

THE CASE FOR A REPARATIONS CLINIC: A PROPOSAL FOR INVESTIGATION, DOCUMENTATION, AND REMEDIATION OF HISTORIC HOUSING DISCRIMINATION THROUGH THE LAW SCHOOL CLINIC MODEL

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ABSTRACT

This Article will provide a blueprint for the creation of a law school based, or associated, clinic dedicated to addressing wealth and inequality issues created by the nation's racial caste system. Much of the focus shall be on reparations for discriminatory conduct in the housing market, but the Article shall also focus upon reparations in general in order to consider the feasibility of this effort. Many (lawyers, sociologists, journalists, poets, etc.) have written about this issue over the years and have studied it intently. Building upon previous research, this Article shall study any justification for reparations and gather evidence to support restorative justice based on the practices by the Federal Housing Administration (FHA), real estate companies, banks, and other institutions. However, this clinic is not to be a litigation clinic exclusively, though such a tool could become useful to achieving the overall goals. This clinic proposes to act as an archival tool for documenting the evidence of what has occurred to make the case that reparations are warranted based on what occurred in the twentieth century in the housing market and to show that these actions should be corrected and can be corrected if action is taken now. This clinic shall be an interdisciplinary clinic with lawyers, economists, and multimedia specialists working for the

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common goal of documenting this period of economic destruction in the United States.

Many of the actual victims of housing discrimination during the period when the FHA openly denied equal housing access to black families will soon be deceased. In order to preserve their stories and capture evidence of the damage inflicted as a result of overt and covert racial injustice, some effort should begin to document the factual record. In addition, while many have urged a study of restitution for these past injustices, no law has been passed to even begin this process. Any discussion of economic restitution for African Americans has been met with fierce resistance and quite nasty responses. This clinic can form the beginning of a larger effort to study the problem, though with a primary focus on the housing market over the past 100 years or so.

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INTRODUCTION

The United States of America must reckon with its history of state-sanctioned racism and its present economic impact on African Americans. The country can—and must—address this legacy of racial discrimination with reconciliation for victims of race-based policies, laws, and customs that established and perpetuated a racial caste system in the United States. These policies, laws, and customs include, at a minimum, injustices related to the Jim Crow era and the Transatlantic Slave Trade as it manifested itself in the United States.

The nation can ignore this problem and allow all of the additional problems that continue to fester and mutate as a result of that decision, but that will not make the issue disappear. Racial division will likely remain, and the wealth inequality and sense of bitterness based upon the history that exists as a result of learning of the socioeconomic impact of the racial decisions made by the country is not likely to dissipate.

This Article proposes a blueprint for a legal clinic at a law college that will seek to begin the work of a movement—legal, political, and otherwise—for reparations for African Americans in the United States, focusing on the housing market. While the law clinic shall focus on restitution for past injustices in the housing market, it will also highlight reparations in general as described by many writers and activists in the past. Thus, the focus of the clinic shall be on reparations in general for all past injustices based on, motivated by, or linked to race or racism that affected and continue to affect the African–American population.

Part I of this paper shall define and describe reparations and the injustices that have created the moral justification (the history, as recounted by writers and historians) for a model for action and

preservation of factual evidence. Part II shall discuss other restorative justice efforts and efforts to address problems of this nature by other individuals and organizations in the past. Part III shall set forth the blueprint for a law clinic as envisioned by this project, the various activities the clinic might be engaged in, the goals and mission of the clinic, and what kinds of expertise might be needed for such a clinic—legal, academic, and otherwise. Finally, this Article concludes with a focus on the challenges to this effort that are quite obvious even at the planning stage. We begin with a discussion of United States racial history and the actual problem this clinic will seek to address.

I. THE ECONOMIC IMPACT OF RACIALLY DISCRIMINATORY PUBLIC POLICY

A. Chattel Slavery

The history behind the voices demanding reparations over the years is well known and documented. Indeed, the argument opposing reparations related to slavery in particular is not a denial of the injustice or the unjust acts; it is that those who perpetuated the slave trade against Africans brought to the United States are no longer alive. If there is no victim and no perpetrator, the argument follows, there is no chance at any remedy or correction of that injustice.

The racial history begins, as it does in much of the West, with chattel slavery and the triangular trade of African men and women as slaves dating back to the seventeenth century, if the history is to be confined to slavery in the United States.

Officially, according to the accepted narrative, the involvement of the territory that would become the United States in the slave trade began in 1620 in Jamestown, Virginia, with the arrival of “twenty negroes” who had been “stolen from Africa.”¹ The moment, described as a “sad, sad hour for the African race,” was the beginning of chattel slavery in a nation that had not yet even been conceived.² The moment was also not just about the ownership of human beings, either; it was the commencement of the difficulties the nation continues to confront, and for the Africans specifically, “physical, mental, and moral degradation.”³ It is estimated that over four million Africans

1. Sarah P. Remond, *The Negroes in the United States of America*, 27 J. NEGRO HIST. 216, 216 (1942).

2. *Id.*

3. *See id.*

eventually came to the United States both before and after the founding of the nation.⁴

Notably, the African experience of racial oppression in the United States is not monolithic.⁵ Because the various colonies functioned differently, the manner in which slavery and national oppression impacted the lives of the Africans was very diverse, though most experiences were tragically destructive and demeaning. For example, some Africans had a right to vote even in the South and even in a state such as Virginia, which was thoroughly committed to chattel slavery.⁶ Africans also voted legally in other states, but the rights existed temporarily and were more common in colonial times.⁷ Accordingly, between 1716—in the various colonies—and 1845—after the United States became an actual nation—African Americans were disenfranchised as a result of the loss of their voting rights.⁸ Even in Northern states such as New York, New Jersey, and Connecticut, the basic right to vote was usually subjected to the goodwill of the white majority population.⁹

But regardless of the state (or colony), chattel slavery was (and is) an economic institution that “formed the foundation of national wealth” in the United States.¹⁰ “Slave labor” produced goods for export as well as domestic consumption.¹¹ As an example, cotton, as a result of “free” labor, soared as a source of wealth in the United States. In a ten-year period (1783–1793), production increased by over 5,000%.¹² The Africans enslaved to work in this system and in the various other agricultural economies that were central to the slavery period in the United States did not benefit from this wealth creation. It is the “diminished wealth” of the Africans who were enslaved that ultimately continues to contribute to economic inequality today.¹³ The United States government has never seriously addressed or considered

4. *See id.*

5. At times this Article—in this Part and later—will refer to events that occurred in the United States prior to the actual founding of the nation. It should be assumed at all times that, even though these events occurred in the colonial period, the use of the United States is best to maintain the discussion.

