror qualifications had served to exclude African Americans from jury service for a number of years.[115]

Impact of Ruling: The Court affirmed its prior rulings that if a criminal defendant is able to present a prima facie case that members of his race were systematically excluded from the jury pool on the basis of their race, his Constitutional rights were violated, absent a compelling showing of evidence from the state. The Court additionally ruled that federal courts had jurisdiction to review violations of defendant's constitutional rights in state court.[116]

Subsequent History: The Court, in *Hernandez v. New York* (1991) 500 U.S. 352, 353-354, later distinguished its holding by clarifying that a state court is entitled to deference when a defendant brings a challenge to prosecutors' peremptory dismissal of jurors under *Batson v. Kentucky* (1986) 476 U.S. 79, and that a defendant is not entitled to "independent" appellate review of a state trial court's denial of a *Batson* claim.

1936

Brown v. Mississippi 297 U.S. 278

Summary of Facts and Issues: Petitioners were three African American men who were indicted for murder. The defendants testified that the police officers, through brutal torture, extracted false confessions that they were responsible for the murder. Other than the false confessions, there was no other evidence that would have supported a conviction for the murder. Still, the trial court allowed the confessions to be received into evidence and submitted the case to the jury. The petitioners were convicted and sentenced to death. They filed a petition in the United States Supreme Court. The Court agreed that the use of the confessions obtained through torture to secure the petitioners' convictions and sentence was a clear denial of due process. "The due process clause requires 'that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.' It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners..."[117]

Impact of the Ruling: The Court's decision reaffirmed that the fundamental requirement for all trials is fairness or due process.

1940

Chambers v. Florida 309 U.S. 227

Summary of Facts and Issues: After an elderly white man was murdered, law enforcement officers employed dragnet tactics and detained between 25 and 40 African American men living in that community. "For five days petitioners were subjected to interrogations culminating in Saturday's ... all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt." Eventually they "broke" and confessed. Three of the petitioners pleaded guilty and one was convicted at trial based on the confession. All four were sentenced to death. On review the United States Supreme Court reversed their convictions. The Court explained that the process the officers put the petitioners through were "lawless" and violated due process. "Due process of law,

preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death."[118]

Impact of the Ruling: The Court's decision reinforced that all states must adhere to due process principles when securing convictions.[119]

1942

Ward v. Texas 316 U.S. 547

Summary of Facts and Issues: Petitioner, an African American man, was indicted for the murder of a white man. During the first trial, the jury did not reach a verdict. During the second trial, the petitioner was convicted of murder without malice. Petitioner contended that his confession was coerced, alleging that it was signed "only after he had been arrested without a warrant, taken from his home town, driven for three days from county to county, placed in a jail more than 100 miles from his home, questioned continuously, and beaten, whipped and burned by the officer to whom the confession was finally made." The Supreme Court reversed his conviction, holding that the use of confessions obtained under circumstances where the defendant was threatened with mob violence, moved to various counties, isolated, and questioned continuously is a denial of due process.[120]

Impact of the Ruling: The Court's decision reaffirmed that the Court would not uphold convictions based on confessions that were coerced. The petitioner in *Ward* was arrested by officers without a warrant, in a county where they did not have authority to make an arrest. These actions, combined with the coercive techniques, denied due process and required reversal.[121]

1945

Akins v. Texas 325 U.S. 398

Summary of Facts and Issues: Petitioner, an African American man, was convicted of murder and sentenced to death by a nearly entirely white jury in Dallas County, Texas. At the time, Dallas County's population was 15 ½ percent African American, yet only one African American sat on the 12-person grand jury, from a grand jury panel list of 16 people. Petitioner challenged the conviction on equal protection and due process grounds, claiming that jury commissioners arbitrarily and purposefully limited the number of African Americans on juries. The Court reviewed statements by jury commissioners, determined that the commissioners followed the Court's previous decisions, and held that "purposeful discrimination is not sustained by a showing that on a single grand jury the number of members of one race is less than that race's proportion of the eligible individuals."[122]

Impact of Ruling: In its ruling, the Court emphasized that a defendant challenging jury composition must show that there was a purpose to discriminate, which can be proven by historical or systematic exclusion, and that a single instance of disproportionality in a jury is not sufficient to establish a due process violation.[123]

1948

Haley v. Ohio 332 U.S. 596

Summary of Facts and Issues: A 15-year-old African American boy was arrested for a robbery that resulted in the death of the store owner, and interrogated for five hours by five or six police officers in relays, during which time he was not able to communicate with counsel or his mother. After being shown the confessions of two other suspects, he himself confessed and he was convicted. The Supreme Court reversed the lower court's conviction, explaining: "The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law."[124]

Impact of the Ruling: The Court emphasized that *Haley* was a continuation of the principle in *Chambers v. State of Florida* (1940) 309 U.S. 227 and other coerced confession cases. The Court noted it would not uphold convictions where the circumstances of the confession indicated that the confession was not freely and voluntarily given, explaining that "the Fourteenth Amendment prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them."[125]

Moore v. New York 333 U.S. 565

Summary of Facts and Issues: Several African American defendants convicted of murder by a special jury challenged New York's special jury selection process, which impaneled only the "best" or most intelligent of potential jurors. Prosecutors impaneled 150 jury members; none were African American. The Court upheld the conviction, determining that defendants' counsel was present at the jury selection stage and that the names were drawn without objection. The Court concluded that African Americans comprised less than two percent of the population of the county at that time, and that there was no evidence of systemic, intentional, and deliberate exclusion of African Americans from jury duty. As a result, the judgement was affirmed.[126]

Impact of Ruling: The dissent highlighted that the jury comprised neither a jury of the defendants' peers nor a fair cross-section of their community. Although the jury process of only selecting the "best" jurors was race-neutral, its application had a systemic impact of excluding African American jurors.[127]

1950

Cassell v. Texas 339 U.S. 282

Summary of Facts and Issues: An African American man convicted by an all-white jury challenged his conviction, alleging that Dallas County jury commissioners, for 21 consecutive jury lists, had consistently limited African Americans selected to serve on grand juries. The commissioners claimed that they did not know any African Americans who qualified for jury service, at the same time admitting that they chose jury members only from those with whom they were personally acquainted. The Court overturned the conviction on the basis of unlawful, systematic exclusion of African Americans from juries, holding that African Americans are denied the equal protection of the laws when indicted by a grand jury from which African Americans as a race have been intentionally excluded.[128]

Impact of Ruling: The Court held that a practice of only selecting jurors who are personally known by the jury selectors violates the Fourteenth Amendment, and that jury commissioners have an obligation to familiarize themselves fairly with the qualifications of eligible jurors of the county without regard to race or color.[129]

1953

Brown v. Allen 344 U.S. 443

Summary of Facts and Issues: Several African American men convicted of various capital offenses in different cases asserted a range of claims as to the exclusion of African Americans from their juries and the extraction of confessions from the accused. One petitioner, Brown, alleged discrimination in the selection of grand and trial jurors, which were based on tax records. Brown contended that no more than one or two African Americans had served on a grand jury panel and that no more than five had served on a trial jury in the county. Another petitioner, Speller, likewise challenged his conviction on the grounds of racial exclusion of potential jurors. In Speller's case, the names of potential jurors were placed in a box, with a dot next to African American jurors' names, and the county had had no African American jurors in any recent case, including Speller's.[130]

Impact of Ruling: The Court held that the petitioners did not provide sufficient evidence of systematic discrimination; a mere showing of disproportionality was not sufficient to merit a granting of a writ of habeas corpus. The tax lists, in the case of Brown, were the most comprehensive lists of names available; in Speller's case, a child drew the names of the potential jurors, in public, convincing the Court that no discrimination had occurred.[131]

Avery v. State of Georgia 345 U.S. 559

Summary of Facts and Issues: Petitioner, an African American man, was convicted of rape and sentenced to death in Fulton County, Georgia, by an all-white jury. He challenged the jury selection process, which involved pulling slips of paper out of a box; the names of potential white jurors were written on white slips and the names of African American potential jurors on yellow slips, to be selected by the judge and sent to the clerk for processing.[132]

Impact of Ruling: The Supreme Court did not find racial discrimination in the selection of the slips, but in the process itself; the fact that not a single African American was chosen presents a prima facie case of discrimination, and the use of different colored slips made it easier to discriminate. The Court ruled that once a defendant establishes a prima facie case of discrimination, it is the state's burden to present sufficient evidence to dispel the prima facie case, regardless of whether the defendant has proven a particular act of discrimination by a particular person.[133]

1961

Monroe v. Pape 365 U.S. 167

Summary of Facts and Issues: Thirteen Chicago police officers broke into the African American petitioners' home early in the morning without a warrant. After forcing the petitioners to stand naked in one room while they ransacked the home, officers took one of the petitioners to the police station where he was interrogated for 10 hours about a murder. He was then released without charges. The petitioners filed an action under 42 U.S.C. section 1983 against the police officers and the City of Chicago for violating their rights under the color of law. The lower court dismissed the City and the police officers. The petitioners appealed. The United States Supreme Court reversed in part and affirmed in part. Specifically, it held that the police officers acted under color of law when they entered the petitioners' home and conducted an unreasonable search and seizure and they could be held individually liable under section 1983. Accordingly, it reversed that aspect of the lower court's decision. It affirmed the part of the decision dismissing the City of Chicago because a municipality could not be liable under section 1983.[134]

Impact of the Ruling: The Court examined the legislative history of section 1983 to conclude that in passing the statute, Congress intended to permit citizens to sue officials who violate their constitutional rights. The same could not be said for municipalities, however, because municipalities are not "persons" within the meaning of the statute.[135]

Subsequent History: *Monroe v. Pape*'s holding that municipalities are immune from liability under section 1983 was overruled by *Monell v. Dep't of Soc. Servs. of City of New York* (1978) 436 U.S. 658, 701.

Mapp v Ohio 367 U.S. 643

Summary of Facts and Issues: This case arises out of a search that was conducted without a warrant. Three police officers arrived at appellant's residence based on information that "a person [was] hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." When the officers demanded entrance, they were refused. They returned later and forcefully entered the home without a warrant and searched it, where they found obscene materials. Petitioner was arrested and later convicted.[136]

The United States Supreme Court reversed the conviction. The Court held that the right to privacy embodied in the Fourth Amendment is enforceable against the states, and because it is enforceable in the same manner as other basic rights secured by the Due Process Clause, the exclusionary rule applies to violations of that right. "Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."[137]

Impact of Ruling: The Court held that the exclusionary rule applied to state violations of the right to privacy. The Fourth Amendment's right of privacy is enforceable against the states through the Due Process Clause of the Fourteenth Amendment. The exclusionary rule, which applies to the federal government's violation of the right to privacy, also applies to violations of the right by the state.[138]

1964

Bouie v. City of Columbia 378 U.S. 347

Summary of Facts and Issues: This case arose out of a "sit-in" demonstration at Eckerd's Drug Store in Columbia, South Carolina. The petitioners, two African American college students, took seats in the restaurant at Eckerd's and waited to be served. After they were seated, an employee who did not speak to them put up a "no trespassing" sign. Petitioners continued sitting at the booth, and the store manager called the police to remove them. After the police arrived, the petitioners were asked to leave again. When they refused to leave they were arrested and later convicted of trespass. After the state court affirmed their convictions, they sought review in the Supreme Court on the grounds that their convictions violated due process and equal protection. The Supreme Court reversed their convictions on due process grounds, finding they did not have fair warning that the conduct for which they were convicted was rendered criminal by a South Carolina statute.[139]

Impact of the Ruling: The Court's decision affirmed that due process requires fair warning of conduct that is a crime.[140]

1966

Davis v. North Carolina 384 U.S. 737

Summary of Facts and Issues: Petitioner, an African American, was tried and convicted on a charge of rape-murder.The prosecution offered a written confession and testimony regarding an oral confession made to law enforcement into evidence at trial. Petitioner's counsel objected on the ground that the confessions were not freely and voluntarily given. After hearing testimony, the trial judge ruled that the confessions were voluntarily made and admitted them into evidence. The jury returned a verdict of guilty without a recommendation for life imprisonment, and petitioner was sentenced to death.[141]

The Supreme Court reversed his conviction. The confessions were the end product of coercive influences, including a 16-day detention during which he was not advised of any rights and subjected to repeated interrogations while isolated from everyone but the police. Due process required the reversal of his conviction.[142]

Impact of the Ruling: Because of the non-retroactivity of *Miranda v. Arizona*, the Court relied on the Due Process Clause of the Fourteenth Amendment and its voluntariness standard to find that the interrogation of defendant, who was an impoverished African American with a third or fourth grade education, was unconstitutional. The case established that *Miranda* did not alter due process concerns of voluntariness. Therefore, common police interrogation tactics, which often relied on the accused not knowing their rights, would continue to be reviewed under the Fourteenth Amendment.[143]

1967

Whitus v. Georgia 385 U.S. 545

Summary of Facts and Issues: The defendants, African American men convicted of murder by all-white juries, filed petitions for writs of habeas corpus challenging the compositions of the grand and trial juries. In selecting the jurors, the jury commissioners had followed Georgia law, in which the grand and trial jury lists were pulled from county tax digests, which were segregated by race and chosen by court employees, as well as from personal acquaintances of the commissioners. Twenty-seven percent of the taxpayers of the county were African American, of whom zero were selected for the trial jury and one of whom was selected for the grand jury.[144]

Impact of Ruling: The Court followed its ruling in *Avery v. State of Georgia* (1953) 345 U.S. 559, finding a racially segregated jury selection system based on tax rolls to be an unconstitutional violation of the defendants' Fourteenth Amendment rights. This system, combined with the selection of personal acquaintances of the commissioners, provided an opportunity for discrimination, regardless of the intent of the commissioners, or the race-neutrality of the face of the law. The Court also affirmed that a defendant has the burden to provide the existence of purposeful discrimination; once a prima facie case has been made, the burden shifts to the prosecution.[145]

Sims v. Georgia 389 U.S. 404

Summary of Facts and Issues: Petitioner, an African American man, was convicted of rape and sentenced to death by an all-white jury. Police had detained him for more than eight hours, depriving him of food and refusing access to counsel. The Court affirmed the holding in *Whitus v. Georgia* (1967) 385 U.S. 545 that confessions produced by violence or threats of violence are involuntary and cannot be used against the person giving them. Additionally, the Court ruled that defendant's equal protection rights were violated where jury commissioners selected jurors they personally knew from county tax rolls that separate taxpayers by race, and the percentage of African Americans on the tax digests were much higher than on the jury lists.[146]

Impact of Ruling: The Court again affirmed that a purportedly race-neutral system of jury selection that relies on personal acquaintances can violate the Fourteenth Amendment.[147]

1968

Terry v. Ohio 392 U.S. 1

Summary of Facts and Issues: A police officer conducted a "stop and frisk" of two men who they suspected planned a robbery. The officers had neither a warrant nor probable cause, but merely observed the men "casing" a location. Petitioner Terry argued that the "stop and frisk" was a violation of his Fourth Amendment right protecting him against unconstitutional searches and seizures.[148]

Impact of Ruling: The U.S. Supreme Court held that police can conduct a "stop and frisk" without a warrant as long as they have reasonable suspicion that a person committed a crime and may be armed. This ruling created a new category of government searches and seizures based on "reasonable suspicion" that remain constitutional under the Fourth Amendment.[149]

Subsequent History: In *Minnesota v. Dickerson* (1993) 508 U.S. 366, 376-377, the Court expanded the holding in *Terry* and held that officers may confiscate nonthreatening contraband detected during a *Terry* pat-down search, so long as it did not exceed the bounds of *Terry* (i.e., the protective search may not go beyond what is necessary to determine whether the person is armed.)

1970

Sibron v. New York 392 U.S. 40

Summary of Facts and Issues: This case considers two separate situations that involved the constitutionality of New York State's "stop and frisk" practice. The appellants were convicted of crimes in state court on the basis of evidence seized from their persons by police officers. The Court of Appeals of New York held that the evidence was properly admitted, on the ground that the searches that uncovered it were authorized by the statute.[150]

Impact of the Ruling: In one appellant's case, the Court refused to permit the search of a drug suspect who police had no reason to believe was armed and dangerous. "The police officer is not entitled to seize and search every person he sees on the street or of whom he makes inquiries." The Court provided guidelines for law enforcement to follow in order to search and arrest suspects. The Court found that the officer's search was not reasonably limited in scope to accomplish the only goal that justified the search: protecting the officer by disarming a potentially dangerous person. As a result, the search violated the Fourth Amendment. By contrast, in the other appellant's case, the court noted the officer properly considered furtive actions and flight, as well as specific knowledge relating the suspect to the evidence of crime in the decision to make an arrest. The search was thus reasonable because it was properly incident to a lawful arrest.[151]

Carter v. Jury Commission of Greene County 396 U.S. 320

Summary of Facts and Issues: A group of African American citizens of Greene County, Alabama, filed a class action against the governor and county officials, alleging that they were wrongfully excluded from the jury rolls because of their race. Under Alabama's juror-selection statutes, the governor appointed a three-member commission for each county; the commission employed a clerk, who was charged with obtaining the name of every citizen of the county between the ages of 21 and 65. The commission then prepared a jury roll containing the names of all citizens "generally reputed to be honest and intelligent and...esteemed in the community for their integrity, good character and sound judgment."[152] In this case, the clerk did not gather all of the names of potentially eligible jurors, but relied on the previous year's roll, adding new names from suggestions from the commissioners. While the county population was 75 percent African American, only seven percent of the names on the jury list were of African American citizens.

