

Executive Summary

Part I: Detail of Historical Atrocities

I. Introduction

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 these harms and ensure they are stopped. The historical information and recommendations 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 and 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 the system in which we exist, this report is intended to satisfy the requirements of AB 3121 in an accessible and comprehensive manner that will facilitate progress towards – finally – meaningful reparations for African Americans in California and the United States.

In 1863, 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.”ⁱ 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 . . .”ⁱⁱ 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.¹ As just one example of the many ways in which this period reflected a meaningful expansion of rights, by 1868, more than 700,000 African American men were registered to vote in the former Confederate states.² 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.³

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.”ⁱⁱⁱ However, other than during Reconstruction, instead of abiding

¹ Foner, *Forever Free: The Story of Emancipation and Reconstruction* (First Vintage Books 2006), pp 113-115, 117-118 (“Foner, *Forever Free*”); Foner, *Reconstruction*, supra, pp. 444-445, U S Const , amend XV, § 1, U S Const , amend XIV, § 2.

² Cobb and Jenkins, *Race and the Representation of Blacks’ Interests During Reconstruction* (2001) 54 Pol. Research Quarterly 181, 184.

³ Foner, *Reconstruction*, supra, at pp. 581-582.

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, California began the process of addressing its role in accommodating and even facilitating slavery, perpetuating the vestiges of enslavement, propagating lawful discrimination, and tolerating persistent, systemic structures of discrimination on living African Americans across its systems of government at the local and state level through the enactment of Assembly Bill No. 3121 (AB 3121, 2019-2020 Reg. Sess.). This law acknowledged that, as a result of the historic and continued discrimination, African Americans in California, and 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. 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. (Gov. Code, § 8301, subd. (b)(1).)

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. This is the Task Force's final report.

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. (Gov. Code, § 8301, subd. (b).) 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.

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.^{iv} 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^v and failed to protect African Americans from widespread terror and violence.^{vi} 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.^{vii}

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.^{viii} Racist, casteist, untrue, and harmful stereotypes created to support slavery continue to physically and mentally harm African Americans today.^{ix} 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 international standards. 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 slaves 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) 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. 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 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 our nation’s historic 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 we eagerly anticipate the Legislature’s enactment of the recommendations contained herein, this national shame can ultimately be comprehensively redressed only through national reparations.

The Legislature directed the Task Force to issue a public report of its findings and recommendations. This is the Task Force’s final report, incorporating and updating the contents of an interim report issued in June 2022. This report includes the Task Force’s final findings and recommendations following extensive hearings, community engagement, and consultations with experts.^x

AB 3121 authorized the Task Force to hold public hearings to pursue its mission.^{xi} 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.

When discussing issues as complex as race and reparations, precision is paramount. Precision helps ensure that we — 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.

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. 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, we quote these terms recognizing that reparations or any other answer to racism cannot be complete until we squarely face 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. 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 one of 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.

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. This report also uses it to describe cultural images and stereotypes that reinforce prejudices against African Americans and others. 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. 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.

Throughout the report, we also use words that center the people discussed. We avoid words that describe solely their conditions, especially when enslavement and other racist laws and policies have imposed these conditions.

Rather than refer to “slaves,” we refer to “enslaved persons.” Most historians now refer to “enslaved persons” instead of “slaves” because the term “slave” reduces the enslaved person to an object. 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.

For similar reasons, this report refers to “enslavers,” rather than “owners” or “masters.” The words master or owner suggests a false sense of natural authority and suggest that the enslaved person is less capable than the enslaver. 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.

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. 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.

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.

African American – The Task Force voted to generally use “African American,” rather than “Black” or “Black American” when discussing racial classification. This term includes the descendants of enslaved people who were brought from their African homelands by force to work in the New World. This report uses “African American” instead of “Black” to refer to such persons, unless “Black” is in a quotation or the source cited 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 enslaved persons or of a free African American person living in the United States prior to the end of the 19th Century.⁴ When this report refers to “descendants” it has the meaning 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

⁴ See Meeting Minutes, March 29, 2022 Meeting of the AB 3121 Task Force Study to Study and Develop Reparations Proposals for African Americans, available at <<https://oag.ca.gov/system/files/media/task-force-meeting-minutes-032922-033022.pdf>>, pp. 10-12.

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. 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 we must do to redress racism, past and present.

II. Enslavement

A. Nationally

America’s wealth was built by the forced labor of trafficked African peoples and their descendants who were bought and sold as commodities.^{xii} 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.^{xiii}

After the War of Independence, the United States built one of the largest and most profitable enslaved labor economies in the world.^{xiv}

The federal government politically and financially supported enslavement.^{xv} The United States adopted a national Constitution that protected slavery and gave pro-slavery white Americans outsized political power in the federal government.^{xvi} Half of the nation’s pre-Civil War presidents enslaved African Americans while in office,^{xvii} and, throughout American history, more than 1,700 Congressmen from 37 states once enslaved African Americans.^{xviii} By 1861, almost two percent of the entire budget of the United States went to pay for expenses related to enslavement,^{xix} including enforcing fugitive slave laws.^{xx}

Enslavers made more than \$159 million between 1820 and 1860 by trafficking African Americans within the U.S.^{xxi} 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.”^{xxii}

Historians have argued that many of today’s financial accounting and management practices began among enslavers in the U.S. South and the Caribbean.^{xxiii} In order to continually increase production and profits, enslavers regularly staged public beatings and other violent acts and maintained deplorable living conditions.^{xxiv}

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.^{xxv} 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.^{xxvi}

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.^{xxvii} 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.^{xxviii} Colonists in North America claimed and passed laws^{xxix} to maintain a false racial hierarchy where white people were naturally superior.^{xxx} Colonial laws effectively made it legal for enslavers to kill the people they enslaved.^{xxxi} In some states, free and enslaved African Americans could not vote or hold political office.^{xxxii} Enslaved people could not resist a white person, leave a plantation without permission, or gather in large groups away from plantations.^{xxxiii}

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.^{xxxiv} After the Civil War, the federal government failed to meaningfully protect the rights and lives of African Americans.^{xxxv} 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[.]”^{xxxvi}

The Slave Codes were reborn as the Black Codes and Jim Crow laws segregating African Americans and white Americans in every aspect of life.^{xxxvii} 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.

B. California

Although California technically entered the Union in 1850 as a free state, its early state government supported slavery.^{xxxviii} 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.^{xxxix}

Some scholars estimate that up to 1,500 enslaved African Americans lived in California in 1852.^{xl} Enslaved people trafficked to California often worked under dangerous conditions,^{xli} lived in unclean environments,^{xlii} and faced brutal violence.^{xliii}

In 1852, California passed and enforced a fugitive slave law that made California a more proslavery state than most other free states.^{xliv} California also outlawed non-white people from testifying in any court case involving white people.^{xlv}

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.^{xlvi}

III. Racial Terror

A. 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.^{xlvi} Racial terror pervaded every aspect of post-slavery life and prevented African Americans from building the same wealth and political influence as white Americans.^{xlvi}

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.^{xlvi} White mobs bombed, murdered, and destroyed entire towns.¹ Federal, state, and local governments ignored the violence, failed to prosecute offenders, or participated in the violence themselves.^{li}

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.^{lii} Many African Americans were traumatized from surviving mass violence and by the constant terror of living in the U.S. South.^{liii} 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.^{liv} Racial terror targeted at successful African Americans has contributed to the present wealth gap between African Americans and white Americans.^{lv}

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.^{lvi} 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.

B. California

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

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.^{lxi} 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.^{lxii}

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.^{lxiii}

IV. Political Disenfranchisement

A. 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.^{lxiv} After the Civil War, the United States protected the voting rights of African Americans on paper, but not in reality.^{lxv} 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^{lxvi} and, by 1868, more than 700,000 Black men were registered to vote in the South.^{lxvii} During Reconstruction, over 1,400 African Americans held federal, state, or local office, and more than 600 served in state assemblies.^{lxviii} However, progress was short lived.

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.^{lxix} 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.^{lxx} States also barred African Americans from serving on juries.^{lxxi}

This targeted government action was extremely effective in stripping African Americans of the political power they gained during Reconstruction. For example, in 1867, Black turnout was 90 percent in Virginia.^{lxxii} After Virginia's voter suppression laws took effect, the number of African American voters dropped from 147,000 to 21,000.^{lxxiii} During Reconstruction, 16 African American men held seats in Congress.^{lxxiv} From 1901 until the 1970s, not a single African American served in Congress.^{lxxv}

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

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.^{lxxix} But the New Deal excluded African Americans from many of its benefits.^{lxxx}

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.^{lxxxi} 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.^{lxxxii} These federal legislative decisions perpetuated the racial hierarchy which continues today.

B. California

California also passed and enforced laws to prevent African Americans from accumulating political power.^{lxxxiii}

California's law prohibiting non-white witnesses from testifying against white Californians protected white defendants from justice.^{lxxxiv} 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," a prospect that the court viewed as an "actual and present danger."^{lxxxv}

California did not allow African American men to vote until 1879.^{lxxxvi} The state also passed many of the voter suppression laws that were used in the South. California prohibited individuals convicted of felonies from voting,^{lxxxvii} added a poll tax,^{lxxxviii} and put in place a literacy test.^{lxxxix}

V. The Root of Many Evils: Residential Segregation

A. Nationally

America's racial hierarchy was the foundation of a system of segregation in the United States after the Civil War.^{xc} 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.^{xc}

Government actors, working with private individuals, actively segregated America into African American and white neighborhoods.^{xcii} 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.^{xciii}

During enslavement, about 90 percent of African Americans were forced to live in the South.^{xciv} Immediately after the Civil War, the country was racially and geographically configured in ways that were different from the way it is segregated today.^{xcv} 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.^{xcvi} Courts enforced racially restrictive covenants and prevented homes from being sold to African Americans until the late 1940s.^{xcvii}

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.^{xcviii} 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.”^{xcix}

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.^c

The average urban African American person in 1890 lived in a neighborhood that was only 27 percent African American.^{ci} 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.^{cii} 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.^{ciii}

B. 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.^{civ} 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.^{cv}

The federal government financed many whites-only neighborhoods throughout the state.^{cvi} The federal Home Owners’ Loan Corporation maps used in redlining described many Californian neighborhoods in racially discriminatory terms.^{cvi} For example, in San Diego there were “servant’s areas” of La Jolla and several areas “restricted to the Caucasian race.”^{cvi}

During World War II, the federal government paid to build segregated housing for defense workers in Northern California.^{cix} Housing for white workers was more likely to be better constructed and permanent.^{cx} 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.^{cx}

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.^{cxii}

Numerous neighborhoods around the state rezoned African American neighborhoods for industrial use to keep out white residents^{cxiii} or adopted zoning ordinances to ban apartment buildings to try and keep out African American residents.^{cxiv}

State agencies demolished thriving African American neighborhoods in the name of urban renewal and park construction.^{cxv} 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.^{cxvi} In doing so, the City of San Francisco closed 883 businesses, displaced 4,729 households, destroyed 2,500 Victorian homes,^{cxvii} and damaged the lives of nearly 20,000 people.^{cxviii} It then left the land empty for many years.^{cxix}

VI. Separate and Unequal Education

A. 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. 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.^{cxx}

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.^{cxxi} In 1889, an Alabama state legislator stated, “[e]ducation would spoil a good plow hand.”^{cxxii} 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.^{cxxiii}

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.^{cxxiv}

After *Brown v. Board*, many white people and white-dominated school boards throughout the country actively resisted integration.^{cxxv} In the South, segregation was still in place through the early 1970s due to massive resistance by white communities.^{cxxvi} In the rest of the country, including California, education segregation occurred when governments supported residential segregation coupled with school assignment and siting policies.^{cxxvii} 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.^{cxxviii}

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.^{cxxix} In part, as a result of this decision and other U.S. Supreme Court decisions that followed that further undermined desegregation efforts, many public schools in the United States never integrated in the first place or were integrated and subsequently re-segregated.

B. California

In 1874, the California Supreme Court ruled segregation in the state's public schools was

legal,^{cxxx} a decision that predated the U.S. Supreme Court’s infamous “separate but equal” 1896 case of *Plessy v. Ferguson* by 22 years.^{cxxxi}

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.^{cxxxii} Like in the South, white Californians fought desegregation and, in a number of school districts, courts had to order districts to desegregate.^{cxxxiii} 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.^{cxxxiv} In 1979, California passed Proposition 1, which further limited desegregation efforts tied to busing.^{cxxxv}

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.^{cxxxvi} 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.^{cxxxvii}

VII. Racism in Environment and Infrastructure

A. 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.^{cxxxviii} 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.^{cxxxix} 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.^{cxl}

B. 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.^{cxli} African American neighborhoods are more likely to lack tree canopy^{cxlii} and suffer from the consequences of water^{cxliii} and air pollution.^{cxliv} For instance, African American neighborhoods in the San Joaquin Valley were historically denied access to clean water.^{cxlv}

VIII. Pathologizing the African American Family

A. 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.^{cxlvi} 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.^{cxlvii}

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.^{cxlviii} African American families were generally excluded, despite their greater need.^{cxlix}

Scholars have found that racial discrimination exists at every stage of the child welfare process.^{cl} Studies have found that 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 children from their families than remove white children from their families.^{cli} As of 2019, African American children make up 14 percent of American children, but 23 percent of children in foster care.^{clii} 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.^{cliii}

Meanwhile, the criminal and juvenile justice systems have intensified these harms to Black families by imprisoning large numbers of Black youth and separating Black families.^{cliv}

B. 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.^{clv} A 2015 study ranked California among the five worst states in foster care racial disparities.^{clvi} African American children in California make up approximately 22 percent of the foster population, while only *6 percent* of the general child population,^{clvii} far higher than the national percentages.^{clviii} 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.^{clix}

IX. Control Over Creative Cultural and Intellectual Life

A. Nationally

During slavery, state governments controlled and dictated the forms and content of African American artistic and cultural production.^{clx} 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.^{clxi} Federal and state governments failed to protect African American artists, culture-makers, and media-makers from discrimination and

simultaneously promoted discriminatory narratives.^{clxii}

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.^{clxiii} State governments denied African American entrepreneurs and culture-makers access to leisure sites, business licenses, and funding for leisure activities.^{clxiv} State governments memorialized the Confederacy as just and heroic through monument building, while suppressing the nation’s history of racism and slavery.^{clxv} States censored cinematic depictions of discrimination against and integration of African Americans into white society.^{clxvi}

B. California

In California, city governments decimated thriving African American neighborhoods with vibrant artistic communities, like the Fillmore in San Francisco.^{clxvii} Local governments in California have discriminated against, punished, and penalized African American students for their fashion, hairstyle, and appearance.^{clxviii} State-funded California museums have excluded African American art from their institutions.^{clxix} California has criminalized African American rap artists, as California courts have allowed rap lyrics to be used as evidence related to street gang activity.^{clxx} California has been home to numerous racist monument and memorial construction for centuries.^{clxxi}

X. Stolen Labor and Hindered Opportunity

A. 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.^{clxxii} Since then, federal, state, and local government actions directly segregated and discriminated against African Americans.^{clxxiii} In 1913, President Wilson officially segregated much of the federal workforce.^{clxxiv} 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.^{clxxv}

Federal laws have also protected white workers while denying the same protections to African American workers, setting up and allowing private discrimination.^{clxxvi} Approximately 85 percent of all African American workers in the United States at the time were excluded from the labor protections passed in 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.^{clxxvii} 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.^{clxxviii}

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.^{clxxxix} Federal and state policies like affirmative action produced mixed results and were short lived.^{clxxx} African Americans continue to face employment discrimination today.^{clxxxi}

B. 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.^{clxxxii} 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.^{clxxxiii} During the New Deal, several California cities invoked city ordinances to prevent African American federal workers from working within their cities.^{clxxxiv} Labor unions excluded African American workers in California.^{clxxxv} Today, by some measures, California's two major industries, Hollywood and Silicon Valley, employ disproportionately fewer African Americans.

XI. An Unjust Legal System

A. 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.^{clxxxvii}

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.^{clxxxviii} 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.^{clxxxix} In the words of the Supreme Court of Virginia, they were "slaves of the state."^{cxc}

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."^{cxc}

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.^{cxcii}

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.^{cxci} African American children on average remain missing longer and are more likely to be missing than non-African American children.^{cxci}

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.^{cxv} While constitutional amendments^{cxvi} and federal civil rights laws^{cxvii} have tried to remedy these injustices, scholars have argued that the U.S. criminal justice system is a new iteration of legal segregation.^{cxviii}

B. California

Like the rest of the country, California police stop, shoot, kill, and imprison more African Americans than their share of the population.^{cxix} 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.^{cc} A 2020 study showed that racial discrimination is an “ever-present” feature of jury selection in California.^{cci} 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.^{ccii}

XII. Harm and Neglect: Mental Physical and Public Health

A. 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.^{cciii} When they are hospitalized, African American patients with heart disease receive older, cheaper, and more conservative treatments than their white counterparts.^{cciv}

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

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.^{ccix} These feelings can profoundly undermine African American children’s emotional and physical well-being and their academic success.^{ccx}

B. California

These measures are similar in California. The life expectancy of an average African American

Californian was 75.1 years, 6 years shorter than the state average.^{ccxi} 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.^{ccxii} Compared with white Californians, African American Californians are more likely to have diabetes, die from cancer, or be hospitalized for heart disease.^{ccxiii}

African American Californians suffer from high rates of serious psychological distress, depression, suicidal ideation, and other mental health issues.^{ccxiv} 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.^{ccxv} African American Californians have the highest rates of attempted suicide among all racial groups.^{ccxvi}

XIII. The Wealth Gap

A. 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.^{ccxvii} 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.^{ccxviii} 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.^{ccxix} Of the \$120 billion worth of new housing subsidized between 1934 and 1962, less than two percent went to nonwhite families.^{ccxx} Other bedrocks of the American middle class, like Social Security and the GI Bill, also mostly excluded African Americans.^{ccxxi} The federal tax structure has in the past and continues today to discriminate against African Americans.^{ccxxii}

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.^{ccxxiii} 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.^{ccxxiv} This wealth gap persists regardless of education level and family structure and across all income levels.^{ccxxv}

B. 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.^{ccxxvi}

California's homestead laws similarly excluded African Americans before 1900 because they

required a homesteader to be white.^{ccxxvii} 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.^{ccxxviii} Californians passed Proposition 209 in 1996, which prohibited the consideration of race in state contracting.^{ccxxix} One study has estimated that, as a result of Proposition 209, minority- and women-owned business enterprises have lost about \$1 billion.^{ccxxx}

Key Findings

- In order to maintain slavery, colonial and American governments adopted white supremacy 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, which have harmed 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 and compared to white Americans, African 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 untrue 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 do not generally 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 our society. 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 between white Americans and African Americans today in the nation and in California.

Part II: International Reparations Framework and Examples of Other Reparations Schemes and Racial Equity Initiatives

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.”⁵

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. 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 “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.”⁶ Examples include genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or

⁵ Gov. Code, § 8301.1, subd. (b)(3)(A).

⁶ 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*, (March 21, 2006) (UN Principles on Reparation).at p. xii.

degrading treatment or punishment, and systematic discrimination.⁷ The Convention on the Prevention and Punishment of the Crime of Genocide separately defines “genocide.”⁸

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.⁹ As discussed below, 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 accepted international standard for effective reparations.

1. 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.”¹⁰

According to the International Commission of Jurists’ (ICJ) interpretation of the UN 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.”¹¹ 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.”¹² 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.”¹³ 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*.”¹⁴

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.

⁷ *Ibid.*

⁸ Office on Genocide Prevention and the Responsibility to Protect, United Nations, *Genocide* <<https://tinyurl.com/GenocideUN>> (as of Mar. 14, 2023).

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](#), (March 21, 2006) (UN Principles on Reparation).

¹⁰ *Id.* at pp. 7-8.

¹¹ International Commission of Jurists, [The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide](#) (Revised Edition, 2018) (ICJ) at p. 173.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

2. 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.”¹⁵

According to the ICJ’s interpretation of the UN 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.”¹⁶ 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.”¹⁷ 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.”¹⁸ The basis for this recommendation comes from Article 2(3)(a) of the International Covenant on Civil and Political Rights.¹⁹ International jurisprudence divides compensation into “material damages” and “moral damages.”²⁰ Material damages include, among other types, loss of actual or future earnings, loss of movable and immovable property, and legal costs.²¹ Moral damages include physical and mental harm.²²

Per the UN Principles on Reparation, “material damages” must cover “lost opportunities, including employment, education and social benefits.”²³ Additionally, according to the European Court of Human Rights, “there [generally] must be a clear and causal connection between the damage claimed by the applicant and the violation.”²⁴ 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.”²⁵

¹⁵ UN Principles on Reparation, *supra*, at p. 7.

¹⁶ ICJ at p. 174.

¹⁷ *Id.* at p. 176

¹⁸ *Id.* p. 177.

¹⁹ *Ibid.*

²⁰ *Id.* at p. 180.

²¹ *Id.* at p. 181.

²² *Id.* at p. 189.

²³ *Id.* at p. 187.