6. W.E.B. DUBOIS, *BLACK RECONSTRUCTION* 6 (1934).

7. *See id.* at 7-8.

8. *See id.*

9. *See id.*

10. REPARATIONS FOR SLAVERY 10 (Ronald P. Salzberger & March C. Turk eds., 2004).

11. *Id.*

12. *Id.*

13. *Id.* at 289.

this status even though it is perhaps the most critical racial issue the country has ever faced. Political and social changes arrived in the twentieth century, but structural changes in the economic system have been slow to occur.

Recent scholarship and writing from historian Steven Craig Wilder documented the presence of African slavery in many of America's most prestigious institutions of higher education.¹⁴ African slavery, according to Wilder, subsidized Harvard college and the colony where the school was located.¹⁵ While the intricate role Africans played to subsidize Harvard and the colony might seem trivial, this is hardly the case according to the factual record. Colleges are "imperial instruments akin to armories and forts" that provide a powerful role in training ministers and missionaries who, at the time, sought to "convert [the] indigenous" resistance to colonial rule and expansion.¹⁶ In addition to Harvard, the founders of Brown University were directly involved in the Transatlantic Slave Trade prior to the founding of the nation.¹⁷ Brown University named the school after Nicholas Brown upon receipt of a gift to the school in 1804.¹⁸ Africans who were enslaved had an integral role in the key institutions that allowed the United States to become a prosperous nation and to expand its empire.

But with the rising demand for reparations and some grant of restorative justice (monetary in nature) to the descendants of the Africans enslaved or economically plundered, the key area of inquiry is the relationship of wealth to the system of slavery. Again, an example is the best manner by which to exhibit this fact:

As North American commercial agriculture expanded in the 1820s and 1830s, British and other foreign capital flooded into American financial institutions and, through them, into the hands of the enslavers. . . . [T]he banking schemes . . . gave slaveholders a means to draw equity from the bodies of the enslaved people, which they bundled and sold abroad. Slaveholders used that leverage to expand sugar and cotton production while slavery's bankers sold the resulting securities to investors in New York, Britain, and Europe.¹⁹

14. See generally CRAIG STEVEN WILDER, *EBONY AND IVY: RACE, SLAVERY, AND THE TROUBLED HISTORY OF AMERICA'S UNIVERSITIES* (1st ed. 2013).

15. *Id.* at 29.

16. *Id.* at 33.

17. See *id.* at 73.

18. See *id.*

19. CALVIN SCHERMERHORN, *THE BUSINESS OF SLAVERY AND THE RISE OF AMERICAN CAPITALISM, 1815-1860* 7 (2015).

In sum, those who owned African slaves were able to obtain access to more capital from banks by leveraging these individuals along with property. This afforded them the opportunity to purchase additional Africans and subject them to bondage for free labor and economic expansion in the agricultural market. This pattern of wealth creation for individuals and for economic institutions in the United States, as indicated in the excerpt above, is repeated many times during the time period of chattel slavery. While this shift of wealth is very well known, little has been done to compute monetarily these amounts to provide an analysis of how economically destructive and unfair the system of slavery was to the Africans. This, at a minimum, would provide context and understanding for the problem and the ongoing demand for study and redress.

B. Reconstruction and Jim Crow

The period following the Civil War, the conflict the nation waged that did in fact resolve the slavery question, is yet more nuanced than the pre-war and colonial periods. The South, emboldened by the nation's indifference to the full social and political equality of its African-American population, completely accelerated the racial division in the nation and cemented the racial caste system:

Although blacks had previously experienced segregation in various forms, the thoroughness of Jim Crow made it strikingly different. The white South successfully segregated the races by law and enforced custom in practically every conceivable situation in which whites and blacks might come into social contact: from public transportation to public parks, from the work place to hospitals, asylums, and orphanages, from the homes for the aged, the blind, deaf, and dumb to the prisons, from saloons to churches. Not only were the races to be kept apart in hospitals—including a special section for black infants requiring medical attention—but some also denied admission to blacks altogether. Laws or custom also required that black and white nurses tend only the sick of their own race.²⁰

While the South presented laws that explicitly disenfranchised African Americans, the nation itself also engulfed the population in national oppression. Indeed, “[n]either the Civil War nor the era of Reconstruction made any significant step towards . . . eliminat[ing] racial barriers.”²¹ There was some improvement in the Reconstruction period, but immediately following Reconstruction, life for the average

20. Leon F. Litwack, *Jim Crow Blues*, 18 OAH MAG. HIST. 7, 8 (2004).

21. John Hope Franklin, *The Two Worlds of Race: A Historical View*, 134 DAEDALUS 118, 124 (2005).

African American was of “steady deterioration.”²² The nation had “almost no interest” in helping to “achieve equality” for African Americans during this period.²³ On the other hand, the Southern states basically legislated “inequality” in every aspect of life.²⁴

Indeed, the process, led by the individual states, of establishing a rigid racial caste system was slow and methodical, and it impacted all aspects of life in the United States for African Americans.²⁵ The decision to allow this racial caste system to exist was quite costly not only to the nation but to the African Americans as well, in real dollars.²⁶ These economic costs are directly attributed to the system of racial isolation that began in the post-Reconstruction period and that was perpetuated for decades throughout the United States.²⁷

In 1913, the federal government “segregated the races in its offices as well as in its eating and restroom facilities.”²⁸ This, too, sent an obvious message.²⁹ Elected officials openly supported this decision:

By the end of 1913, segregation had been realized in the Bureau of Engraving and Printing, the Post Office Department, the Office of the Auditor for the Post Office, and had even begun in the City Post Office in Washington, D.C. This involved not only separated or screened-off working positions, but segregated lavatories and lunchrooms. Segregation appeared to a lesser extent in the office of the Auditor of the Navy. In the Navy itself, Negroes traditionally held menial posts, but segregation in the Auditor’s office was new. Screens set off Negroes from whites, and a separate lavatory in the cellar was provided for the colored clerks.³⁰

Ultimately, the racial caste system impacted all aspects of African-American life and resulted in disparate outcomes for African Americans.³¹ This included outcomes in economics, health, education, wealth accumulation, and life span.³²

22. *Id.* at 125.