Impact of Ruling: The Supreme Court noted that this was its first case in which African American plaintiffs sought affirmative relief from a discriminatory jury system, rather than a criminal defendant seeking relief from a conviction. The Court held that Alabama's jury system was valid, even though the application of the law resulted in the exclusion of African American jurors. However, the Court upheld the lower court's order regarding the administration of the juror selection statute, requiring that the county compile a new jury roll composed of all eligible citizens of the county.[153]

Evans v. Abney 396 U.S. 435

Summary of Facts and Issues: A public park in Macon, Georgia, was open to white residents only based on the provisions of a testamentary trust. In *Evans v. Newton* (1966) 382 U.S. 296, the Court had held that the city could not continue to operate the park in a segregated manner without violating the Fourteenth Amendment; therefore, the trust failed and the property returned to its heirs. African American citizens who sought to integrate the park appealed this holding, arguing that closing the park violated their Fourteenth Amendment right to equal protection under the law.

Impact of Ruling: The U.S. Supreme Court upheld the closing of the park. In reaching this decision, the Court distinguished the facts from its landmark holding in *Shelley v. Kraemer* (1948) 334 U.S. 1, where it ruled that it was unconstitutional for a court to enforce a racially discriminatory land covenant. In *Evans*, the Court applied race-neutral principles and said the destruction of the park was constitutional because it eliminated all discrimination against African Americans and the loss applied equally to white and African American citizens in Macon.[154]

1971

Bivens v. Six Unknown Named Fed. Narcotics Agents 403 U.S. 388

Summary of Facts and Issues: Six Federal Bureau of Narcotics agents entered and searched Bivens' home and arrested him without a warrant. The agents then booked him and subjected him to a visual strip search. In addition to the allegations of Fourth Amendment violations, Bivens, an African American man, sued each of the agents for damages for humiliation and mental suffering. The agents argued they were immune from suit via government privilege because they acted under federal authority.

Impact of Ruling: The Court held that Bivens did have a private right of action for money damages against federal officers for Fourth Amendment violations, recoverable upon proof of his injuries.[155] This case maintains federal court access for private citizens to file claims against federal government officials for some constitutional violations.[156]

Subsequent History: The Court initially extended *Bivens* to allow plaintiffs to bring actions against federal officers for Fifth and Eighth Amendment violations.[157] In recent years, the Court limited *Bivens* by holding that it cannot apply in new contexts.[158]

1972

Adams v. Williams 407 U.S. 143

Summary of Facts and Issues: Relying on an informant's tip that Williams was illegally carrying a gun and narcotics, a police officer approached Williams' car and reached in when Williams rolled down his window and removed a gun from his waistband. The officer then arrested Williams and searched his car, finding drugs. Williams was convicted and after the Supreme Court of Connecticut affirmed, Williams challenged the conviction on the ground that the state was imprisoning him unlawfully based on evidence that should not have been admitted at trial.

Impact of Ruling: The U.S. Supreme Court held that a police officer may conduct a search based on an informant's tip alone.[159] This allows officers to exercise discretion when determining whether the suspicion is sufficient or reliable.[160]

Subsequent History: The Court used the reasoning in *Williams* to justify its holding in *Illinois v. Wardlow* (2000) 528 U.S. 119. In *Wardlow*, a person fled when they saw a police officer in a high crime area, and the Court found the police's subsequent stop and search was reasonable based upon the person's suspicious behavior, even if they had acted out of intimidation or fear.[161]

Alexander v. Louisiana 405 U.S. 625

Summary of Facts and Issues: Defendant, who was convicted of rape and sentenced to life in prison, challenged the selection method used to form the grand jury. The grand jury pool of 20 had one African American, but the grand jury itself was all white. In forming the grand jury, the jury commissioners collected from potential jury members approximately 7,000 questionnaires, which contained a space to indicate the race of the recipient, and later excluded many because they were deemed not qualified or exempted from service. They then relied on the remaining 2,000 questionnaires to randomly select 400 people to serve on the grand jury. Of those selected, only 27, or 7 percent, were African American; the parish population was 21 percent African American at the time.

Impact of Ruling: The Court held that, while there is no numbers-based standard for determining systematic exclusions of African Americans from juries, there was unfair racial discrimination in this grand jury process. The racial designation on the questionnaires provided a clear and easy opportunity for discrimination; even if the defendant could not point to a specific instance of discrimination, the opportunity is sufficient to establish a Fourteenth Amendment violation.[162]

Peters v. Kiff 407 U.S. 493

Summary of Facts and Issues: Peters, a white man convicted of burglary, challenged the systematic exclusion of African Americans from the juries that indicted and convicted him. The state argued that Peters was not entitled to a reversal of his conviction because he did not provide affirmative evidence of actual harm.

Impact of Ruling: In a case of first impression, the Court ruled that a white defendant could challenge the systematic exclusion of African American jurors. The fact that the juries were illegally constituted was sufficient to establish a Fourteenth Amendment violation. This decision benefitted African American defendants as well, by strengthening the principle that a jury must be composed of a representative cross section of the community, and that any defendant is harmed by the systematic exclusion of jurors of any race on the basis of their race, regardless of whether they have demonstrated actual harm resulting from the exclusion.[163]

Subsequent History: In *Hobby v. United States* (1984) 468 U.S. 339, 350, the Court held that, assuming discrimination entered into the selection of federal grand jury foremen, such discrimination did notwarrant the reversal of the conviction of, and dismissal of the indictment against, a white male bringing a claim under the due process clause.

1973

Ham v. South Carolina 409 U.S. 524

Summary of Facts and Issues: Defendant Ham, who was convicted of the possession of marijuana, challenged his conviction because the trial judge refused to examine jurors on voir dire as to their racial prejudices. His counsel had asked the judge to ask potential jurors two questions regarding their racial biases, a question related to possible prejudice against beards (Ham was bearded), and a fourth question regarding publicity about drugs; the judge refused to ask any of the questions. Ham's defense was that the state was targeting him for his civil rights activities.

Impact of Ruling: The Court held that the Fourteenth Amendment and circumstances of this case required the judge to interrogate the jurors on the subject of racial prejudice. The Fourteenth Amendment ensures essential demands of fairness; the Court found that to advance this fairness, the trial court, while not required to ask the specific questions of defendant's counsel, must at least make an inquiry, since the defendant relied on an argument that he was racially profiled.[164]

Subsequent History: The Court soon clarified that the *Ham* decision would be construed narrowly. In *Ristaino v. Ross* (1976) 424 U.S. 589, 597, the Court held that the Constitution did not always entitle a defendant to have questions posed during voir dire on the issue of racial bias; this entitlement materialized in *Ham* because "[r]acial issues . . . were inextricably bound up with the conduct of the trial."

Davis v. United States 411 U.S. 233

Summary of Facts and Issues: Davis, an African American federal prisoner, was convicted by an all-white jury. He made an untimely challenge to the composition of the grand jury under a federal habeas corpus proceeding, arguing that the unconstitutional discrimination precludes the timeliness requirement.

Impact of Ruling: The Court found that a motion to dismiss a conviction on the basis of exclusion of qualified African American jurors, brought three years after the conviction, should be denied as untimely. The Court held that an allegation of deprivation of constitutional rights was not

sufficient to overcome an explicit timeliness waiver contained in the Federal Rules of Civil Procedure.[165]

Tollett v. Henderson 411 U.S. 258

Summary of Facts and Issues: Defendant was indicted by an all-white jury for murder and pleaded guilty on advice of his counsel, receiving a sentence of 99 years in prison. Years later, he petitioned for habeas corpus, claiming that his confession had been coerced and that he had ineffective assistance of counsel.

Impact of Ruling: The Court held that state prisoners cannot make a separate claim of discrimination in grand jury selection when they had already pleaded guilty with their lawyers' advice. However, they could challenge their guilty plea if they could prove that their counsel gave them advice outside of the range of competence demanded of attorneys in criminal cases. The Court remanded the habeas petition to the lower court to determine whether counsel's advice was within the range of competence.[166]

1975

Johnson v. Mississippi 421 U.S. 213

Summary of Facts and Issues: Six African American men boycotting businesses in Mississippi for racial discrimination in employment were arrested and charged with conspiracy to bring about a boycott. The petitioners sought to remove the case to federal court, arguing that the underlying charges were unconstitutional and in violation of the Civil Rights Act of 1968, which protected their right to participate and encourage participation in boycotts.

Impact of Ruling: The U.S. Supreme Court found that the Civil Rights Act of 1968 did not apply to state prosecutions, but only crimes of racial violence: petitioners did not have a right to be free from arrest and prosecution for federally protected conduct. Since there was no federal statutory authority, petitioners could not bring the case in federal court. [167]

1976

Ristaino v. Ross 424 U.S. 589

Summary of Facts and Issues: An African American man, Ross, was tried for crimes against a white man. During voir dire, the trial court was mandated by statute to inquire generally into prejudice but the trial court judge refused. Ross appealed, alleging his federal constitutional rights were violated because he was denied the opportunity to inquire about racial prejudice.

Impact of Ruling: The U.S. Supreme Court held that questioning potential jury members during voir dire about racial prejudice is not required under the Constitution and can be made on a case-by-case determination.[168]

Subsequent History: The Court later held that defendants in interracial capital cases are entitled to question jurors about potential racial bias.[169]

Francis v. Henderson 425 U.S. 536

Summary of Facts and Issues: An African American man convicted of felony murder filed a habeas corpus petition in federal court six years after his conviction, alleging his trial was unconstitutional because African American jurors were excluded from the grand jury that indicted him.

Impact of Ruling: The U.S. Supreme Court denied the petition for relief and upheld the rule set out in *Davis v. United States* (1973) 411 U.S. 233, which required a showing of "cause" explaining the petitioner's failure to challenge the constitutionality of the jury before trial, and a showing of actual prejudice, in federal collateral proceedings.[170]

1977

Manson v. Brathwaite 432 U.S. 98

Summary of Facts and Issues: The defendant, an African American man, challenged under the Sixth and Fourteenth Amendments the admissibility of a police officer's testimony that identified him as the culpable party.

Impact of Ruling: The U.S. Supreme Court held the officer's identification was reliable, even though a suggestive identification procedure was used. *Brathwaite* established the following factors for the court to consider to regulate the fairness and reliability of eyewitness testimony: (1) the witness' opportunity to view the perpetrator at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the accused; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. These factors are to be weighed against "the corrupting effect of the suggestive identification itself."[171]

1979

Rose v. Mitchell 443 U.S. 545

Summary of Facts and Issues: Criminal defendants challenged, through a habeas corpus petition, racial discrimination in the selection of the foreman of the grand jury that indicted them, but not the racial composition of the trial jury. In support of their argument, defendants presented evidence that there had not been an African American foreman of a grand jury in the county.

Impact of Ruling: The court held that if a state defendant is convicted, but the grand jury indicting them was

selected based on race, the conviction can be overturned, even if the trial was fair and the person was convicted by a legitimate trial jury, and that these claims can be made in a federal habeas petition. Ultimately, the Court ruled that the defendants did not present sufficient evidence of racial discrimination in the selection of the grand jury foreman and denied the petition.[172]

1980

United States v. Mendenhall 446 U.S. 544

Summary of Facts and Issues: Drug Enforcement Agency agents, who were white, approached the defendant, an African American woman, on a suspicion that she was unlawfully carrying narcotics. After some questioning, the agents asked her to accompany them to their office for further questioning and she complied. After being told she had the right to decline a search, the defendant consented to a search of her person and handbag. The agents then conducted the search and found narcotics in her possession. The defendant appealed her conviction on drug charges, on the ground that she never consented to the search.

Impact of Ruling: The U.S. Supreme Court upheld the conviction and found that the woman was legally searched because she voluntarily went to the agents' office and was not under duress or coercion based on the totality of the circumstances. The Court found that race had not been a decisive factor in whether the defendant freely consented to accompanying them to their office. Since a "reasonable person" would have believed they were free to walk away when first approached by the officers, the defendant's liberty and privacy had not been restricted in violation of the Fourth Amendment.[173]

Subsequent History: In *California v. Hodari D.* (1991) 499 U.S. 621, the Court applied the objective reasonable person standard from *Mendenhall* and elaborated that a show of authority was not enough to determine that a seizure had occurred, noting that "*Mendenhall* establishes that the test for existence of a 'show of authority' is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person."[174]

1984

Palmore v. Sidoti 466 U.S. 429

Summary of Facts and Issues: A white father sought custody of his child after the white mother married an African American man. The trial court granted the father custody, claiming that the child could experience a damaging impact from living in a racially mixed household. The mother appealed.

Impact of Ruling: The U.S. Supreme Court held that the effects of racial prejudice cannot be considered during a custody proceeding because it violates the Equal Protection Clause.[175]

1986

Batson v. Kentucky 476 U.S. 79

Summary of Facts and Issues: During the criminal trial of an African American man, a prosecutor used his peremptory challenges to dismiss all African American jurors in the jury pool. After his conviction, the defendant appealed, arguing that the prosecutor's actions violated his Sixth and Fourteenth Amendment rights.

Impact of Ruling: The U.S. Supreme Court ruled that the Equal Protection Clause prohibits prosecutors from challenging potential jurors solely on account of race, or based on the assumption that African American jurors would, as a group, be unable to impartially consider the government's case against an African American defendant.[176]

Subsequent History: The Court applied *Batson* in *Hernandez v. New York* (1991) 500 U.S. 352, and ruled that petitioners must show discriminatory intent, not just impact, to demonstrate that prosecutors violated the Equal Protection Clause when using a preemptory challenge.[177]

1987

Anderson v. Creighton 483 U.S. 635

Summary of Facts and Issues: Respondents filed a case in state court against a Federal Bureau of Investigation (FBI) agent for damages after he conducted a warrantless search of their home. The FBI agent removed the case to federal court and argued that their Fourth Amendment civil liability claim was barred by qualified immunity.

Impact of Ruling: The U.S. Supreme Court held that the FBI agent was protected by qualified immunity because a reasonable officer would have believed the search was justified. This ruling expanded the scope of qualified immunity to protect officials who conduct unlawful warrantless searches but reasonably believe their actions are legal.[178]

1988

Felder v. Casey 487 U.S. 131

Summary of Facts and Issues: In Milwaukee, a group of white police officers questioned an African American man, Felder. The questioning turned hostile and the police beat Felder. Nine months later, Felder brought a lawsuit

against the officers pursuant to 42 U.S.C. section 1983, alleging their conduct was racially motivated and violated his federal civil rights. The officers argued that a state law requiring a 120-day notice of the claim barred Felder from bringing the action.

Impact of Ruling: The U.S. Supreme Court ruled in favor of Felder and found that federal law preempted the Wisconsin notice-of claim law, allowing him to file in state court.[179] In the Prison Litigation Reform Act of 1995, Congress amended 42 U.S.C. section 1997e(a) to require persons in prison to exhaust such administrative remedies as are available before filing a section 1983 action suing over prison conditions. Therefore, *Felder* is no longer good law on the question of exhaustion with respect to section 1983 lawsuits filed by persons in prison.

1991

Powers v. Ohio 499 U.S. 400

Summary of Facts and Issues: Powers, a white defendant, objected under *Batson v. Kentucky* (1967) 467 U.S. 79, when the state used peremptory challenges to remove seven African American potential jurors from his trial jury.

Impact of Ruling: The Court held that a defendant has a right to be tried by a jury that was selected by non-discriminatory criteria. Although the holding in *Batson* emphasized the common racial identity of the defendant and the dismissed prospective juror, the Court in this case held that the defendant's race was irrelevant to his standing to object to the discriminatory use of preemptory challenges. The Equal Protection Clause prohibits a prosecutor from using their peremptory challenges to exclude otherwise qualified and unbiased potential jurors solely because of their race.[180]

II. State Statutes and Case Law

1879

Former Cal. Const., art. 1, § 18

Summary of Provisions: "Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State."[181]

Subsequent History: Section 18 was repealed November 5, 1974. Article 1, section 6, enacted in 1974, is similar to this original provision and provides that "Slavery is prohibited. Involuntary servitude is prohibited except to punish crime."[182]

1850

An Act Regulating Marriages, Ch. 140, § 3 (April 22, 1850)

Summary of Provisions: "All marriages of white persons with negroes or mulattoes are declared to be illegal and void."[183]

An Act Concerning Crimes and Punishments, Ch. 99, Third Division ("Who may be a witness in criminal cases"), § 14 (April 16, 1850)

Summary of Provisions: "No black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person. Every person who shall have one eighth part or more of Negro blood shall be deemed a mulatto, and every person who shall have one half of Indian blood shall be deemed an Indian."[184]

1851

Act for regulating proceedings in the Court practice of the Courts of the State of California, § 394, Ch. 3 (April 15, 1851)

Summary of Provisions: "...persons having one-half or more of negro blood, shall not be witnesses in an action or proceeding, to which a white person is a party."