²⁴ *Id.* at p. 182.

²⁵ *Id.* at p. 189.

Therefore, in the likely event that a person 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.”²⁶

Per the UN Principles on Reparation, compensation for “moral damages” must “encompass financial reparation for physical or mental suffering.”²⁷ Since “this [type of] damage is not economically quantifiable, the assessment must be made in equity.”²⁸ 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.”²⁹ 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.”³⁰

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.

3. Rehabilitation

“Rehabilitation should include medical and psychological care as well as legal and social services.”³¹ 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.”³² The ICJ also highlighted the Convention Against Torture’s assessment on what constitutes rehabilitation. 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.”³³ 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.”³⁴ 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.”³⁵

²⁶ *Ibid.*

²⁷ *Id.* at p. 204.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ UN Principles on Reparation at p. 8.

³² ICJ at p. 206.

³³ *Id.* at p. 207.

³⁴ *Ibid.*

³⁵ *Ibid.*

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.

4. 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 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 acknowledgement 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.”³⁶

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” that has “been recognized by the International Court of Justice.”³⁷ Satisfaction can take the form of a condemnatory judgment, or the acknowledgement of truth, as well as the acknowledgement of responsibility and fault.³⁸ The ICJ also held that satisfaction includes “the punishment of the authors of the violation.”³⁹ Furthermore, “the UN Updated Principles on Impunity recommend that the final report of truth commissions be made public in full.”⁴⁰ 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,

³⁶ UN Principles on Reparation, *supra*, at p. 8.

³⁷ ICJ at p. 207.

³⁸ *Id.* at pp. 207-209.

³⁹ *Id.* at p. 209.

⁴⁰ *Ibid.*

including the accomplices, of these violations are essential steps towards rehabilitation and reconciliation.”⁴¹

Another important factor for satisfaction is a “public apology” and a “public commemoration.”⁴² The public apology is to help “in restoring the honor, reputation or dignity of a [victim].” 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.”⁴³ A public commemoration “in these cases has a symbolic value and constitutes a measure of reparation for current but also future generations.”

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 wide 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.” 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” 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.

5. 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,

⁴¹ *Id.* at p. 210; see also Human Rights Commission resolutions: 2001/70, para 8; 2002/79, para 9; 2003/72, para 8.

⁴² ICJ at p. 211.

⁴³ *Ibid.*

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.”⁴⁴

According to the ICJ’s interpretation of the UN Principles on Reparation, the guarantee of non-repetition derives from general international law.⁴⁵ A guarantee of non-repetition is an aspect of “restoration and repair of the legal relationship affected by the breach.”⁴⁶ According to the International Law Commission, “[a]ssurances and guarantees are concerned with the restoration of confidence in a continuing relationship.”⁴⁷ A guarantee of non-repetition overlaps with international human rights law because “[s]tates have a duty to prevent human rights violations.”⁴⁸ A guarantee of non-repetition is “required expressly” as part of the “legal consequences of [a state’s] decisions or judgments.”⁴⁹ 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.⁵⁰ Another measure that falls under the guarantee of non-repetition is “the necessity to remove officials implicated in gross human rights violations from office.”⁵¹ 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.⁵²

While the UN 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.”⁵³ Principle 3(c) provides for equal and effective access to justice, “irrespective of who may ultimately be the bearer of responsibility for the violation.”⁵⁴ Additionally, Principle 15 states, “in cases where a person, a legal person, or other entity is found liable for reparation to a victim,

⁴⁴ UN Principles on Reparation, *supra*, at pp. 8-9.

⁴⁵ ICJ at p. 135.

⁴⁶ *Id.* at p. 136.

⁴⁷ *Id.* at p. 137.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Id.* at pp. 138-139.

⁵¹ *Id.* at p. 140.

⁵² *Ibid.*

⁵³ 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.

⁵⁴ UN Principles on Reparation at p. 5.

such party should provide reparation to the victim or compensate the State if the State has already provided reparation for the victim.”⁵⁵

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.⁵⁶ 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.”⁵⁷ 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.”⁵⁸ 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.”⁵⁹

Also, the ICJ has specified that for purposes of the UN Principles on Reparation, the definition of “victim” is meant to be broad.⁶⁰ 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.”⁶¹ 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.”⁶² 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.⁶³

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.”⁶⁴ 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,

⁵⁵ *Id.* at p. 7.

⁵⁶ *Id.* at p. 7.

⁵⁷ *Id.* at p. 5.

⁵⁸ *Ibid.*

⁵⁹ *Id.* at p. 6

⁶⁰ International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide* (Revised Edition, 2018), at p. 36.

⁶¹ *Id.* at p. 34.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Id.* at p. xii.

deportation or forcible transfer of population, and systematic racial discrimination.”⁶⁵ The ICJ also held that “harm should be presumed in cases of gross human rights violations”⁶⁶

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; and
- (c) Access to relevant information concerning violations and reparation mechanisms.⁶⁷

According to the UN Human Rights Committee, “the right to an effective remedy necessarily entails the right to reparation.”⁶⁸ 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.”⁶⁹ 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.”⁷⁰ 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.”⁷¹

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.

⁶⁵ *Ibid.*

⁶⁶ *Id.* at p. 42.

⁶⁷ UN Principles on Reparation at p. 6.

⁶⁸ Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 16.

⁶⁹ UN Principles on Reparation at p. 6.

⁷⁰ ICJ at p. 55.

⁷¹ *Ibid.*

XV. Examples of Other Reparations Programs and Racial Equity Initiatives

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 historical and current worldwide examples of attempts to remedy wrongs and injuries caused by the state and private actors in other contexts, including initiatives that have included full reparations and special measures. The Task Force examined the following initiatives:

1. International

a. 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. Beginning in 1933, the Third Reich implemented several provisions to control and limit the citizenship and freedom of its Jewish citizens. Initially, the laws excluded Jewish citizens from certain positions, schools, and professions. 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. In addition to these atrocities, about \$6 billion in property was stolen from the Jewish people in Germany and territories controlled by Germany. 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.

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.⁷² Although the 1952 Luxembourg Agreement predates the United Nations General Assembly’s Resolution,⁷³ which identifies the five requirements for a full and effective reparations scheme, the Agreement comes close to fully embodying those principles. The 1952 Agreement consisted of three parts, two of which were protocols. The first part of the Agreement required the FRG to pay Israel 3 billion Deutschemarks (DM)⁷⁴ to help resettle Jewish refugees in the new State of Israel. The DM3

⁷² De Greiff, *Luxembourg Agreement: Excerpts* in The Handbook of Reparations (“*Luxembourg Agreement*”) (2006) page 886; Colonomos and Armstrong, *German Reparations to the Jews After World War II* in The Handbook of Reparations (“*German Reparations*”) (2006) page 391.

⁷³ 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*](#), (March 21, 2006) (UN Principles on Reparation).

⁷⁴ The Agreement sets out the FRG’s financial obligations in Deutschemark. At the time of the Agreement was executed, one dollar equaled 4.2 Deutschemark. The DM3 billion was equal to \$820 million. Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany* (“*Reparations Agreement*”) 48 Am. J. Int’l L. 564, 566, fn. 11.

billion sum would be paid in annual installments.⁷⁵ The second part, Protocol 1, required the FRG to enact laws to compensate individuals. And the third part, Protocol 2, required the FRG to pay the Conference on Jewish Material Claims against Germany (Claims Conference) DM450 million.⁷⁶

The first part of Agreement required the FRG to pay the first installment in 1952 in two parts. The first part, a payment of DM60 million, was due on the day the Agreement was entered into force.⁷⁷ The remaining DM140 million was due three months later.⁷⁸ The FRG was also required to pay DM200 million in 1953.⁷⁹ The remaining funds would be paid in nine annual installments of DM310 million plus a tenth installment of DM260 million.⁸⁰ 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 none of the installments be reduced below DM250 million.⁸¹ The DM3 billion payment was intended to help Israel meet the costs of resettling Jewish refugees who fled Nazi Germany and other territories that were formerly under Nazi Germany control.

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.⁸² The Compensation Law covered harms that occurred between January 30, 1933, the beginning of the Third Reich, to May 8, 1945.⁸³ Claimants could pursue compensation for harm endured under each of the various categories simultaneously.⁸⁴

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;⁸⁵
- 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

⁷⁵ De Greiff, *Luxembourg Agreement*, *supra* note 1, at p. 887.

⁷⁶ Colonomos and Armstrong, *German Reparations*, *supra* note 1 at p. 399; De Greiff, *Luxembourg Agreement*, *supra* note 3 at pp. 895-897. 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* note 4, at p. 394

⁷⁷ De Greiff, *Luxembourg Agreement*, *supra* note 3, at p. 888.

⁷⁸ *Ibid.*

⁷⁹ *Id.* at p. 887.

⁸⁰ *Ibid.*

⁸¹ *Id.* at pp. 887-888.

⁸² Colonomos and Armstrong, *German Reparations*, *supra* note 12, at p. 403; De Greiff, *Luxembourg Agreement*, *supra* note 6, at p. 889.

⁸³ *Id.* at p. 403.

⁸⁴ *Ibid.*

⁸⁵ *Id.* at p. 407.

concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime;⁸⁶

- The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after;⁸⁷
- The ceiling for education claims increased to DM10,000;⁸⁸
- And claims already adjudicated were to be revised based on the new law.⁸⁹

Although the Final Law still excluded the same groups as the prior versions of the compensation laws, it recognized slave or forced labor that occurred under “jail-like” conditions.⁹⁰ However, compensation for their work was not recognized as a claim category.⁹¹

The third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Claims Conference DM450 million for the “relief, rehabilitation (social and cultural), and resettlement of Jewish victims of Nazi persecution living outside of Israel.”⁹² The money would be paid to Israel, which would disburse the funds to the Claims Conference.⁹³

The 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.⁹⁴ Further, it was the first reparations program where the perpetrator paid reparations “on its own volition in order to facilitate self-rehabilitation.”⁹⁵ And the Agreement was formed by two states that were “descendent entities of the perpetrators and victims.”⁹⁶

The program was also the largest reparations program ever implemented.⁹⁷ The German government received over 4.3 million claims for individual compensation, of which 2 million were approved.⁹⁸ It is estimated that by 2000, Germany had paid more than DM82 billion (\$38.6 billion) in reparations.⁹⁹

Moreover, the Agreement had significant economic and political consequences for Israel and the FRG.¹⁰⁰ The treaty enabled a substantial trade relationship between the countries.¹⁰¹ During the period of enforcement for the treaty, they did not have political or diplomatic relations.¹⁰² But

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Id.* at p. 399.

⁹³ *Ibid.*

⁹⁴ Barkan, *Between Restitution and International Morality* (2001) 25 *Fordham Int'l L.J.* 46, 49

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Colonomos and Armstrong, *German Reparations*, *supra* note 63, at p. 408.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Id.* at p. 409.

¹⁰² *Ibid.*

when reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.¹⁰³

The 1953, 1956, and 1965 Compensation Laws excluded compensation for forced and slave labor. But in 2000, Germany and seven other countries enacted the Forced and Slave Labor Compensation Law.¹⁰⁴ The other countries were the United States, Russia, Israel, Poland, the Czech Republic, Belarus, and the Ukraine.¹⁰⁵ Former slave laborers¹⁰⁶ received DM15,000 (\$7,500).¹⁰⁷ Former forced laborers received DM5,000 (\$2,500).¹⁰⁸ Payments were limited to claimants only and not extended to descendants. However, heirs of anyone who died after February 1999, the date negotiations over compensation began, could file a claim.¹⁰⁹ The Law also allowed for compensation of all non-Jewish survivors living outside the five Eastern European countries.¹¹⁰ The International Organization for Migration processed those claims.¹¹¹ By the claims deadline, it had received 306,000 claims.

b. 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.¹¹² In 1988, a plebiscite was held to determine whether General Pinochet should remain president of the country, and Pinochet lost. However, it was not until March 1990 that Patricio Aylwin was sworn in as President of the Republic of Chile.

One month after his inauguration, Aylwin created the National Truth and Reconciliation Commission. 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.¹¹³ In February 1991, the Commission delivered its first report to the President, the Rettig Report. President Aylwin sent a draft bill on victim compensation to Congress; the bill used the recommended measures of compensation from the Rettig 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

¹⁰³ *Ibid.*

¹⁰⁴ *Id.* at p. 433.

¹⁰⁵ *Id.* at p. 432.

¹⁰⁶ Slave labor was work performed in a concentration camp or ghetto or other place 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. (Authers, *German Compensation*, *supra* note 85, p. 435.)

¹⁰⁷ *Id.* at p. 434.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Id.* at p. 435.

¹¹⁰ *Id.* at p. 437.

¹¹¹ *Ibid.*

¹¹² *The Center for Justice & Accountability*, [Chile](#) (as of December 27, 2022).

¹¹³ Greiff, *The Handbook of Reparations* (2010) p. 57; *United States Institute of Peace*, [Truth Commission: Chile 90](#) (as of Dec. 23, 2022).

recommendations contained in the Report of the National Truth and Reconciliation Commission.¹¹⁴ As written in Law 19.123, the national corporation was tasked to achieve all of the following:

- Promoting restitutions 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;¹¹⁵
- 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;¹¹⁶
- 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. It 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;¹¹⁷
- Conducting research and making decisions in certain cases, regarding whether the person was a victim of human rights violations or political violence.¹¹⁸
- 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.¹¹⁹
- Making proposals for consolidating a culture of respect for human rights in the country.¹²⁰

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.¹²¹ The Institute of Pension Normalization was placed in charge of paying the pensions throughout the country. 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.¹²² In 1996, the monthly pension amounted to 226,667 Chilean pesos, around 537 US dollars.¹²³ This figure was used as a reference for estimating the different amounts provided to each type of beneficiary as defined in Law 19.123.

In the years since its enactment, there have been public criticisms of the restitution measures enacted by the government. For example, some have objected to allowing compensation based

¹¹⁴ *Id.* at p. 748.

¹¹⁵ *Id.* at p. 749.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Id.* at p. 750.

¹²⁰ *Ibid.*

¹²¹ *Id.* at p. 59.

¹²² *Ibid.*

¹²³ *Ibid.*

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.¹²⁴ 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.¹²⁵ Law 19.123 also excluded certain beneficiaries (unmarried partners, victims without children, and mothers of children of unknown parentage) and lacked recognition or remedy for specific victims (those illegally detained and tortured).¹²⁶

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately 200 US Dollars per month) and free education, housing, and health care.¹²⁷

c. South Africa

Apartheid was an institutional regime of racial segregation and systemic oppression, implemented in South Africa for the purpose of depriving the majority Black South African population of basic rights and securing the white minority's power over the country's government, economy, and resources.¹²⁸ Similar to the United States' system of segregation, de jure racial segregation was widely practiced in South Africa since the first white settlers arrived in the region.¹²⁹ When the National Party gained control of the government in 1948, it expanded the policy of racial segregation, naming the system apartheid.¹³⁰ 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.¹³¹ 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. The law was designed to remove thousands of "Coloureds," Black South Africans, and Indians from areas classified for white occupation. 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.¹³²

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."¹³³ Many private companies, including some based in the United States and Europe, enabled apartheid by manufacturing the military

¹²⁴ *Id.* at p. 58.

¹²⁵ *Ibid.*

¹²⁶ *Id.* at p. 63.

¹²⁷ *Ibid.*

¹²⁸ Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 454-455.

¹²⁹ See Britannica <https://www.britannica.com/topic/apartheid> (as of Mar. 10, 2023).

¹³⁰ See Britannica <https://www.britannica.com/topic/apartheid> (as of Mar. 10, 2023).

¹³¹ See Britannica <https://www.britannica.com/topic/apartheid> (as of Mar. 10, 2023). A fourth category for Asian, that is Indian and Pakistani, was added later.

¹³² See Britannica <https://www.britannica.com/topic/apartheid> (as of Mar. 10, 2023).

¹³³ See Britannica <https://www.britannica.com/topic/apartheid> (as of Mar. 10, 2023).

and police vehicles¹³⁴ used to enforce segregation and by creating the document system that stripped Black South Africans of their citizenship and rights.¹³⁵

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. To make that transition, the Act created the Truth and Reconciliation Commission (Commission), which operated through three committees: the Committee on Human Rights Violations (CHRV), 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 that were 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.

In its final policy recommendations, the CRR recommended financial and symbolic compensation reparations as well as community rehabilitation programs and institutional reforms. 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. The government adopted some of the CRR's symbolic reparation recommendations, community rehabilitation program recommendations, and institutional reforms. 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.¹³⁶

The South African government did not adopt the CRR's financial recommendations nor its recommendation to appoint a national implementing body. 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. 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. By 2004, only 10 percent of the confirmed victims had received their payment.

The Commission's CRR was responsible for developing both the Urgent Interim Reparations policy program (UIR) and making final policy recommendations to the President. The UIR was an interim financial compensation program. The UIR regulations required referrals and financial assistance to access services necessary to meet urgent medical, emotional, educational,

¹³⁴ A Ford plant in Port Saint Elizabeth manufactured vehicles that were used by the military and police. (Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 462-463.)

¹³⁵ Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 455

¹³⁶ Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367, 383.

material, and symbolic needs to applicants whose requirements the CRR deemed urgent.¹³⁷ The UIR payments were calculated based on need and the number of the victim's dependents, ranging from a maximum of R2900 (US \$250) for a victim with no dependents to a maximum of R5705 (US \$713) for those with five or more dependents.¹³⁸ The first UIR payments were made in July 1998.¹³⁹ The UIR "process was mostly completed in April 2001."¹⁴⁰ The President's Fund paid out about R44,000,000 (US \$5.5 million) in cash payments to 14,000 victims for three years.¹⁴¹ Those payments ranged from R2000 (US \$250) to R5600 (US \$700).¹⁴²

Some critics of the UIR program criticize the lack of information shared with victims about the Commission.¹⁴³ Specifically, victims were not given information about how the Commission was organized or how it functioned.¹⁴⁴ Thus, they were not empowered to engage with the Commission, nor were they knowledgeable about the next steps in the restitution process.¹⁴⁵ And they received little information regarding the perpetrators the Amnesty Committee was considering for amnesty.¹⁴⁶

d. Canada

Indigenous children in Canada were sent to residential schools from the 17th century until the late 1990's. 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. 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 1894 amendment made attendance at residential schools mandatory. Starting in the 1880's, 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.

There were 130 residential schools in Canada between 1831 and 1996. During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools. Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing. Children were forced to leave their homes, parents, and often their siblings, as the schools were segregated based on gender. 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. At some schools, children were banned from speaking their native language, even in letters home to their parents. The Christian missionary staff at these schools emphasized

¹³⁷ Colvin, *Reparations Program in South Africa* in *The Handbook of Reparations* at pp. 188-189.

¹³⁸ *Id.* at p. 188.

¹³⁹ *Ibid.*

¹⁴⁰ *Id.* at p. 189.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Id.* at p. 190.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

Christian traditions while simultaneously denigrating Indigenous spiritual traditions. Physical and sexual abuse were common. Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza.

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. In 1996, a group of 27 former students filed a class action lawsuit against the Government of Canada and the United Church of Canada. Thousands of other former students began to sue the federal government and churches. 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. 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.

In 2007, the Canadian government entered into the Indian Residential Schools Settlement Agreement. 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 recover. The Agreement has five main components: the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services. The Settlement Agreement allocated \$1.9 billion to the Common Experience Payment for all former students of the residential schools. Every former student was given \$10,000 for the first year at school and \$3,000 for each additional year.

By the end of 2012, 98 percent of the 80,000 eligible former students received payments. The Independent Assessment Process provided a mechanism to resolve sexual and serious physical and psychological abuse claims. By the end of 2012, it had provided more than \$1.7 billion to former students.

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. 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. The Settlement Agreement also allocated \$20 million for commemorative projects and \$125 million for the Aboriginal Healing Foundation. 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.

In January 2023, Canada also stated it had 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. 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.

Under this settlement, the federal government agreed to establish a trust fund for Indigenous communities to use for educational, cultural, and language programs. 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. 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. 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. The settlement does not release the federal government from future lawsuits involving children who died or disappeared at the residential schools.

2. Domestic: Federal

a. 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.¹⁴⁷ 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.¹⁴⁸ Sutton’s petition is one of the first examples of African Americans demanding reparations. The court granted her petition, partially due to Royall’s resistance to American independence and allegiance to King George III.¹⁴⁹

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.¹⁵⁰ 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.¹⁵¹

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 1898.¹⁵² The MRBPA grew to 300,000 members by 1916.¹⁵³ 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

¹⁴⁷ Sinha, [*The Long History of American Slavery Reparations*](#) (Sept. 20, 2019) Wall Street Journal (as of Apr. 12, 2023).

¹⁴⁸ *Ibid.*

¹⁴⁹ Sinha, *supra*.

¹⁵⁰ Darity and Mullen, *From Here to Equality: Reparations for Black Americans in the Twenty-First Century* (2nd ed. 2022) p. 9.

¹⁵¹ Darity and Mullen, *supra*, at p. 10.

¹⁵² Darity and Mullen, *supra*, at p. 11.