23. *Id.*

24. *Id.*

25. See Wali R. Kharif, *Black Reaction to Segregation and Discrimination in Post Reconstruction Florida*, 64 FLA. HIST. Q. 161, 161 (1985).

26. See Richard Lee, Jr., *Discrimination and Dollars*, 5 CHALLENGE 35, 35 (1957).

27. *See id.*

28. Franklin, *supra* note 21, at 126.

29. *See id.*

30. Kathleen L. Walgemuth, *Woodrow Wilson and Federal Segregation*, 44 J. NEGRO HIST. 158, 161 (1959).

31. *See id.*

32. See DAINA RAMEY BERRY, *THE PRICE FOR THEIR POUND OF FLESH: THE VALUE OF THE ENSLAVED, FROM WOMB TO GRAVE, IN THE BUILDING OF A NATION* 131 (2017).

During the same period of time that the country was perfecting its racial caste system across the many states, in law or custom and through institutions, the dominant ideological voice for African Americans was Booker T. Washington.³³ While others were also prominent and openly vocal, Washington, by the late nineteenth century, had emerged as the more accepted voice for African Americans to the white dominated power structure that had effectively halted political progress for blacks during the post-Reconstruction period.³⁴ His views, used to disadvantage blacks, were best captured in his Atlanta Exposition Address of 1895.

In that address, and overall, Washington took the view that African Americans should forego political agitation and seek progress through their own hard work and individual advancement.³⁵ “The agitation of questions of social equality,” according to Washington, was “the extremest folly.”³⁶ African Americans could advance through “severe and constant struggle,” according to Washington, not through “artificial forcing.”³⁷ “No race that has anything to contribute to the markets of the world is long in any degree ostracized.”³⁸

Washington’s address was highly accepted by the white power structure at the time, which embraced the address going forward at a time of growing racial oppression.³⁹ Washington’s philosophy of African Americans achieving progress by their own “individual efforts” had been thoroughly adopted by African Americans well before he emerged as the unofficial appointed leader of the race. It was these efforts that allowed African Americans to advance and achieve progress in various cities and communities across the nation despite the caste system.

However, historical perspective is also necessary here, as the success of African Americans became a target of white hatred and violence. Famous race riots occurred in Tulsa, Oklahoma (1921) and Rosewood, Florida (1923), where African Americans, through their own individual efforts, had successfully built vibrant, thriving communities.⁴⁰ There, white supremacist race riots led to the total

33. See BOOKER T. WASHINGTON, *UP FROM SLAVERY* 17 (1901).

34. See *id.*

35. See *id.*

36. *Id.* at 223-24.

37. *Id.*

38. *Id.*

39. See *id.*

40. See V.P. Franklin, *African-Americans and Movements for Reparations: From Ex-Slave Pensions to Reparations Superfund*, 1 J. AFR. AM. HIST. 1, 5 (2012).

destruction of these communities and verification that the racial oppression of black people in the United States was two tiered: within the system itself and outside of it.⁴¹ African Americans could neither seek political franchise and economic equity through the democratic systems nor expect protection from the system if they built their own communities.

With respect to Tulsa and Rosewood, economic reparations have always been a focus, considering the brutality that occurred.⁴² In 1994, the state of Florida did award \$2.1 million to victims of the Rosewood riots.⁴³ The late activist Arnett Doctor led the effort to secure the legislation that awarded the funds.⁴⁴ There are additional examples of the resistance to restorative justice for African Americans, with an economic component included as well.

C. The Federal Housing Administration and the Modern Racial Wealth Gap

Perhaps the most cogent arguments for reparations of some kind have been made with respect to housing discrimination that has occurred consistently throughout the post-Civil War and chattel slavery abolishment period in the United States. This economic injustice is not the same as in the case of chattel slavery, where there is some need to speculate on some of the facts or at least research the specific facts more closely.⁴⁵ On the contrary, as shall be explained below, individuals and families who faced discrimination from government policies and public and private lending practices in the housing market are likely still alive and can provide vital information relating to events that occurred throughout the twentieth century. This

41. *See id.*

42. *See id.*

43. *See* Eileen Finan, *Delayed Justice: The Rosewood Story*, 22 HUM. RTS. 8, 8-9 (1995).

44. *See id.*

45. *See* Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [<https://perma.cc/4CYH-6YZD>]. As an example, Clyde Ross, who is featured in Ta-Nehisi Coates's *Atlantic Monthly* article, "The Case for Reparations," was interviewed by Coates for the article. *See id.* Ross was a victim of Chicago's institutionalized racism in its local housing market. *See id.* The law school clinic would be specifically interested in individuals who participated in any manner in the housing market at the time and is interested in speaking with anyone with knowledge of any injustices that occurred at the time.

is specifically why this clinic's proposed activities are so necessary now to preserve and document the bad acts that occurred.