1852

California Fugitive Slave Law, Book 33

Summary of Provisions: "When a person held to labor in any State or Territory of the United States under the laws thereof, shall escape into this state, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, or shall have the right to obtain a warrant of arrest for such fugitive..."

In re Perkins 2 Cal. 424

Summary of Facts and Issues: Petitioners were slaves who were brought to California when it was a free state, before its admission into the United States. They argued that the California Constitution prohibited slavery and that because they were brought into a free state, they were free and should not be returned to their master in Mississippi.

Impact of Ruling: The Court held that the master's property right was established by the slaves' residence,

which was in Mississippi, which established their status as slaves. The Court further held that California's fugitive slave law applied and required that they be returned to their master.[185]

1854

People v. Hall 4 Cal. 399

Summary of Facts and Issues: A free white was man convicted of murder through the testimony of a Chinese-American witnesses. The California Supreme Court reversed his conviction, holding that the 1850 state law that prohibited "Black or Mulatto person[s], or Indian[s]" from giving evidence in favor or, or against, a white man, applied to Chinese persons as well.[186]

Impact of Ruling: The California Supreme Court ruled the testimony was inadmissible and the witness incompetent, and that Chinese-Americans were included in the statute since the intention of the Legislature is clear, and if the Legislature would have known of the specific minority they would have included it by name, and because the specific words used in the statute are generic terms used to exclude all races other than white.[187]

Subsequent History: In *People v. Elyea* (1859) 14 Cal. 144, 146, the California Supreme Court noted that "we cannot presume that all persons having tawny skins and dark complexions are within the principle of [*Hall*]," and that the statute itself made it impossible to adopt any rule of exclusion based solely on color; other factors such as birthplace and parentage of a witness may be needed. In that case, the witness whose testimony was sought to be excluded was from Turkey, whose population was mostly Caucasian. In *People v. Howard* (1860) 17 Cal. 63, 64, while accepting the district attorney's argument that some crimes will go unpunished, the Court held that pursuant to statute, even as an "injured party," African American and "mulatto" persons are incompetent witnesses against white individuals. In posthumously admitting applicants to the California State Bar, who were previously barred by the federal Chinese Exclusion Act, the Court in *In re Chang* (2015) 60 Cal.4th 1169, 1172, 1175, found that denial violated equal protection and cited *Hall* as an example of previously upheld discriminatory laws and government action.

1858

In re Archy 9 Cal. 147

Summary of Facts and Issues: A Mississippi citizen petitioned the Court for the recovery of his property, a 19-year old African-American enslaved person; and argued that the Eighteenth section of the Constitution of California, that "neither slavery nor involuntary servitude except for the punishment of crimes shall ever be tolerated in this State," could not be applied to a non-California citizen, that Mississippi law should apply, and that the constitutional declaration was not enough without a Penal Code, remedies, or legislative action giving life to the proclamation.

Impact of Ruling: The Court disagreed that the constitutional bar needed anything more to be effective; however, it also supported a citizen's federal right to travel between states with one's own property, applied Mississippi law under the law of comity based on the length of time of the non-citizen in the state, and because this was the first case to come under this section, exempted plaintiff from a rigid enforcement – although the court stated that, going forward, it would enforce the rule strictly.

Subsequent History: Decided during the same term, in *Pleasants v. North B. & M. R. Co.* (1868) 34 Cal. 586, 589, the Court reiterated the holding, requiring proof of special damages, malice, ill will, or wanton or violent conduct by defendant, in addition to statements such as "we don't take colored people in the cars."

1948

Hughes v. Superior Court 32 Cal.2d 850

Summary of Facts and Issues: Petitioners picketed a store, arguing that the store should have clerks more representative of the racial makeup of its customers (i.e., that there should be more African American store clerks). A preliminary injunction was subsequently issued, ordering them to stop picketing for that specific purpose. The petitioners were then found in contempt of court for willfully violating the preliminary injunction and sought to annul the judgment. The petitioners argued that the right to picket peacefully and truthfully is one of organized labor's lawful means of advertising its grievances to the public, and as such, is guaranteed by the Free Speech Clause of the Constitution.

Impact of Ruling: The California Supreme Court affirmed the lower court's injunction, stating that if the store yielded to the demand of its petitioners, its resultant hiring policy would have constituted, as to a proportion of its employees, "a closed shop and a closed union in favor of the Negro race [. . .] because race and color are inherent qualities which no degree of striving or of other qualifications for a particular job could meet, those persons who are born with such qualities constitute, among themselves, a closed union which others cannot join."[188] Specifically, the Court held that the injunction in the case is limited to enjoining picketing for a specifically designated unlawful purpose: arbitrary discrimination in favor of African Americans, based on race alone.[189]

1975

Murgia v. Municipal Court 15 Cal.3d 286

Summary of Facts and Issues: The defendants sought a writ of mandate challenging the trial court's ruling that denied all discovery on discriminatory prosecution issues. Defendants were members of the United Farm Workers Union (UFW) and alleged that local law enforcement were utilizing penal statutes discriminatorily against non-whites. They sought discovery to defend themselves against criminal prosecution emanating from picketing and organizational activities of the UFW.

Impact of Ruling: The California Supreme Court held that the equal protection clauses of the federal and California Constitutions safeguard individuals from intentional and purposeful invidious discrimination in enforcement of all laws, including penal statutes, and a defendant may raise such a claim of discrimination as a ground for dismissal of a criminal prosecution. The trial court erred in barring defendants' right to access to discover information relevant to their claim of intentional and purposeful, invidious discrimination. The "plausible justification" standard held sway in California until 1990. Penal Code section 1054, subdivision (e) took effect in 1990, and it prohibited any discovery in a criminal case that was not expressly mandated by statute or required by the United States Constitution.

1978

People v. Wheeler 22 Cal.3d 258

Summary of Facts and Issues: Defendants were two African American men convicted by an all-white jury of murdering a white grocery store owner in the course of a robbery. Although there were a number of African American people summoned to hear the case, called to the jury box, questioned on voir dire, and passed for cause, the prosecutor proceeded to strike every single African American from the jury by means of their peremptory challenges. The defendants' motions for mistrial were denied by the trial court.

Impact of Ruling: The California Supreme Court held that the use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community. The Court further held that the trial court made a prejudicial error by not requiring the prosecutor to respond to the defendants' allegation of discrimination and in denying the defendants' motion for a mistrial without a rebuttal showing by the prosecutor that the challenges were each predicated on grounds of specific bias.

1979

People v. Allen 23 Cal.3d 286

Summary of Facts and Issue: Defendants were African American men were life prisoners who were convicted of fatally stabbing a white correctional officer and sentenced to death. Although the pool from which the jury was selected included a broad cross-section of racial and ethnic groups, the prosecutor used their peremptory challenges to exclude all 14 African Americans who were tentatively seated as either a regular or alternate juror. .

Impact of Ruling: As the Court in *Wheeler* established, peremptory challenges may not be used based on race alone. In this case, the prosecutor used peremptory challenges to remove 14 African American potential jury members from different genders, and economic backgrounds, leaving race as the only other commonality. The Court affirmed the state's commitment to diverse juries, finding that the trial court erred in rejecting defendants' objections to the jury selection process and erred in permitting the case to be tried by a jury from which African American prospective jurors had been unconstitutionally excluded.

People v. Bower 24 Cal.3d 638

Summary of Facts and Issues: Officers noticed Defendant Bower, a white man, in the presence of African American men at night in a predominantly African American residential area. The officers stopped Bower and a search of his person revealed a concealed weapon, and Bower was convicted for being a felon in possession of a concealable firearm. At trial, one officer testified that he had "never observed a white person in the projects or around the projects on foot in the hours of darkness or for innocent purposes" to justify the stop and search.[190]

Impact of Ruling: The California Supreme Court reversed Bower's conviction because his detention was not justified and the subsequent search was illegal. The court held that the motion to suppress should have been granted and determined that a white man in the presence of African American men in a predominantly African American neighborhood was not a valid reason to be detained. The Supreme Court further held that the other circumstances relied on by the officer in attempt to justify the detention were not in fact relied on by the officer, and in any event, were insufficient additional circumstances to warrant the intrusion.[191] Pre-Proposition 8 California decisions such as *Bower* held that the lack of subjective suspicion may render a detention unlawful, requiring the suppression of evidence flowing from the detention, but following Proposition 8 the analysis of such evidentiary issues must be conducted under federal law.[192]

1983

People v. Hall 35 Cal.3d 161

Summary of Facts and Issues: An African American defendant was convicted of aggravated assault and false imprisonment of a white woman after a jury retrial. The first jury trial was declared a mistrial after the lone African American juror did not join the remainder of the jury in voting for guilty verdicts. During the voir dire of jury at the retrial, the prosecutor used peremptory challenges to excuse at least four African American jurors. On two occasions, the defendant asked that the prosecutor be required to make a showing that no systematic exclusion of African American people was underway if any further peremptory challenges were used to exclude African American jurors, but the prosecutor declined and the court deferred the rulings. After a facially neutral explanation was eventually provided by the prosecutor, the judge accepted it and expressed a view that systematic exclusion of a class of potential jurors occurs only when the prosecutor expressly states an intent to exclude all members of a class. Defendant's motion for a new trial was denied, he was convicted and subsequently appealed.

Impact of Ruling: The California Supreme Court reversed the conviction, concluding that the trial court failed to exercise its judgment to determine whether the prosecutor's use of peremptory challenges was for reasons relevant to the case before it or reflected a constitutionally impermissible group bias. It is imperative, if the constitutional guarantee is to have real meaning, that once a prima facie case of group bias appears, the allegedly offending party is required to come forward with explanation to the court that demonstrates other bases for the challenges *and* that the court satisfies itself that the explanation is genuine. The Supreme Court explained that the record itself showed that the trial court made no serious attempt to evaluate the prosecutor's explanation, and the disparate treatment of excusing so many African American jurors demanded further inquiry on the part of the trial court.[193]

1985

People v. Motton 39 Cal.3d 596

Summary of Facts and Issues: Defendant appealed from a conviction for second-degree murder. During jury selection, defense counsel objected that the prosecutor was exercising his peremptory challenges to exclude African Americans from the jury. Seven out of the thirteen of the prosecutor's peremptory challenges were directed against African American people, leaving only one African American person on the jury. The trial court found that no prima facie case had been established and did not require the prosecutor to justify his challenges.

Impact of Ruling: The California Supreme Court found that the trial court committed reversible error per se in finding that the defendant did not present a prima facie showing and in failing to require the prosecutor to justify his challenges. The court also held that African American people generally, and African American women specifically, are considered members of a "cognizable" group and that "[w]here Blacks compromise a significant portion of the population – particularly in Alameda County where blacks comprise the majority population in some areas – black women are a vital part of that 'ideal cross section of the community' that should be represented on jury panels."[194]

1987

People v. Snow 44 Cal.3d 216

Summary of Facts and Issues: An African American man appealed his conviction of first-degree murder of a white victim. During voir dire, the defense attorney on multiple occasions objected to the prosecutor's repeated use of peremptory challenges to exclude African American people from jury, stating that it was a "systematic exclusion" of African American jurors. In response, the prosecutor denied any of his exclusions were based on race stating he had his reasons and argued that the defense systematically excluded all white persons, but not one non-white had been excluded by them. Although the trial judge twice commented that the prosecution appeared to be using his peremptories improperly, he declined to require the prosecutor to explain his reasons. Ultimately, six African American people were excluded by the prosecutor and the final jury had two African American jurors.

Impact of Ruling: The Supreme Court held that the trial court's failure to require the prosecutor to explain his peremptory challenges of African American potential jurors was reversible. Citing to *People v. Wheeler* and other similar cases, the court held that the prosecutor was in error in assuming that defense counsel's supposed wrongful exclusion of white people in some manner justified his own exclusion of African American persons. The court further held that just because there were two African American people left on the jury, did not mean that there was not a pattern of unlawful discrimination short of total exclusion, as the fact that two African American jurors were left was not a conclusive factor that discrimination did not occur. In a case where the trial judge himself expressed serious suspicions that the prosecutor was using some of his peremptory challenges to exclude African American people, the trial judge was obligated to conduct further inquiry of the prosecutor on the record.

1988

People v. Wright 45 Cal.3d 1126

Summary of Facts and Issues: Defendant was convicted of armed robbery after a group of men in stocking masks armed with handguns robbed a warehouse. The sole evidence against him at trial was eyewitness identification. The trial court declined to give four of the five special jury instructions that defendant requested on eyewitness identification. While he was convicted of all charges by the jury, the jury was unable to reach a verdict as to his co-defendant.

Impact of Ruling: The California Supreme Court held that the trial correctly declined to give four of the five requested jury instructions. Although the trial court erred in failing to give an instruction listing the factors the jury could consider in evaluating eyewitness identifications, the Court found the error harmless. Justice Mosk, in the dissent, discussed studies that show significant impairment in white witnesses' attempts to recognize African American faces. Justice Mosk also disagreed with the majority's conclusion that the error in refusing to give a correct instruction on the factors affecting the eyewitness identifications was harmless.[195]

1989

People v. Johnson 47 Cal.3d 1194

Summary of Facts and Issues: Defendant Johnson challenged his murder and robbery convictions on various grounds including (1) that the granting of hardship exclusions because of the projected length of the trial tended to systematically exclude poor persons in a disproportionate manner denying a fair cross-sectional jury; and (2) the trial court erred in denying his *Wheeler* motion that the prosecutor used his peremptory challenges to exclude various African American, Jewish, and Asian jurors.

Impact of Ruling: The California Supreme Court affirmed the judgment of the trial court in its entirety. The Court held that the granting of hardship exclusions because of the projected length of the trial did not tend to systematically exclude poor persons in a disproportionate manner, as persons with low income do not constitute a cognizable class. The Court also found that the defendant's *Wheeler* motion was properly denied: the prosecutor's peremptory challenges to African American jurors were not improper because they were based on individual evaluations of each juror's bias (e.g., an African American juror seemed to be prejudiced against police officers and another African American juror discussed how police officers treated African American people differently).[196]

1991

People v. Fuentes 54 Cal.3d 707

Summary of Facts and Issues: Defendant was convicted of murder and other crimes and sentenced to death after a jury retrial. During jury selection for the retrial, the prosecutor used 14 of their 19 peremptory challenges to exclude potential African American jurors and alternates. The defendant made several objections to the prosecutor's exclusion of African American people, but the trial court postponed hearing the prosecutor's explanation for exclusion until the end of jury selection, and even though the court found some of the prosecutor's excuses "totally unreasonable," or "very spurious," there were "some good reasons" and ultimately decided that the prosecutor had not improperly excluded the prospective African American jurors.[197]

Impact of Ruling: The California Supreme Court held that defendant's constitutional right to trial by a jury drawn from a representative cross-section of the community was violated by the trial court's failure to carefully evaluate the prosecutor's explanations for peremptory challenges to African American prospective jurors, which it must do in order to determine whether the challenges reflected a constitutionally impermissible group bias. While the trial court took the first step in the evaluation process by determining "which of the myriad justifications cited by the prosecutor were sham and which were bona fide," the trial court "failed to take the next, necessary step of asking whether the asserted reasons actually applied to the particular jurors whom the prosecutor challenged."[198]

1994

People v. Turner 8 Cal.4th 137

Summary of Facts and Issues: Turner, an African American defendant, was convicted of murdering two white people after a jury retrial. After the first trial, Turner's conviction was reversed for a *Wheeler* error. In the second trial, Turner challenged the trial court's failure to grant his motion to recuse the same prosecutor in the first trial whose failure to adequately explain his use of peremptory challenges to African American prospective jurors caused the reversal in the first trial, making the defendant unable to receive a fair trial if the jury is not drawn from a representative cross-section of the community. The defendant further cited to *People v. Fuentes* (discussed above), in which the same prosecutor was counsel of record, and in which 10 of the 14 prosecution peremptory challenges were against African American people. The defendant also challenged the trial court's ruling that the defendant did not make a prima facie showing of group bias in the prosecutor's use of peremptory challenges to

excuse three African American jurors, and that regardless the prosecutor provided adequate race-neutral reasons for excusing them.

Impact of Ruling: The California Supreme Court held that the trial court acted within its discretion in denying the motion to recuse, finding that just because the prosecutor made a mistake at prior trial, does not mean he should be subject to recusal at any subsequent trial. The trial court was within its discretion in impliedly concluding that the lack of adequate explanation in the first trial by the prosecutor did not mean he possessed "a vendetta against Black defendants and Black jurors."[199] Furthermore, the Court's ruling in *People v. Fuentes* preceded the ruling in this case, the basis for which was the trial court's failure, not the prosecutor's misconduct, to determine whether the prosecutor asserted reasons actually applied to the particular jurors challenged.

2013

People v. Harris 57 Cal.4th 804

Summary of Facts and Issues: Defendant was convicted of murder and other charges and was sentenced to death. He challenged the outcome on multiple bases. Among them, was (1) that the trial court violated his right to a fair trial by limiting race-related questions in the jury questionnaire and during voir dire; (2) that the trial court erred by denying his motion to allow counsel to conduct voir dire of each prospective juror individually and separately from the other prospective jurors because the cross-racial nature of the case was likely to evoke racial biases; and (3) the prosecution unjustly removed prospective African American jurors using their peremptory challenges.