¹⁵³ Darity and Mullen, *supra*, at p. 12.

assistance when they became incapacitated by illness; and (4) providing a burial assistance payment when a member died.¹⁵⁴ 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 1868.¹⁵⁵ The MRBPA petitioned for \$68 million—the money the government collected from the “Internal Revenue Tax on Raw Cotton” on the cotton they produced.¹⁵⁶ The claim was denied based on government immunity.¹⁵⁷ The U.S. Supreme Court affirmed.¹⁵⁸

The MRBPA faced strong opposition from the U.S. government.¹⁵⁹ 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.¹⁶⁰ House was convicted and served time in a penitentiary in Missouri.¹⁶¹

Another reparations trailblazer was “Queen Mother” Audley Moore, known as the “Mother” of the modern reparations movement.¹⁶² 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.¹⁶³ In the 1950’s she formally petitioned the U.N. for reparations for African Americans.¹⁶⁴

In the 1960’s 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.¹⁶⁵ 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

¹⁵⁴ Darity and Mullen, *supra*, at p. 11.

¹⁵⁵ *Johnson v. McAdoo* (1916) 45 App.D.C. 440, 441.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Johnson v. McAdoo* (1917) 244 U.S. 643.

¹⁵⁹ Perry, [No Pensions for Ex-Slaves: How Federal Agencies Suppressed Movement to Aid Freedpeople](#) (Summer 2010) 42 Prologue Magazine 2.

¹⁶⁰ Darity and Mullen, *supra*, at p. 12.

¹⁶¹ *Ibid.*

¹⁶² National African-American Reparations Commission, [Who is Queen Mother Moore?](#) (July 27, 2013) (as of Apr. 12, 2023).

¹⁶³ Darity and Mullen, *supra*, at p. 13.

¹⁶⁴ *Ibid.*

¹⁶⁵ [The Black Panther Party’s Ten-Point Program](#), UC Press Blog (as of Apr. 12, 2023).

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.¹⁶⁶

The reparations movement surged in the 1980s.¹⁶⁷ The National Coalition of Blacks for Reparations in America was founded in 1987,¹⁶⁸ 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.¹⁶⁹ Rep. Conyers introduced the bill 20 times without success.¹⁷⁰

The publication of the 2014 essay “The Case for Reparations” by Ta-Nehisi Coates in *The Atlantic*¹⁷¹ refocused the country’s attention on reparations.¹⁷² 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.¹⁷³ Reparations was also an issue in the 2020 Democratic presidential primary.¹⁷⁴ 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).¹⁷⁵

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.

¹⁶⁶ X, *The Race Problem* (Jan. 23, 1963).

¹⁶⁷ Darity and Mullen, *supra*, at p. 15.

¹⁶⁸ National Coalition of Blacks for Reparations in America, [About](#) (as of Apr. 13, 2023).

¹⁶⁹ Darity and Mullen, *supra*, at p. 15.

¹⁷⁰ Felton, [Supporters Say They Have the Votes in the House to Pass a Reparations Bill after Years of Lobbying](#) (Feb. 25, 2022) Washington Post (as of Apr. 13, 2023).

¹⁷¹ Coates, [The Case for Reparations](#) (June 2014) *The Atlantic* (as of Apr. 14, 2023).

¹⁷² Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3121 (2019- 2020 Reg. Sess.) May 11, 2020, p. 7, (as of Apr. 14, 2023).

¹⁷³ Sotomayor, [House Panel Approves Bill to Create Commission on Slavery Reparations](#) (Apr. 14, 2021) Washington Post (as of Apr. 13, 2023).

¹⁷⁴ *Ibid.*

¹⁷⁵ Felton, *supra*; H.R. 40, has been reintroduced in the 118th Congress, but as of May 2023 was awaiting consideration by the House Judiciary Committee (Congress.gov, [H.R.40 - Commission to Study and Develop Reparation Proposals for African Americans Act](#)).

b. U.S. Indian Claims Commission

The United States Indian Claims Commission (“Commission” or “ICC”) was established in 1946 through federal legislation.¹⁷⁶ 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. The government’s inhumanity and the atrocities committed during this period were diverse and devastating.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹ This dispossession was accomplished by various means, including outright conquest, treaty, executive order, and federal statute.¹⁸⁰ 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.

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.¹⁸¹ 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.”¹⁸² 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.”¹⁸³ Indeed, the majority of claims alleged that “the United States acquired valuable land for unconscionably low prices in bargains struck between unequals.”¹⁸⁴ 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.¹⁸⁵

The Commission initially comprised three members, all appointed by President Harry Truman.¹⁸⁶ The ICC acted as a “quasi-judicial branch of the legislature” that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided

¹⁷⁶ Kuykendall et al., [United States Indian Claims Commission, Final Report](#) at p. 5 (Sept. 30, 1978) (“Final Report”).

¹⁷⁷ See, e.g., Cohen, *Cohen’s Handbook of Federal Indian Law* (2005) at § 1.03[4][a] (discussing the Trail of Tears and several other forcible relocations associated with Indian Removal).

¹⁷⁸ Dunbar-Ortiz, [Yes, Native Americans Were the Victims of Genocide](#) (May 12, 2016) History News Network (as of Feb. 15, 2023); Dobuzinskis, [California governor apologizes to Native Americans, cites ‘genocide’](#) (June 18, 2019) Reuters (as of Feb. 15, 2023).

¹⁷⁹ Final Report, *supra*, fn. 1 at p. 1.

¹⁸⁰ Saunt, [The Invasion of America](#) (Jan. 7, 2015) Aeon (as of Feb. 13, 2023).

¹⁸¹ Derocher, [Manifesting a Better Destiny: Interest Convergence and the Indian Claims Commission](#) (2021-2022) 24 New York University Journal of Legislation and Public Policy 511, 535 (as of Feb. 2, 2023) (hereafter “Manifesting a Better Destiny”).

¹⁸² Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050.

¹⁸³ U.S. Congress House Committee on Indian Affairs, Hearings on H R 1198 and H. R. 1341 to Create an Indian Claims Commission. 79th Cong. 1st sess. March 2, 3, 28 and June 11, 14, 1945.

¹⁸⁴ Final Report, *supra*, fn. 1 p. 8.

¹⁸⁵ *Id.* at p. 6.

¹⁸⁶ *Id.* at 5.

over trials.¹⁸⁷ 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.¹⁸⁸ 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.¹⁸⁹

The ICC was initially set to terminate ten years after its first meeting,¹⁹⁰ but was repeatedly extended until its termination in 1978.¹⁹¹ Individual cases often took several years to complete,¹⁹² and the appeal process alone typically took between eight months and three years.¹⁹³ During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60 percent of matters.¹⁹⁴ It awarded approximately \$800 million in total compensation to tribal claimants.¹⁹⁵ At its termination in 1978, the Commission had not fully cleared its docket and the remaining matters were transferred to the Court of Claims.¹⁹⁶

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.¹⁹⁷ The Commission was not empowered to convey land back to tribes,¹⁹⁸ yet its rulings have barred all subsequent claims, including those to repossess land.¹⁹⁹ Nor did the Commission address issues such as the suppression of Native languages, religions, and forms of government.²⁰⁰ 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.²⁰¹ Moreover, except in the rare claim premised on a Fifth Amendment “taking,” the Commission ruled that interest on amounts owed was not recoverable.²⁰² The unpaid interest was estimated by the U.S. Solicitor General to have been several billion dollars.²⁰³

¹⁸⁷ *Id.* at 7.

¹⁸⁸ *Ibid.*

¹⁸⁹ Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050.

¹⁹⁰ Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat. 1049, 1055.

¹⁹¹ Final Report, *supra*, fn. 1 at p. iii.

¹⁹² Final Report, *supra*, fn. 1, p. 6.

¹⁹³ Final Report, *supra*, fn. 1, p. 6.

¹⁹⁴ Final Report, *supra* fn. 1 at p. 21.

¹⁹⁵ *Ibid.*

¹⁹⁶ Final Report, *supra*, fn. 1 at p. iii.

¹⁹⁷ See, e.g., Danforth, Repaying Historical Debts: The Indian Claims Commission (1973) 49 N.D. L. Rev. 359, 374-80; Lurie, The Indian Claims Commission (1978) 436 Annals of the Am. Soc. Of Poli. & Soc. Sci. 97; Vance, [The Congressional Mandate and the Indian Claims Commission](#) (1969) 45 N.D. L. Rev. 325, 332-35 (as of Feb. 14, 2023); Churchill, *Charades, Anyone?* *supra*, fn. XX.

¹⁹⁸ Churchill, *Charades, Anyone?* *supra*, fn. XX, at p. 53.

¹⁹⁹ Cohen, Cohen’s Handbook of Federal Indian Law (2005) § 5.06[3].

²⁰⁰ Churchill, *Charades, Anyone?* *supra*, fn. XX, at p. XX.

²⁰¹ Churchill, *Charades, Anyone?* *supra*, fn. XX, at p. XX.

²⁰² Final Report, *supra*, fn. 1, p. 11.

²⁰³ *Id.* at p. 11.

A core defect in the ICC's structure and practice was the adversarial rather than investigative nature of the proceedings.²⁰⁴ 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."²⁰⁵ 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.²⁰⁶ Finally, the Native Americans' obligation to retain counsel at their own cost diminished any eventual financial award.²⁰⁷ In light of these and other inefficiencies, many have argued that the Commission should have operated as an investigative rather than quasi-judicial body.²⁰⁸ Indeed, the Commission was statutorily authorized to conduct its own investigations,²⁰⁹ but it rarely employed these powers and instead consistently acted as a tribunal.²¹⁰

c. 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. The Study was intended to observe the natural history of untreated syphilis in African American men. A total of 600 African American men 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. The African American men in the Study were only told they were receiving free health care from the federal government of the United States. 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, severe health issues, and sometimes death.

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. The Assistant Secretary for Health and Scientific Affairs appointed an Ad Hoc Advisory Panel that concluded that there was evidence that scientific research protocols routinely applied to human subjects to ensure the safety and well-being of the men involved were either ignored by the Study or deeply flawed.

Following the Advisory Panel's findings in October 1972, a class-action lawsuit was filed on behalf of the men in the Study, their wives, children, and families, resulting in a nearly \$10

²⁰⁴ Danforth, *supra*, fn. XX at p. 376-77.

²⁰⁵ Vance, The Congressional Mandate, *supra*, fn. XX at p. 334.

²⁰⁶ Churchill, *Charades, Anyone* *supra*, fn. XX, at p. XX; Vance, *supra*, fn. XX at p. 334 (noting that although settlement at the ICC was authorized by statute, the prevailing Department of Justice policy at the time was to not make settlement offers).

²⁰⁷ Final Report, *supra*, fn. 1 at p. 9.

²⁰⁸ Vance, *supra*, fn. XX at p. 334; Danforth, *supra*, fn. XX at p. 376-77.

²⁰⁹ Indian Claims Commission Act of 1946, Pub. L. No. 79-726, 60 Stat. 1049, 1052.

²¹⁰ Danforth, *supra*, fn. XX at p. 376-77.

million settlement in 1974. Under the settlement, 70 living syphilitic participants received \$37,500 each. The 46 living men in the control group received \$16,000 each. The family members of the 339 deceased syphilitic participants received \$15,000 per participant. The family members of the deceased members of the control group received \$5,000 per participant. The settlement included free healthcare for life for the participants who were still living, as well as healthcare for their infected wives, widows, and children.

The federal government in 1974 enacted legislation to study and write regulations governing studies involving human participants, to acknowledge and provide redress for the Study, including a formal apology to the surviving study victims, and to implement policy changes to protect human subjects in biomedical and behavioral research.

In February 1994, the Claude Moore Health Sciences Library in Charlottesville, hosted a symposium entitled, “Doing Bad in the Name of Good?: The Tuskegee Syphilis Study and Its Legacy.”²¹¹ The symposium featured seven humanities scholars discussing the Tuskegee Syphilis Experiments, their troubling historical reality, and their legacy.²¹² Following this symposium, the Tuskegee Syphilis Study Legacy Committee was formed to develop ideas that had arisen at the symposium.²¹³ In 1996, the Committee issued its final report, presenting two goals: (1) to persuade President Bill Clinton to apologize to the surviving Study participants, their families, and to the Tuskegee community; and (2) to develop a strategy to redress the damages caused by the Study and to transform its damaging legacy.

In 1997, President 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. President Clinton also announced the creation of bioethics fellowships for minority students and extended the life of the National Bioethics Advisory Commission to 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.

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.

d. 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

²¹¹ [Syphilis Study Legacy Committee](#) (undated) National Center for Bioethics in Research and Health Care, Tuskegee University (as of Jan 14, 2023).

²¹² Klein, [Doing Bad in the Name of Good: The Tuskegee Syphilis Study and Its Legacy](#) (1992) University of Virginia Health System Claude Moore Health Sciences Library (as of Feb 14, 2023).

²¹³ [Syphilis Study Legacy Committee, supra](#).

commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona. 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. 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. Tens of thousands of Japanese Americans were incarcerated in desolate camps, for up to four years.

In 1980, the United States Congress and President Jimmy Carter approved the Commission on the Wartime Internment and Relocation of Civilians (CWRIC). 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 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; and (3) recommend appropriate remedies. 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.

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

Under the Act, the United States Attorney General was charged with locating eligible individuals for the purpose of paying restitution in the amount of \$20,000.00. The Act required the Attorney General to attempt to complete the identification and location of individuals within 12 months of the Act's enactment. The Act provided for notice requirements to potentially eligible individuals, a right to refuse payment, a waiver of all claims if payment was accepted, payments to survivors of certain 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. By 1999, redress payments had been distributed to approximately 82,220 claimants.

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. The trust totalled \$1,250,000,000, and the fund would terminate once the money was exhausted or 10 years after the enactment of the Civil Liberties Act of 1988. 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. Finally, the Act provided a formal apology for each surviving incarcerated person.

e. 9/11

The militant network al-Qaeda carried out four coordinated terrorist attacks against the United States on September 11, 2001, commonly known as 9/11.²¹⁴ The incineration of the Twin Towers and the crashed aircrafts released clouds of noxious toxins in Lower Manhattan.²¹⁵ First responders, volunteers, and residents near Ground Zero inhaled harmful dust, smoke, toxic chemicals, and particle remnants.²¹⁶ This toxic exposure subsequently caused various illnesses including more than 60 types of cancer, respiratory conditions, and digestive disorders.²¹⁷ Thousands of survivors and first responders have been diagnosed with 9/11-related illnesses, and thousands more have died.²¹⁸

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).²¹⁹ 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.²²⁰ The claims window for VCF closed in 2004.

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).²²¹ While the original VCF 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 exposure to the toxic air in Lower Manhattan and the other attack sites.²²² The new claim filing deadline was October 2016.²²³ The Zadroga Act also established the World Trade Center Health Program (WTCHP) to provide medical monitoring and treatment for responders and survivors with chronic health conditions arising from the 9/11 attacks.²²⁴ In contrast to the WTCHP, the VCF does not cover mental health conditions.²²⁵

In 2015, the Zadroga Act was reauthorized and extended until December 2020. Certain award calculations were changed.²²⁶ The original VCF paid an average death claim award of over \$2

²¹⁴ Jackson, [September 11 Attacks: What Happened on 9/11?](#) (Aug. 3, 2021) BBC News (as of Feb. 14, 2023).

²¹⁵ CDC World Trade Center Health Program, [Toxins and Health Impacts](#) (as of Feb. 14, 2023).

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Virgilio v. City of New York*, 407 F.3d 105, 109 (2d Cir. 2005).

²²⁰ September 11th Victim Compensation Fund, [20th Anniversary Special Report](#) (September 2021) at p. 4 (as of Feb. 14, 2023).

²²¹ *Ibid.*

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ [20th Anniversary Special Report](#), *supra* at p. 4.

²²⁵ September 11th Victim Compensation Fund, [Annual Report 2022](#) at p. 14 (as of Feb. 14, 2023).

²²⁶ [20th Anniversary Special Report](#), *supra* at p. 4

million²²⁷ and awarded anywhere from \$500 to over \$8.6 million in personal injury claims.²²⁸ Due to budgetary considerations, the 2015 reauthorization of the Zadroga Act reduced victim compensation.²²⁹ 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 \$200,000.²³⁰

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.²³¹ Claimants who participated in this compensation scheme waived their right to sue for damages for injury or death as a result of the attacks.²³² 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.²³³ 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.²³⁴

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.²³⁵ Many exposure symptoms and 9/11-related diseases took years to manifest.²³⁶ The VCF's most recent five-year extension only lasted until 2020. 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. 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. It also allows for supplemental compensation to any victim whose previous award had been reduced due to the previous budgetary restrictions.²³⁷

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

²²⁷ September 11th Victim Compensation Fund of 2001, [Compensation for Deceased Victims](#) (as of Feb. 14, 2023).

²²⁸ CNN Editorial Research, [September 11 Victim Aid and Compensation Fast Facts](#) (Sept. 7, 2022) CNN (as of Feb. 14, 2023).

²²⁹ September 11th Victim Compensation Fund, [About the Victim Compensation Fund](#) (as of Feb. 14, 2023).

²³⁰ *Ibid.*

²³¹ Isaacson, Terrorism and Mass Toxic Torts: An Examination of the James Zadroga 9/11 Health and Compensation Act, 25 Fordham Envtl. L. Rev. 509 (2014).

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ Goldmacher, [With Ground Zero Payments Slashed, a Push to Replenish a 9/11 Fund](#) (Feb. 28, 2019) New York Times (as of Feb. 14, 2023).

²³⁶ Gordy, The 9/11 Cancer Conundrum: The Law, Policy, & Politics of the Zadroga Act, 37 Seton Hall Legis. J. 33, 50 (2012).

²³⁷ September 11th Victim Compensation Fund, [VCF Permanent Authorization Act: Questions and Answers](#) (Aug. 2019) (as of Feb. 14, 2023).

documents, and 32.2 percent do not have a certified physical condition at the time the claim is filed.²³⁸

f. Sandy Hook Elementary School

On December 14, 2012, a gunman shot and murdered 20 children and 6 adult staff members at Sandy Hook Elementary School in Newton, Connecticut, after killing his own mother.²³⁹ 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.²⁴⁰ When he arrived at the school, he shot and killed the school's principal and school psychologist.²⁴¹ Teachers, who heard the gunshots, entered lockdown procedures, but he was able to enter a classroom where he killed the teacher and fourteen children.²⁴² He entered a second classroom and killed the teacher and six students; he also killed a special education aide and a behavioral therapist.²⁴³ When police arrived at the school, they discovered that the gunman had killed himself.²⁴⁴ It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall.²⁴⁵ The school was demolished in 2014 and replaced by a new building in 2016.²⁴⁶

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.²⁴⁷ The Commission concluded that the shooter acted alone, but did not identify a motive.²⁴⁸ The Commission made several recommendations, including investment in

²³⁸ [Annual Report 2022](#), *supra* at p. 8.

²³⁹ Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. Times (Dec. 14, 2012) <<https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html>> (as of Feb. 14, 2023).

²⁴⁰ Buchanan, et al., "How They Got Their Guns," New York Times (Updated Feb. 16, 2018); Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) <<https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting>> (as of Mar. 13, 2023).

²⁴¹ Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) <<https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting>> (as of Mar. 13, 2023).

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. Times (Dec. 14, 2012) <<https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html>> (as of Feb. 14, 2023).

²⁴⁵ Gamio & Hubler, *Texas Massacre Is the Second-Deadliest School Shooting on Record*, N.Y. Times (May 24, 2022) <<https://www.nytimes.com/interactive/2022/05/24/us/texas-school-shooting-deaths.html>> (as of Feb. 14, 2023).

²⁴⁶ Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) <<https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting>> (as of Mar. 13, 2023).

²⁴⁷ Sandy Hook Advisory Commission, Final Report (March 6, 2015) at p. 1 <https://portal.ct.gov/-/media/Malloy-Archive/Sandy-Hook-Advisory-Commission/SHAC_Final_Report_3-6-2015.pdf?sc_lang=en&hash=BDF55EC4ACE382E87941870AD9BF2A34> (as of Feb. 15, 2023); Sandy Hook Advisory Commission, at <https://portal.ct.gov/Malloy-Archive/Working-Groups/Sandy-Hook-Advisory-Commission> (as of Apr. 22, 2023).

²⁴⁸ *Id.* at pp. 10-12.

mental health professionals and funding for short-term and long-term recovery plans and behavioral health and education responses to crisis events.²⁴⁹

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.²⁵⁰ Much of the money from the grants went directly to opening the new Sandy Hook Elementary.²⁵¹

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.²⁵² 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.²⁵³ The DOJ also provided \$2.5 million in funding for Connecticut and Newtown law enforcement agencies through the Bureau of Justice Assistance.²⁵⁴

In 2014, the federal DOJ issued another grant for \$7.1 million through its Office for Victims of Crime.²⁵⁵ This grant was for victim services, school safety efforts, and new mental health services.²⁵⁶ Additionally, the town of Newton and the state received \$2.5 million from the DOJ for police overtime costs.²⁵⁷

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.²⁵⁸ The remainder was used to hire teachers, security guards, and other personnel. In total, as noted, the federal government provided \$17 million in additional aid for mental health services and school security.²⁵⁹

²⁴⁹ *Id.* at pp. 211-213.