The thirty-four years between the establishment of the Federal Housing Administration (FHA) and the passage of the Fair Housing Act in 1968 is a period of particular interest for this project. This period is marked by a series of policy decisions that blatantly and viciously discriminated against black families. In 1934, Congress passed the National Housing Act and established the FHA for the purpose of "[d]emocratizing [h]omeownership" during the New Deal.⁴⁶ The FHA would insure mortgage loans in order to encourage banks to lend to middle-class American families.⁴⁷ Whereas mortgage lending terms had previously been unaffordable to average Americans, the FHA sparked the establishment of the modern day mortgage, which was self-amortizing, required a down payment of less than 20%, and extended the repayment period to twenty or more years.⁴⁸

The federal government took another step to expand homeownership opportunity ten years later, seeking to reward veterans returning from service during World War II through an attractive package of educational and economic benefits known as the Servicemen's Readjustment Act of 1944 (the G.I. Bill).⁴⁹ A centerpiece of the G.I. Bill was Title III, which provided affordable homeownership opportunities to veterans.⁵⁰ Title III read:

Any [eligible] Veteran may apply within two years after separation from the military or naval services, or two years after termination of the war . . . to the Administrator of Veterans' Affairs for the guaranty by the Administrator

46. See Arnold Hirsch, *Choosing Segregation: Federal Housing Policy Between Shelley and Brown*, in FROM TENEMENTS TO TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA 206, 208 (John F. Bauman, Roger Biles, & Kristen M. Szylvian eds., 2000).

47. See *id.*

48. See Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 POL. AFF. Q. 255, 255-56 (2007).

Until the creation of the temporary Home Owner's Loan Corporation (HOLC) in 1933, and, more importantly, the creation of the permanent Federal Housing Authority (FHA) in 1934, home mortgages were generally limited to less than 50[%] of the home's appraised value, the loans were generally limited to time periods of less than five years, and the loans generally ended with a large "balloon-payment" of the remaining principal.

Id.

49. See Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, § 500-03, 8 Stat. 284, 291.

50. See *id.*

of not to exceed 50 per centum of a loan or loans for [the purchase of a home, farm, or business property].⁵¹

The Veterans Administration (VA) program was based on the FHA's mortgage insurance program. The FHA made homeownership available to middle class Americans by insuring mortgage loans made by private lenders, thus incentivizing banks to offer mortgages on terms favorable to working families.⁵² These terms included reduced monthly payments, lengthy amortization periods, and low interest rates.⁵³ In addition, veterans who became homeowners because of the G.I. Bill could access tax benefits, such as the exclusion of mortgage interest and local property taxes from income on tax returns.⁵⁴ By 1950, the FHA and VA insured half of all mortgages.⁵⁵

The FHA and VA also provided loans to private developers who transformed vast tracts of farmland into suburban enclaves of identical homes.⁵⁶ As a result, single-family home construction jumped from 114,000 homes in 1944 to 1.18 million homes in 1948.⁵⁷ For returning veterans and their families, it became less expensive to purchase a home than to rent.⁵⁸ Indeed, the purpose of the law was to "accelerate the ability of veteran wage-earners to realize the fruits of their sustained wage-earning and, indirectly, to spur growth in housing markets outside of the traditional cityscape."⁵⁹

However, homeownership was not available to all Americans. Despite its democratic goals, the FHA "exhorted segregation and enshrined it as public policy."⁶⁰ The FHA and later the VA adopted the underwriting standards of the Home Owner's Loan Corporation (HOLC), which were blatantly racially discriminatory.⁶¹ The underwriting standards encouraged redlining by ranking neighborhoods by risk level and deeming homogenous white

51. *Id.*

52. *See id.*

53. *See id.*

54. *See* Thomas W. Hanchett, *The Other "Subsidized Housing": Federal Aid to Suburbanization, 1940s-1960s*, in *FROM TENEMENTS TO TAYLOR HOMES*, *supra* note 46, at 163, 171.

55. *See* Hirsch, *supra* note 46, at 208.

56. *See* Hanchett, *supra* note 54, at 165.

57. KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBINIZATION OF THE UNITED STATES* 233 (1985).

58. *See id.* at 235.

59. Melissa E. Murray, *Whatever Happened to G.I. Jane?: Citizenship, Gender, and Social Policy in the Postwar Era*, 9 *MICH. J. GENDER & L.* 91, 106 (2002).

60. Coates, *supra* note 45 (quoting JACKSON, *supra* note 57, at 213).

61. *See* JACKSON, *supra* note 57, at 213.

neighborhoods the safest investments.⁶² The federal government created and advanced the suburbanization of America on the basis of race through actual policy decisions.⁶³ It “all but eliminated black access” to suburban communities, where the vast majority of wealth would be concentrated for the present and the foreseeable future.⁶⁴

The original 1934 underwriting manual stated, “The more important among the adverse influential factors . . . are the ingress of undesirable racial or nationality groups . . . All mortgages on properties in neighborhoods definitely protected in any way against the occurrence of unfavorable influences obtain a higher ranking.”⁶⁵ Thus, the government’s discriminatory appraisal system essentially mandated that developers and neighborhood associations impose racially restrictive covenants or risk complete disinvestment.⁶⁶ Barred from white neighborhoods by restrictive covenants, and redlined out of FHA loans in racially integrated neighborhoods, black families were effectively blocked from homeownership opportunities altogether. Fewer than 2% of FHA loans went to black Americans between 1945 and 1959.⁶⁷

By creating a system where neighborhoods with black residents were valued lower than all-white neighborhoods, the HOLC manual created a self-fulfilling prophecy: Property values became artificially depressed in neighborhoods where black families moved. Indeed, “cut off from sources of new investment[,] [black] homes and communities deteriorated and lost value in comparison to those homes and communities that FHA appraisers deemed desirable.”⁶⁸ Moreover aggressive “block busting,” where real estate agents catalyzed white flight by canvassing “changing” neighborhoods with warnings about declining property values, caused a vacuum in the housing market that

62. See *id.* (recognizing that unfortunately, the FHA’s underwriting standards created a self-fulfilling prophesy whereby the lack of financing available in neighborhoods of color and white flight from neighborhoods that were moving toward racial heterogeneity led to vacancies and a decline in property values).

63. See MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH, WHITE WEALTH: NEW PERSPECTIVES ON RACIAL INEQUALITY* 16 (1995).

64. *Id.* at 17.

65. Daniel Aaronson, Daniel Hartley & Bhashkar Mazumder, *The Effects of the 1930s HOLC “Redlining” Maps* 9 n.1 (Fed. Reserve Bank of Chi., Working Paper No. 2017-12, 2018), <http://eh.net/eha/wp-content/uploads/2017/08/Aaronson.pdf> [<https://perma.cc/PQE2-6B33>].