Impact of Ruling: As to the above bases, the California Supreme Court found that (1) in light of the nine questions the trial court permitted on racial bias and rejection of five other racial bias questions which were duplicative, collateral or phrased in a biased or non-neutral manner, the defense's opportunity to explore possible racial bias was sufficient; (2) the trial court did not abuse its discretion in denying defendant's request for individual sequestered voir dire—such sequestering is not constitutionally required even in a capital case and any sensitive matters, such as examining a juror's possible racial biases privately, could have been requested by the defendant; and (3) the defendant had not made a prima facie showing that the two challenges were based on race; the challenge of one or two jurors can rarely suggest a pattern of impermissible exclusion, only three of the 69 prospective jurors were African American, and one of the two excused personally knew eight of the witnesses and indicated in his questionnaire that he would be biased.[200]

People v. Mai 57 Cal. 4th 986

Summary of Facts and Issues: Defendant Hung Thanh Mai was convicted of murder of a police officer and was sentenced to death. One of his various challenges was that his right to a jury drawn from a representative cross-section of the community was violated when the trial court erroneously denied his *Wheeler* objection to the prosecutor's use of peremptory challenges to excuse the only three African American jurors of the jury pool for racially discriminatory reasons.

Impact of Ruling: The California Supreme Court concluded that substantial evidence supported the race-neutral reasons given by the prosecutor for his excusal of the three prospective jurors. The Court further noted that while considering the *Batson/Wheeler* motion, the court asked for the relevant juror questionnaires, and presumably reviewed them. As such, it appeared to the Court that there was no reason to conclude that the trial court had failed to consider all the factors bearing on the prosecutor's credibility, the court's own observation of the relevant jurors' voir dire, its experience as a trial lawyer and judge in the community, and the common practices of the prosecutor's office and the individual prosecutor himself.[201]

2020

California Proposition 16 - Repeal Proposition 209 Affirmative Action Amendment

Summary of Proposition: Proposition 16 would have allowed state and local entities to consider race, sex, color, ethnicity, and national origin in public education, public employment, and public contracting to the extent allowed under federal law. It would have repealed Proposition 209, which added section 31 of article 1 to the California Constitution in 1996, and which generally banned the consideration of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting in California, subject to some exceptions.

Result of Proposition Vote: Rejected, which resulted in keeping Prop. 209.

Impact of Law: This constitutional amendment to repeal Proposition 209 was rejected by California voters on November 3, 2020.

Endnotes

[1] *An Ordinance for the Government of the Territory of the United States North-West of the River Ohio* (Jul. 13, 1787) National Archives Catalog (as of May 18, 2023).

[2] *See* Knipprath, July 13, 1787: Northwest Ordinance Provides a Process for Forming New States – Constituting America, Constituting America (as of May 18, 2023).

[3] Andreadis, The First Fugitive Slave Law in America (May 26, 2020) Harriet Beecher Stowe House (as of May 18, 2023).

[4] *Ibid.*

[5] *See ibid.*

[6] U.S. Const. art. IV, § 2, cl. 3.

[7] Kaczorowski, *Tragic Irony of American Federalism: National Sovereignty versus State Sovereignty in Slavery and in Freedom, The Federalism in the 21st Century: Historical Perspectives,* (1997) 45 U. Kan. L.Rev. 1015, 1025 (hereinafter Tragic Irony of American Federalism).

[8] The Editors of Encyclopaedia Britannica, *Fugitive Slave Acts* (October 21, 2022) Britannica (hereinafter Fugitive Slave Acts) (as of May 18, 2023).

[9] Naturalization Act of 1790, Pub. L. 1-3 (Mar. 26, 1790) 1 Stat. 103.

[10] *Ibid.*

[11] Naturalization Act of 1795, Pub. L 3-20 (Jan. 29, 1795) 1 Stat. 414.

[12] *Tragic Irony of American Federalism*, *supra*, at pp. 1025-1027; *Fugitive Slave Acts*, *supra.*

[13] *Tragic Irony of American Federalism*, *supra, at p. 1025.*

[14] Fugitive Slave Acts, *supra.*

[15] Naturalization Act of 1798, Pub. L 5-54 (June 18, 1798) 1 Stat. 566.

[16] *Alien and Sedition Acts (1798)* (November 30, 2022) National Archives (as of May 20, 2023).

[17] *See ibid.*

[18] Naturalization Act of 1798, Pub. L 5-54, *supra.*

[19] Naturalization Act of 1802, Pub. L 7-28 (Apr. 14, 1802) 2 Stat. 153.

[20] *Ibid.*

[21] *See* U.S. Const. art. I, § 2, cl. 3.

[22] *Ibid.*

[23] Missouri Compromise *(1820)* (Jun. 16, 2021), National Archives (as of May 19, 2023).

[24] *See ibid.*

[25] *Dred Scott v. Sandford* (1857) 60 U.S. 393, 451–452.

[26] *Kansas Nebraska Act (1854)* (May 10, 2022) National Archives (as of May 19, 2023).

[27] The 1807 Act is sometimes referenced as the 1808 Act because, although it was passed in 1807, it became effective in 1808

[28] *The Josefa Segunda* (1820) 18 U.S. 338, 352-353, 359.

[29] See The Slave Trade *(Jan. 7, 2022)* National Archives (as of May 17, 2023).

[30] *United States v. Preston* (1830) 28 U.S. 57, 60, 66-67.

[31] *The Merino* (1824) 22 U.S. 391, 394-395, 403-405.

[32] *Id.* at pp. 405-408.

[33] *See id.* at pp. 404-408.

[34] *The St. Jago de Cuba* (1824) 22 U.S. 409, 410-411, 413, 418-420.

[35] *Id.* at p. 415.

[36] *The Antelope* (1825) 23 U.S. 66, 67-69, 118, 132-133.

[37] *See id. at pp. 118, 132-133.*

[38] *The Amistad* (1841) 40 U.S. 518, 587-598.

[39] *See id.* at pp. 593-594.

[40] The Amistad Case (Aug. 15, 2016) National Archives (as of May 17, 2023).

[41] *Prigg v. Pennsylvania* (1842) 41 U.S. 539, 608-610, 612-613, 625-626.

[42] *Id.* at pp. 614-615.

[43] Fugitive Slave Acts, *supra.*

[44] Treaty of Peace, Friendship, Limits, and Settlement Between The United States of America and The United Mexican States Concluded at Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922.

[45] Treaty of Guadalupe Hidalgo (1848) (Sep. 20, 2022) National Archives (as of May 18, 2023).

[46] *Ibid.*

[47] *Ibid.*

[48] Pratt et al., Measuring Race and Ethnicity Across the Decades (Sep. 4, 2015) United States Census Bureau (as of May 17, 2023).

[49] Urofsky, Compromise of 1850 (April 28, 2023) Britannica (as of May 31, 2023).

[50] The Kansas Nebraska Act (May 30, 1854) 10 Stat. 277; Kansas-Nebraska Act (1854) (May 10, 2022), National Archives (as of May 19, 2023); Urofsky, Compromise of 1850, supra.

[51] Urofsky, Compromise of 1850, *supra.*

[52] *Ibid.*

[53] Edwards and Lash, The Fugitive Slave Act of 1850, National Constitution Center (hereinafter The Fugitive Slave Act of 1850) (as of May 17, 2023).

[54] *Ibid.*

[55] Smith, Bounty Hunters and Kidnapping, Encyclopedia.com (as of May 15, 2023); The Fugitive Slave Act of 1850, *supra.*

[56] Fugitive Slave Acts, *supra*; The Fugitive Slave Act of 1850, *supra.*

[57] *Bennett v. Butterworth* (1850) 49 U.S. 124, 127-130.

[58] *Ibid.*

[59] *Randon v. Toby* (1850) 52 U.S. 493, 493, 520-521.

[60] *Id.* at pp. 520-521.

[61] Fugitive Slave Acts, *supra.*

[62] *Ibid.*

[63] The Fugitive Slave Act of 1850, *supra.*

[64] *Ibid.*

[65] *Ibid.*

[66] Smith, Bounty Hunters and Kidnapping, *supra*; The Fugitive Slave Act of 1850, *supra*.

[67] Fugitive Slave Acts, *supra*.

[68] *Kansas Nebraska Act (1854)* (May 10, 2022) National Archives (as of May 19, 2023).

[69] The Editors of Encyclopaedia Britannica, Kansas-Nebraska Act (April 18, 2023) Britannica (as of May 19, 2023).

[70] History.com Editors, Bleeding Kansas (October 27, 2009), History (as of May 17, 2023).

[71] *Ibid.*

[72] *Dred Scott v. Sandford* (1857) 60 U.S. 393, 393, 397-398, 407, 422, 451-452.

[73] *Id.*

[74] U.S. Const., Amend. XIV.

[75] *Ableman v. Booth* (1858) 62 U.S. 506, 507-511, 517, 523-526.

[76] Civil Rights Act of 1866 (April 9, 1866) 14 Stat. 27.

[77] Guelzo and Miller, Civil Rights Act of 1866, "An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication," National Constitution Center (as of May 17, 2023).

[78] Civil Rights Act of 1870 (May 31, 1870) 16 Stat. 140.

[79] *Blyew v. United States* (1871) 80 U.S. 581, 582-585.

[80] *Id.* at pp. 592-595.

[81] *See id.* at pp. 596, 599.

[82] Silverbrook, The Ku Klux Klan and Violence at the Polls, Bill of Rights Institute (as of May 17, 2023).

[83] *United States v. Cruikshank* (1875) 92 U.S. 542, 552-559.

[84] *Ibid.*

[85] See Silverbrook, The Ku Klux Klan and Violence at the Polls, *supra*.

[86] *New York v. Compagnie Generale Transatlantique* (1883) 107 U.S. 59, 59-63.

[87] *Id.* at pp. 61-62.

[88] *United States v. Harris* (1883) 106 U.S. 629, 629-633, 640-641.

[89] *Id.* at pp. 638-641.

[90] *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 356-357, 365, 368, 373-374.

[91] *Id.* at pp. 373-374.

[92] *Carter v. Texas* (1900) 177 U.S. 442, 443, 447-449.

[93] *Id.* at p. 447.

[94] *Brownfield v. South Carolina* (1903) 189 U.S. 426, 427-429.

[95] *Rogers v. Alabama* (1904) 192 U.S. 226, 229-231.

[96] *Martin v. Texas* (1906) 200 U.S. 316, 318-321.

[97] *Batson v. Kentucky* (1986) 476 U.S. 79, 96.

[98] *Battle v. United States* (1908) 209 U.S. 36, 36-37, 39.

[99] *Ex Parte Young* (1908) 209 U.S. 123, 159-160, 169-173.

[100] *Ibid.*

[101] *Thomas v. Texas* (1909) 212 U.S. 278, 278, 281-283.

[102] *Franklin v. South Carolina* (1910) 218 U.S. 161, 162, 165-168.

[103] *Id.* at pp. 167-168.

[104] *Moore v. Dempsey* (1923) 261 U.S. 86, 87-91.

[105] *Id.* at pp. 91-92.

[106] *Aldridge v. United States* (1931) 283 U.S. 308, 309, 311.

[107] *Id.* at pp. 310-311, 315.

[108] *Rosales-Lopez v. United States* (1981) 451 U.S. 182, 189-190.

[109] *Powell v. Alabama* (1932) 287 U.S. 45, 49-52, 56-58.

[110] *Id.* at pp. 53, 65, 71, 73.

[111] Cose, *The Saga of the Scottsboro Boys* (July 27, 2020) ACLU (as of May 20, 2023).

[112] *Norris v. Alabama* (1935) 294 U.S. 587, 597-599.

[113] George, *Who Were the Scottsboro Nine?* (March 23, 2021) Smithsonian Magazine (as of May 20, 2023).

[114] Bellamy, *The Scottsboro Boys Injustice in Alabama* (2014) National Archives (as of May 20, 2023).

[115] *Norris v. Alabama, supra,* 294 U.S. at pp. 588-591

[116] *Id.* at pp. 589-590, 598.

[117] *Brown v. Mississippi* (1936) 297 U.S. 278, 279, 286-287.

[118] *Chambers v. Florida* (1940) 309 U.S. 227, 229, 235, 237-241.

[119] *Id.* at pp. 240-241.

[120] *Ward v. Texas* (1942) 316 U.S. 547, 547-549, 555.

[121] *Ibid.*

[122] *Akins v. State of Texas*, *supra*, 325 U.S. 398, 403, 406-407.

[123] *Id.* at pp. 403.

[124] *Haley v. Ohio*, *supra*, 332 U.S. 596, 600-601.

[125] *Id.* at p. 601.

[126] *Moore v. New York*, *supra,* 333 U.S. 565, 567-570.

[127] *Id.* at 565, 567-570.

[128] *Cassell v. Texas*, *supra*, 339 U.S. 282, 283, 286-290.

[129] *Ibid.*

[130] *Brown v. Allen*, *supra*, 344 U.S. 443, 446-447, 466-477, 478-481, 485-487.

[131] *Ibid.*

[132] *Avery v. State of Georgia, supra*, 345 U.S. 559, 560-562.

[133] *Id.* at pp. 560-562.

[134] *Monroe v. Pape*, *supra*, 365 U.S. 167, 169-170, 172, 191-192.

[135] *Id.* at pp. 172, 191.

[136] *Mapp v. Ohio, supra,* 367 U.S. 643, 644-645.

[137] *Id.* at p. 660.

[138] *Id.* at p. 655.

[139] *Bouie v. City of Columbia, supra,* 378 U.S. 347, 347-355.

[140] *Id.* at p. 363.

[141] *Davis v. North Carolina, supra,* 384 U.S. 737, 738, 740, 752-753.

[142] *Id.* at pp. 740, 752-753.

[143] *Id.* at pp. 740, 745-747.

[144] *Whitus v. Georgia*, *supra*, 385 U.S. 545, 550-552.

[145] *Ibid.*

[146] *Sims v. Georgia, supra,* 389 U.S. at pp. 406-408.

[147] *Id.* at pp. 407-408.

[148] *Terry v. Ohio*, *supra*, 392 U.S. at pp. 5-8.

[149] *Id. at pp. 15, 30-31.*

[150] *Sibron v. New York*, *supra*, 392 U.S. 40, 64.

[151] *Id.* at pp. 64-67.

[152] *Carter v. Jury Commission of Greene County, supra,* 396 U.S. 320, 323.

[153] *Id.* at pp. 321-324, 327, 329, 336-337, 339-340.

[154] *Evans v. Abney, supra,* 396 U.S. 435, 436, 438-440, 445.

[155] *Bivens*, *supra,* 403 U.S. at pp. 389-390, 397.

[156] *See* Chapter 11, An Unjust Legal System, *supra*.

[157] *Davis v. Passman* (1979) 442 U.S. 228; *Carlson v. Green* (1980) 446 U.S. 14.

[158] *Ziglar v. Abbasi* (2017) 582 U.S. 120; *Hernandez v. Mesa* (2020) __ U.S. __ [140 S.Ct. 735, 206 L.Ed.2d 29].

[159] *Adams v. Williams* (1972) 407 U.S. 143, 145, 147.

[160] See Chapter 8, Pathologizing the African American Family, for some of the effects of the "War on Drugs."

[161] *Illinois v. Wardlow* (2000) 528 U.S. 119, 125.

[162] *Alexander v. Louisiana* (1972) 405 U.S. 625-628, 630.

[163] *Peters v. Kiff, supra, 407 U.S. at pp. 495, 497-499, 503.*

[164] *Ham v. South Carolina*, *supra*, 409 U.S. at pp. 525-528.

[165] *Davis v. United States*, *supra*, 411 U.S. at pp. 234, 239-240.

[166] *Tollett v. Henderson, supra,* 411 U.S. at pp. 259, 266-267, 269.

[167] *Johnson v. Mississippi, supra,* 421 U.S. at pp. 223, 225-227.

[168] *Ristaino v. Ross, supra,* 424 U.S. at pp. 593, 597-598.

[169] *Turner v. Murray* (1986) 476 U.S. 28, 36-37.

[170] *Francis v. Henderson*, *supra,* 425 U.S. at p. 542.

[171] *Manson v. Brathwaite*, *supra,* 432 U.S. at p. *114.*

[172] *Rose v. Mitchell, supra,* 443 U.S. at pp. 547, 563-564, 566-567, 574.

[173] *United States v. Mendenhall, supra,* 446 U.S. at pp. 544-545, 547, 554, 558.

[174] *California. v. Hodari D., supra,* 499 U.S. at p. 628.

[175] *Palmore v. Sidoti*, *supra*, 466 U.S. at pp. 430-431, 434.

[176] *Batson v. Kentucky, supra,* 476 U.S. at p. 89.

[177] *Hernandez v. New York*, *supra*, 500 U.S. at pp. 359, 362-363.

[178] *Anderson v. Creighton*, *supra*, 483 U.S. at pp. 637, 641.

[179] *Felder v. Casey, supra,* 487 U.S. at pp. 134-136, 153.