²⁵⁰ Altimari, *Sandy Hook Two Years Later: Where is the Aid Going?*, Hartford Courant (Dec. 14, 2014) <<https://www.courant.com/news/connecticut/hc-sandy-hook-shooting-two-years-later-20141214-story.html>> (as of Feb. 15, 2023).

²⁵¹ *Ibid.*

²⁵² U.S. Dept. of J., Attorney General Holder Announces \$1.5 Million to Reimburse Support Efforts to Victims of the Sandy Hook Elementary School Shooting (December 17, 2013) <<https://www.justice.gov/opa/pr/attorney-general-holder-announces-15-million-reimburse-support-efforts-victims-sandy-hook>> (as of Feb. 15, 2023).

²⁵³ *Ibid.*

²⁵⁴ U.S. Dept. of J., Attorney General Holder Announces \$2.5 Million to Connecticut Law Enforcement for Costs Related to Sandy Hook School Shootings (August 28, 2013) <<https://www.justice.gov/opa/pr/attorney-general-eric-holder-announces-25-million-connecticut-law-enforcement-costs-related>> (as of Feb. 15, 2023).

²⁵⁵ New Haven Register, *Newtown receives \$7.1M federal grant to support Sandy Hook Victims* (June 17, 2014) <<https://www.nhregister.com/connecticut/article/Newtown-receives-7-1M-federal-grant-to-support-11380111.php>> (as of Feb. 15, 2023).

²⁵⁶ *Ibid.*

²⁵⁷ Altimari, *supra*. 1

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

g. 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.²⁶⁰ The seizure took place shortly after the Iranian Revolution. 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. The Algiers Accords included, among other items, a provision preventing the freed hostages from seeking compensation from Iran in U.S. courts.²⁶¹ As a result, former hostages and their families have never successfully won judgments or collected damages for the harms of the hostage crisis.

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. 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.²⁶² These recommendations were debated in Congress, but ultimately not adopted.²⁶³

In 2015, Congress passed the United States Victims of State Sponsored Terrorism Act, establishing a fund through the Consolidated Appropriations Act of 2015 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 1981.²⁶⁴ The Fund initially included an appropriation for \$1.025 billion for Fiscal Year 2017.²⁶⁵ Further funding has been provided by proceeds of federal enforcement actions.²⁶⁶ At the time of passage, 39 former hostages were still alive.²⁶⁷ Each hostage is entitled to receive \$10,000 per day of captivity, and spouses and children are each entitled to a lump sum

²⁶⁰ Encyclopedia Britannica, *Iran Hostage Crisis* <<https://www.britannica.com/event/Iran-hostage-crisis>> (as of Feb. 14, 2023).

²⁶¹ P.L. 96-449, 94 Stat. 1967 (1980); see also Elsea, Congressional Research Service, *The Iran Hostages: Efforts to Obtain Compensation* (November 2, 2015) at p.1 <<https://sgp.fas.org/crs/misc/R43210.pdf>> (as of Feb. 15, 2023).

²⁶² *Ibid.*

²⁶³ H.R. No. 2851, 99th Cong. (1985).

²⁶⁴ Originally 42 U.S.C. § 10609; now, as amended, 34 U.S.C. § 20144.

²⁶⁵ Feinberg, United States Victims of State Sponsored Terrorism Fund, Report from the Special Master (Jan. 2017) <<http://www.usvsst.com/docs/USVSST%20Fund%20Congressional%20Report%201-9-17.pdf>> (as of Feb. 14, 2023) (2017 Report).

²⁶⁶ United States Victims of State Sponsored Terrorism Fund, Special Master's Supplemental Report Regarding the Third Distribution (Dec. 2022) <<http://www.usvsst.com/docs/USVSST%20Fund%20Supplemental%20Congressional%20Report%20Dec%202022.pdf>> (as of Feb. 15, 2023) (2022 Report).

²⁶⁷ Herszenhorn, *Americans Held Hostage in Iran Win Compensation 36 Years Later*, N.Y. Times (Dec. 25, 2015) p. A1 <<https://www.nytimes.com/2015/12/25/us/politics/americans-held-hostage-in-iran-win-compensation-36-years-later.html>> (as of Feb. 15, 2023).

of \$600,000.²⁶⁸ 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.²⁶⁹

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.²⁷⁰ The Consolidated Appropriations Act of 2021 again amended the legislation.²⁷¹

The Fund distributed \$1 billion between 2017 and 2019, and another \$1.2 billion between 2019 and 2022. As of the latest report, \$93.4 billion in compensatory and statutory damages remained unpaid for the former hostages, judgement holders, and 9/11 victims eligible for compensation from the fund.²⁷² The Fund is scheduled to terminate in 2039, and the Special Master predicts authorizing annual payments if sufficient funds are available.²⁷³

The Act was amended to include 9/11 victims who had won judgments against Iran, and the Fund was converted to be disbursed on an equal portion basis.²⁷⁴ 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.²⁷⁵ The half allocated to non-9/11-related victims is further divided equally, based on the amounts outstanding and unpaid on eligible claims, until such amounts are paid in full.²⁷⁶

As a result of the inclusion of 9/11-related claimants to the fund, only a fraction of the amount entitled to former Iranian hostages and their families has been distributed.²⁷⁷ The former hostages have received occasional payments; Fund administrators estimate that the non-9/11 beneficiaries, including the former hostages, have received about 24 percent of their eligible amounts.²⁷⁸ As of September 2021, only 35 hostages remained alive.²⁷⁹ As long as the Fund is maintained and there are outstanding payments, the Special Master will authorize payments on an annual basis; the Fund sunsets on January 2, 2039.²⁸⁰

²⁶⁸ 34 U.S.C. § 20144, subds. (c)(2)(B) – (c)(2)(C).

²⁶⁹ Herszenhorn, *supra*.

²⁷⁰ 2022 Report, *supra*.

²⁷¹ *Id.*

²⁷² *Id.* at p. 12.

²⁷³ *Id.* at p. 13.

²⁷⁴ 34 U.S.C. § 20144, subd. (d)(3).

²⁷⁵ 34 U.S.C. § 20144, subd. (d)(3)(A)(i).

²⁷⁶ 34 U.S.C. § 20144, subd. (d)(3)(A)(i)(II).

²⁷⁷ Parvini, *They were hostages in Iran for 444 days. Decades later, they're waiting for compensation*, L.A. Times (Nov. 3, 2019) <<https://www.latimes.com/world-nation/story/2019-11-03/iran-hostages-444-days-decades-later-waiting-compensation>> (as of Feb. 15, 2023).

²⁷⁸ Gearan, *40 years later, a dwindling band of Iran hostages awaits a promised payment*, Wash. Post (Sept. 26, 2021) <<https://www.washingtonpost.com/politics/2021/09/26/40-years-later-dwindling-band-iran-hostages-awaits-promised-payment/>> (as of Feb. 15, 2023).

²⁷⁹ *Ibid.*

²⁸⁰ United States Victims of State Sponsored Terrorism Fund, Important Dates, <<http://www.usvsst.com/important.php>> (as of Mar. 13, 2023).

3. Domestic Programs: State and Local

a. 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.²⁸¹ Many African American descendants of Rosewood contend that the “attack” was a cover-up for a visit from her white lover.²⁸² Hearing the report from Taylor, a white vigilante mob led by Levy County Sheriff Robert Elias Walker descended upon Rosewood.²⁸³ The mob tortured and killed Sam Carter, an African American.²⁸⁴

For the next week, hundreds of white vigilantes, consisting of KKK members and other deputies from neighboring counties, arrived in Rosewood.²⁸⁵ They burned every home and building, including churches and schools, murdered six African American residents, and wounded dozens more.²⁸⁶ Two white men also died in a shootout.²⁸⁷ News of the “race war” traveled quickly throughout the state and country,²⁸⁸ but the Florida Governor never sent the National Guard to protect African American residents and end the violence.²⁸⁹ Many of Rosewood’s African American residents fled to the nearby swamps and hid during the riots.²⁹⁰ A rescue train evacuated fleeing residents to Gainesville.²⁹¹ At the end of the violence, only the house of John and Mary Jane Hall Wright, the white residents of Rosewood, remained standing.²⁹²

In February 1923, a grand jury convened in Bronson, Florida, to investigate the Rosewood massacre.²⁹³ Four days later, the grand jury found insufficient evidence to prosecute.²⁹⁴ African American residents never returned to Rosewood.²⁹⁵

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.²⁹⁶ In 1982, the *St. Petersburg Times* unraveled the history of Rosewood in a

²⁸¹ Colburn, Dye, Jones, Rivers, and Rogers, A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923: Submitted to the Florida Board of Regents (Dec. 1993) p. 23.

²⁸² *Id.* at p. 27.

²⁸³ *Ibid.*

²⁸⁴ *Id.* at p. 31.

²⁸⁵ *Id.* at p. 56.

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Id.* at p. 47.

²⁸⁹ *Id.* at p. 49.

²⁹⁰ *Id.* at p. 3.

²⁹¹ *Id.* at p. 4.

²⁹² Real Rosewood Foundation, [Rosewood Remembered](#) (as of Oct. 20, 2022).

²⁹³ Colburn, Dye, Jones, Rivers, and Rogers, A Documented History of the Incident Which Occurred at Rosewood, Florida in January 1923: Submitted to the Florida Board of Regents (Dec. 1993) p. 85.

²⁹⁴ *Id.* at p. 4.

²⁹⁵ *Id.* at p. 87.

²⁹⁶ Times Staff Writer, [Arnett Doctor, Driving Force Behind Rosewood Reparations, Dies at 72](#) (Mar. 26, 2015) Tampa Bay Times, (as of Oct. 20, 2022).

comprehensive article that later became a story on CBS's *60 Minutes*.²⁹⁷ The media attention galvanized Arnett Doctor, a descendent of Rosewood residents, who had been gathering the history of Rosewood for years.²⁹⁸ Doctor was the driving force behind Rosewood becoming a public issue.²⁹⁹ He secured pro bono counsel to help descendants and victims seek compensation from the state for the violence and destruction of Rosewood.³⁰⁰

In 1993, an academic report substantiated the claims of Rosewood descendants.³⁰¹ 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*.³⁰²

Then in 1994 the Florida Legislature passed a claim bill, to acknowledge and provide redress for the destruction and massacre of Rosewood.³⁰³ Florida's restitution to victims included approximately \$2.1 million in compensation and a state scholarship fund for direct descendants.³⁰⁴ 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 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 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 Rosewood incident and the history of race relations in Florida and develop educational materials about the destruction of Rosewood.³⁰⁵

The Rosewood Family Scholarship Program is codified in the state's Education Code³⁰⁶ and the Florida Department of Education promulgated the criteria to receive an award.³⁰⁷ 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.³⁰⁸ 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

²⁹⁷ Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 508.

²⁹⁸ Times Staff Writer, [Arnett Doctor, Driving Force Behind Rosewood Reparations, Dies at 72](#) (Mar. 26, 2015) Tampa Bay Times, (as of Oct. 20, 2022).

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ Dye, *The Rosewood Massacre: History and the Making of Public Policy* (1997) *The Public Historian*, vol. 19, no. 3, p. 39.

³⁰² Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 513.

³⁰³ Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for A Seventy-One-Year-Old Injury* (1994) 22 Fla. St. U. L. Rev. 503, 505-506.

³⁰⁴ Florida House Bill No. 591 (1994 Reg. Sess.).

³⁰⁵ Florida House Bill No. 591 (1994 Reg. Sess.).

³⁰⁶ Fla. Stat. § 1009.55.

³⁰⁷ Fla. Admin. Code, rule 6A-20.027.

³⁰⁸ Florida Department of Education, [Rosewood Family Scholarship Fact Sheet 2022-23](#) (2022).

obituary; and enroll in a state university, Florida College System institution, or career center authorized by law.³⁰⁹ Applicants are selected based on need.³¹⁰

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.³¹¹ It states: “Those who survived were forever scarred.”³¹²

b. 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.”³¹³ The North Carolina Supreme Court invalidated the law in 1933 because it failed to provide any notice or opportunity for appeal.³¹⁴ 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.³¹⁵

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.³¹⁶ There was a very limited appeal process, but the board approved about 90 percent of the petitions.³¹⁷ The state ultimately sterilized around 7,600 persons, the third-largest number in the country.³¹⁸ The program was somewhat unique in that it also sterilized non-institutionalized individuals, not just those residing in penal or mental facilities. Moreover, the vast majority of sterilizations took place after World War II.³¹⁹

In 2003, Governor Mike Easley apologized for forced sterilizations performed under the purview of the State of North Carolina’s Eugenics Board. 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

³⁰⁹ Florida Department of Education, [Rosewood Family Scholarship Fact Sheet 2022-23](#) (2022).

³¹⁰ Fla. Stat. § 1009.55, subd. (2), par. (c).

³¹¹ Banks, [Reparations after Rosewood Massacre a Model, Descendants Say](#) (Dec. 24, 2020) Tampa Bay Times, (as of Oct. 20, 2022).

³¹² *Ibid.*

³¹³ North Carolina P.L. 1929, c. 34.

³¹⁴ *Brewer v. Valk*, 204 N.C. 186 (1933).

³¹⁵ North Carolina P.L. 1933, c. 224.

³¹⁶ North Carolina P.L. 1933, c. 224.

³¹⁷ Railey & Begos, “*Still hiding*,” *Against their Will: North Carolina’s Sterilization Program, Part One*, Winston-Salem Journal (Mar. 13, 2003) at https://www.journalnow.com/news/local/still-hiding/article_e26e967e-8fe4-11e2-b104-0019bb30f31a.html [as of Jan. 23, 2023].

³¹⁸ Bakst, *North Carolina’s Forced-Sterilization Program: A Case for Compensating the Living Victims*, John Locke Found. Policy Rep. (2011), p. 7, at <https://www.johnlocke.org/wp-content/uploads/2016/06/NCeugenics.pdf> [as of Jan. 20, 2023].

³¹⁹ *Ibid.*

Eugenics Board.³²⁰ During 2011 and 2012, the Foundation also supported the separate Gubernatorial Task Force on Eugenics Compensation established under Executive Order 83.³²¹ This effort culminated in the State Legislature creating the Eugenics Asexualization and Sterilization Compensation Program in 2013.³²² 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.

The statute set out a program to compensate 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.³²³ This requirement that the State Eugenics 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.³²⁴

The State Legislature allocated \$10 million to pay compensation claims, with payments to be made in installments.³²⁵ The compensation was specifically limited to those who were themselves directly harmed by the State Eugenics Board and still alive at the time the legislation was passed.³²⁶

Claims were first assessed by a deputy commissioner to determine eligibility, and if the claim was not approved, the deputy commissioner had to set forth in writing the reasons for the disapproval and notify the claimant.³²⁷ If not approved, a claimant could submit additional documentation and request a redetermination by the deputy commissioner.³²⁸ 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.³²⁹ The deputy commissioner who heard the claim had to issue a written decision of eligibility.³³⁰

A claimant could then file a notice of appeal with the Commission within 30 days, such appeal to be heard by the full Commission, and the Commission had to notify all parties concerned in

³²⁰ Brochure, N.C. Justice for Sterilization Victims Foundation (Sept. 2014), at <https://ncadmin.nc.gov/media/3165/download> [as of Jan. 23, 2023].

³²¹ Ibid.

³²² N.C.S.L. 2013-360, sec. 6.18, subd. (a), creating N.C.G.S. §§ 143B-426.50 – 143B-426.57.

³²³ N.C.G.S. § 143B-426.50, subd. (5).

³²⁴ Mennel, *Why Some NC Sterilization Victims Won't Get Share of \$10 Million Fund*, WUNC.org (Oct. 6, 2014) at <https://www.wunc.org/2014-10-06/why-some-nc-sterilization-victims-wont-get-share-of-10-million-fund.html> [as of Jan. 24, 2023].

³²⁵ N.C.G.S. § 143B-426.51, subd. (a).

³²⁶ Bakst, *North Carolina's Forced-Sterilization Program: A Case for Compensating the Living Victims*, John Locke Found. Policy Rep. (2011), p. 12, at <https://www.johnlocke.org/wp-content/uploads/2016/06/NCeugenics.pdf> [as of Jan. 20, 2023].

³²⁷ N.C.G.S. § 143B-426.53, subd. (b).

³²⁸ N.C.G.S. § 143B-426.53, subd. (c).

³²⁹ N.C.G.S. § 143B-426.53, subd. (d).

³³⁰ Ibid.

writing of its decision.³³¹ 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.³³² Decisions favorable to the claimant were final and not subject to appeal by the State.³³³

c. Virginia (Eugenics)

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.³³⁴ 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.³³⁵

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.” The Racial Integrity Act was bolstered by the eugenics efforts like the Eugenic Sterilization Act, which assumed non-white people were genetically inferior. 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. 200.³³⁶ The controversial ruling was never overturned, but the law was repealed in 1974.³³⁷ Between 1927 and 1972, Virginia sterilized about 8,300 people.³³⁸

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

³³¹ N.C.G.S. § 143B-426.53, subd. (e).

³³² N.C.G.S. § 143B-426.53, subd. (f).

³³³ N.C.G.S. § 143B-426.53, subd. (h).

³³⁴ Encyclopedia Virginia, Chapter 46B of the Code of Virginia § 1095h-m (1924),

<https://encyclopediaivirginia.org/entries/chapter-46b-of-the-code-of-virginia-%c2%a7-1095h-m-1924/>

³³⁵ Encyclopedia Virginia, Buck v. Bell (1927), <https://encyclopediaivirginia.org/entries/buck-v-bell-1927/>

³³⁶ Encyclopedia Virginia, Buck v. Bell (1927), <https://encyclopediaivirginia.org/entries/buck-v-bell-1927/>. On October 19, 1927, John H. Bell, the colony’s superintendent, performed a salpingectomy, sterilizing Carrie Buck. She was released from the institution a month later. Historians have since found evidence that neither Carrie Buck nor her daughter suffered from any mental illness and that Bell’s sterilization relied on a false diagnosis. Vivian Dobbs, Carrie Buck’s daughter, was placed on the honor roll at her elementary school in 1931, a year before she died at the age of eight. Carrie Buck Eagle Detamore, who married twice, died in a nursing home in Waynesboro on January 28, 1983, and is buried in Oakwood Cemetery in Charlottesville. Encyclopedia Virginia, Buck v. Bell (1927), <https://encyclopediaivirginia.org/entries/buck-v-bell-1927/>

³³⁷ Encyclopedia Virginia, Buck v. Bell (1927), <https://encyclopediaivirginia.org/entries/buck-v-bell-1927/>

³³⁸ Encyclopedia Virginia, Buck v. Bell (1927), <https://encyclopediaivirginia.org/entries/buck-v-bell-1927/>

persons confined to state institutions from 1927 to 1979.³³⁹ In 2015, the Virginia Legislature voted to enact the Virginia Victims of Eugenics Sterilization Compensation Program (VESC)³⁴⁰ 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, 2015.³⁴¹ 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 instead of the proposed \$50,000.³⁴² 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.³⁴³ 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. As of the enactment, there were only 11 surviving victims.³⁴⁴

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).

d. 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.³⁴⁵ 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 feeble-mindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."³⁴⁶

California maintained 12 state homes and state hospitals that housed thousands of patients who were committed by the courts, family members, and medical authorities. While many sterilizations included the use of consent forms, such consent was often a condition for release

³³⁹ Leung, E. (2014, March 18). Virginia becomes the first US state to issue a formal apology for sterilization. Retrieved November 4, 2022, from <https://eugenicsarchive.ca/discover/tree/532874b8132156674b00029c>

³⁴⁰

³⁴¹ <https://budget.lis.virginia.gov/bill/2015/1/>

³⁴² <https://budget.lis.virginia.gov/bill/2015/1/>

³⁴³ <https://budget.lis.virginia.gov/bill/2015/1/>

³⁴⁴

³⁴⁵ Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subds. (a), (b).

³⁴⁶ *Ibid.*

from commitment, and this along with other conditions prevented true consent.³⁴⁷ Moreover, though the law did not target specific racial or ethnic groups, in practice, “labels of ‘mental deficiency’ and ‘feble-mindedness’ were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women.”³⁴⁸

California’s eugenic sterilization law was repealed in 1979, but sterilization without proper consent continued in state institutions. 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.³⁴⁹

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 2012–13.³⁵⁰ 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.³⁵¹ 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 (CDCR).³⁵² There are an estimated 244 survivors of illegal prison sterilization.³⁵³

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.³⁵⁴ AB 137 created the California Forced or Involuntary Sterilization Compensation Program (Program), which financially compensates survivors of state-sponsored sterilization. The California Victim Compensation Board administers the Program. 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.”³⁵⁵

³⁴⁷ Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (c).

³⁴⁸ Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (e).

³⁴⁹ Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subds. (g)-(h).

³⁵⁰ Cal. State Auditor, *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed* (June 2014), at <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf> [as of Jan. 12, 2023].

³⁵¹ *Id.* at 19.