66. See *Shelley v. Kraemer*, 334 U.S. 1, 14-20 (1948) (recognizing that even though *Shelley v. Kraemer* outlawed the use of racially restrictive covenants in 1948, the government was reluctant to enforce the holding).

67. Hanchett, *supra* note 54, at 165.

68. OLIVER & SHAPIRO, *supra* note 63, at 18.

in fact caused property values to decline as black families moved in.⁶⁹ Meanwhile demand for housing rose in segregated white communities, and property values rose accordingly.⁷⁰

Jonathan Kaplan and Andrew Valls, who advocate for FHA discrimination as a basis for black reparations, describe the ongoing impact of this racialized manipulation of home values:

Part of the legacy of residential segregation is therefore that investment in residential property has differentially benefitted White and Black Americans. As access to the equity in homes is one of the main sources of funds available for, say, job related and medical emergencies, the failure of homes in predominantly Black neighborhoods to increase in value as rapidly as those in White neighborhoods not only effects the immediate wealth of Black families, but the stability of those families when faced with crises, as well.⁷¹

Thus, not only were black families denied homeownership opportunities during this period, but those who managed to buy homes were denied an equal return on their investment. The material impact of this denial continues to impact black communities today, where home values are still artificially depressed half a century later.

Excluded from federally subsidized homeownership, black families had only one subsidy available to them in the post-World War II landscape: public housing. Because of racial discrimination by the FHA and VA, “[b]lack people . . . had to resort to means-and morals-tested public assistance programs to improve their living conditions . . . rather than private home purchases.”⁷²

The Housing Act of 1937 established the United States Housing Authority and authorized the new agency to make loans to local public housing agencies for slum clearance and subsidized housing development.⁷³ Federal regulations permitted local authorities to keep public housing segregated and required that areas redeveloped with federal funds adhere to existing demographic patterns.⁷⁴ The Housing Act of 1949 appropriated \$1.5 billion to develop 810,000 units of public housing over six years.⁷⁵ By way of comparison, the federal government spent approximately \$13 billion in federal mortgage

69. *See id.*

70. *See* Kaplan & Valls, *supra* note 48, at 265-66.

71. *Id.* at 266.

72. RHONDA WILLIAMS, THE POLITICS OF PUBLIC HOUSING: BLACK WOMEN'S STRUGGLES AGAINST URBAN INEQUALITY 31 (2004).

73. *See* Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888.

74. *See* WILLIAMS, *supra* note 72, at 35.

75. ROBERT M. MORONEY & JUDY KRYSIK, SOCIAL POLICY AND SOCIAL WORK: CRITICAL ESSAYS ON THE WELFARE STATE 98 (2d ed. 1998).

guarantees during the post-War period.⁷⁶ Thus, many black families were forced to forgo homeownership altogether and, along with it, the ability to build equity and wealth.

Other black families that chose to pursue homeownership despite the limitations imposed by the government's discriminatory lending policies were targeted by predatory real estate practices that sucked wealth out of communities. Beryl Satter, in researching her father's civil rights law practice, uncovered the rampant use of "contract" sales in Chicago's black and mixed-race neighborhoods in the 1950s and 1960s.⁷⁷ Black families who wished to purchase homes had limited options.⁷⁸ They were excluded from white neighborhoods and new federally subsidized suburban developments by racially restrictive covenants, and they were redlined out of FHA-insured mortgages in black and mixed-race neighborhoods by HOLC's racially discriminatory underwriting standards.⁷⁹

In Chicago, in particular, real estate agents would prey on these families by purchasing a property and then reselling it "on contract" at two or three times the cost to black families who had no other homeownership options.⁸⁰ "On contract" means that homeowners had all the responsibilities of homeowners and none of the benefits. The homeowner was responsible for all upkeep and maintenance but did not build equity until the contract was paid in full.⁸¹ The selling agent retained the deed and had the power to evict the homeowner for even one missed payment.⁸² If evicted, the family would lose its entire investment. Contract sales, which were not only legal but directly facilitated by the government's discriminatory housing policy, leached massive amounts of wealth from black families in Chicago.⁸³

Thus, for much of the twentieth century, the American government was engaged in a massive project of wealth redistribution by stripping wealth from black families.⁸⁴ In Chicago specifically, FHA was so racist during the twentieth century that, even when blacks sought to form their own mortgage company to provide loans for black

76. See Kristin M. Szylvian, *The Federal Housing Program: During World War II*, in FROM TENEMENTS TO THE TAYLOR HOMES, *supra* note 46, at 140.

77. See BERYL SATTER, FAMILY PROPERTIES 40-42 (2009).

78. See *id.*

79. See *id.*

80. See *id.* at 44.

81. See *id.* at 3-7.

82. See *id.*

83. See *id.* at 39-44.

84. See *id.* at 44.

families seeking to buy homes, FHA worked to prevent this from happening.⁸⁵ FHA was essentially a government entity fully committed to maintaining white supremacy in the United States with its policies, at least according to the facts in Chicago.

Fifty years after the passage of historic civil rights legislation that purported to address racial segregation (but not necessarily inequality), white American families have three times the wealth of black families.⁸⁶ In 2016, 71% of white households owned their own homes compared to 45% of black and latino families.⁸⁷ Yet, instead of directly addressing the issue of “wealth” and asset ownership disparities, such as homeownership historically, all kinds of misguided reasons are provided for economic inequality between the two races in the United States.⁸⁸

Policy geared toward equalizing black homeownership rates could reduce the wealth gap between black and white households.⁸⁹ These proposals specifically seek to address the actual wealth differences and the specific reasons for the disparity. Rarely are these ideas proposed. Considering that reparations for blacks in America would specifically target the wealth disparity, identify the specific reasons why these disparities exist, and document the facts through government and personal data, the idea behind this law-school-based clinic fits squarely with this goal.