[180] *Powers v. Ohio, supra,* 499 U.S. at pp. 402-403, 409, 416.

[181] Constitution of the State of California Adopted and Ratified in 1879.

[182] Cal Const., art. I, sec. 6.

[183] Chap 40 An Act Regulating Marriages, p. 424.

[184] Chap 99 An Act Concerning Crimes and Punishments, p. 230.

[185] *In re Perkins, supra*, 2 Cal. at p. 447.

[186] *People v. Hall*, *supra*, 4 Cal. 399.

[187] *Id.* at pp. 403-404.

[188] *Hughes v. Superior Court* (1948) 32 Cal.2d 850, 856.

[189] *Ibid.*

[190] *People v. Bower*, *supra*, 24 Cal.3d at p. 642.

[191] *Id.* at p. 644-645.

[192] *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733.

[193] *People v. Hall*, *supra*, 35 Cal.3d at pp. 168-169.

[194] *People v. Motton* (1985) 39 Cal.3d at pp. 605-606.

[195] *People v. Wright*, *supra*, 45 Cal.3d at pp. 1132, 1158.

[196] *People v. Johnson*, *supra*, 47 Cal.3d at pp. 1214-1218.

[197] *People v. Fuentes*, *supra*, 54 Cal.3d at p. 713.

[198] *Id.* at pp. 720-721.

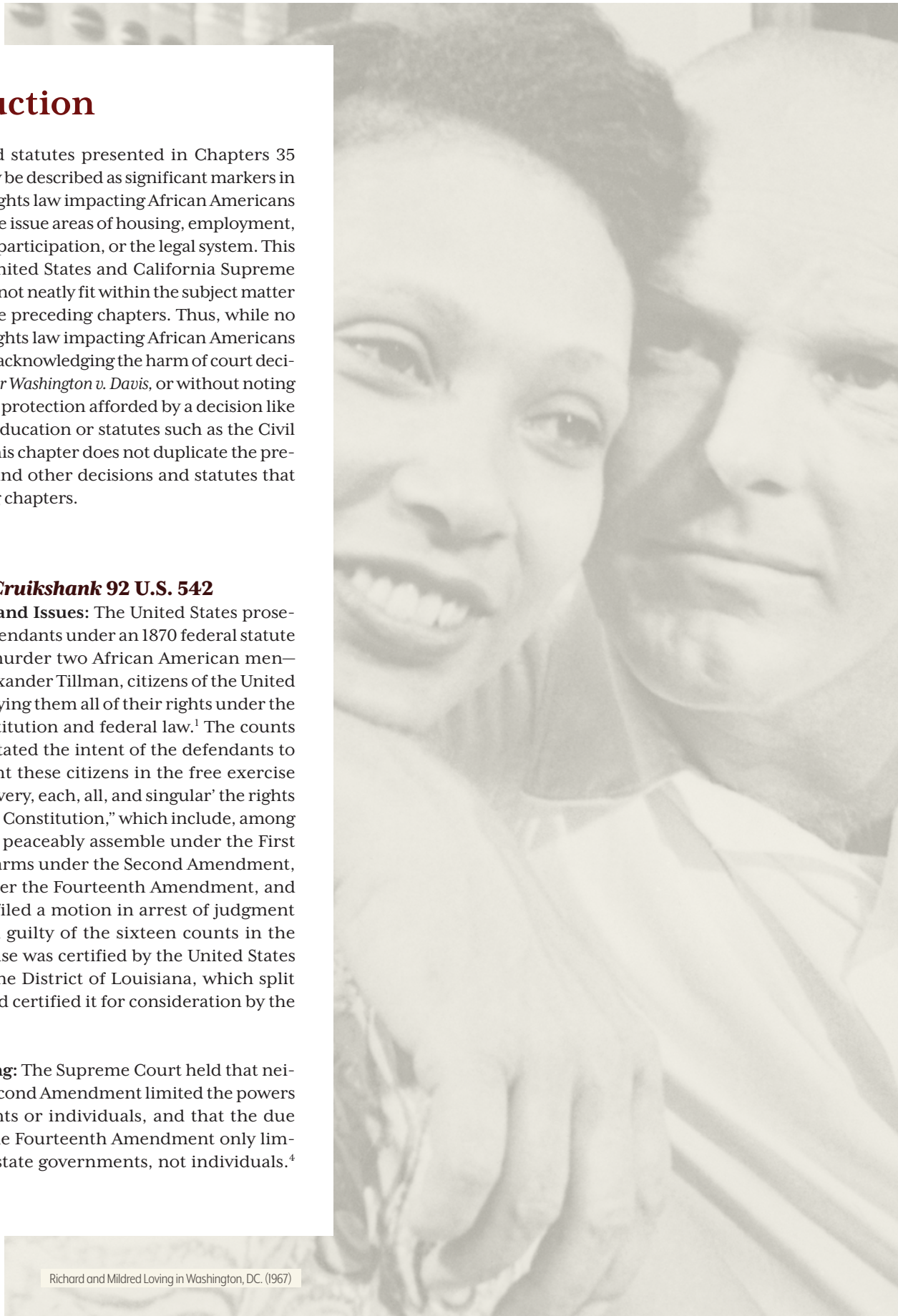
[199] *People v. Turner*, *supra*, 8 Cal.4th at p. 163.

[200] *People v. Harris*, *supra*, 57 Cal.4th at pp. 831-836.

[201] *People v. Mai*, *supra*, 57 Cal. 4th at pp. 1050-1054.

CHAPTER 40 Federal Civil Rights Cases

COURTESY OF BETTMANN VIA GETTY IMAGES



I. Introduction

All of the cases and statutes presented in Chapters 35 through 39 can fairly be described as significant markers in the history of civil rights law impacting African Americans in one of five discrete issue areas of housing, employment, education, political participation, or the legal system. This chapter presents United States and California Supreme Court cases that did not neatly fit within the subject matter focus of any of those preceding chapters. Thus, while no discussion of civil rights law impacting African Americans is complete without acknowledging the harm of court decisions like *Dred Scott or Washington v. Davis,* or without noting the advancement in protection afforded by a decision like Brown v. Board of Education or statutes such as the Civil Rights Act of 1964, this chapter does not duplicate the presentation of these and other decisions and statutes that appear in preceding chapters.

1873

United States v. Cruikshank 92 U.S. 542

Summary of Facts and Issues: The United States prosecuted a group of defendants under an 1870 federal statute for conspiring to murder two African American men—Levi Nelson and Alexander Tillman, citizens of the United States—thereby denying them all of their rights under the United States Constitution and federal law.[1] The counts in the indictment stated the intent of the defendants to "hinder and prevent these citizens in the free exercise and enjoyment of 'every, each, all, and singular' the rights granted them by the Constitution," which include, among others, the right to peaceably assemble under the First Amendment, bear arms under the Second Amendment, life and liberty under the Fourteenth Amendment, and vote.[2] Cruikshank filed a motion in arrest of judgment after he was found guilty of the sixteen counts in the indictment.[3] The case was certified by the United States Circuit Court for the District of Louisiana, which split on the challenge and certified it for consideration by the Supreme Court.

Impact of the Ruling: The Supreme Court held that neither the First nor Second Amendment limited the powers of state governments or individuals, and that the due process clause of the Fourteenth Amendment only limited the actions of state governments, not individuals.[4]

Richard and Mildred Loving in Washington, DC. (1967)

The Court further held that the rights to life and liberty and to vote are protected by the states, not the federal government.[5] The Court also vacated the convictions because the counts in the indictment were "too vague and general" and "lack[ed] the certainty and precision required by the established rules of criminal pleading." The Court reasoned that under the Sixth Amendment "the accused has the constitutional right to be informed of the nature and cause of the accusation," which has means that "every ingredient of which the offence is composed must be accurately and clearly alleged."[6]

This case arose from the 1873 Colfax Massacre, in which a group of armed white people killed more than 100 African American men due to a political dispute.[7] The 1870 federal statute under which the defendants were convicted was a law primarily intended to curb the violence of the Ku Klux Klan and forbade conspiracies to deny the constitutional rights of any citizen.[8] The Supreme Court narrowly interpreted the Fourteenth Amendment in this case, similar to actions taken by other branches and states' waning efforts on Reconstruction.[9] It was only decades after the decision in *Cruikshank* that the Supreme Court began interpreting the 14th Amendment as incorporating and applying provisions of the Bill of Rights to the states.[10]

1877

Hall v. DeCuir 95 U.S. 485

Summary of Facts and Issues: DeCuir, a person of color, traveled on a steamboat from New Orleans headed to Hermitage, Louisiana.[11] She was refused accommodations, on account of her color, in a cabin that was designated for white people only.[12] DeCuir then filed suit against the owner of the steamboat to recover damages under the provision of the Louisiana Constitution enacted in 1869 that stated: "All persons engaged within this State, in the business of common carriers of passengers, shall have the right to refuse to admit any person to their railroad cars . . . *Provided*, said rules and regulations make no discrimination on account of race or color . . . ."[13] The owner, in defense, stated this provision was inoperative and void because it was an attempt to regulate interstate commerce in violation of the federal commerce clause, which vests the power to regulate such commerce within the federal government.[14]

Impact of the Ruling: The U.S. Supreme Court held that Louisiana's law violated the U.S. commerce clause.[15] The Court emphasized the distinction between domestic (or intrastate) and national (or interstate) impacts upon commercial activity.[16] Because the Louisiana provision "seeks to impose a direct burden upon inter-state commerce, or to interfere directly with its freedom, [it] does encroach upon the exclusive power of Congress" because it influences a carrier's conduct in the management of his intrastate business.[17] The Court stated, by way of example: "A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced."[18] This ruling was an early legal blow to Reconstruction because it overturned a state law that sought to protect the rights of African American people and set the stage for legal segregation in public transportation.

1883

Pace v. Alabama 106 U.S. 583

Summary of Facts and Issues: A couple, an African American man and a white woman, were arrested and convicted of violating an Alabama law that prohibited an African American person and a white person from "intermarry[ing]" or living together in adultery or fornication.[19] Couples who violated the provision faced between two to seven years in prison.[20] Another law prohibited any couple from living together "in adultery or fornication."[21] Those who violated that provision faced up to six months in jail.[22] The Supreme Court affirmed their convictions, finding that the difference in penalties that applied to couples of the same race who live together in violation of the law did not violate the equal protection clause of the Fourteenth Amendment because one law generally applied to people of different sexes living together and the other applied where the two sexes were of different races.[23] And where the couple was of different races, they were both treated the same under the statute.[24] "Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same."[25]

Impact of the Ruling: The Court ruled that an anti-miscegenation law that prohibited African Americans and white people from intermarrying as well as cohabitating did not violate the equal protection clause of the Fourteenth Amendment because both white and African American people were punished equally when they violated the law. The Court's decision validated anti-miscegenation laws.

Subsequent History: The Supreme Court's decision in *Loving v. Virginia* (1967) 388 U.S. 1, which invalidated anti-miscegenation laws, noted that *Pace* was later overruled as having a limited view of equal protection, and "represents a limited view of the Equal Protection Clause which has not withstood analysis in the subsequent decisions of this Court." [26]

Civil Rights Cases 109 U.S. 3

Summary of Facts and Issues: Congress passed the Civil Rights Act of 1875, which provided that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement . . . applicable alike to citizens of every race and color, regardless of any previous condition of servitude."[27] A group of African Americans was denied accommodations at inns, theaters, and railroads and sued under this law to recover damages.[28] Defendants, the owners of these establishments, argued Congress did not have the constitutional power to enact the Civil Rights Act.[29]

Impact of the Ruling: The Supreme Court held Congress did not have the constitutional authority under the Thirteenth or Fourteenth Amendments to enact the Civil Rights Act of 1875.[30] The Fourteenth Amendment "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws."[31] The Court ruled that what is prohibited under the Fourteenth Amendment is state action of a particular character, not "the individual invasion of individual rights" by private actors.[32] Further, even though the Court affirmed that section 2 of the Thirteenth Amendment in theory "clothes Congress with the power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States," it found Congress did not have the authority under this section to enact the Civil Rights Act.[33] The Court ruled that the Thirteenth Amendment is not intended to adjust "the social rights of men and races in the community," but rather the fundamental rights that pertain to citizenship.[34]

Subsequent History: After the decision in this case, the Supreme Court consistently struck down legislation enacted under the Thirteenth Amendment and adopted a highly restrictive interpretation of the "badges and incidents of slavery."[35] There would be no comparable federal civil rights act until 1964—more than 80 years later.

1896

Plessy v. Ferguson 163 U.S. 537

Summary of Facts and Issues: Homer Plessy, a Louisiana resident who looked white—but was seven-eighths white and one-eighth African American—bought a first-class ticket on a Louisiana train to sit in a coach for whites only.[36] Plessy was ordered by a conductor to vacate the coach and sit in a coach for non-whites, pursuant to an 1890 Louisiana statute that provided for separate railway cars for whites and non-whites.[37] Plessy refused and was forcibly ejected.[38] Plessy challenged the constitutionality of the statute on the grounds that it conflicted with the Thirteenth and Fourteenth Amendments.[39]

Impact of the Ruling: The Supreme Court held the Louisiana statute did not conflict with the Thirteenth or Fourteenth Amendment.[40] The Court stated the Thirteenth Amendment abolished slavery and involuntary servitude, and "[a] statute which implies merely a legal distinction between the white and colored races . . . has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude."[41] It cited the *Civil Rights Cases* for the proposition that the act of a private individual could not "be justly regarded as imposing any badge of slavery or servitude."[42]

The Court further held that the object of the Fourteenth Amendment was "undoubtedly" to enforce legal equality but "could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either."[43] The Court also noted that "the enforced separation of the races, as applied to the internal commerce of the state" did not abridge the privileges or immunities of a non-white person, deprive him of property without due process of law, nor deny him the equal protection of the laws.[44] Accordingly, the question before the Court was whether the Louisiana statute was a reasonable regulation; the Court answered the question in the affirmative, noting that "there must necessarily be a large discretion on the part of the legislature."[45]

With this case, the Court formally ratified the legality of racial segregation under the "separate but equal" doctrine, which was to be a feature of legal segregation laws in the half century that followed.[46] The ruling maintained racial segregation on trains and buses, and in public facilities such as hotels, theaters, and schools.[47]

Subsequent History: The Supreme Court explicitly overruled *Plessy* in *Brown v. Board of Education* (1955) 349 U.S. 294. There the Court ruled that the "separate but equal" doctrine announced in *Plessy* does not have a place in the field of education, noting that "[s]eparate education facilities are inherently unequal."[48]

1914

McCabe v. Atchison, T. & S.F. R. Co. 235 U.S. 151

Summary of Facts and Issues: Oklahoma enacted the "separate coach law" in 1907, which required every railway company conducting business in the state to provide separate coaches or compartments for white and non-white people.[49] On February 15, 1908, right before the statute

was to become effective, five African American citizens of Oklahoma filed suit against a number of railway companies to restrain them from making any distinction in service on the basis of race.[50] On February 26, 1908, after the law had been effective for a few days, plaintiffs filed an amended bill to enjoin compliance with the provisions of the statute, arguing it violated the federal Constitution's commerce clause, the enabling act under which the state of Oklahoma was admitted to the United States, and the Fourteenth Amendment.

Impact of the Ruling: The Supreme Court ruled that under the enabling act, the state of Oklahoma "had authority to enact such laws, not in conflict with the federal Constitution, as other states could enact."[51] The Court further held the law did not violate the commerce clause because it must be construed as applying to only intrastate transportation exclusively, in the absence of a different construction by the state court.[52] Finally, with respect to the Fourteenth Amendment argument, the Court affirmed *Plessy v. Ferguson*, noting that, as it had already been decided by the Court, "the question could no longer be considered an open one, that it was not an infraction of the [Fourteenth] Amendment for a state to require separate, but equal, accommodations for the two races."[53] Ultimately, the Court rejected plaintiffs' case because they could not show an injury to themselves, i.e., that they were prevented from using sleeping cars.[54]

1920

Cincinnati, C. & E. Ry. Co. v. Commonwealth of Kentucky 252 U.S. 408

Summary of Facts and Issues: In this case, which was argued with *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 399, two railroad companies were indicted for violating Kentucky's "Separate Coach Law," which required companies operating railroads in the state to furnish separate coaches for white and non-white passengers.[55] The companies' defense to the indictment was that the Kentucky statute unlawfully interfered with interstate commerce.[56] The court of appeals found the company violated the statute, and that the statute did not interfere with interstate commerce.[57]

Impact of the Ruling: The Supreme Court rejected the federal commerce clause challenge, noting that the even though the railway company operated a railway between Kentucky and Ohio, "there are other considerations."[58] The Court noted the railway companies were a "distinct operation" in Kentucky, authorized by their charters, and it was this operation that the "separate coach law" regulated, and nothing more.[59] The Court emphasized: "The regulation of the act affects interstate business incidentally and does not subject it to unreasonable demands."[60] The Court maintained it was not concerned with the railway companies' attempt to distinguish "between street railways and other railways, and between urban and interurban roads . . . ."[61]

1945

Screws v. United States 325 U.S. 91

Summary of Facts and Issues: The defendant police officers arrested Robert Hall, a 30-year-old African American man, for the theft of a tire.[62] The officers took Hall to the courthouse and beat him with their fists and "a solid-bar blackjack."[63] The officers claimed Hall reached for a gun and used insulting language, and he was beaten for 15 to 30 minutes until he was unconscious.[64] Hall was taken to a hospital but died within the hour.[65] The officers were indicted for violating a federal criminal statute that prohibits "willfully" depriving an individual of his rights under the due process clause of the Constitution based on the individual's race (18 U.S.C. § 52) and conspiracy to commit the same crime (18 U.S.C. § 88).[66]

The trial judge instructed the jury that due process of law gave Hall the right to be tried by a jury and sentenced by a court, and that the jury should find defendants guilty if they "without its being necessary to make the arrest effectual or necessary for their own personal protection, beat this man, assaulted him or killed him while he was under arrest."[67] The jury returned a guilty verdict and the court of appeals affirmed.[68] Defendants appealed, contending that title 18 United States Code section 52 was unconstitutional because it applied criminal penalties to acts in violation of the due process clause of the Fourteenth Amendment.