³⁵² Assem. Bill No. 1135 (2013-2014 Reg. Sess.).

³⁵³ Sen. Com. On Judiciary, Analysis of Assem. Bill. No. 1007 (2021-2022 Reg. Sess.) Jul. 1, 2021, p.6.

³⁵⁴ Galpern, *Social Justice Coalition Key to Success in California’s New Sterilization Compensation Program*, Genetics and Society (Jan. 26, 2022), at <https://geneticsandsociety.org/biopoliticaltimes/social-justice-coalition-key-success-californias-new-sterilization-compensation> [as of Jan. 12, 2023].

³⁵⁵ Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, subd. (b), codified at Health & Saf. Code § 24210, subd. (b)(1), (2).

Each approved applicant receives an initial payment of \$15,000 within 60 days of notice of confirmed eligibility.³⁵⁶ 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, 2024.³⁵⁷ Applications to the program are being accepted from January 1, 2022 through December 31, 2023.³⁵⁸

e. 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, which also led to many victims to issue coerced confessions.³⁵⁹ Mr. 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.”³⁶⁰ Moreover, evidence suggests judges and some city officials were complicit in these abuses for many years.³⁶¹ As a result, many African American victims were convicted of crimes due to coerced confessions, and some were sentenced to the death penalty.³⁶² There was an effort to hold Mr. Burge specifically accountable for his actions, but the statutes of limitations had expired on many of the cases of torture. Community members started to seek alternative methods of repair, which eventually led to a reparations ordinance.³⁶³

Community activist organizations in Chicago, including the Chicago Torture Justice Memorial (CTJM), and attorney Joey Mogul of Peoples Law Office, sought compensation for years. Activists petitioned the Inter-American Commission for Human Rights (IACHR) and the United Nations Committee Against Torture (UNCAT).³⁶⁴ 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.”³⁶⁵ The UNCAT also noted that, although Burge was later convicted for perjury and obstruction of justice, there was not sufficient evidence for a constitutional rights violation prosecution, so no police officer has been

³⁵⁶ Beam, *California Trying to Find, Compensate Sterilization Victims*, A.P. News (Jan. 5, 2023), at <https://apnews.com/article/politics-health-california-state-government-prisons-b560ec0a0155d8cc13730310e1073d9d> [as of Jan. 12, 2023].

³⁵⁷ CalVCB, *Forced or Involuntary Sterilization Compensation Program Frequently Asked Questions*, at <https://victims.ca.gov/fiscp/#:~:text=your%20eligibility%20reviewed,-.CalVCB%20will%20accept%20applications%20from%20January%201,%2C%20to%20December%2031%2C%202023.&text=Applicants%20may%20submit%20documentation%20demonstrating,state%20records%20for%20eligibility%20documentation> [as of Jan. 17, 2023].

³⁵⁸ *Ibid.*

³⁵⁹ Baer, *Dignity Restoration and the Chicago Police Torture Reparations Ordinance* (2019) 92 Chi.-Kent L.Rev. 769, 769-70.

³⁶⁰ *Id.* at 769.

³⁶¹ *Id.* at 770.

³⁶² *Id.*

³⁶³ Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol’y 330, 340; Macaraeg & Kunichoff, *How Chicago Became the First City to Make Reparations to Victims of Police Violence* (Mar. 21, 2017) Yes Magazine.

³⁶⁴ Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol’y 330, 337-38.

³⁶⁵ *Id.* at 337, 346.

convicted for their crimes and the majority of victims still did not receive “compensation for the extensive injuries suffered.”³⁶⁶

In 2015, the Chicago City Council “approved a municipal ordinance giving reparations to Burge torture survivors,”³⁶⁷ and the \$5.5 million package awarded claimants \$100,000 in financial payments along with other non-financial reparations such as psychological counseling, healthcare, and a memorial site.³⁶⁸ The intended recipients of the compensation included all torture survivors who have credible claim of “torture or physical abuse at the hands of Jon Burge or his subordinates . . . , their immediate family members, and “in some cases, to their grandchildren.” The ordinance requires the individual to 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, 1991.³⁶⁹

The holistic ordinance includes many components. First, it contains a formal apology and acknowledgement that describes the police abuse and admits that city officials and others were complicit in the abuse of over 100 African Americans.³⁷⁰ Second, the ordinance provides financial reparations totaling \$100,000 for each survivor with a credible claim of torture or abuse from Mr. Burge or one of the officers under his command.³⁷¹ The ordinance also created the Chicago Police Torture Reparations Commission to administer these financial reparations to the survivors. Third, the ordinance provides free tuition at the City Colleges of Chicago and free access to job training and certification programs, and access to City programs that offer formerly incarcerated individuals job placements as well as other support services and programs.³⁷² Fourth, the ordinance provides psychological services to survivors and family members at a dedicated community center.³⁷³ Finally, the City of Chicago promised to work with CTJM to “construct a permanent memorial to the Burge victims; and beginning in the 2015-2016 school year, Chicago Public Schools began incorporating into their existing U.S. history curriculum for eighth-grade and tenth-

³⁶⁶ U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the third to fifth periodic reports of United States of America, U.N. Doc. CAT/C/USA/CO/3-s (Nov. 2014).

³⁶⁷ Taylor, *supra*, at p. 771.

³⁶⁸ *Id.*

³⁶⁹ [Chicago Ord.](#) No. SO2015-2687.

³⁷⁰ *Id.* (The apology included the following language: “Whereas, The City Council wishes to acknowledge this exceedingly sad and painful chapter in Chicago’s history, and to formally express its profound regret for any and all shameful treatment of our fellow citizens that occurred; and whereas, The City Counsel recognizes that words alone cannot adequately convey the deep regret and remorse that we and our fellow citizens feel for any and all harm that was inflicted by Burge and the officers under his command. And yet, words do matter. For only words can end the silence about wrongs that were committed and injustices that were perpetrated, and enable us, as a City, to take the steps necessary to ensure that similar acts never again occur in Chicago; and whereas, The apology we make today is offered with the hope that it will open a new chapter in the history of our great City, a chapter marked by healing and an ongoing process of reconciliation . . . Be it resolved, that we, the Mayor and Members of the City Council of the City of Chicago, on behalf of all Chicagoans . . . apologize to the Burge victims for these horrific and inexcusable acts . . .”).

³⁷¹ *Id.*

³⁷² Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol’y 330, 349; https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf

³⁷³ Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol’y 330, 349.

grade students a lesson about the Burge case and its legacy.”³⁷⁴ The only portion remaining unfulfilled is the memorial. As of 2021, the memorial has still not been built but individuals at CTJM are meeting with the Mayor and remain hopeful the process will start soon.³⁷⁵ This is, in part, because the resolution did not specify the timeline for the memorial and specific funding was not provided.³⁷⁶

f. Evanston, Illinois

The Evanston, Illinois 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).³⁷⁷ According to the report, “the City of Evanston officially supported and enabled the practice of segregation,”³⁷⁸ with specific actions such as passing a zoning ordinance in 1921 that condoned implicit 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 post-World War II temporary housing for veterans; and failing until the late 1960s to enact a fair housing ordinance to outlaw housing discrimination.³⁷⁹

The City of Evanston passed 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.³⁸⁰ Under this initiative, 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.³⁸¹ The Restorative Housing Program was the first such repair program enacted by the city, but Evanston has also studied its discriminatory past, created a City Reparations Fund, honored local historical African American sites, and issued an apology.

The Program was aimed at increasing African American homeownership in order to revitalize and preserve African American owner-occupied homes in Evanston.³⁸² To be eligible, the home must be located in Evanston and be the applicant’s primary residence.³⁸³ The program will eventually extend funds to all intended recipients: Evanston residents over the age of 18 years, of 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 at the time, and experienced

³⁷⁴ https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf.

³⁷⁵ Evans, *Chicago Promised Police Torture Survivors A Memorial. Nearly 6 years Later, They’re Still Waiting For Funding* (Feb. 26, 2021)

³⁷⁶ *Id.*

³⁷⁷ Gavin, *Report Examines the City of Evanston’s Practices That Impacted the Black Community, 1900-1960*, (Oct. 12, 2020) Evanston RoundTable, (as of Oct. 4, 2022).

³⁷⁸ Robinson and Thompson, *Evanston Policies and Practices Directly Affecting the African American Community, 1900 - 1960 (and Present)*, (Aug 2020) p. 39.

³⁷⁹ *Id.* at pp. 35-57.

³⁸⁰ Evanston Resolution No. 37-R-27.

³⁸¹ *Ibid.*

³⁸² City of Evanston, *Local Reparations: Restorative Housing Program: Official Program Guidelines* (2021) p. 3.

³⁸³ *Id.* at p. 8.

housing discrimination due to the City's policies/practices; (2) a Direct Descendant of an Ancestor (e.g., child, grandchild, great-grandchild, and so on); or (3) a resident who does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to city ordinance, policy or practice after 1969.³⁸⁴

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.³⁸⁵ In March 2023, Evanston planned its second round of disbursements for 35-80 Ancestors.³⁸⁶

In November 2022, the City Council passed a resolution to dedicate \$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.³⁸⁷ 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.³⁸⁸ Evanston Mayor Daniel Biss launched a survey to assess Evanston residents' views on the reparations program on February 16, 2023.³⁸⁹ Respondents answered questions about their political views, thoughts on racism, support and understanding of Evanston's reparations program, and their personal demographics and housing information.³⁹⁰

Prior to implementing a repair program, 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 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 black community, and a history of bias in government services; declared itself an anti-racist city; and denounced white supremacy.³⁹¹ The Resolution provides the foundation for an apology and then proceeds with a series of pronouncements against anti-African American racism.³⁹²

g. 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.³⁹³ A portion of this 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,"³⁹⁴ The city anticipates that of the \$2.1

³⁸⁴ City of Evanston, [Local Reparations: Restorative Housing Program: Official Program Guidelines](#) (2021) pp. 6-7.

³⁸⁵ Brown and Cahan, [Evanston Reparations Begin: Random Drawing Selects 16 Black 'Ancestors' to Receive \\$25,000 Grants](#) (Jan. 13, 2022) Evanston RoundTable, (as of Oct. 4, 2022).

³⁸⁶ Castro, [Reparations Committee Approves Cash Payments for 2 Ancestors](#) (Mar. 2, 2023) Evanston RoundTable, (as of Mar. 9, 2023).

³⁸⁷ Evanston Resolution No. 120-R-22.

³⁸⁸ Evanston Resolution No. 125-R-22.

³⁸⁹ Biss, [Mayor Daniel Biss Newsletter](#) (Feb. 16, 2023) (as of Mar. 10, 2023).

³⁹⁰ *Ibid.*

³⁹¹ Evanston Resolution No. 58-R-19.

³⁹² Evanston Resolution No. 58-R-19.

³⁹³ Traynum-Carson, [Asheville City Council makes initial \\$2.1 million in reparations funding appropriation](#) (Jun. 8, 2021) The City of Asheville (as of Oct. 3, 2022) (hereinafter "Traynum-Carson"); Davis, *supra*.

³⁹⁴ *Ibid.*

million, \$200,000 will fund the Reparation Commission’s planning and engagement process, leaving approximately \$1.9 million in initial funding for compensation.³⁹⁵ The city’s Reparations Commission is working on a report that is scheduled to be completed by October 31, 2023.³⁹⁶

The Commission is required to consider restitution for the city’s participation in and sanctioning of the enslavement of African Americans, its enforcement of segregation and accompanying discriminatory practices, and carrying out an urban renewal program that destroyed multiple successful African American communities, as well as for a long list of other types of harms to African Americans living in Asheville.³⁹⁷ 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.³⁹⁸ 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.”³⁹⁹

h. 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.⁴⁰⁰ Following that three-part process, the city issued a formal apology and enacted a 2023 city budget that includes \$10 million earmarked for compensation programs, but does not include direct cash payments to descendants.⁴⁰¹

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)*.⁴⁰² 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

³⁹⁵ Traynum-Carson, *supra*.

³⁹⁶ [2023 Reparations Project Timeline and IFA Recommendation Development](#), January 9, 2023 Meeting, City of Asheville and Buncombe County Community Reparations Commission (as of Feb. 10, 2023).

³⁹⁷ [Asheville Res. No. 20-128](#) (hereinafter “Asheville Resolution”); Davis, [Asheville reparations resolution is designed to provide Black community access to the opportunity to build wealth](#) (Jul. 20, 2020) The City of Asheville (as of Oct. 3, 2022) (hereafter “Davis”); see also Honosky, [‘Slap in the face,’ Asheville Reparations Commission balks at proposed timeline changes](#), Citizen Times (Jan. 10, 2023) (as of Mar. 9, 2023) (hereinafter “Honosky”).

³⁹⁸ *Ibid*.

³⁹⁹ *Ibid*.

⁴⁰⁰ Providence, Rhode Island Mayor’s Exec. Order No. 2020-13 (Jul. 15, 2020).

⁴⁰¹ Kalunian, [Providence Finalizes Plan to Invest \\$124M in Federal COVID Money](#), WPRI.com (May 20, 2022) (as of Oct. 3, 2022).

⁴⁰² Rhode Island Black Heritage Society, [A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island \(1620-2020\)](#) (2021), pp. 1-2 (as of Oct. 7, 2022).

discrimination from 1620 to 2020 throughout the City of Providence and the State of Rhode Island.⁴⁰³

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.⁴⁰⁴ 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.⁴⁰⁵ 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.⁴⁰⁶ 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.⁴⁰⁷

With regard to the third and final phase—reparations—the mayor of Providence's 2022 executive order created the Municipal Reparations Commission (Commission), consisting of 13 members from the local community.⁴⁰⁸ The Commission held over a dozen public meetings, discussing the justifications for reparations and the form they might take.⁴⁰⁹

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.⁴¹⁰ 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.⁴¹¹

⁴⁰³ *Ibid.*

⁴⁰⁴ Roger Williams University & Providence Cultural Equity Initiative, [Truth-Telling and Reconciliation: Proposing a Framework for the City of Providence](#) (Feb. 9, 2022), p. 10 (as of Oct. 7, 2022).

⁴⁰⁵ *Id.* at pp. 4-8.

⁴⁰⁶ *Id.* at p. 8.

⁴⁰⁷ *Id.* at pp. 8-9.

⁴⁰⁸ Providence, Rhode Island Mayor's Exec. Order No. 2022-4 (Feb. 28, 2022). Seven of the Commission's members were appointed by the mayor, while six were appointed by the city council. *Ibid.*

⁴⁰⁹ [Providence Municipal Reparations Commission](#) (as of Oct. 7, 2022).

⁴¹⁰ City of Providence, [Ordinance 38099 COVID-19 Equities Program Budget](#) (as of Oct. 7, 2022); Russo, [Elorza Signs Providence's \\$10M Reparations Budget. Here's What's in It](#), *The Providence J.* (Nov. 18, 2022) (as of Mar. 13, 2023); Abdul-Hakim et al., [Providence Establishes Reparations Program to Praise and Criticism](#), *ABC News* (Jan. 31, 2023) (as of Mar. 13, 2023).

⁴¹¹ Providence, Rhode Island Mayor's [Exec. Order No. 2022-6](#) (Aug. 25, 2022) (as of Mar. 13, 2023).

Part III: 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

XVI. Apologies

The Legislature directed the Task Force to recommend appropriate remedies in consideration of the Task Force’s findings. In making 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. (Gov. Code, § 8301.1, subd. (b)(3)(B).)

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.⁴¹² The Basic Principles and Guidelines include the principle of satisfaction. “Satisfaction” can include a public apology that constitutes an “acknowledgement of the facts and acceptance of responsibility,” judicial and administrative sanctions against perpetrators, and commemorations and tributes to the victims, among others.⁴¹³

Apologies alone are inadequate reparations to victims.⁴¹⁴ 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.⁴¹⁵ An effective apology should both acknowledge and express regret for what was done to victims and their relatives and take responsibility.⁴¹⁶ 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.⁴¹⁷ An apology should also be accompanied by a request for forgiveness.⁴¹⁸

⁴¹² U.N. Gen. Assem., Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005) Res. 60/147.

⁴¹³ *Id.* at (IX)(22)(e)-(g). See also U.N. Gen. Assem., Responsibility of States for Internationally Wrongful Acts, (Dec. 12, 2001) Res. 56/83, Art. 37 (“Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality”).

⁴¹⁴ International Center for Transitional Justice, Reparative Justice: More Than Words: Apologies as a Form of Reparation (2015), p. 1 (hereafter “Reparative Justice”).

⁴¹⁵ Wijaya, [Public Apology as a Form of Reparation](#) (July 2019) 2 Internat. J. of Global Community 2, p. 1 (as of Mar. 9, 2023).

⁴¹⁶ Reparative Justice, *supra*, p. 12.

⁴¹⁷ *Id.* at p. 13.

⁴¹⁸ Reparative Justice, *supra*, p. 5.

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.⁴¹⁹

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 perpetration of gross human rights violations in California of Africans who were enslaved and their Descendants 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 the final 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 systemic structures of 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 the people, as documented in this report.

In addition to acknowledging the atrocities committed by the state or which the state, through its law enforcement mechanisms failed to deter or punish, discussed in Chapter 16, 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 Freedmen’s 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. Physical markers of past atrocities serve as reminders of the

⁴¹⁹ *Id.* at p. 18, quoting *Case of the Massacres of El Mozote and Nearby Places v. El Salvador* (Oct. 25, 2012) Inter-American Court of Human Rights, para. 357.

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: Recommendations of Task Force Regarding Calculations of Reparations and Forms of 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 (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, is calculated; (b) what form of compensation should be awarded, through what instrumentalities, and who should be eligible for such compensation; and (c) 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. (Gov. Code, § 8301, subds. (b)(3)(E), (F), (G).)

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, the attributability to the State of California and its local jurisdictions of the harms to African Americans, especially descendants of persons enslaved in the United States, 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 Task Force voted to recommend that only those individuals who are able to demonstrate that they are the descendant of either an individual enslaved in the United States, or an individual who was present in the United States prior to 1900 be eligible for monetary reparations. The

Task Force also determined that the State of California, potentially through the recommended new California American Freedmen’s Affairs Agency, should take responsibility for facilitating through whatever means necessary the process of assisting any requester in establishing whether they qualify by funding or otherwise handling the tracing and confirmation of this lineage. 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, and (c) housing discrimination. Further, with regard to two other atrocities, unjust property takings by eminent domain, and devaluation of African American businesses, 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.

1. Health Harms

The difference in life expectancy between African Americans and white non-Hispanics⁴²⁰ 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, 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. At the root of these discriminatory practices is 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:

⁴²⁰ Census bureau term.

- (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).
- (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 (\$966,921). 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: $\$966,921 / 71 = \$13,619$. This would be the value of each year spent in California, to which an African American Californian would be entitled, subject to their eligibility.

2. Mass Incarceration and Over-Policing of African Americans

The “War on Drugs” began in 1971. Established research shows that people of all races use and sell illegal drugs at remarkably similar rates. To measure racial mass incarceration disparities in the 50 years of the War on Drugs from 1970 to 2020, we can estimate disproportionate years spent behind bars for African American compared to white non-Hispanic drug offenders, and multiply 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). We add to this 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.

To estimate the number of disproportionately incarcerated African American individuals:

- (1) We use total California arrest figures for felony drug offenses and African American drug felony arrests from 1970 to 2020, to compute the African American percentage.
- (2) We then compute 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) We obtain 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) We then multiply 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 1970 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 of the enslaved in the United States who lived in California during the “War on Drugs.” We therefore divide 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.

3. Housing Discrimination

Nefarious housing discrimination has always existed in the United States, including in California even before the state’s founding in 1850. 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. 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.

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.⁴²¹ 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.⁴²²

⁴²¹ See Chapter 5, Housing Segregation, *supra* at pp. XX-XX; 12 U.S.C. 2901 et seq.

⁴²² See Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

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 \$435,300, and the average white non-Hispanic home had a value of \$773,400.⁴²³ At the time, about 36.8 percent of Black Californian households owned their own home, while 63.2 percent of white Californian households did, reflecting a homeownership gap of 26.4 percentage points.⁴²⁴ 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 African Americans living in California⁴²⁵ / 2.44 African Americans per household in California⁴²⁶ = 907,371 African American households in California]

[14,364,928 white Americans living in California⁴²⁷ / 2.36 white Americans per household in California⁴²⁸ = 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.

⁴²³ 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).

⁴²⁴ 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 Apr. 19, 2023).

⁴²⁵ USA Facts, [Our Changing Population: California](#) (as of Apr. 19, 2023) (measuring data between 2019 and 2021).

⁴²⁶ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

⁴²⁷ USA Facts, [Our Changing Population: California](#) (as of Apr. 19, 2023) (measuring data between 2019 and 2021).