II. THE MATTER OF RESTORATIVE JUSTICE

A. The Call for Reparations

In his 2015 *Atlantic Magazine* article “The Case for Reparations,” writer Ta-Nehisi Coates states the following:

85. *See id.*

86. *See* Alexis L. Flippin, *Challenging Persistent Myths About The Racial Wealth Gap*, NEXT CITY (Apr. 20, 2018), <https://nextcity.org/daily/entry/challenging-persistent-myths-about-the-racial-wealth-gap> [<https://perma.cc/R8S2-HB4Z>].

87. DEDRICK ASANTE-MUHAMMED ET. AL, INST. FOR POLICY STUDIES, THE EVER-GROWING GAP: WITHOUT CHANGE, AFRICAN-AMERICAN AND LATINO FAMILIES WON'T MATCH WHITE WEALTH FOR CENTURIES (Aug. 2016), https://www.ipsdc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-2.pdf [<https://perma.cc/953W-RPT8>].

88. *See generally* Amy Traub et. al, Demos, *The Asset Value of Whiteness: Understanding the Racial Wealth Gap*, DEMOS (Feb. 6, 2017), <http://www.demos.org/publication/asset-value-whiteness-understanding-racial-wealth-gap> [<https://perma.cc/U73A-Z7XW>].

89. *See id.* at 11-12.

And so we must imagine a new country. Reparations—by which I mean the full acceptance of our collective biography and its consequences—is the price we must pay to see ourselves squarely. The recovering alcoholic may well have to live with his illness for the rest of his life. But at least he is not living a drunken lie. Reparations beckons us to reject the intoxication of hubris and see America as it is—the work of fallible humans.⁹⁰

Coates's call is not the first in history. Yet, few in the modern era have been able to energize the debate over reparations to African Americans as Coates was able to do with his magazine article. His article is an accessible work of journalism that a wide array of affected individuals in the reparations debate can understand. The article is comprehensive in nature, socioeconomic in scope, and all-inclusive. Reparations are not a white burden or a black plea; they are an American predicament. As such Coates's article represents a shift in approach.

Coates is “talking about . . . more than a recompense for past injustices.”⁹¹ Reparations are not “a payoff, hush money, or a reluctant bribe.”⁹² They are a “national reckoning that would lead to spiritual renewal.”⁹³

Coates's article created a national buzz with respect to the topic of reparations, and this included deeply entrenched racial values and beliefs and resistance to any degree of restorative remedies.⁹⁴ For example, Kevin Williamson of the *National Review*, a conservative publication, asserted that there is no case for reparations and dismissed them as “racial apportionment.”⁹⁵ While Williamson admits that Coates's arguments are correct about the past and present, for the most part, he still refuses to embrace a progressive solution to the problem and is willing to allow the current unequal and unjust system to persist.⁹⁶

Law Professor Richard A. Epstein dismissed Coates's call for economic justice. But Epstein's response is a recitation of the wrongs committed and the economic injustice those wrongs imposed upon a large segment of the population; he barely challenges Coates's

90. Coates, *supra* note 45.

91. *Id.*

92. *Id.*

93. *Id.*

94. See Howard W. French, *The Enduring Whiteness of the American Media*, GUARDIAN (May 25, 2016), <https://www.theguardian.com/world/2016/may/25/enduring-whiteness-of-american-journalism> [<https://perma.cc/B3YN-827K>].

95. Kevin D. Williamson, *The Case Against Reparations*, NAT'L REV. (May 24, 2014), <http://www.nationalreview.com/article/378737/case-against-reparations-kevin-d-williamson> [<https://perma.cc/B7A2-3ZEX>].

96. See *id.*

positions on the issue.⁹⁷ Epstein then suggests conservative solutions to a problem that is far greater in scope and importance than his personal political ideology.⁹⁸ In the end, Epstein examines the issues from the vantage point of a legal scholar and does not consider the human damage of racism in America since the arrival of the Africans in chattel slavery.⁹⁹ His argument is procedural in nature, as he rejects reparations only because the exact narrative, at least much of the specific evidence relating to actual victims, is disorganized and suppressed. The damage caused by the legacy of racist public policy in America extends beyond individual Africans and African Americans. Such policies, and the nation's refusal to adequately study and document their aftershocks, impact the entire nation by upholding an immoral and unjust system of privilege and exploitation.

As for support for reparations historically, there are extensive writings on the topic. In 2007, Jonathan Kaplan and Andrew Valls published an article in *Public Affairs Quarterly* that called for "reparations" as a result of "housing discrimination."¹⁰⁰ Kaplan and Valls focused on economic disenfranchisement as a result of discrimination against African Americans in the housing market, the greatest source of wealth accumulation in the United States for ordinary citizens.¹⁰¹ White Americans benefitted from government policy decisions that assisted the housing market and lending opportunities; this benefit was acquired, according to Kaplan and Valls, at the expense of black Americans.¹⁰²

Prior to Kaplan and Valls, the poet and activist Amiri Baraka published *The Essence of Reparations*,¹⁰³ which set forth a demand for reparations to African Americans for the injustices imposed upon them since their arrival in the United States, both prior to the founding of the nation and afterwards as a nation. Baraka described "reparations" and the "call for reparations" as "the key link in our international struggle against war, imperialism, national oppression, racism, right wing attack, on our democratic rights."¹⁰⁴ Baraka's

97. See Richard A. Epstein, *The Case Against Reparations for Slavery*, LIBERTARIAN (May 27, 2014), <http://www.hoover.org/research/case-against-reparations-slavery> [https://perma.cc/NXK4-8UNT].

98. See *id.*

99. See *id.*

100. Kaplan & Valls, *supra* note 48, at 255.

101. See *id.* at 259-66.

102. See *id.*

103. See generally AMIRI BARAKA, *THE ESSENCE OF REPARATIONS* (2003).

104. *Id.* at 11.

offering is strictly political in nature and is not driven by actual empirical data.