Impact of the Ruling: A plurality of the Supreme Court held the statute was not unconstitutionally vague, so its enforcement did not turn all torts of state officials into federal crimes.[69] The Court clarified that only specific acts done willfully, under color of state law, and which deprived a person of a right secured by the Constitution or federal law were proscribed by title 18 United States Code section 52.[70] The Court noted the specific intent requirement gives "fair warning" that certain conduct is within its prohibition because a person who acts "with such specific intent is aware that what he does is precisely that which the statute forbids."[71] The Court still reversed the judgment and ordered a new trial because the jury instructions did not convey a finding of willfulness was necessary to find someone guilty under the statute.[72] The Court noted review of this error was required because the essential elements of the offense on which the convictions rested were not submitted to the jury.[73]

In this ruling, the Court imposed significant mental state limitations on a provision of the Civil Rights Act of 1866, codified at title 18 United States Code section 52, which made it a federal crime to discriminate on the basis of color, race, or previous slave status by depriving them of legal rights established by the U.S. Constitution, and in particular, the Thirteenth, Fourteenth, and Fifteenth Amendments. However, the Court required that the federal government prove the discriminatory conduct was "willful," and adopted a narrow interpretation of that mental state. This standard set a very high burden of proof for federal prosecutors because it required that an individual intended to interfere with some specific civil right, not simply that he intended to commit a harmful act and ended up interfering with a civil right (often referred to as the "general intent" standard). The Court's interpretation of "willfully" made it much harder for the federal government to prosecute criminal violations of state laws motivated by racial bias.

Subsequent History: The Supreme Court held in *United States v. Lanier* that, in order to satisfy the "fair warning" requirement in prosecuting actions under this statute, it is not necessary that the right in question has been identified in a Supreme Court decision and has been held to apply in a factual situation "fundamentally similar" to the case at issue.[74] Instead, criminal liability under the statute may be imposed for a deprivation of a constitutional right, if and only if, in light of preexisting law, the unlawfulness under the Constitution is apparent.[75]

1946

Morgan v. Commonwealth of Virginia 328 U.S. 373

Summary of Facts and Issues: Irene Morgan, an African American woman, was traveling on a bus from Gloucester County, Virginia, to Baltimore, Maryland, and she was asked by the driver of the bus to move a back seat, partially occupied by other "colored passengers," so her seat could be used by white passengers.[76] Morgan refused, and she was arrested, tried, and convicted under a Virginia statute for failure to comply with the requirement for "white and colored passengers" to be seated separately on all passenger buses traveling in the state and between states.[77] Morgan challenged the law as violative of the commerce clause in the United States Constitution.[78]

Impact of the Ruling: The Supreme Court held the Virginia statute was unconstitutional under the commerce clause because the statute "materially affects interstate commerce" and Congress, not the states, has the ultimate power to regulate commerce.[79] The Court noted that the statute "imposes undue burdens on interstate commerce," as "[a]n interstate passenger must if necessary repeatedly shift seats while moving in Virginia to meet the seating requirements of the changing passenger group," but "[o]n arrival at the [D.C.] line, [she] would have had freedom to occupy any available seat and so to the end of her journey."[80] The Court stated that the facts of this case highlight "the soundness of this Court's early conclusion in *Hall v. DeCuir*," as "the transportation difficulties arising from a statute that requires commingling of the races, as in the *DeCuir* case, are increased by one that requires separation, as here."[81]

1948

Bob-Lo Excursion Co. v. People of State of Michigan 333 U.S. 28

Summary of Facts and Issues: In June 1945, an African American girl, Sarah Elizabeth Ray, intended to travel with 12 other girls and their teacher (who were all white) from Detroit to Bois Blanc Island, Canada (stated by the Court as Detroit's Coney Island).[82] After they all boarded the steamship, the ship's assistant manager and steward told Miss Ray that she "could not go along because she was colored"; when it appeared that she would be forcibly removed, Miss Ray left voluntarily.[83] Due to this discrimination against Miss Ray, the company was criminally prosecuted for violation of the Michigan civil rights act, which provided that any owner or employee of a place of public accommodation who withholds any accommodation secured by the law on the basis "of race, creed or color" becomes guilty of a misdemeanor.[84] The question before the Court was "whether the state courts correctly held that the commerce clause, Art. I, § 8 of the Federal Constitution does not forbid applying the Michigan civil rights act to sustain appellant's conviction."[85]

Impact of the Ruling: The Supreme Court held that application of Michigan's civil rights law to appellant did not violate the commerce clause.[86] In a very fact-specific holding, the Court stated that unique features of the island and its relationship to Detroit (and the manner in which the Canadian government treated the island) rendered the island and its trade with Detroit local rather than national or international.[87] The Court rejected appellant's contention that Canada might adopt regulations that conflict with Michigan's law, and said it was as remote a possibility as Congress taking conflicting action.[88] The Court also rejected appellant's argument that the holding from *Hall v. DeCuir*, *supra*, supplemented by *Morgan v. Virginia* (1946) 328 U.S. 373, controls in this case, as the decisions of those cases were not factually similar, and there was no "probability of conflicting regulations by different sovereignties."[89] The Court stated that neither of the cases "so completely and locally insulated a segment of foreign or interstate commerce."[90]

1950

Henderson v. United States 339 U.S. 816

Summary of Facts and Issues: On May 17, 1942, Elmer W. Henderson, an African American passenger, was traveling on a first-class ticket on the Southern Railway from Washington, D.C., to Birmingham, Alabama, and was denied service in the dining car.[91] The practice of the dining car was to conditionally reserve the two tables closest to the kitchen for African Americans, but deny them seats if the other tables in the car were occupied by white passengers, or put up a curtain if African Americans were already seated.[92] When Henderson first arrived in the dining car, the end tables were occupied by white passengers but one seat was unoccupied.[93] The steward declined to serve him in the car and offered to serve him at his Pullman seat; Henderson declined, and even though the steward said he would send notice when space was available, Henderson received no notice and was declined service twice more when he returned to the dining car.[94] In October 1942, Henderson filed a complaint with the Interstate Commerce Commission alleging this conduct violated section 3(1) of the Interstate Commerce Act, which provides that it is unlawful for any common carrier to subject a person "to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."[95]

Impact of the Ruling: The Supreme Court held that the railway's conduct was in violation of section 3(1) of the Interstate Commerce Act and declined to reach any constitutional issues.[96] The Court held that Mitchell v. United States (1941) 313 U.S. 80 controlled in this case.[97] In Mitchell, an African American passenger with a first-class ticket was denied a Pullman seat even though such a seat was unoccupied and would have been available to him had he been white; the railroad rules limited the amount of Pullman space available to African American passengers.[98] The Court held the passenger in Mitchell had been subjected to an unreasonable disadvantage in violation of section 3(1).[99] The Court called the similarity between the two cases "inescapable" and the denial of existing and unoccupied dining facilities to passengers, combined with the curtains, partitions, and signs, "emphasize the artificiality of a difference which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility."[100]

1961

Burton v. Wilmington Parking Authority 365 U.S. 715

Summary of Facts and Issues: Wilmington Parking Authority, an agency of the state of Delaware, owned and operated a parking garage.[101] The Parking Authority leased a portion of the parking garage to Eagle Coffee Shoppe, Inc., which refused to serve William Burton, an African American man, solely on the basis of his race.[102] Burton then brought an action against Eagle and the Parking Authority, alleging Eagle's refusal to serve him violated his rights under the equal protection clause of the Fourteenth Amendment.[103] The Supreme Court of Delaware held that Eagle was acting in a purely private capacity and as such was not state action in violation of the Fourteenth Amendment.[104]

Impact of the Ruling: The Supreme Court held that Eagle's exclusion of Burton was discriminatory state action in violation of the equal protection clause of the Fourteenth Amendment.[105] The Court reasoned the state of Delaware "has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which . . . cannot be considered to have been so 'purely private' as to fall [outside] the scope of the Fourteenth Amendment."[106] The Court emphasized, "[b]y its inaction, the Authority, and through it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination."[107] The Court noted that the Parking Authority in its lease with Eagle could have affirmatively required the coffee shop "to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation."[108] The Court cautioned against using any kind of "readily applicable formulae" as the conclusions drawn from the specific facts of this case could not be "declared as universal truths" for each state leasing agreement.[109]

1962

Taylor v. State of Louisiana 370 U.S. 154

Summary of Facts and Issues: Six African American men were convicted of violating Louisiana's breach of peace statue after four of them waited in a waiting room reserved for white people at a bus stop in Louisiana for a bus to Mississippi, and two others sat nearby in the car that had brought them to the station.[110] A police officer arrested the men after they communicated they were interstate passengers, had rights under federal law, and refused to leave.[111] The trial court held that the mere presence of the African American men in the waiting room was a breach of the peace, despite the men having been "quiet, orderly, and polite."[112]

Impact of the Ruling: The Supreme Court held that the only evidence of a breach of peace was the upsetting of the customary segregation of the bus waiting room, and that this segregation was prohibited in interstate transportation facilities under federal law.[113] As such, the Court reversed the judgments of the convictions of the six men.[114]

Turner v. City of Memphis, Tenn. 369 U.S. 350

Summary of Facts and Issues: Jesse Turner, an African American man, was refused non-segregated service at a Memphis Municipal Airport restaurant operated by Dobbs Houses, Inc., under a lease from the City of Memphis.[115] The Tennessee Division of Hotel and Restaurant Inspection issued a regulation that required restaurants to segregate white and African American patrons; a violation of the regulation was a misdemeanor.[116] Turner thereafter sought an injunction against the discrimination on the basis of race under 42 U.S.C. section 1983.[117] Turner argued the restaurant and City had acted under color of state law.[118] Dobbs House said in its answer that its lease would be forfeited if it desegregated due to a provision that limits the leased premises to be used "only and exclusively for lawful purposes," while the City argued it was bound to object to desegregation as a violation of Tennessee law and the lease.[119] The district court initially declined to hear this case and directed Turner to file his action in state court to have it interpret the state statutes on segregation, and Turner then appealed to the Sixth Circuit and the Supreme Court.[120]

Impact of the Ruling: The Supreme Court vacated and remanded the case to the district court to grant Turner injunctive relief, holding that pursuant to Burton v. Wilmington Parking Authority (1961) 365 U.S. 715, not only was the restaurant subject to the Fourteenth Amendment because it was operated within a state airport, but also the regulations upholding segregation in Tennessee were inconsistent with the Fourteenth Amendment.[121] The Court cited cases striking down racial segregation as a violation of the equal protection clause: Brown v. Board of Education (1954) 347 U.S. 483 (education); Mayor & City Council v. Dawson (1955) 350 U.S. 877 (beaches); Holmes v. City of Atlanta (1955) 350 U.S. 879 (golf courses); Gayle v. Browder (1956) 352 U.S. 903 (city buses); and New Orleans City Park Improvement Ass'n v. Detiege (1958) 358 U.S. 54 (parks).[122]

1963

Edwards v. South Carolina 372 U.S. 229

Summary of Facts and Issues: One hundred and eighty-seven African American high school and college students walked in groups of 15 on the South Carolina State House grounds to peacefully protest the discrimination against the African American citizens of South Carolina.[123] There were already 30 or more law enforcement officers present when the students arrived and were told by the officers that they had a right to go through the grounds as long as they were peaceful.[124] After about an hour and 45 minutes, a crowd of 200 to 300 people had collected in the area; although there was no basis to suggest the onlookers were anything but curious (as there was no evidence of threatening remarks, hostile gestures, or offensive language from the crowd), the students were threatened with arrest if they did not disperse within 15 minutes.[125] The students responded with singing, clapping and praying, in what the city manager described as "boisterous, loud, and flamboyant" conduct.[126] The students were arrested and convicted of breach of the peace, and the Supreme Court of South Carolina affirmed.[127]

Impact of the Ruling: The Supreme Court reversed the judgment, holding that South Carolina's vague definition of breach of peace and the lack of evidence proving the students were actually disruptive pointed to the wrongful conviction of the students.[128] Specifically, the Court noted the students were convicted of an offense the South Carolina Supreme Court defined as "not susceptible of exact definition" with evidence that "showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection."[129] The Court emphasized that the Fourteenth Amendment does not allow a state "to make criminal the peaceful expression of unpopular views," which is what occurred in this case.[130]

Peterson v. City of Greenville, S.C. 373 U.S. 244

Summary of Facts and Issues: Ten African American children were arrested for trespassing at the S. H. Kress store in Greenville, South Carolina because they sat at a lunch counter to be served.[131] The manager of the store had one of his employees call the police, turn off the lights, and state the lunch counter was closed, and then he asked everyone to leave the area; the children remained seated and were arrested.[132] The manager stated that he asked the students to leave because integrated service was "contrary to local customs" and in violation of a Greenville city ordinance requiring segregation in restaurants.[133] The children argued they had been deprived of equal protection under the law as guaranteed by the Fourteenth Amendment.[134]

Impact of the Ruling: The Supreme Court agreed and reversed their convictions.[135] The Court cited Burton v. Wilmington Parking Authority (1961) 365 U.S. 715, 722, for the proposition that it cannot be disputed that "private conduct abridging individual rights does no violence to the equal protection clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it."[136] Accordingly, the Court held the Fourteenth Amendment was violated because the City of Greenville, a "state agency," passed a law compelling persons to discriminate based on race and the state's criminal processes were employed in a way to enforce the discrimination mandated by that law.[137]

Lombard v. State of Louisiana 373 U.S. 267

Summary of Facts and Issues: A group of three African American and one white college students were arrested by Louisiana police on the grounds that they were in violation of the Louisiana criminal mischief statute.[138] On September 17, 1960, they entered the McCrory Five and Ten Cent Store in New Orleans and refused to leave until they were served.[139] The students were convicted and on appeal to the Supreme Court of Louisiana their convictions were affirmed.[140]

Prior to this incident, New Orleans city officials determined that attempts to receive desegregated service at restaurants and stores, termed "sit-in demonstrations," would not be permitted.[141] One week earlier, on September 10, 1960, a similar occurrence took place in a Woolworth store, also in New Orleans.[142] In response, the Superintendent of Police and Mayor issued widely publicized statements that were printed in the local newspaper.[143] Both were similar in content, and the Mayor's statement noted in part: "It is my determination that the community interest, the public safety, and the economic welfare of this city require that such demonstrations cease and that henceforth they be prohibited by the police department."[144] Additionally, there was evidence indicating the manager of the McCrory Five and Ten Cent Store asked the group to leave at the direction of city officials.[145]

Impact of the Ruling: The Supreme Court reversed the students' convictions.[146] It interpreted the New Orleans city officials' statements as though the city had an ordinance prohibiting desegregated service in restaurants.[147] It noted that it just held in Peterson v. City of Greenville (1963) 373 U.S. 244, that where an ordinance makes it unlawful for restaurant owners and managers to seat whites and African Americans together, a criminal conviction that enforces the discrimination mandated by the ordinance cannot stand.[148] The Court stated, "[t]he official command here was to direct continuance of segregated service in restaurants," and not to "preserve the public peace in a nondiscriminatory fashion in a situation where violence was present or imminent by reason of public demonstrations."[149]

1964

Hamm v. City of Rock Hill 379 U.S. 306

Summary of Facts and Issues: The highest courts of South Carolina and Arkansas affirmed convictions under state trespass statutes, against African American petitioners, for participating in "sit-in" demonstrations in luncheon facilities of retail stores where they were refused service.[150] The two cases, Hamm v. City of Rock Hill and Lupper *v. State of Arkansas*, were consolidated for argument before the United States Supreme Court.