⁴²⁸ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

$[(\$435,300)^{429} (907,371 \text{ African American households in California}) (0.368)^{430} =$
 $\$145,352,123,438 \text{ in homeownership wealth owned by African American Californians in}$
 $2019]$

$[(\$773,400)^{431} (6,086,834 \text{ white households in California}) (0.632)^{432} =$
 $\$2,975,176,286,659 \text{ in homeownership wealth owned by white Californians in 2019}]$

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

$[\$145,352,123,438 / 2,213,986 \text{ African Americans in California} = \$65,652 \text{ per capita}$
 $\text{African American Californian homeownership wealth}]$

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

Comparing the two shows an estimated per capita home ownership wealth gap of \$141,462 in 2019. Adding a compounded, annual 30-year mortgage interest rate (3.10 percent in 2020; see Table 1 below),⁴³³ the African American and white homeownership gap in California, in 2020, is approximately \$145,847 in 2020 dollars.

$[\$141,462 (1 + 0.031) = \$145,847 \text{ in 2020 dollars (rounded to the nearest dollar in each step)}]$

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

⁴²⁹ 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).

⁴³⁰ Reflecting the 36.8 percent of Black Californian households who owned their own home. 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 Apr. 19, 2023).

⁴³¹ 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).

⁴³² Reflecting the 63.2 percent of white Californian households who owned their own home. 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 Apr. 19, 2023).

⁴³³ Miller, [Mortgage Rates Chart: Historical and Current Rate Trends](#) (Apr. 3, 2023) The Mortgage Reports (as of Apr. 19, 2023).

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, 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.⁴³⁴ 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.⁴³⁵ From this data, the Task Force's experts estimated the total wealth held in home values collectively by African Americans and white Californians.

$[81,048 \text{ African American Californians in } 1930^{436} / 2.44 \text{ African American residents per household in California}^{437} = 33,216 \text{ African American households in California in } 1930]$

$[5,408,260 \text{ white Californians in } 1930^{438} / 2.36 \text{ white residents per household in California}^{439} = 2,291,636 \text{ white households in California in } 1930]$

⁴³⁴ CITE.

⁴³⁵ 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).

⁴³⁶ 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.

⁴³⁷ U.S. Census Bureau, *America's Families and Living Arrangements: 2019* (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

⁴³⁸ 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.

⁴³⁹ U.S. Census Bureau, *America's Families and Living Arrangements: 2019* (as of Apr. 19, 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 Task Force's expert team estimated the total wealth in homes held in each year. For 1930:

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

[((\$6,067 mean value of a white home in California in 1930) (1,482,203 white households in California in 1930) (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 total African American wealth in California homes in 1930 / 81,048 African Americans in California in 1930 = \$475 African American per capita wealth in California homes in 1930]

[\$4,334,397,340 total white wealth in California homes in 1930 / 5,408,260 white Americans in California in 1930 = \$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.⁴⁴⁰

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 (CRA) of 1977.⁴⁴¹ For 1980:

⁴⁴⁰ 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).

⁴⁴¹ See 12 U.S.C. 2901 et seq.

[1,819,281 African Americans in California in 1980⁴⁴² / 3.67 African Americans per household in California⁴⁴³ = 495,717 African American California households]

[18,030,893 white Americans in California in 1980⁴⁴⁴ / 3.22 white Americans per household in California⁴⁴⁵ = 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 an estimated \$100,516 in 1980 dollars.⁴⁴⁶

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.⁴⁴⁷

[((\$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 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 \$11,537 (in 1980 dollars) greater than that of African American Californians.

⁴⁴² 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.

⁴⁴³ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

⁴⁴⁴ 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.

⁴⁴⁵ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

⁴⁴⁶ CITE.

⁴⁴⁷ 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).

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,⁴⁴⁸ subtracting the 1930 per-capita homeownership wealth gap from the 1980 per-capita homeownership wealth gap (\$11,537-\$1,483) results in a redlining per-capita wealth gap of \$10,054, quantifying how much Black Californians lost in homeownership wealth due to federal redlining discrimination and California's complicity in this policy. Compounding \$10,054 up to 2020 using the annual 30-year mortgage interest rate⁴⁴⁹ yields a per-capita value of \$160,931 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 \$160,931 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 Black 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 (\$160,931) with the number of African American residents in California in 1980 (1,819,281)⁴⁵⁰ yields \$292,778,710,611—or \$293 billion (in 2020 dollars). If all 1,976,911 African American non-Hispanic California residents who lived in the State in 2020⁴⁵¹ were eligible Black descendants of the enslaved in the United States, each would receive housing reparations up to \$148,099—or \$3,366 for each year between 1933 and 1977 spent as a resident of the State of California.

4. 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,⁴⁵² building the highways, cities, and parks that have enabled the State of

⁴⁴⁸ CITE.

⁴⁴⁹ See Table 1 (citing Miller, [Mortgage Rates Chart: Historical and Current Rate Trends](#) (Apr. 3, 2023) The Mortgage Reports (as of Apr. 19, 2023)).

⁴⁵⁰ 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.

⁴⁵¹ U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023)

⁴⁵² Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

California to become the fourth or fifth largest economy in the world.⁴⁵³ The unjust taking of land did more than just seize property—it destroyed communities and forced African Americans out of their historical neighborhoods and watering holes. At its peak in 1980, 7.7 percent of the population in California was Black.⁴⁵⁴ By 2020, that number dropped to about six percent.⁴⁵⁵ In 2018 alone, 75,000 Black Americans left the State.⁴⁵⁶ The State’s more expensive coastal cities alone have shed 275,000 Black residents.⁴⁵⁷

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 Black 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.

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.⁴⁵⁸ Business formation results from a combination of factors creating demand for businesses—including the public sector, households, business-to-

⁴⁵³ *ICYMI: California Poised to Become World’s 4th Biggest Economy*, Office of Governor Newsom (Oct. 24, 2022) as of Mar. 23, 2023) citing Winkler, *California Poised to Overtake Germany as World’s No. 4 Economy*, Bloomberg News (Oct. 24, 2022) (as of Mar. 23, 2023).

⁴⁵⁴ Johnson et al., *California’s Population* (2022) Public Policy Institute of Cal. (as of Apr. 18, 2023).

⁴⁵⁵ U.S.Census Bureau, *Quick Facts: California (2020)* U.S.Census Bureau (as of Apr.22, 2022).

⁴⁵⁶ Helper, *The Hidden Toll of California’s Black Exodus*, Cal Matters (July 15, 2020) (as of Apr. 19, 2023).

⁴⁵⁷ *Ibid.*

⁴⁵⁸ See Chapter 10, Stolen Labor and Hindered Opportunity, *supra* at pp. XX-XX; Chapter 13, The Wealth Gap, *supra* at pp. XX-XX.

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.⁴⁵⁹ 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.⁴⁶⁰ The most recent data from the Census’s survey of business owners is from the 2012.⁴⁶¹ 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.⁴⁶² Given California’s population in 2012,⁴⁶³ 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. 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.⁴⁶⁴ In other words, white-owned firms had total sales, receipts, or value of shipments 80-times larger than that of black-owned firms.

⁴⁵⁹ See Chapter 10, Stolen Labor and Hindered Opportunity, *supra* at pp. XX-XX; Chapter 13, The Wealth Gap, *supra* at pp. XX-XX.

⁴⁶⁰ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

⁴⁶¹ See *ibid.*

⁴⁶² U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

⁴⁶³ CITE.

⁴⁶⁴ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

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.⁴⁶⁵ 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.⁴⁶⁶ The history and ongoing effects of residential segregation and redlining further limited opportunities for African American construction firms in the private sector,⁴⁶⁷ 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.⁴⁶⁸

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.⁴⁶⁹

The average sales of firms in California, according to the 2012 U.S. Census Survey, was \$1,103,966.⁴⁷⁰ Because the average value of a non-financial business is generally 2.3 times its sales value⁴⁷¹ that would give these firms an average value of approximately \$2,539,122.

⁴⁶⁵ Aldrich et al., *Ethnic Residential Concentration and the Protected Market Hypothesis* (1985) 63 *Social Forces* 996, 996-1009.

⁴⁶⁶ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

⁴⁶⁷ 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).

⁴⁶⁸ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

⁴⁶⁹ Motoyama, Yasuyuki, and Emil Malizia. "Demand pull or supply push? Metro-level analysis of start-ups in the United States." *Regional Studies, Regional Science* 4, no. 1 (2017): 232-246. 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.)

⁴⁷⁰ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

⁴⁷¹ New York University, Stern School of Business, [Revenue Multiples by Sector \(US\)](#) (January 2023) (as of April 13, 2023).

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 2020,⁴⁷² that would amount to roughly \$77,000 per African American in California.

6. 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 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 of that data 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 measured by the subjective experience of the 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 to the Legislature as to the Appropriate Policies, Programs, Projects, and Recommendations for the Purpose of Reversing the Injuries

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, and to address how the injuries resulting from matters described in this subdivision can be reversed and how to provide appropriate policies, programs, projects, and recommendations for the purpose of reversing the injuries. Also, the Task Force was directed to develop reparations proposals that in addition to providing compensation will bring about appropriate “forms of rehabilitation or restitution to African descendants” and address “[t]he lingering negative effects of the institution of slavery” and the ensuing and continuing effects of ongoing “discrimination on living African Americans

⁴⁷² U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023).

and on society in California and the United States.”⁴⁷³ 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.

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 Descendants⁴⁷⁴ of [p]ersons [e]nslaved in the United States.”⁴⁷⁵ 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.

As the Legislature recognized in AB 3121,⁴⁷⁶ and as Part I of this report documented, emancipation from enslavement did not end to 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.⁴⁷⁷ 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.

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

⁴⁷³ Gov. Code, §§ 8301, subd. (a), 8301.1, subd. (b)(3)(C), (D), (G).

⁴⁷⁴ As used throughout this Part, the term “Descendants” refers 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,” in accordance with the Motion approved by the Task Force 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, available at <<https://oag.ca.gov/system/files/media/task-force-meeting-minutes-032922-033022.pdf>>.

⁴⁷⁵ Assem. Bill No. 3121 (2019-2020 Reg. Sess.).

⁴⁷⁶ 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(a)(5)-(6).

⁴⁷⁷ For more detailed discussion and documentation, see Chapters 1 through 13.

every facet of American life. 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.”⁴⁷⁸

AB 3121 invokes the international standards of remedy for wrongs and injuries caused by the state.⁴⁷⁹ In developing its policy recommendations in Part V, the Task Force followed the standards embodied in the UN 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:

1. Chapter 18: Introduction to Policy Recommendations with General Recommendations
 - i. Introduction to Policy Recommendations
 - ii. General Policy Recommendations
 1. California American Freedman Affairs Agency
 2. Repeal or Amend Proposition 209

⁴⁷⁸ Malcolm X, <https://www.facebook.com/theshabazzcenter/videos/if-you-stick-a-knife-in-my-back-9-inches-and-pull-it-out-6-inches-thats-not-prog/10159147606541532/> (last checked Mar. 21, 2023) (quoted in Darrity Jr. & Mullen, *Defining Reparations* (June 1, 2021) p. 22, <https://oag.ca.gov/system/files/media/task-force-agenda6-060121.pdf> (last checked Mar. 21, 2023)).

⁴⁷⁹ See Chapter 14 for a more fulsome discussion of the international law framework for reparations.

3. Conduct Racial Impact Analyses
4. Agency Transparency
5. Legislative Findings
6. Transmit AB 3121 Task Force Report to the President and Congress
2. Chapter 19: Enslavement
 - i. Enact a legal resolution affirming the state’s protection of Descendants and guaranteeing protection of the civil, political, and socio-cultural rights of Descendants of enslaved people,
 - ii. Amending the California Constitution to prohibit involuntary servitude
 - iii. Pay fair market value for labor provided by incarcerated persons (whether in jail or prison)
 - iv. Emphasize the “Rehabilitation” in the California Department of Corrections and Rehabilitation (CDCR)
 - v. Abolish the death penalty
 - vi. Prohibit private prisons from benefiting from contracts with CDCR to provide reentry services to incarcerated or paroled individuals
3. Chapter 20: Racial Terror
 - i. Establish and fund community wellness centers in African American communities
 - ii. Fund research to study the mental health issues within California’s African American youth population, and to address rising suicide rates among African American youth
 - iii. Expand the membership of the Mental Health Services Oversight and Accountability Commission (MHSOAC) and require the appointment of an expert in reducing disparities in mental health care access and treatment to the MHSOAC
 - iv. Fund community-driven solutions to decrease community violence at the family, school, and neighborhood levels in African American communities
 - v. Address and Remedy Discrimination Against African American LGBTQ+ Youth and LGBTQ+ 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 LGBTQ+ Adults
 - vi. Implement procedures to address the over-diagnosis of emotional disturbance disorders, including conduct disorder, in African American children
 - vii. Disrupt the mental health crisis and county jail cycle in African American communities
 - viii. Eliminate legal protections for peace officers who violate civil or constitutional rights

- ix. Recommend Abolition of the Qualified Immunity Doctrine to Allow Victims of Police Violence Access to Justice
- x. Assess and remedy racially biased treatment of African American Adults and Juveniles in Custody in County Jails, State Prisons, Juvenile Halls, and Youth Camps
- 4. Chapter 21: Political Disenfranchisement
 - i. Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the African American Voting Bloc
 - ii. Increase Funding to Support the California Department of Justice's Enforcement of Voting Rights in California
 - iii. Pass Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities
 - iv. Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among African American
 - v. Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls
 - vi. Remove the Barrier of Proving Identity to Vote
 - vii. Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction
 - viii. Increase Efforts to Restore the Voting Rights of Formerly Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote
- 5. Chapter 22: Housing Segregation and Unjust Property Takings
 - i. Prioritize Responsible Development in Communities and Housing Development
 - ii. Enact Policies Overhauling the Housing Industrial Complex
 - iii. Collect Data on Housing Discrimination
 - iv. Provide Anti-Racism Training to Workers in the Housing Field
 - v. Expand Grant Funding to Community-Based Organizations to Increase Home Ownership
 - vi. Provide Property Tax Relief to Descendants, Living in Formerly Redlined Neighborhoods, Who Purchase or Construct a New Home
 - vii. Provide Direct Financial Assistance to Increase Home Ownership Among Descendants Through Shared Appreciation Loans and Subsidized Down Payments, Mortgages, and Homeowner's Insurance
 - viii. Require State Review and Approval of Residential Land Use Ordinances Enacted by Historically and Currently Segregated Cities and Counties
 - ix. Repeal Crime-Free Housing Policies

- x. Increase Affordable Housing for African American Californians
- xi. Provide Restitution for Racially Motivated Takings
- xii. Provide a Right to Return for Displaced African American Californians
- 6. Chapter 23: Separate and Unequal Education
 - i. Increase Funding to Schools to Address Racial Disparities
 - ii. Fund Grants to Local Educational Agencies to Address the COVID-19 Pandemic's Impacts on Exacerbating Racial Disparities in Education
 - iii. Implement Systematic Review of School Discipline Data
 - iv. Improve Access to Educational Opportunities for All Incarcerated People
 - v. Adopt Mandatory Curriculum for Teacher Credentialing and Trainings for School Personnel and Grants for Teachers
 - vi. Employ Proven Strategies to Recruit African American Teachers
 - vii. Require that Curriculum at All Levels Be Inclusive and Free of Bias
 - viii. Advance the Timeline for Ethnic Studies Classes
 - ix. Adopt a K-12 African American Studies Curriculum
 - x. Adopt the Freedom School Summer Program
 - xi. Reduce Racial Disparities in the STEM Fields for African American Students
 - xii. Expand Access to Career Technical Education for Descendants
 - xiii. Reduce K-12 Public School Segregation by Enabling Students to Attend Schools in Other Districts
 - xiv.
 - xv. Fund Free Tuition to California Public Colleges and Universities
 - xvi. Eliminate Standardized Testing for Admission to Graduate Programs in the University of California and California State University Systems
 - xvii. Identify and Eliminate Racial Bias and Discrimination in Statewide K-12 Proficiency Assessments
- 7. Chapter 24: Racism In Environment and Infrastructure
 - ix. Increase Greenspace Access and Recreation Opportunities in African American Communities
 - x. Test For and Eliminate Toxicity in Descendant Communities
 - xi. Increase Trees in Redlined Communities
 - xii. Develop Climate Resilience Hubs in Redlined and Descendant Communities
 - xiii. Remove Lead in Drinking Water
 - xiv. Prevent Highway Expansion and Mitigate Transportation Pollution
- 8. Chapter 25: Pathologizing African American Families
 - i. Reduce and Seek to Eliminate Racial Disparities in the Removal of African American Children from Their Homes and Families

- ii. Reduce the Placement of African American Children in Foster Care and Increase Kinship Placements for African American Children
- iii. Establish and Fund Early Intervention Programs That Address Intimate Partner Violence (IPV) Within the African American Community
- iv. Eliminate Interest on Past-Due Child Support and Eliminate Back Child Support Debt
- v. Eliminate or Reduce Charges for Phone Calls Between County Jail Inmates and Their Families
- vi. Address Disproportionate Homelessness Among African American Californians
- vii. Address Disparities and Discrimination Associated with Substance Use Recovery
- 9. Chapter 26: Control Over Creative, Cultural, and Intellectual Life**
 - i. 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
 - ii. Prohibit Discrimination Based on Natural and Protective Hair Styles In All Competitive Sports
 - iii. 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
 - iv. Provide Funding to the Proposed California American Freedmen Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life
 - v. Eliminate the Practice of Banning Books Maintained by the California Department of Corrections and Rehabilitation
- 10. Chapter 27: Stolen Labor and Hindered Opportunity**
 - i. Greater Transparency in Gubernatorial Appointments
 - ii. Guaranteed Income Program for Descendants
 - iii. Licensure for People with Criminal Records
 - iv. Transforming the Minimum Wage Back into a Living Wage
 - v. Advancing Pay Equity through Employment Transparency and Equity in Hiring/Promotion
 - vi. Professional Career Training
 - vii. Apprenticeship Grant Program
 - viii. Funding African American Businesses
 - ix. Funding African American Banks
- 11. Chapter 28: An Unjust Legal System**

- i. Allocate Funds to Remedy Harms and Promote Opportunity
 - ii. Eliminate Barriers for African American Prospective Attorneys by Funding Legal Education and Ending Discriminatory Gatekeeping at the State Bar
 - iii. Prohibit Cash Bail and Mandate that Those Who Are Acquitted or Exonerated be Reimbursed by the Agency at Fault
 - iv. Enact Enforceable Legislation with Penalties that Dismantles the School to Prison Pipeline and Decriminalizes the Youth Justice System
 - v. Amend the Penal Code to Clarify and Confirm Decriminalization of Transit and Other Public Disorder Offenses
 - vi. Amend the Penal Code to Shift Public Disorder Infractions and Low-Level Crimes Outside of Law Enforcement Jurisdiction
 - vii. Prohibit Pretextual Traffic and Pedestrian Stops, Probation Inquiries, and Consent-Only Searches
 - viii. Mandate Policies and Training on Bias-Free Policing
 - ix. Enact Legislation that Requires the Department of Justice to Promulgate Model Law Enforcement Policies Designed to Prevent Racial Disparities in Policing
 - x. Strengthen and Expand the Racial Justice Act
 - xi. Repeal Three Strikes Sentencing
 - xii. Accelerate Scheduled Closures of Identified California State Prisons and Close Ten Prisons Over the Next Five Years, with Financial Savings Re-directed to the California American Freedmen Affairs Agency
 - xiii. End the Under-protection of Black Women and Girls
- 12. Chapter 29: Mental and Physical Harm and Neglect**
- xv. Address Health Inequities among African American Californians by Funding the California Health Equity and Racial Justice Fund
 - xvi. Improving Health Insurance Coverage
 - xvii. Evaluate Recently-Passed Health Care Laws
 - xviii. Address Anti-Black Discrimination in Health Care
 - xix. Mandate Standardized Data Collection
 - xx. Provide Medical Social Workers/Health Care Advocates
 - xxi. Improving Diversity Among Clinical Trial Participants
 - xxii. Remedy the Higher Rates of Injury and Death Among African American Mothers and Infants
 - xxiii. Advance the Study of the Intergenerational, Direct, and Indirect Impacts of Racism
 - xxiv. Remedy the High Rates of Mental Health Issues/Suicide Among African American Youth
 - xxv. Meet the Health Needs of African American Elders
 - xxvi. Remedy Disparities in Oral Health Care

- xxvii. Fix Racially Biased Algorithms and Medical Artificial Intelligence in Health Care
 - xxviii. Fund and Expand the UC PRIME-LEAD-ABC Program to be Available at All UC Medical Campuses
 - xxix. Create and Fund Equivalents to the UC-PRIME-LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists
 - xxx. Permanently Fund the California Medicine Scholars Program and Create and Fund Equivalent Pathway Programs for Students in the CSU and UC Systems
 - xxxi. Review and Prevent Racially Biased Disciplinary Practices by the Medical Board of California
 - xxxii. Address Food Injustice
13. Chapter 30: The Wealth Gap

Part VI: Report on Racial Justice Act Implementation

XXXI. Report on Racial Justice Act Implementation

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. 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.

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 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.

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 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 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. 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 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: Bunche Center Report on Community Engagement and Input through Community Listening Sessions

The Task Force engaged the Ralph J. Bunche Center⁴⁸⁰ 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 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

⁴⁸⁰ 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. 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. 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. UCLA's Center for African American Studies was renamed after Bunche in 2003, in commemoration of the centenary of his birth.