Randall Robinson, the former Executive Director of the international human rights organization TransAfrica, has written extensively on the question of reparations for decades.¹⁰⁵ In Robinson's view, reparations or some form of restitution must occur; otherwise, the country will always have a racial problem.¹⁰⁶

The Case For Black Reparations by academic Boris I. Bittker was published in 1973.¹⁰⁷ Bittker's lesser known text is a comprehensive analysis of the issue, refusing to limit the demand to just economic compensation for slavery.¹⁰⁸ This approach, according to Bittker, reduces the issue to an "ancient injustice."¹⁰⁹ This has been attacked and dismissed repeatedly over the years. It is unclear if Bittker's attachment to academia afforded him more credibility, but his book's position in reparations discourse is well established. Nevertheless, despite these writings and arguments on reparations presented from various vantage points (political activism, sociology, etc.), reparations have never gained any widespread support in the United States.

B. Restorative Justice Defined

"Reparations" are commonly characterized as one version of "restorative justice." "Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs[,] and obligations in order to heal and put things as right as possible."¹¹⁰ There are three principles that guide the restorative justice approach. These principles are described as follows:

1. Restorative justice focuses on the victims' harms and needs, not rules and laws.

105. See generally RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000).

106. See *id.* at 204.

107. See generally BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973).

108. See generally *id.*

109. *Id.* at 9.

110. HOWARD ZEHR & ALI GOHAR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 40 (2003).

2. Restorative justice emphasizes the responsibility of the offender to make things right and sees punishment as secondary to restoration of those affected.
3. Restorative justice seeks to engage all “stakeholders” in a process of creative problem-solving that addresses the needs of victims and the responsibility of offenders and seeks to reconcile everyone’s best interests.¹¹¹

The late historian Lerone Bennett contextualizes the black quest for justice by focusing upon what blacks in America cannot obtain and the actual goals. According to Bennett, “The story of black people in America is, among other things, the story of a quest for the hard rock of economic security.”¹¹² This includes the basics: “bread, shelter, clothing, land, raw materials, resources, skills, and space for the heart.”¹¹³ In regards to these basic staples of life, the refusal or failure to take the issue of restorative justice seriously continues to impede racial progress and the quest for equality.

There are many examples of restorative justice internationally and historically.

With regard to the actual history of the African–American pursuit of restorative justice, it begins at the same time as the founding of the republic. In 1783, a formerly enslaved free woman named Belinda filed a petition against her former owner in the Massachusetts state legislature for compensation for a lifetime of slavery.¹¹⁴ At the time of the petition, Belinda was eighty years of age.¹¹⁵ Belinda, among other things, filed the petition against her former owner specifically because he had monetarily benefited from her free labor.¹¹⁶ Belinda’s action, while well documented, was one of many such petitions for reparations filed in the state of Massachusetts during the transition period of the colonies into one nation.¹¹⁷ Belinda’s petition was granted, but her former owner, via his estate, paid only one

111. Michael F. Blevins, *Restorative Justice, Slavery, and the American Soul: A Policy-Oriented Intercultural Human Rights Approach to the Question of Reparations*, 31 T. MARSHALL L. REV. 253, 291-92 (2006).

112. LERONE BENNETT, JR., *THE SHAPING OF BLACK AMERICA* 286 (1975).

113. *Id.*

114. See generally Roy E. Finkenbine, *Belinda’s Petition: Reparations for Slavery in Revolutionary Massachusetts*, 64 WM. & MARY Q. 95 (2007).

115. See *id.* at 95-96.

116. See *id.*

117. See Thomas J. Davis, *Emancipation Rhetoric, Natural Rights, and Revolutionary New England: A Note on Four Black Petitions in Massachusetts, 1773-1777*, 62 NEW ENG. Q., 248, 248-49 (1989).

payment, as he had fled the country to England.¹¹⁸ This fact alone supports the fact that African Americans have always sought economic redress for the manner in which they were treated in their own country.

In addition, after the end of the Civil War, General William Tecumseh sought to provide a version of immediate reparations to “freedpeople” in South Carolina and Florida in the coastal areas.¹¹⁹ Tecumseh issued Special Field Order No. 15 as the union troops began their conquering of the Confederate territories on January 16, 1865.¹²⁰ The order set aside 40 acres of land for freed people in these regions.¹²¹ Eventually, 400,000 acres were reserved.¹²² However, months later, President Andrew Johnson reversed the order awarding confiscated property of Confederates to African Americans.¹²³

C. The Conyers Bill

For over twenty years, Congressmen John Conyers of Michigan has introduced a bill that would create “a commission to examine the institution of slavery, study the impact of subsequent and continuing discrimination against African-Americans, and make recommendations to Congress on whether some remedy should be made to the descendants of slaves.”¹²⁴ Conyers first introduced the bill in 1989 and no hearings have ever been held with respect to the bill.¹²⁵ Conyers modeled his legislation after the bill that formed the commission that was created to study reparations for Japanese-Americans.¹²⁶ The Conyers Bill would establish the path to a real study and consideration of the issue.

Real reparations, and monetary awards, were eventually provided to Japanese-Americans interned during World War II by the United States upon the formation of The Commission on Wartime

118. See Finkenbine, *supra* note 114, at 102.

119. GARRINE P. LANEY, CONG. RESEARCH SERV., RS20740, PROPOSALS FOR REPARATIONS FOR AFRICAN-AMERICANS: AN OVERVIEW 2 (2007).

120. See *id.*

121. *Id.*

122. *Id.*

123. See *id.*

124. 135 CONG. REC. E4007 (daily ed. Nov. 21, 1989) (statement of Rep. John Conyers, Jr.).

125. *Id.* Authors conducted a search of the Congressional Index and no such hearings were located or identified.

126. See *id.* at E4008.

Relocation and Internment of Citizens (CWRIC).¹²⁷ The CWRIC is what eventually led to the recommendation of reparations (economic payments) to the victims of the government's actions.¹²⁸ The CWRIC was formed well before the passage of the actual law that authorized the reparations payments.¹²⁹

D. The Commission on Wartime Relocation and Internment of Citizens

When President Ronald Reagan signed into law the Civil Liberties Act of 1988,¹³⁰ it was the most recognized act of reparations in the modern era in the United States. The law approved payments of \$20,000 to Japanese–American citizens and descendants of Japanese–American citizens who were detained in internment camps by the United States during World War II.¹³¹ The law also required the United States government to issue official apologies to those who had been detained under the program.¹³² The law was the result of decades of advocacy.