Impact of the Ruling: The Supreme Court held the convictions must be vacated and the prosecutions dismissed because the "Civil Rights Act of 1964 forbids discrimination in places of public accommodation and removes peaceful attempts to be served on an equal basis from the category of punishable activities."[151] The Court held the Act covered the lunch counter operations in South Carolina and in Arkansas because both establishments were places of public accommodation.[152] The Court concluded that section 203(c) of the Act explicitly immunized from prosecution "nonforcible attempts to gain admittance to or remain in establishments covered by the Act" and the Act generally "prohibits the application of state laws in a way that would deprive any person of the rights granted under the Act."[153] The Court specified the convictions should be vacated even though they occurred before the enactment of the Act; the Court stated that in cases involving "great national concerns," it "must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when entered, but which cannot be affirmed but in violation of law, the judgment must be set aside."[154]

This case was the culmination of a number of "sit-in" cases in which African American defendants were convicted of trespassing when they participated in demonstrations at lunch counters that refused them service. However, upon the passage of the Civil Rights Act of 1964, the Court found that discrimination on the basis of race was no longer allowed. The Supreme Court declared that the public policy of the country is to prohibit such discrimination and no public interest would be served to convict the petitioners. This decision came more than 80 years after the Court in the *Civil Rights Cases*, discussed above, interpreted the Thirteenth and Fourteenth Amendments as not affording the government authority to bar race discrimination by private actors.

Heart of Atlanta Motel, Inc., v United States 379 U.S. 241

Summary of Facts and Issues: The Heart of Atlanta Motel had 216 rooms available to guests, was located near interstate highways, was advertised in national media, and served approximately 75 percent out-of-state clientele.[155] Prior to passage of the Civil Rights Act of 1964, the motel refused to rent rooms to African Americans, and it took the position that it would continue to do so, leading to this case.[156] The motel contended that Congress in passing this Act exceeded its power to regulate commerce under the commerce clause.[157]

Impact of the Ruling: The Supreme Court held that title II of the Civil Rights Act of 1964, which prevents discrimination in public accommodations based on race, color, religion, or national origin, was constitutional.[158] The Court discussed the disruptive effect of racial

discrimination on interstate commerce and noted that "the voluminous testimony" before the Senate and the House of Representatives "present[ed] overwhelming evidence that discrimination by hotels and motels impedes interstate travel."[159] The Court even noted conditions for African Americans "had become so acute" that a special guidebook had been created to list available lodgings for them, "which was itself dramatic testimony to the difficulties [African Americans] encounter in travel."[160]

1966

Evans v. Newton 382 U.S. 296

Summary of Facts and Issues: In 1911, Senator Augustus Bacon executed a will that left land he owned to the Mayor and City Council of Macon, Georgia.[161] The will stated that, after the death of his wife and daughters, it was to be used as a park for white people only and managed by a Board of Managers, all of whom were to be white.[162] The City of Macon managed the park according to these terms, but eventually opened it up to African Americans when it believed it could no longer legally exclude them.[163] Evans, a member of the Board of Managers, and other members filed suit against the City and several trustees of Bacon's estate, asking that the City be removed as a trustee and new trustees be appointed.[164] Several African American residents of Macon intervened on behalf of the City as well as heirs of Bacon's estate, asking for a reversion of the trust property back to the estate if the petition was denied.[165] The City resigned as trustee, taking the position that it could not legally enforce racial segregation in the park, which the Georgia state court accepted, and the Supreme Court of Georgia affirmed.[166]

Impact of the Ruling: The U.S. Supreme Court reversed the decisions of the lower courts accepting the resignation of the City as a trustee.167 The Court noted that two complementary principles must be reconciled—the freedom of association and the constitutional ban against state-sponsored racial inequality.168 It noted that private conduct "may become so intertwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."169 The Court reasoned that the park for years "was an integral part of the City of Macon's activities" and was taken care of by the city as a public facility such that "the tradition of municipal control had become firmly established."[170] The Court's conclusion was further supported "by the nature of the service rendered the community by a park," which is municipal in nature and in the public domain.[171]

1967

Loving v. Virginia 388 U.S. 1

Summary of Facts and Issues: Mildred Jeter, an African American woman, and Richard Loving, a white man, were married in Washington, D.C., and when they returned to Virginia they were indicted for violating Virginia's ban on interracial marriage.[172] They pleaded guilty to the charge in 1959 and were sentenced to one year in jail, but the trial judge suspended the sentence for a period of 25 years on the condition that the Lovings leave Virginia and not return for 25 years.[173] The Lovings moved to Washington, D.C., and then filed a motion in state trial court to vacate the judgment and sent aside the sentence on the ground that the statutes they violated were inconsistent with the Fourteenth Amendment.[174] The trial court denied their motion, the Virginia Supreme Court affirmed, and the Lovings appealed to the Supreme Court.[175]

Impact of the Ruling: The Supreme Court held that state bans on interracial marriage violate the equal protection clause of the Fourteenth Amendment, the "clear and central purpose" of which "was to eliminate all official state sources of invidious racial discrimination in the States."[176] The Court stated, "[t]here is patently no legitimate overriding purpose independent of invidious racial discrimination" to justify these laws, [and t]he fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy."[177] The Court also held the statutes deprived the Lovings of liberty without due process of law in violation of the due process clause of the Fourteenth Amendment, as the "freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."[178]

1968

United States v. Johnson 390 U.S. 563

Summary of Facts and Issues: Three African American people in Georgia were patrons at a restaurant when "outside hoodlums" (not affiliated with the restaurant) assaulted them for the purpose of discouraging them and other African Americans from seeking service there on the same basis as white people.[179] The individuals accused of the attack were indicted on conspiracy charges to injure and intimidate the three African American people in the exercise of their right to patronize a restaurant.[180]

Impact of the Ruling: The Supreme Court held that conspiracies by individuals to assault African American people for exercising their right to equality in public accommodations are subject not only to civil suits, but

also to criminal prosecution for "conspiracy to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution of law of the United States."[181] The Court noted that even though section 207(b) of the Civil Rights Act of 1964 states that an injunction could be obtained by a party aggrieved under the law and is "the exclusive means of enforcing the rights based on this title," there is a further provision stating that nothing in the law shall preclude a state or local agency "from pursing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."[182]

Lee v. Washington 390 U.S. 333

Summary of Facts and Issues: African Americans confined in various Alabama jails filed an action for declaratory and injunctive relief regarding racial segregation in Alabama's state penal system and in county, city, and town jails. A three-judge district court panel found certain state statutes violate the Fourteenth Amendment to the extent they required racial segregation in prisons and jails.[183]

Impact of the Ruling: The Supreme Court held the statutes requiring racial segregation in prisons and jails were unconstitutional and violated the Fourteenth Amendment, though further orders directing desegregation could make an allowance for prison security and discipline.[184] This decision reaffirmed the Court's determination to end segregation, not only in schools, but in other public institutions.

1970

Adickes v. S. H. Kress & Co. 398 U.S. 144

Summary of Facts and Issues: This case arose out of S. H. Kress & Co.'s refusal to serve lunch to Sandra Adickes, a white school teacher from New York, at its restaurant facilities in its Hattiesburg, Mississippi store on August 14, 1964.[185] Adickes was with six African American children, who were her students in a Mississippi "Freedom School" where she was teaching that summer.[186] After Adickes left the store, she was arrested on a vagrancy charge.[187] Adickes filed suit against Kress, alleging a violation of her right under the equal protection clause not to be discriminated against on the basis of race.[188] She advanced two claims: (1) she was refused service because there was a custom of refusing service to white people in the company of African Americans; and (2) the refusal of service and arrest were the result of a conspiracy between Kress and the Hattiesburg police.[189] At trial, Adickes failed to prove there were other instances of a white person refused service for being with African Americans and therefore Adickes did not establish a custom; accordingly, the district court directed a verdict in favor of Kress on the first count.[190] The second count was dismissed on summary judgment before trial.[191] The court of appeals affirmed on both counts and Adickes appealed.[192]

Impact of the Ruling: The Supreme Court held the district court erred in granting summary judgment. The Supreme Court concluded that Adickes could advance an equal protection claim under 42 U.S.C. section 1983 (which applies to the deprivation of rights "under color of" law) if she proved she was refused service by Kress because of a state-enforced custom requiring racial segregation in Hattiesburg restaurants.[193] Specifically, the Court noted it was error to grant Kress's motion for summary judgment on the second count because Kress did not meet its burden of proving there was no conspiracy between Kress and the Hattiesburg police.[194] Kress would have had to show there was no dispute of material fact as to whether there was a police officer in the store at the time of the incident and that the officer did not have an understanding with Kress employees that Adickes should not be served.[195] Because Kress failed to prove there was no police officer in the store during this incident, the Court reversed summary judgment.[196]

1971

Griffin v. Breckenridge 403 U.S. 88

Summary of Facts and Issues: A group of African American citizens of Mississippi filed an action under 42 U.S.C. section 1985(3), which provides:

> If two or more persons . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws [and] in any case of conspiracy set forth under this section, if one or more persons engaged therein do . . . any act in furtherance of the object of such conspiracy, whereby another is injured . . . or deprived of . . . any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators.[197]

Plaintiffs alleged a group of white citizens conspired to assault them as they travelled on the federal, state, and local highways in a car driven by Grady, a citizen of Tennessee, for the purpose of preventing them and other African Americans through "force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges, and immunities under the laws of the United States and the State

of Mississippi."[198] Plaintiffs identified these rights as the rights to free speech, assembly, association, and movement, and the right not to be enslaved.[199] Plaintiffs alleged that pursuant to this conspiracy and believing Grady to be a civil rights worker, defendants blocked their passage on public highways, forced them from the car, held them with firearms, and with threats of murder, clubbed them, and inflicted severe physical injury.[200] The district court dismissed the complaint for failure to state a claim, relying on *Collins v. Hardyman* (1951) 341 U.S. 651, in which the Court construed 42 U.S.C. section 1985(3) to only reach conspiracies under color of state law.[201]

Impact of the Ruling: The Supreme Court reversed the lower court's judgment and held 42 U.S.C. section 1985(3) covered private conspiracies.[202] The Court concluded the statute on its face fully covered the conduct of private persons.[203] The Court further concluded plaintiffs' complaint stated a claim under section 1985(3) and determined Congress had the constitutional authority to enact the statute imposing liability under federal law for the conduct alleged.[204] The Court specified Congress had the power under section two of the Thirteenth Amendment to create a statutory cause of action for African American citizens who had been victims of conspiratorial, racially discriminatory private action aimed at depriving them of their basic rights.[205]

This decision had important implications for the African American community, which had long been subjected to discrimination and violence at the hands of private organizations and private individuals acting in concert with one another. The Court provided a means for African American people to hold these organizations or individuals accountable for their actions and seek redress for the harms they had suffered.

Palmer v. Thompson 403 U.S. 217

Summary of Facts and Issues: In prior litigation, courts held the operation of segregated swimming pools and other public attractions by the City of Jackson, Mississippi, was unconstitutional as a violation of equal protection under the Fourteenth Amendment.[206] After this, the City desegregated some attractions but closed all of its public pools.[207] A group of African American citizens filed suit to force the City to reopen the pools and operate them in a desegregated manner.[208] The district court found the closure was justified "to preserve peace and order and because the pools could not be operated economically on an integrated basis."[209] The court of appeals affirmed.[210]

Impact of the Ruling: The Supreme Court affirmed, holding the City's closure of the swimming pools did not deny equal protection in violation of the Fourteenth Amendment because there was substantial evidence to support the City's contention that it was not safe to operate integrated pools nor was it economically feasible to do so.[211] There was also no evidence to show the City was covertly helping maintain and operate pools that were private in name only.[212] The Court ruled the record did not contain evidence of state action treating races differently. The Court also dismissed the claim that the City's actions violated the Thirteenth Amendment.[213]

1972

Moose Lodge No. 107 v. Irvis 407 U.S. 163

Summary of Facts and Issues: Irvis, an African American man, was denied service by a Moose Lodge in Harrisburg, Pennsylvania, despite being invited to its private dining room by a white member.[214] All Moose Lodge clubs were limited to white members only.[215] Irvis subsequently filed a 42 U.S.C. section 1983 action for injunctive relief against Moose Lodge and the Pennsylvania Liquor Control Board, claiming that because the Board issued Moose Lodge a private club license, the refusal of service was "state action" for the purposes of the equal protection clause of the Fourteenth Amendment.[216]

Impact of the Ruling: The Supreme Court disagreed with Irvis, finding the regulatory scheme enforced by the Pennsylvania Liquor Control Board did not sufficiently implicate the state in the discriminatory guest policies of Moose Lodge to make the latter state action within the ambit of the equal protection clause of the Fourteenth Amendment.[217] The Court conceded that whether particular discriminatory conduct is private or amounts to state action "frequently admits of no easy answer," and "only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance."[218] The Court concluded that there was nothing in the facts here to suggest Moose Lodge had any symbiotic relationship with the State like there was in *Burton*, discussed above, nor is the State "in any realistic sense a partner or even a joint venturer in the club's enterprise."[219]

1973

Tillman v. Wheaton-Haven Recreation Ass'n, Inc. 410 U.S. 431

Summary of Facts and Issues: The Wheaton-Haven Recreation Association, Inc. was organized in 1958 as a recreational club to operate a swimming pool near Silver Spring, Maryland, that was limited to members and their guests.[220] Membership to the pool was determined by a geographic area within a three-quarter mile radius of the pool.[221] A resident did not require a recommendation to apply for membership and received preference on the waiting list if it was full; further, a resident-member who

sold his home and turned in his membership conferred on the purchaser of his home an option on the vacancy in the club.[222] In the spring of 1968, Harry C. Press, an African American man, purchased from a nonmember a home in the geographic area and inquired about membership in the club; at that time the club had not had African American members.[223] In November 1968, the general membership rejected a resolution that would have allowed African American members.[224] Additionally, in July 1968, Murray and Rosalind N. Tillman, who were members in good standing, brought Grace Rosner, an African American woman, to the pool as their guest.[225] Ms. Rosner was admitted, but a special meeting of the board of directors limited guests to relatives of members; respondents conceded the reason for the policy's adoption was to prevent members from bringing African American guests.[226]

In October 1969, petitioners (Mr. and Ms. Tillman, Dr. and Ms. Press, and Ms. Rosner) filed an action against the Association and its officers and directors, seeking damages and declaratory and injunctive relief under the Civil Rights Act of 1866 (42 U.S.C. § 1982), the Civil Rights Act of 1870 (42 U.S.C. § 1981), and title II of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000a et seq.).[227] The district court held Wheaton-Haven was a private club and exempt from the nondiscrimination provisions of the statutes, and the court of appeals affirmed.[228]

Impact of the Ruling: The Supreme Court held the provisions of 42 U.S.C. section 1982 applied because Wheaton-Haven was not a private club.[229] The Court agreed the Presses' section 1982 claim was controlled by a prior decision, *Sullivan v. Little Hunting Park, Inc.* (1969) 396 U.S. 229, in which the Court applied section 1982 "to private racial discrimination practiced by a nonstock corporation organized to operate a community park and playground facilities, including a swimming pool, for residents of a designated area."[230] The Court noted in this case that the structure and practices of Wheaton-Haven were "indistinguishable" from the park in *Sullivan*—namely, membership was open to every white person within the geographic area, there was no selective element other than race, and members required formal board or membership approval.[231] The Court declined to consider respondents' contention that 42 U.S.C. section 2000a(e) limited "the sweep of [§] 1982."[232]

1974

Gilmore v. City of Montgomery, Ala. 417 U.S. 556

Summary of Facts and Issues: In December 1958, a group of African American citizens of Montgomery, Alabama, sought an injunction to desegregate public parks in the city.[233] Petitioners alleged that a Montgomery ordinance which made it a misdemeanor "for white and colored persons to enter upon, visit, use or in any way occupy public parks or other public houses or public places" violated their Fourteenth Amendment due process and equal protection rights.[234] The district court adjudged that the ordinance was unconstitutional and enjoined defendants (the City of Montgomery and various city officials) from enforcing the ordinance "or any custom, practice, policy or usage" that would require African Americans to submit to segregation in public parks; the court of appeals affirmed.[235]

Petitioners subsequently filed a motion for supplemental relief, which argued the City was allowing racially segregated schools, private groups, and clubs to use city parks and recreational facilities.[236] The district court granted petitioners' request for relief and enjoined the city and its officials from allowing racially segregated school and non-school groups from using city-owned or city-operated recreational facilities.[237] The court of appeals affirmed the part of the injunction that enjoined exclusive use of city facilities by segregated private schools; however, it also directed the district court to modify its order to allow nonexclusive use by segregated school groups or school-affiliated groups.[238]

Impact of the Ruling: The Supreme Court affirmed the prohibition on exclusive use by segregated school groups and reversed the court of appeals' allowance for nonexclusive use by segregated school and private groups.[239] The Court concluded "the exclusive use and control of city recreational facilities . . . by private segregated schools" in effect ran a segregated recreational program and "operated directly to contravene an outstanding school desegregation order."[240] The Court reasoned that the city's assistance to improve "the attractiveness of segregated private schools . . . by enabling them to offer complete athletic programs" undermined a federal court order requiring "the establishment and maintenance of a unitary school system in Montgomery."[241] The Court therefore concluded that it "was wholly proper for the city to be enjoined from permitting exclusive access to public recreational facilities by segregated private schools and by groups affiliated with such schools."[242] The Court determined that the factual scenario in this case was more like *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715 than *Moose Lodge No. 107 v. Irvis* (1972) 407 U.S. 163 because "the city ma[de] city property available for use by private entities."[243] Regarding the matter of nonexclusive use of public facilities by a segregated private group, the Court focused on the question of whether there was significant state action involved in the private discrimination alleged. Because the lower court had not predicated this part of its order upon a proper finding of state action, the Court directed the district court to reconsider that

question on remand and determine whether there was significant state involvement in the private discrimination alleged.[244] In doing so, the Court observed that it had not previously "attempted to formulate 'an infallible test for determining whether the State . . . has become significantly involved in private discriminations' so as to constitute state action, [and 'o]nly by sifting facts and weighing circumstances' (on a case-by-case basis) can the 'nonobvious involvement of the State in private conduct be attributed its true significance.'"[245]