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 reflect the input of the community intended to be served by this initiative.

Part VIII: Task Force’s Recommendations for Educating the Public

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. (Gov. Code, § 8301.1, subd. (b).) 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, and the answers should be responsive to, 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.

Part IX: Compendium of Statutes and Case Law that Contributed to an Unjust Legal System

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.”⁴⁸¹ 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. 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) Employment (Chapter 36); (3) Education (Chapter 37); (4) Political Participation (Chapter 38); and (5) the Unjust Legal System (Chapter 39). In

⁴⁸¹ Gov. Code, § 8301.1, subds. (b)(1)(F), (b)(3)(C).

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.

ⁱ Pres. Proc. No. 95, (Jan. 1, 1863); U.S. Const. amend. XIII, § 1.

ⁱⁱ The Reconstruction Amendments' Debates: The Legislative History and Contemporary Debates in Congress on the 13th, 14th, and 15th Amendments (Alfred Avins Ed., 1967), p. 122.

ⁱⁱⁱ The Civil Rights Cases, (1883) 109 U.S. 3, 20.

^{iv} Kolchin, *American Slavery: 1619 – 1877* (1993) (Kolchin), at pp. 17 – 18; Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America* (2016) (Kendi) p. 38-41.

^v See generally Chapter 3 Political Disenfranchisement

^{vi} See generally Chapter 3 Racial Terror

^{vii} See generally Chapters 2. Enslavement; 3. Racial Terror; Chapters 4. Political Disenfranchisement; 5. The Root of Many Evils Residential Segregation; 6. Separate and Unequal Education, 8. Pathologizing the Black Family; 9. Control Over Spiritual Creative and Cultural Life; 10. Stolen Labor and Hindered Opportunity; 11. An Unjust Legal System; 12. Harm and Neglect Mental Physical and Public Health

^{viii} See generally Chapters 6. Separate and Unequal Education; 7. Racism in Environment and Infrastructure; 8. Pathologizing the Black Family; 10. Stolen Labor and Hindered Opportunity; 11. An Unjust Legal System; 12. Harm and Neglect Mental Physical and Public Health; 13. The Wealth Gap.

^{ix} See generally Chapter 12. Harm and Neglect Mental Physical and Public Health;

^x *Ibid.*

^{xi} 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, according to California Governor Executive Orders N-29-20, N-08-21, and N-1-22, all meetings were conducted virtually.

^{xii} Chapter 2, section V.B, see also Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (2014) (Baptist) at p. xxiii.

^{xiii} Chapter 2, section V.B.

^{xiv} Baptist, *supra*, at p. xxiii.

^{xv} Chapter 2, Section IV.C.

^{xvi} Baptist, *supra*, at pp. 9 – 11. For an in depth discussion, see Chapter 2, Section IV.C.

^{xvii} Presidents who owned enslaved people while in office included 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* (June 3, 2020) Washington Post

<<https://www.washingtonpost.com/history/2020/06/23/slave-owning-presidents-become-targets-protesters/>> (as of Jan. 24, 2022).

^{xviii} Weil and Adrian Blanco, *More than 1,700 Congressmen Once Enslaved Black People. This Is Who They Were, and How They Shaped the Nation* (Jan. 20, 2022) Washington Post

<https://www.washingtonpost.com/history/interactive/2022/congress-slaveowners-names-list/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F35b8b59%2F61dc6b2f9d2fda14d7e8b144%2F596c43ceade4e24119c923f2%2F8%2F72%2F61dc6b2f9d2fda14d7e8b144> (As of January 24, 2022) (Weil and Blanco).

^{xix} Ericson, *The Federal Government and Slavery: Following the Money Trail* (Spring 2005) 19 Stud. in Amer. Pol. Dev. 107.

^{xx} *Id.* at pp. 112 – 115.

^{xxi} Pritchett, Quantitative Estimates of the United States Interregional Slave Trade, 1820 – 1860 (June 2001) 61 J. of Econ. Hist. 474.

- ^{xxii} Ball, *Slavery in the United States: A Narrative of the Life and Adventures of Charles Ball, a Black Man* (1837), p. 69.
- ^{xxiii} Rosenthal, *Reckoning with Slavery: How Revisiting Management’s Uncomfortable Past Can Help Us Confront Challenges Today* (2021) 20 *Academy of Management Learning & Ed.* 467-472.
- ^{xxiv} Baptist, *supra*, at pp. 116-124. For an in depth discussion of the horrors suffered by enslaved people, see Chapter 2, section V
- ^{xxv} 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. Written by Himself* (1845), pp. 3 – 4.
- ^{xxvi} Thomas Jefferson, [letter to Joel Yancey](#), Jan. 17, 1819 (as of May 9, 2022)
- ^{xxvii} [U.S. Census of 1860](#), Introduction, p. vii (as of May 9, 2022)
- ^{xxviii} Kendi, *supra*, at pp. 38–41.
- ^{xxix} Kendi, *supra*, at p. 48.
- ^{xxx} Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (1975) (Morgan), at pp. 369, 385 – 386.
- ^{xxxi} Commonwealth of Virginia Legislature, Act I. [An act about the casual \[sic\] killing of slaves](#) (1669) Act I. (as of Apr. 24, 2022).
- ^{xxxii} Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (1998), pp. 123 – 124 (Berlin).
- ^{xxxiii} [An act concerning Servants and Slaves XXXIV](#) (1705), Records of the American Colonies, p. 459 (as of Apr. 24, 2022).
- ^{xxxiv} See e.g., US Constitution, Article I, Section 2; Kolchin, *supra*, at pp. 17 – 18, *Dred Scott v. Sandford*, 60 U.S. 393; Darlene Goring, *The History of Slave Marriage in the United States*, 39 *J. Marshall L. Rev.* 299 (2006) (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.”)
- ^{xxxv} See Chapter 3 and 4.
- ^{xxxvi} 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 Society <<https://www.aaihs.org/this-is-a-country-for-white-men-white-supremacy-and-u-s-politics/>> (as of March 15, 2022).
- ^{xxxvii} See Chapters 2, 4, 6, 10, 11
- ^{xxxviii} Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (Feb. 2011) 80 *Pacific Hist. Rev.* 33
- ^{xxxix} Smith, *Freedom’s Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (2013), p. 8 (Freedom’s Frontier).
- ^{xl} *Id.* at pp. 40, 257.
- ^{xli} Rohrbough, *Days of Gold: The California Gold Rush and the American Nation* (1997) at pp. 136 – 138.
- ^{xlii} Baur, *The Health Factor in the Gold Rush Era* (Feb. 1949) 18 *Pacific Hist. Rev.* 97 – 105.
- ^{xliii} See e.g., *A Slave Flogged in San Jose* (Feb. 16, 1850) *Daily Alta California*, p. 2, col. 3; *Slaveholding in California* (Aug. 30, 1850), *Liberator*, p. 140, col. 5.
- ^{xliv} 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.
- ^{xlvi} *Freedom’s Frontier, supra*, at pp. 71 – 72.
- ^{xli} Waite, *Early California lawmakers also preached #resistance—but against immigration* (Aug. 3, 2018) *Los Angeles Times* <<https://www.latimes.com/opinion/op-ed/la-oe-waite-california-14-amendment-20180803-story.html>> (as of Jan. 26, 2022); Cottrell, *It took 92 years for California to ratify the 15th Amendment* (June 26, 2020) *The Union* <<https://www.theunion.com/news/steve-cottrell-it-took-92-years-for-california-to-ratify-the-15th-amendment/>> (as of March 15, 2022)

^{xlvi} See Equal Justice Initiative (EJI), *Lynching in America: Confronting the Legacy of Racial Terror* (2015), p. 3 <https://time.com/wp-content/uploads/2015/02/eji_lynching_in_america_summary.pdf> (as of Oct. 20, 2021) (EJI 2015).

^{xlvi} 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 <<https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-052421.pdf>> (as of Oct. 20, 2021) (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* (Aug. 18, 2019), New York Times, <<https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html>> (as of Oct. 22, 2021) (Lee); *Case for Reparations, supra*; Lawfare, *supra*.

^{lxix} 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).

^l See, e.g., Brockell, *Tulsa isn't the only race massacre you were never taught in school. Here are others.*, *The Washington Post*, <https://www.washingtonpost.com/history/2021/06/01/tulsa-race-massacres-silence-schools/>

^{li} 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).

^{lii} Walter Howard Smith, Jr., *The Impact of Racial Trauma on African Americans* The Heinz Endowments (2010) (as of Apr. 5, 2022), p. 4 (Impact of Racial Trauma); Erlanger A. Turner & Jasmine Richardson, *Racial Trauma Is Real: The Impact of Police Shootings on African Americans* (July 14, 2016), American Psychological Association, Psychology Benefits Society, <<https://psychologybenefits.org/2016/07/14/racial-trauma-police-shootings-on-african-americans/>> (as of Mar. 15, 2022).

^{liii} EJI 2015, *supra*, at p. 23.

^{liv} *Ibid.*

^{lv} Lee, *How America's Vast Racial Wealth Gap Grew: By Plunder*, N.Y. Times, (Aug. 14, 2019) (as of April 4, 2022)

^{lvi} Niedermeier, *The Color of the Third Degree* (2019), pp. 17-19; 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; Love, *The Trayvon Martin case reveals a vigilante spirit in the US justice system*, The Guardian, (Apr. 7, 2012) (as of April 4, 2022).

^{lvii} See e.g., Hudson, *West of Jim Crow: The Fight Against California's Color Line* (2020), p. 193 (Hudson).

^{lviii} Bringham, *The Ku Klux Klan in a Central California Community: Tulare County During the 1920s and 1930s* (Winter 2000) 82(4), Southern California Quarterly 365, 370; Hudson, *supra*, at pp. 171-72.

^{lix} Hudson, *supra*, at p. 172.

^{lx} *Ibid.*

^{lxi} Brenda Elaine Stevenson, *The Contested Murder of Latasha Harlins: Justice, Gender, and the Origins of the LA Riots* (2013), p. 186; Hudson, *supra*, at p. 179.

^{lxii} Hudson, *supra*, at p. 168.

^{lxiii} See Chapter 3.IV.J.5.

^{lxiv} Nat. Park Service, U.S. Dept. of the Interior, *Civil Rights in America: Racial Voting Rights* (2009) (Nat. Park Service), p. 4 (as of Nov. 8, 2021); See Chapter 4.

^{lxv} Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (1988), pp. 550, 569-76 ("Foner, Reconstruction").

^{lxvi} Foner, *Forever Free: The Story of Emancipation and Reconstruction* (First Vintage Books 2006), pp. 113-115, 117-118 ("Foner, Forever Free"). Foner, *Reconstruction, supra*, pp. 444-44, U.S. Const., amend. XV, § 1, U.S. Const., amend. XIV, § 2.

^{lxvii} Cobb and Jenkins, *Race and the Representation of Blacks' Interests During Reconstruction* (2001) 54 Pol. Research Quarterly 181, 184.

^{lxviii} Nat. Park Service, *supra*, p. 6; *Black Officeholders in the South*, (as of Nov. 19, 2021).

^{lxix} Foner, *Reconstruction, supra*, at pp. 581-82.

^{lxx} Chapter 4, Section IV.

- ^{lxxi} See Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection* (Nov. 2005), p. 15 (as of Mar. 31, 2022).
- ^{lxxii} Foner, *Forever Free*, *supra*, p. 143.
- ^{lxxiii} Nat. Park Service, U.S. Dept. of the Interior, *Civil Rights in America: Racial Voting Rights* (2009), p. 14 <<https://tinyurl.com/3rupm86e>> (as of Nov. 8, 2021).
- ^{lxxiv} Nat. Park Service, *supra*, p. 6; Black Officeholders in the South, (as of Nov. 19, 2021).
- ^{lxxv} U.S. House of Representatives, Office of History and Preservation, *African Americans in Congress: 1870-2007* (2008), pp. 2, 4.
- ^{lxxvi} Caro, *Master of the Senate* (2009), pp. xiii-xiv; Grantham, *The Life and Death of the Solid South: A Political History* (1992).
- ^{lxxvii} Caro, *supra*, pp. xiii-xiv.
- ^{lxxviii} See Chapter 4, 10, 12
- ^{lxxix} See, e.g., Katznelson, *When Affirmative Action was White* (2005), p. 113; Krugman, Paul Krugman - *New Deal Created the Middle Class* (Apr. 1, 2011) (as of Jan. 18, 2022); Mettler, *Soldiers to Citizens: The G.I. Bill and the Making of the Greatest Generation* (2005), p. 9.
- ^{lxxx} Katznelson, *supra*, p. 113; California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021), *Testimony of Jacqueline Jones*, 7:20-8:55 (as of Jan. 26, 2022).
- ^{lxxxi} Katznelson, *supra*, p. 121.
- ^{lxxxii} Thomas, *The Hill-Burton Act and Civil Rights: Expanding Hospital Care for Black Southerners, 1939-1960* (2006) 72 J. of Southern History p. 823, 836; Von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949* (2000) 11 Housing Policy Debate 299, 309
- ^{lxxxiii} See Chapter 4.IV.L., and Chapter 3.
- ^{lxxxiv} *People v. Hall* (1854) 4 Cal. 399, at p. 404.
- ^{lxxxv} *Id.* at p. 404.
- ^{lxxxvi} Katz, et al., *Reckoning with our Rights: The Evolution of Voter Access in California*, UCLA Luskin Center for History and Policy (Sept. 2020) (Katz) pp. 3, 7 (as of Mar. 31, 2021).
- ^{lxxxvii} Cal. Const. of 1849, art. II, § 5.
- ^{lxxxviii} Katz, at p. 9
- ^{lxxxix} *Id.* at pp. 11-12.
- ^{xc} See Chapters 3, 5, 6, 7, and 10
- ^{xci} See, e.g., Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration* (2011) (Warmth of Other Suns) pp. 38-45; Wilkerson, *Caste: The Origins of Our Discontents* (2020) pp. 116-17.
- ^{xcii} See Cal. EPA, *Pollution and Prejudice: Redlining and Environmental Injustice in California* (Aug. 16, 2021) (as of Apr. 4, 2022) (Cal. EPA).
- ^{xciii} Rothstein, *The Color of Law* (2017) pp. 13 (Rothstein).
- ^{xciv} U.S. Census Bureau, *Black Population 1790-1915* (1918) at p. 33.
- ^{xcv} See e.g., Cutler et al., *The Rise and the Decline of the American Ghetto* (1999) 107 No. 3 J. of Political Economy 455, 456
- ^{xcvi} Rothstein, *supra*, at pp. vii-xvii, 16-30, 51-52; Cal. EPA, *supra*, Taylor, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* (2014) p. 229 (Toxic Communities); Taylor, *The Environment and the People in American Cities, 1600s-1900s: Disorder, Inequality, and Social Change* (2009) pp. 365 (Environment and People); Mohl, *The Interstates and the Cities: Highways, Housing, and the Freeway Revolt, Poverty & Race Research Action Council* (Jan. 1, 2002) p. 2 (Mohl).
- ^{xcvii} See *Corrigan v. Buckley* (1926) 271 U.S. 323, 331; U.S. Commission on Civil Rights, *Understanding Fair Housing* (Feb. 1973) p. 4; *Shelley v. Kraemer* (1948) 334 U.S. 1.
- ^{xcviii} Domonoske, *Interactive Redlining Map Zooms In On America's History Of Discrimination*, (Oct. 19, 2016) NPR (as of May 3, 2022); Jackson, *What Is Redlining?*, (Aug. 17, 2021) N.Y. Times (as of May 3, 2022).
- ^{xcix} Rothstein, *supra*, at 61
- ^c See *Id.* at pp. 177-180.
- ^{ci} Cutler, *supra*, p. 456

- cii Frey, *Neighborhood Segregation Persists for Black, Latino or Hispanic, and Asian Americans* (Apr. 6, 2021) Brookings Institution < <https://www.brookings.edu/research/neighborhood-segregation-persists-for-black-latino-or-hispanic-and-asian-americans/> > (as of June 30, 2021).
- ciii <https://belonging.berkeley.edu/roots-structural-racism>
- civ Toxic Communities *supra*, p. 184
- cv Loewen, *Sundown Towns: A Hidden Dimension of American Racism* (2005) p. at 76.
- cvi Rothstein, *supra*, at pp. 72-73.
- cvi Nelson, et al., *Mapping Inequality: Redlining in New Deal America, American Panorama* (as of May 1, 2022).
- cvi Beal, *Redlining in San Diego, Local Initiatives Support Corporation San Diego* (as of Apr. 26, 2022).
- cix Rothstein, *supra*, at p. 31
- cx *Ibid.*
- cxii *Id.* at page 33.
- cxii Rothstein *supra* at p. 81, see also Toxic Communities, *supra*, at p. 155.
- cxiii Toxic Communities, *supra*, at p. 184-186
- cxiv Rothstein at p. 9
- cxv Taylor, How “Urban Renewal” Decimated the Fillmore District, and Took Jazz with It (Jun. 25, 2020), KQED (as of Apr. 25, 2022) (Decimated Fillmore); Xia, Manhattan Beach Was Once Home to Black Beachgoers, but the City Ran Them Out. Now It Faces a Reckoning (Aug. 2, 2020), L.A. Times (as of Apr. 25, 2022) (Xia I)
- cxvi Fulbright, *Sad chapter in Western Addition history ending*, San Francisco Chronicle (Jul. 21, 2008) <<https://www.sfgate.com/bayarea/article/Sad-chapter-in-Western-Addition-history-ending-3203302.php>> (as of Jul. 7, 2021)
- cxvii Fulbright, *supra*.
- cxviii Decimated Fillmore, *supra*.
- cxix Fulbright, *supra*.
- cxix Sambol-Tosco, *The Slave Experience: Education, Arts & Culture*, Thirteen (2004) p. 2 (as of Mar. 5, 2021) (The Slave Experience); Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (2004) p. 52 (Silent Covenants).
- cxix 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 & 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.”).
- cxix Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (2008) pp. 105 (Slavery by Another Name).
- cxix See, e.g., Du Bois & Dill, *The Common School and the Negro American*, Report (1911) (hereafter *The Common School*) p. 52; see also *The Warmth of Other Suns* at pp. 57, 59-60, 101 (describing differences in months of operation for black 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, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools* (2006) 35 Ed. Researcher 3, 5; *The Warmth of Other Suns*, at p. 88
- cxix *Brown v. Board of Education* (1954) 347 U.S. 483, 495; Horsford & 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 (*Exploring Black Superintendent Perspectives*).
- cxix *Id.*
- cxix See *Alexander v. Holmes County Bd. of Educ.* (1969) 396 U.S. 19, 20-21.
- cxix 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 & Shapiro, *Black Wealth/White Wealth: A New*

Perspective on Racial Inequality (1995) pp. 8-9, 19-20; Guastafarro, [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).

cxviii *Id.*

cxix *Milliken v. Bradley* (1974) 418 U.S. 717, 752.

cxx *Ward v. Flood* (1874) 48 Cal. 36.

cxix *Plessy v. Ferguson* (1896) 163 U.S. 537.

cxix Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975* (1976) p. 143

cxix *Id.* at p. 148-164.

cxix Orfield & 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. California* (1992) 4 Cal. 4th 668, 684-685.

cxix See Cal. Const., art. I, § 7; School Assignment and Transportation of Pupils, California Proposition 1 (1979).

cxix Orfield & Jarvie, [Black Segregation Matters: School Resegregation and Black Educational Opportunity](#),

UCLA Civil Rights Project/Proyecto Derechos Civiles (Dec. 2020) pp. 30-31, Tables 13 and 14 (as of July 1, 2021).

cxix Orfield & Ee, *Segregating California's Future*, *supra*, pp. 3, 27.

cxix Muller et al., [Environmental Inequality: The Social Causes and Consequences of Lead Exposure](#) (2018) 44 Annual Review of Sociology, pp. 266-68; Jacobs, [Environmental Health Disparities in Housing](#) (2011) 101 Am. J. of Public Health, pp. S115-S122.

cxix Villarosa, [Pollution is Killing African Americans. This Community Fought Back](#), (July 28, 2020) New York Times Magazine (as of Apr. 7, 2022); Zwickl, [The Demographics of Fracking: A Spatial Analysis for Four U.S. States](#) (2019) 161 Ecological Economics, pp. 202-215; Fleischman and Franklin, *Fumes Across the Fence-Line* (Nov. 2017) Nat. Ass. for the Advancement of Colored People and Clean Air Task Force, p. 6; Pratt et al., [Traffic, Air Pollution, Minority and Socio-Economic Status: Addressing Inequities in Exposure and Risk](#) (2015) 12 International J. of Environmental Research and Public Health 5, pp. 5355-5372; *Environment and People*, pp. 94, 270.

cxl Hoffman et al, [The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas](#) 8 Climate 2020.

cxli Pulido, [Rethinking Environmental Racism: White Privilege and Urban Development in Southern California](#) (2000) 90 Annals of the Ass. of Am. Geographers 1, p. 21; CalEPA, *Pollution and Prejudice*; Office of Health Equity, [Housing Overcrowding](#) (Dec. 2018) Cal. Dept. of Public Health (as of Apr. 7, 2022).

cxlii Arango, ["Turn Off the Sunshine": Why Shade Is a Mark of Privilege in Los Angeles](#) (Dec. 1, 2019) N.Y. Times (as of Apr. 26, 2022)

cxlii Del Real, [The Crisis Lurking in Californians' Taps: How 1,000 Water Systems May Be at Risk](#) (July 24, 2019) N.Y. Times (as of Apr. 27, 2022).

cxlii Morello-Frosch et al., [Environmental Justice and Regional Inequality in Southern California: Implications for Future Research](#) (Apr. 2002) 110 Environmental Health Perspectives 2, pp. 149-154.

cxlii London et al., [The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities](#) (Feb. 2018) UC Davis Center for Regional Change, p. 10.

cxlii Fuke, *Planters, Apprenticeship, and Forced Labor: The Black Family under Pressure in Post-Emancipation Maryland* (1988) 62 Ag. Hist. 57, p. 63.

cxlii Robinson, *"The Black Family" and US Social Policy: Moynihan's Unintended Legacy?*, 97 Revue Française d'études Américaines (2003) 118, 118-128; Baldwin, *Stratification of the Welfare Poor: Intersections of Gender, Race, and "Worthiness" in Poverty Discourse and Policy* (2010) 6 The Modern American 4; Cooper, *Racial Bias in American Foster Care: The National Debate* (2013) 97 Marq. L.Rev. 215, 230-233; sections VI & VII, *infra*; see generally Minoff, Center for the Study of Social Policy, [The Racist Roots of Work Requirements](#) (Feb. 2020) (as of Mar. 6, 2022).

cxlii Floyd et al., [TANF Policies Reflect Racist Legacy of Cash Assistance](#) (Aug. 4, 2021) Ctr. on Budget & Pol'y Priorities, p. 10.

cxlii Moehling, *Mother's Pensions and Female Headship* (2002) Yale University, pp. 2-3, 12-18, 31 table 9 (analyzing data from Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia).