1976

Rizzo v. Goode 423 U.S. 362

Summary of Facts and Issues: Plaintiffs, African American citizens of Philadelphia, brought two class action suits against Philadelphia Mayor Frank Rizzo, the city managing director, and the police commissioner, seeking equitable relief and "alleging a pervasive pattern of illegal and unconstitutional police treatment of minority citizens in particular and Philadelphia residents in general."[246] The district court heard about 250 witnesses and "was faced with a staggering amount of evidence" involving incidents of police brutality—"each of the 40-odd incidents might alone have been the piece de resistance of a short, separate trial."[247] After parallel trials of the two suits, the district court found the evidence showed an unacceptably high number of police misconduct incidents, for which defendants should be held responsible due to their failure to act in the face of the statistical "pattern" of misconduct.[248] The district court then entered an order to require the defendants to submit for the court's approval a program to improve the handling of citizen complaints alleging misconduct in accordance with the guidelines in the opinion.[249] A proposed program was then negotiated and incorporated into a final judgment by the district court and the court of appeals affirmed pertinent parts.[250]

Impact of the Ruling: The Supreme Court reversed the district court's decision, holding that it exceeded its authority under the Civil Rights Act of 1871.[251] The Court stated the district court improperly interfered with defendants' latitude in the dispatch of internal affairs and departed from principles of federalism which prohibit federal court interference with state agencies and officials.[252] The Court noted the evidence established only a few individual police officers, not named as parties, had violated the constitutional rights of particular individuals.[253] Further, the Court found no affirmative link between various incidents of police misconduct and the adoption of any plan or policy by defendants showing their authorization or approval of the misconduct.[254] The evidence established only some 20 incidents of police misconduct in 12 months in the city of three million inhabitants with 7,500 policemen, which did not establish a "pattern" of misconduct.[255]

II. Relevant California Case

2000

Hi-Voltage Wire Works, Inc. v. City of San Jose 24 Cal.4th 537

Summary of Facts and Issues: After Proposition 209 passed, the City of San Jose adopted a program that required contractors bidding on city projects to utilize a specified percentage of non-white and women subcontractors or to document efforts to include non-white and women subcontractors in their bids. The trial court granted the plaintiff general contracting firm's motion challenging the program as a violation of Proposition 209.

Impact of the Ruling: The California Supreme Court affirmed the judgment, holding that the city's program violated Proposition 209: "Viewing the provisions of article I, section 31 from this perspective, it is clear the voters intended to adopt the original construction of the Civil Rights Act and prohibit the kind of preferential treatment accorded by this program."[256] This case clarified the definition of "discriminate," which is "to make distinctions in treatment; show partiality in favor of or prejudice against," and "preferential," which is "a giving of priority or advantage to one person or group over others."[257] As such, the Court ruled that the City of San Jose's program was unconstitutional because the outreach option afforded preferential treatment to non-white and women subcontractors on the basis of race or sex, and discriminated on the same bases against white and male subcontractors as well as general contractors that fail to fulfill either of the options when submitting their bids.

Endnotes

[1] *United States v. Cruikshank* (1876) 92 U.S. 542, 548.

[2] *Id.* at pp. 552–557.

[3] *Id.* at p. 548.

[4] *Id.* at pp. 552–555.

[5] *Id.* at pp. 555–557.

[6] *Id.* at pp. 557–559, internal quotation marks and citations omitted.

[7] Federal Judicial Center, History of the Federal Judiciary, *U.S. v. Cruikshank* (as of May 16, 2023).

[8] *Ibid.*

[9] *Ibid.*

[10] See, e.g., *De Jonge v. Oregon* (1937) 299 U.S. 353 (holding the rights guaranteed by the First Amendment are fundamental personal rights and liberties protected by the Fourteenth Amendment from invasion by state governments); *McDonald v. City of Chicago, Ill.* (2010) 561 U.S. 742 (holding the Second Amendment is fully applicable to state governments through the Fourteenth Amendment).

[11] *Hall v. DeCuir* (1878) 95 U.S. 485, 486.

[12] *Ibid.*

[13] *Id.* at pp. 485–486, emphasis in original.

[14] *Id.* at p. 486.

[15] *Id.* at p. 490.

[16] *Id.* at pp. 487–488.

[17] *Id.* at pp. 488–489.

[18] *Id.* at p. 489.

[19] *Pace v. Alabama* (1883) 106 U.S. 583, 584.

[20] *Id.* at p. 583.

[21] *Ibid.*

[22] *Ibid.*

[23] *Id.* at p. 585.

[24] *Ibid.*

[25] *Ibid.*

[26] *Loving v. Virginia* (1967) 388 U.S. 1, 10.

[27] *Civil Rights Cases* (1883) 109 U.S. 3, 9.

[28] *Id.* at pp. 4–5.

[29] *Id.* at pp. 8–10.

[30] *Id.* at pp. 25–26.

[31] *Ibid.*

[32] *Id.* at p. 11.

[33] *Id.* at pp. 20–21.

[34] *Id.* at p. 22.

[35] See *Plessy v. Ferguson* (1896) 163 U.S. 537, 542 (determining that segregation "cannot be justly regarded as imposing any badge of slavery"), overruled by *Brown v. Bd. of Educ.* (1954) 347 U.S. 483; *Hodges v. United States* (1906) 203 U.S. 1, 8 (holding that § 2 only empowers Congress to outlaw private conduct so extreme as to impose "the state of entire subjection of one person to the will of another"), overruled in part by *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 438–443.

[36] *Plessy v. Ferguson*, *supra*, 163 U.S. at pp. 538, 541-542.

[37] *Id.* at pp. 540–542.

[38] *Id.* at p. 542.

[39] *Ibid.*

[40] *Id.* at pp. 542–552.

[41] *Id.* at p. 543.

[42] *Id.* at pp. 542–543, citing *Civil Rights Cases*, 109 U.S. at p. 3.

[43] *Id.* at p. 544.

[44] *Id.* at pp. 548–549.

[45] *Id.* at p. 550.

[46] History.com, Black History, *Plessy v. Ferguson* (Oct. 29, 2009) (as of May 17, 2023).

[47] Drexler, *Plessy v. Ferguson: Primary Documents in American History* (Nov. 16, 2020) Library of Congress Research Guides (as of May 17, 2023).

[48] *Brown v. Bd. of Educ. of Topeka, Shawnee Cnty., Kan.* (1954) 347 U.S. 483, 495.

[49] *McCabe v. Atchison, T. & S.F. R. Co.* (1914) 235 U.S. 151, 158.

[50] *Id.* at pp. 158–159.

[51] *Ibid.*

[52] *Ibid.*

[53] *Id.* at p. 160, citing *Plessy v. Ferguson*, *supra*, 163 U.S. 537.

[54] *Id.* at pp. 163–164.

[55] *Cincinnati, C. & E. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 408, 409, noting that the facts, indictment, defenses, and contentions are stated in the *South Covington* case; *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky* (1920) 252 U.S. 399, 400.

[56] *Ibid.*; *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky*, *supra*, 252 U.S. at p. 401.

[57] *Cincinnati, C. & E. Ry. Co. v. Commonwealth of Kentucky*, *supra*, 252 U.S. at p. 410; *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky*, *supra*, 252 U.S. at p. 401.

[58] *South Covington & Cincinnati St. Ry. Co. v. Commonwealth of Kentucky*, *supra*, 252 U.S. at p. 403.

[59] *Ibid.*

[60] *Ibid.*

[61] *Cincinnati, C. & E. Ry. Co. v. Commonwealth of Kentucky*, *supra*, 252 U.S. at p. 410.

[62] *Screws v. United States* (1945) 325 U.S. 91, 92.

[63] *Ibid.*

[64] *Id.* at pp. 92-93.

[65] *Id.* at p. 93.

[66] *Ibid.* , citing 18 U.S.C. § 52 and 18 U.S.C. § 88.

[67] *Id.* at p. 94.

[68] *Ibid.*

[69] *Id.* at p. 103.

[70] *Id.* at pp. 107-108.

[71] *Id.* at pp. 104-105.

[72] *Id.* at pp. 107, 113.

[73] *Id.* at p. 107.

[74] *United States v. Lanier* (1997) 520 U.S. 259, 268.

[75] *Id.* at pp. 271-272.

[76] *Morgan v. Commonwealth of Virginia* (1946) 328 U.S. 373, 374-375.

[77] *Id.* at p. 375.

[78] *Id.* at p. 376.

[79] *Id.* at pp. 379-380.

[80] *Id.* at p. 381.

[81] *Id.* at pp. 384-385, citing *DeCuir*, *supra*, 95 U.S. at p. 487.

[82] *Bob-Lo Excursion Co. v. People of State of Michigan* (1948) 333 U.S. 28, 30.

[83] *Id.* at p. 31.

[84] *Ibid.*

[85] *Id.* at p. 34.

[86] *Id.* at p. 40.

[87] *Id.* at pp. 35–36.

[88] *Id.* at p. 37.

[89] *Id.* at p. 39.

[90] *Ibid.* , fn. omitted.

[91] *Henderson v. United States* (1950) 339 U.S. 816, 818–819.

[92] *Ibid.*

[93] *Id.* at p. 819.

[94] *Ibid.*

[95] *Id.* at p. 820.

[96] *Id.* at p. 825.

[97] *Id.* at p. 823.

[98] *Id.* at pp. 823–824, citing *Mitchell v. United States* (1941), *supra*, 313 U.S. at pp. 92-93.

[99] *Id.* at p. 824, citing *Mitchell v. United States* (1941), *supra*, 313 U.S. at pp. 92-93.

[100] *Id.* at pp. 824–825.

[101] *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, 716.

[102] *Ibid.*

[103] *Ibid.*

[104] *Id.* at p. 721.

[105] *Id.* at p. 717.

[106] *Id.* at p. 725.

[107] *Ibid.*

[108] *Ibid.*

[109] *Id.* at pp. 725–726.

[110] *Taylor v. State of Louisiana* (1962) 370 U.S. 154, 154–155.

[111] *Id.* at p. 155.

[112] *Ibid.*

[113] *Id.* at p. 156.

[114] *Ibid.*

[115] *Turner v. City of Memphis, Tenn.* (1962) 369 U.S. 350, 351.

[116] *Ibid.*

[117] *Ibid.*

[118] *Ibid.*

[119] *Id.* at pp. 351-352.

[120] *Id.* at p. 352.

[121] *Ibid.*

[122] *Id.* at p. 353.

[123] *Edwards v. South Carolina* (1963) 372 U.S. 229, 230.

[124] *Ibid.*

[125] *Id.* at pp. 230-232.

[126] *Id.* at p. 233.

[127] *Id.* at p. 234.

[128] *Id.* at pp. 235-237.

[129] *Id.* at p. 237.

[130] *Ibid.*

[131] *Peterson v. City of Greenville, S.C.* (1963) 373 U.S. 244, 245.

[132] *Id.* at pp. 245-246.

[133] *Id.* at p. 246.

[134] *Id.* at p. 247. They also argued their activity was protected by the First Amendment because the trespass statute did not require a showing that the manager gave them notice of his authority when he asked them to leave, but the Court declined to consider this argument. (*Ibid.*)

[135] *Id.* at p. 248.

[136] *Id.* at p. 247.

[137] *Ibid.*

[138] *Lombard v. State of Louisiana* (1963) 373 U.S. 267, 269.

[139] *Id.* at p. 268.

[140] *Id.* at p. 269.

[141] *Ibid.*

[142] *Id.* at p. 270.

[143] *Id.* at pp. 271-272.

[144] *Id.* at p. 271.

[145] *Id.* at p. 272.

[146] *Id.* at p. 274.

[147] *Id.* at p. 273.

[148] *Ibid.*

[149] *Id.* at pp. 273-274.

[150] *Hamm v. City of Rock Hill* (1964) 379 U.S. 306, 307-308.

[151] *Id.* at p. 308.

[152] *Id.* at pp. 309-310.

[153] *Id.* at p. 311.

[154] *Id.* at pp. 311-312, 317.

[155] *Heart of Atlanta Motel, Inc. v. United States* (1964) 379 U.S. 241, 243.

[156] *Ibid.*

[157] *Id.* at pp. 243-244.

[158] *Id.* at pp. 247, 261.

[159] *Id.* at pp. 252-255.

[160] *Id.* at p. 253, internal quotation marks omitted.

[161] *Evans v. Newton* (1966) 382 U.S. 296, 297.

[162] *Ibid.*

[163] *Id.* at pp. 297-298.

[164] *Ibid.*

[165] *Id.* at p. 298.

[166] *Ibid.*

[167] *Id.* at p. 302.

[168] *Id.* at p. 298.

[169] *Id.* at p. 299.

[170] *Id.* at p. 301.

[171] *Id.* at p. 302.

[172] *Loving v. Virginia* (1967) 388 U.S. 1, 2–3.

[173] *Id.* at p. 3.

[174] *Ibid.*

[175] *Ibid.*

[176] *Id.* at p. 10.

[177] *Id.* at p. 11.

[178] *Id.* at p. 12.

[179] *United States v. Johnson* (1968) 390 U.S. 563, 563-564.

[180] *Id.* at p. 564.

[181] *Id.* at pp. 563, 566, citing 18 U.S.C. § 241.

[182] *Id.* at p. 566.

[183] *Lee v. Washington* (1968) 390 U.S. 333, 333.

[184] *Ibid.*

[185] *Adickes v. S. H. Kress & Co.* (1970) 398 U.S. 144, 146.

[186] *Id.* at pp. 146-147.

[187] *Id.* at p. 146.

[188] *Id.* at pp. 147-148.

[189] *Ibid.*

[190] *Ibid.*

[191] *Id.* at p. 148.

[192] *Ibid.*

[193] *Ibid.*

[194] *Id.* at p. 157.

[195] *Id.* at pp. 157-158.

[196] *Id.* at p. 157.

[197] *Griffin v. Breckenridge* (1971) 403 U.S. 88, 92.

[198] *Id.* at p. 88.

[199] *Id.* at p. 90.

[200] *Id.* at p. 88.

[201] *Id.* at pp. 92-93.

[202] *Id.* at p. 107.

[203] *Id.* at pp. 101-102.

[204] *Id.* at p. 103.

[205] *Id.* at p. 105.

[206] Palmer v. Thompson (1971) 403 U.S. 217, 218-219.

[207] *Id.* at p. 219.

[208] *Ibid.*

[209] *Ibid.*

[210] *Ibid.*

[211] *Id.* at pp. 224-225.

[212] *Id.* at p. 225.

[213] *Id.* at pp. 226-227.

[214] *Moose Lodge No. 107 v. Irvis* (1972) 407 U.S. 163, 164–166.

[215] *Id.* at pp. 165-166.

[216] *Id.* at p. 165.

[217] *Id.* at p. 177.

[218] *Id.* at p. 172, citing *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, 722.

[219] *Id.* at p. 177.

[220] *Tillman v. Wheaton-Haven Recreation Ass'n, Inc.* (1973) 410 U.S. 431, 432-433.

[221] *Id.* at p. 433.

[222] *Ibid.*

[223] *Id.* at pp. 433-434.

[224] *Id.* at p. 434.

[225] *Ibid.*

[226] *Ibid.*

[227] *Ibid.*

[228] *Id.* at pp. 434-435.

[229] *Id.* at p. 438.

[230] *Id.* at p. 435.

[231] *Id.* at p. 438.

[232] *Ibid.*

[233] *Gilmore v. City of Montgomery, Ala.* (1974) 417 U.S. 556, 558.

[234] *Id.* at pp. 558-559.

[235] *Id.* at p. 559.

[236] *Id.* at p. 562.

[237] *Id.* at p. 563.

[238] *Id.* at pp. 564-565.

[239] *Id.* at pp. 566, 569, 573-575.

[240] *Id.* at pp. 567–568.

[241] *Id.* at p. 569.

[242] *Ibid.*

[243] *Id.* at p. 573.

[244] *Id.* at pp. 573-574.

[245] *Id.* , citations omitted.

[246] *Rizzo v. Goode* (1976) 423 U.S. 362, 362, 365-367.

[247] *Id.* at p. 362.

[248] *Id.* at pp. 364-365.

[249] *Id.* at p. 365.

[250] *Id.* at pp. 365–366.

[251] *Id.* at p. 380.

[252] *Id.* at pp. 379-380.

[253] *Id.* at pp. 371, 373-376.

[254] *Id.* at p. 371.

[255] *Id.* at pp. 373-374.

[256] *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 542.

[257] *Id.* at p. 559.

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