- ^{cl} 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
- ^{cli} Dettlaff, et al., *Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare* (2011) 33 Children and Youth Services Review 1630, 1634–1635; Miller, *Racial Disproportionality in Washington State’s Child Welfare System* (June 2008) Washington State Institute for Public Policy; Rivaux et al., *The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children* (2008) 87 Child Welfare 151, 151–152.
- ^{clii} Children’s Bureau, *Child Welfare Practice to Address Racial Disproportionality and Disparity* (Apr. 2021) U.S. Dept. of Health and Human Services, (Children’s Bureau) pp. 2-3.
- ^{cliii} Cooper, *Racial Bias in American Foster Care: The National Debate* (2013) 97 Marq. L.Rev. 215, 230; Sedlak & Broadhurst, *Third National Incidence Study of Child Abuse and Neglect: Final Report* (1996) U.S. Dept. of Health and Human Services, Administration for Children and Families, p. 8–7; see generally 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 (hereinafter “Dettlaff et al. 2020”).
- ^{cliv} Henning, *The Rage of Innocence: How America Criminalizes Black Youth* (Pantheon Books 2021) p. xv; U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, [Statistical Briefing Book: Juvenile Arrest Rates by Race, 1980-2019](#) (2019) (as of Apr. 15, 2022); Puzzanchera, [Juvenile Arrests, 2018](#) (June 2020) U.S. Dept. of Justice, Juvenile Justice Statistics National Report Series Bulletin (as of Apr. 15, 2022).
- ^{clv} Cal. Dept. of Justice, [Attorney General Becerra Secures Settlements with Barstow and Oroville School Districts to Address Discriminatory Treatment of Students Based on Race and Disability Status](#) (Aug. 25, 2020) (as of Apr. 15, 2022)..
- ^{clvi} Tiano, [Los Angeles’ Plan to Address the Overrepresentation of Black and LGBTQ Youth in Foster Care](#) (May 22, 2019) The Imprint (as of Aug. 25, 2021).
- ^{clvii} KidsData, [Children in Foster Care, by Race/Ethnicity](#) (2018) (as of Aug. 27, 2021).
- ^{clviii} Compare *Ibid.* with Children’s Bureau, *supra*, pp. 2-3.
- ^{clix} KidsData, *supra*.
- ^{clx} Sambol-Tosco, [Education, Arts, & Culture](#) (2004), Thirteen, p. 1 (as of March 20, 2022); Newton, *Slave Artisans and Craftsmen: The Roots of Afro-American Art* (1977), 9(3) Plastic Arts and Crafts, 35.
- ^{clxi} Barnes, [Yes, Politicians Wore Blackface. It Used to be All-American ‘Fun’](#) (Feb. 8, 2019), Washington Post (as of March 21, 2022)
- ^{clxii} Absher, [The Black Musician and the White City: Race and Music in Chicago, 1900-1967](#) (2014), pp. 1-2, 157 (as of April 6, 2022); Koppes & Black, *Blacks, Loyalty, and Motion-Picture Propaganda in World War II* (Sept. 1986), 73 The Journal of American History 383; Rothwell, [The Black Innovators Who Elevated the United States: Reassessing the Golden Age of Invention](#) (Nov. 23, 2020), Brookings Institution (as of March 21, 2022); Reese, *The Socio-Political Context of the Integration of Sport in America* (1998), 3(4) Journal of African American Men, 5-22; Alison Rose Jefferson, *Living the California Dream: African American Leisure Sites During Jim Crow Era* (2020); Cox, *Dixies Daughters: The United Daughters of the Confederacy and the Preservation of Confederate Culture* (2003); Scott, *Cinema Civil Rights: Regulation, Repression, and Race in the Classical Hollywood Era* (2015).
- ^{clxiii} Rothwell, *supra*.
- ^{clxiv} Jefferson, *supra*
- ^{clxv} Cox, *supra*.
- ^{clxvi} Scott, *supra*.
- ^{clxvii} Pepin, [Music of the Fillmore](#) (2000), PBS (as of March 20, 2022).
- ^{clxviii} See, e.g., Paggett, [Cultural Incompetence: My Son was Kicked out of Class Because of His Hair](#) (March 8, 2018), ACLU of Northern California (as of March 21, 2022).
- ^{clxix} See, e.g., Miranda, [How One Art Museum Has Reckoned with Race and Its Past](#) (Oct. 22, 2020), L.A. Times (as of March 20, 2022).
- ^{clxx} *People v. Olguin* (1994) 31 Cal.App.,4th 1355.
- ^{clxxi} Desmarais, [Historic Wrongs on a Pedestal: Ugly Past Doesn’t Vanish When the Artwork Does](#) (Feb. 27, 2018) (as of March 21, 2022).
- ^{clxxii} Trotter, *Workers on Arrival: Black Labor and the Making of America* (2019) pp. xvi, xx-xxi; see also California Task Force to Study and Develop Reparation Proposals for African Americans (October 13, 2021) [Testimony of](#)

- Jacqueline Jones, (as of Apr. 7, 2022) (Jones Testimony) citing Berry, *The Price for their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation* (2017); Baptist, *The Half has Never Been Told: Slavery and the Making of American Capitalism* (2016); Beckert, *Empire of Cotton: A Global History* (2015); Beckert & Rockman, eds., *Slavery's Capitalism: A New History of American Economic Development* (2018).
- clxxiii U.S. Postal Service, [Postal History: African American Postal Workers in the 20th Century](#) (as of Apr. 11, 2022); [Wilson and Race](#), President Wilson House (as of Apr. 11, 2022); [The Army and Diversity](#), U.S. Army Center of Military History; Broussard, *In Search of the Promised Land in Seeking El Dorado: African Americans in California* (De Graaf et al., eds. 2001) p. 198; *United States v. City and County of San Francisco* (N.D. Cal. 1988) 696 F. Supp. 1287, 1290.
- clxxiv Little, [How Woodrow Wilson Tried to Reverse African American Progress](#) (Jul. 14, 2020) History.com.
- clxxv [The Army and Diversity](#), U.S. Army Center of Military History.
- clxxvi See Jones, *American Work: Four Centuries of Black and White Labor* (1998) p. 342; see also Perea, [The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act](#) (2011) 72 Ohio State L.J. 95; Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (2013) p. 163; Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (2017), p. 101; Reich, *A Working People: A History of African American Workers Since Emancipation* (2013) p. 91.
- clxxvii California Task Force to Study and Develop Reparation Proposals for African Americans (October 13, 2021), [Testimony of Jacqueline Jones](#), (as of October 25, 2021).
- clxxviii See, e.g., Walters & Briggs, [The Family Economy, Child Labor, and Schooling: Evidence from the Early Twentieth-Century South](#) (1993) 58 Am. Sociological Rev. 163, 164.
- clxxix Barnes, [Is the EEOC Protecting Workers or Discriminatory Employers?](#) (Sept. 4, 2019) Forbes; Jones, *American Work*, *supra*, p. 362; Linderman, [At the EEOC, harassment cases can languish for years](#) (Apr. 9, 2018) AP News; Korber & Adkisson, [Department of Fair Employment and Housing: Underfunding and Misguided Policies Compromise Civil Rights Mission](#) (Dec. 18, 2013) Cal. Sen. Off. Oversight & Outcomes, pp. 1-2.
- clxxx Chatterji, et al., [The Impact of City Contracting Set-Asides on Black Self-Employment and Employment](#) (2014) 32 J. of Labor Economics 507, 510; *Regents of Univ. of Calif. v. Bakke* (1978) 438 U.S. 265, 318-319
- clxxxi Quillian et al., [Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time](#) (2017) Proceedings of the Nat. Academy of Sciences (PNAS).
- clxxxii See, e.g., Broussard, “In Search of the Promised Land: African American Migration to San Francisco, 1900-1945” in *Seeking El Dorado: African Americans in California* (De Graaf, Mulroy & Taylor, eds. 2001) p. 198; *West of Jim Crow: The Fight Against California's Color Line* (2020) p. 234;
- clxxxiii *United States v. City and County of San Francisco*, 696 F. Supp. 1287 (N.D. Cal. 1988)
- clxxxiv See, e.g., Sundown Towns: A Hidden Dimension of American Racism by James Loewen (pp. 100, 239-40)
- clxxxv See, e.g., Trotter, *Workers on Arrival: Black Labor and the Making of America* (2019) p. 113.
- clxxxvi Faughnder & James, [Hollywood's C-suites Are Overwhelmingly White. What Are Studios Doing About It?](#) (July 1, 2020) Los Angeles Times; [Is Silicon Valley Tech Diversity Possible Now?](#) (Jun. 26, 2019) Center for Employment Equity, U. Mass-Amherst.
- clxxxvii See, e.g., Alexander, *The New Jim Crow* (2020) (Alexander); see also Wilkerson, *Caste: The Origins of Our Discontents* (2020).
- clxxxviii Alexander, *supra*, at pp. 38-44, [Jim Crow Laws](#), National Park Service (as of May 10, 2022)
- clxxxix See generally Blackmon, *Slavery by Another Name: The Re-Enslavement of African Americans from the Civil War to World War II* (2008)), p. 247, 294-296, 377-382.
- cx See, e.g., *Ruffin v. Commonwealth* (1871) 62 Va. 790, 796.
- cxci Baum, [Legalize It All: How to Win the War on Drugs](#) (April 2016), Harper's Magazine at p. 22 (as of Apr. 24, 2022).
- cxcii See, e.g., Pierson et al., [A large scale analysis of racial disparities in police stops across the United States](#) (2017), *Nature Human Behavior* 4, 736-745 (as of Apr. 25, 2022); Weir, [Policing in black & white](#) American Psychological Association, *Monitor on Psychology* (December 2016) Vol. 47, No. 11 at p. 36 (as of Apr. 25, 2022); Moy, [A Taxonomy of Police Technology's Racial Inequity Problems](#) (2021) 2021 U. Ill. L. Rev. 139 (as of Apr. 25, 2022); Okidegbe, [When They Hear Us: Race, Algorithms and the Practice of Criminal Law](#) (2020) 29-SUM Kan. J.L. & Pub. Pol'y, 329 (as of Apr. 26, 2022); Selbst, [Disparate Impact in Big Data Policing](#) (2017) 52 Ga. L. Rev. 109 (as of Apr. 26, 2022); Richardson et al., [Dirty Data, Bad Predictions: How Civil Rights Violations Impact](#)

- Police Data, Predictive Policing Systems, and Justice* (2019); Blad and Harwin, *Black Students More Likely to Be Arrested at School* (January 24, 2017), Education Week (as of Apr. 26, 2022); Riddle and Sinclair, *Racial disparities in school-based disciplinary actions are associated with county-level rates of racial bias* (April 2, 2019) Proceedings of the National Academy of Sciences (as of Apr. 26, 2022); Barkow, Prosecutorial Administration: Prosecutor Bias and the Department of Justice (April 2013) 99 Va. L.Rev. 271, 271–342 (as of Apr. 26, 2022); Levinson, Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering (2007) 57 Duke L.J. 345, 398–407 (as of Apr. 26, 2022).
- ^{exciii} Sood, *Biases Behind Sexual Assault: A Thirteenth Amendment Solution to Under-Enforcement of the Rape of Black Women* (2018) vol. 18, No. 2, U. Md. L.J. Race, Religion, Gender & Class 405, 405, 407 (as of Apr. 25, 2022).
- ^{exciv} See, e.g., van de Rijdt, et al., *Racial and gender differences in missing children's recovery chances* vol. 13, No. 12 (December 31, 2018) (as of Apr. 26, 2022).
- ^{excv} The Washington Post, *Police shootings database 2015-2022* (as of Apr. 25, 2022); Campaign Zero, *Mapping Police Violence Database* (Mar. 15 2022), Campaign Zero, (as of Apr. 25, 2022); U.S. DOJ Office of Justice Programs, *Prisoners in 2019* (Oct. 2020), pp. 1, 16 (as of Apr. 26, 2022); Federal Bureau of Prisons, *Inmate Race* (last visited Apr. 26, 2022).
- ^{excvi} See, e.g., U.S. Const., 13th, 14th, and 15th Amends.
- ^{excvii} See, e.g., The Civil Rights Act of 1866, The Reconstruction Acts of 1867-1868, The Ku Klux Klan Act, The Civil Rights Act of 1875, The Civil Rights Act of 1964, The Voting Rights Act of 1965, and The Fair Housing Act of 1968.
- ^{excviii} Alexander, *supra*.
- ^{excix} Cal. Department of Justice, *Racial and Identity Profiling Advisory Board Annual Report 2022* pp. 6-8 (as of Apr. 25, 2022) (RIPA 2022); Cal. Department of Justice, *Use of Force Incident Reporting 2016-2020* (as of Apr. 25, 2022); U.S. Census Bureau, *Quick Facts: California* (as of Apr. 26, 2022).
- ^{cc} RIPA 2022, *supra*, at p. 8.
- ^{cci} Semel et al., *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors* (June 2020), Berkeley Law Death Penalty Clinic (as of Apr. 26, 2022).
- ^{ccii} Sutton, *Symbol and Substance: Effects of California's Three Strikes Law on Felony Sentencing* (2013) vol. 47, No. 1, *Law & Society Rev.* 37–71 (as of Apr. 26, 2022).
- ^{cciii} Office of Minority Health, *Profile: Black/African Americans* (Oct. 12, 2021) U.S. Dept. of Health and Human Services (as of Mar. 20, 2022).
- ^{cciv} California Task Force to Study and Develop Reparation Proposals for African Americans (January 27, 2022), *Testimony of Melissa Jones* (as of February 8, 2022).
- ^{ccv} Forde et al., *The Weathering Hypothesis as an Explanation for Racial Disparities in Health: A Systematic Review* (2019) 33 *Annals of Epidemiology* 1, 1-18.
- ^{ccvi} Simons et al., *supra*; Geronimus et al., *Black/White Differences in the Relationship of Maternal Age to Birthweight: A Population-Based test of the Weathering Hypothesis* (1996), 42 *Social Science & Medicine* 589; Geronimus et al., *Differences in Hypertension Prevalence Among United-States Black-and-White Women of Childbearing Age* (1991) 106 *Pub. Health Report* 393.
- ^{ccvii} Forde, *supra*.
- ^{ccviii} Simons et al., *Discrimination, Segregation, and Chronic Inflammation: Testing the Weathering Explanation for the Poor Health of African Americans* (2018) 54 *Developmental Psychology* 1993.
- ^{ccix} Sellers et al., *Racial Identity Matters: The Relationship between Racial Discrimination and Psychological Functioning in African American Adolescents* (2006) 16 *J. of Research on Adolescence* 187; Fisher et al., *Discrimination Distress During Adolescence* (2000) 29 *J. of Youth and Adolescence* 679.
- ^{ccx} Chavous et al., *Gender Matters, Too: The Influences of School Racial Discrimination and Racial Identity on Academic Engagement Outcomes among African American Adolescents* (2008) 44 *Developmental Psychology* 637; Neblett et al., *African American Adolescents' Discrimination Experiences and Academic Achievement: Racial Socialization as a Cultural Compensatory and Protective Factor* (2006) 32 *J. of Black Psychology* 199; Smalls et al., *Racial Ideological Beliefs and Racial Discrimination Experiences as Predictors of Academic Engagement Among African American Adolescents* (2007) 33 *J. of Black Psychology* 299; Wong et al., *The Influence of Ethnic*

Discrimination and Ethnic Identification on African American Adolescents' School and Socioemotional Adjustment (2004) 71 J. of Personality 1197.

ccxi Cal. Health Care Foundation, [California Health Care Almanac](#) (Oct. 2019), p. 7 (as of July 12, 2021) (CHCF 2019).

ccxii Cal. Maternal Quality Care Collaborative, *The California Pregnancy-Associated Mortality Review* (2018), p. 21 <<https://tinyurl.com/yc5uc8dx>> (as of Jan. 21, 2022); Watson, [A Black Mother Told Not to Scream in Labor Asks: Can California Fix Racism in Maternity Care?](#) (Jul. 11, 2019) Cal Matters (as of Apr. 5, 2022).

ccxiii Cal. Health Care Foundation, [Health Disparities by Race and Ethnicity in California: Pattern of Inequity](#) (Oct. 22, 2021), p. 19, 25, 28.

ccxiv Woods et al., [“WE AIN’T CRAZY! Just Coping With a Crazy System”: Pathways into the Black Population for Eliminating Mental Health Disparities](#) (May 2012) Cal. Reducing Disparities Project, pp. 6 (as of Mar. 16, 2022).

ccxv Eberhart, [Monitoring Californians’ Mental Health: Population Surveillance Reveals Gender, Racial/Ethnic, Age, and Regional Disparities](#) (2018) Rand Corporation, at pp. 3-8 (as of Mar. 19, 2022).

ccxvi *Ibid.*

ccxvii Allen, *Homesteading and Property Rights; or, ‘How the West Was Really Won* in The Journal of Law and Economics 34, no. 1, (1991).

ccxviii Merritt, [Land and the roots of African-American Poverty](#) AEON (Mar. 11, 2016)(as of Mar. 18, 2022).

ccxix Darity Jr. and Mullen, [William A. Darity and Kristen Mullen on Direct Payments to Close the Racial Wealth Gap](#), The Economist (May 18, 2021) (as of Mar. 18, 2022).

ccxx Public Broadcasting Service, [Go Deeper: Where Race Lives](#) (n.d.) (as of Mar. 18, 2022) (PBS).

ccxxi Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (2005), p. 42-43 (When Affirmative Action Was White); Katznelson & Mettler, [On Race and Policy History: A Dialogue About the G.I. Bill](#) (Sept. 2008) 6(3) American Political Science Association 519, pp. 521, 522, 530 (as of Jan. 18, 2022).

ccxxii See Brown, Dorothy A. *The Whiteness of Wealth*, p. 16; 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).

ccxxiii Fed. Reserve Bank of Cleveland, [What is Behind the Persistence of the Racial Wealth Gap?](#) (Feb. 28, 2019) (as of Mar. 18, 2022).

ccxxiv Hicks et al., [Still Running Up the Down Escalator: How Narratives Shape Our Understanding of Racial Wealth Inequality](#) (2021) (as of Mar. 18, 2022).

ccxxv Darity Jr. and Mullen, *From Here to Equality: Reparations for African Americans in the 21st Century* (2020) pp. 35-38.

ccxxvi De La Cruz-Viesca et al., *The Color of Wealth in Los Angeles* (2016), Fed. Reserve Bank of San Francisco, <https://www.frbsf.org/wp-content/uploads/sites/3/color-of-wealth-in-los-angeles.pdf> (as of Mar. 18, 2022) p. 38.

ccxxvii National Park Service, [A History of African Americans in California: Farming](#) (n.d.) (as of Mar. 18, 2022).

ccxxviii Toxic Communities *supra*, p. 184; Sundown Towns, *supra*, p. at 76; Rothstein, *supra*, at pp. 72-73.

ccxxix Lohrentz, [The Impact of Proposition 209 on California’s MWBE’s](#) (Jan. 2015), Equal Justice Society, p. 2 (as of Mar. 18, 2022).

ccxxx *Ibid.*