The CWRIC, a congressionally created body, concluded in December 1982 that the internment of Japanese–American citizens was the result of “racial prejudice, wartime hysteria, and a failure of [the nation’s] leadership.”¹³³ The CWRIC recommended that the nation offer the victims (and descendants of those who were detained) an apology as well as the monetary payments of \$20,000 each.¹³⁴ In testimony before Congress in 1983, prominent lawyer Joan Bernstein summarized why reparations were under consideration at the time:

In simple terms, 120,000 people lost the right to live where they chose, and the large majority were held in detention for more than 2 years without charges being brought against them. Of course, that is not the way in which the American Government has historically behaved. The Government is not

127. See Stanley I. Kutler, *At the Bar of History: Japanese Americans Versus the United States*, in *THE MASS INTERNMENT OF JAPANESE-AMERICANS AND THE QUEST FOR LEGAL REDRESS* 204 (Charles McClain ed., 1994).

128. See *id.*

129. See *id.*

130. Civil Liberties Act of 1988, 50 U.S.C. § 4202.

131. See *id.*

132. See *id.*

133. *Id.*

134. See 28 C.F.R. § 74.10 (1990).

free to lock up citizens or expel them from extensive areas of the country without making or presenting some charge against them.¹³⁵

In addition, the CWRIC “conducted an analysis of the economic losses” and was able to determine that the victims “in 1945 dollars . . . lost between \$108 million and \$164 million in income, and between \$41 million and \$206 million in property for which no compensation was made.”¹³⁶ The Commission estimated the total losses of income and property for the actions by the state at the time to be “between \$810 million and \$2 billion in 1983 dollars.”¹³⁷

E. The Indian Claims Commission Act

In 1946, Congress passed into law the Indian Claims Commission Act, another reparations law that was designed to “consolidate and adjudicate Natives’ claims against the federal government.”¹³⁸ The law eventually awarded \$37 million by 1961 and remained in operation through 1978.¹³⁹

Regarding the Indian Claims Commission Act and the Civil Liberties Act, it is important to note that reparations would likely not have been awarded without the passage of a statute. It is the most crucial step in the process, as it affords the elected officials, or those seeking to address and administer these historical challenges, the authority to act. At the present time in the United States there is no law providing authority for awarding reparations to African Americans.

F. Black Farmers Litigation: *Pigford v. Glickman*

Pigford v. Glickman was a class action lawsuit against the United States Department of Agriculture (USDA) that alleged a racially discriminatory allocation of farm loans between 1981 and 1996.¹⁴⁰ It

135. *Japanese American Evacuation Redress: Hearing on S. 1520 Before the Subcomm. on Admin. Practice and Procedure of the Comm. on the Judiciary*, 98th Cong. 4, 5 (1983) (statement of Joan Bernstein, Chairman, Comm. on Wartime Relocation and Internment of Civilians).

136. *Id.* at 5-6.

137. *Id.* at 6.

138. ALFRED L. BROPHY, REPARATIONS: PRO & CON 41 (2006).

139. *468 Claims Remain in Indian Claims*, N.Y. TIMES, Nov. 7, 1961 (online archives).

140. *Pigford* was part of a series of cases brought by minority and women farmers against the USDA for credit discrimination, including *Keepseagle v. Veneman*, No. Civ.A.9903119EGS1712, 2001 WL 34676944, at *15 (D.D.C. Dec. 12, 2001) (extending class certification to Native Americans); *In re Black Farmers*

provides an example of a restorative justice initiative in the United States that targets African Americans. It does not constitute reparations per se but is an instance where an actual wrong was recognized and addressed monetarily. And while *Pigford* is a legal action that resulted in some degree of economic justice, it is still evidence that the State is capable of addressing a specific injustice in society to a wide degree of individuals.

The plaintiff class in *Pigford* brought claims under the Administrative Procedure Act (APA) and the Equal Credit Opportunity Act (ECOA),¹⁴¹ alleging:

(1) that the United States Department of Agriculture (“USDA”) willfully discriminated against them and other similarly situated African American farmers on the basis of their race when it denied their applications for credit and/or benefit programs or delayed processing their applications, and (2) that when plaintiffs filed complaints of discrimination with the USDA, the USDA failed properly to investigate and resolve those complaints.¹⁴²

As a result of this discrimination, the number of African-American farmers declined from 925,000 in 1920 to 18,000 in 1992.¹⁴³ Because the USDA’s complaint system had been functionally nonexistent for ten years, Congress extended the two-year ECOA statute of limitations to enable claimants to file.¹⁴⁴

The litigation resulted in a consent decree worth an estimated \$2.25 billion, the largest civil rights settlement in the history of the United States.¹⁴⁵ The settlement established a two-track claims process that provided financial compensation to class members.¹⁴⁶ In Track A,

Discrimination Litigation, 856 F. Supp. 2d 1, 42 (D.D.C. 2011) (extending the class of African-Americans who could seek redress after *Pigford*); *Garcia v. Johanns*, 444 F.3d 625, 637 (D.C. Cir. 2006) (denying class certification to a group of Hispanic farmers); and *Love v. Johanns*, 439 F.3d 723, 733 (D.C. Cir. 2006) (denying class certification to a group of women). See generally Stephen Carpenter, *The USDA Discrimination Cases: Pigford, In re Black Farmers, Keepseagle, Garcia, and Love*, 17 DRAKE J. AGRIC. L. 1 (2012).

141. The ECOA does not present a viable vehicle for claims based on historic government redlining, as it was not passed until 1974. See generally Equal Credit Opportunity Act, 15 U.S.C. 1691 (2012).

142. See *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999), *aff’d*, 206 F.3d 1212 (D.C. Cir. 2000), *enforcement denied sub nom.* *Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008).

143. *Id.* at 87.

144. See *id.* at 95. Congress similarly extended the statute of limitations in the Keepseagle litigation. See generally *Keepseagle v. Veneman*, No. Civ.A.9903119EGS1712, 2001 WL 34676944 (D.D.C. Dec. 12, 2001).

145. See *id.*

146. See *id.*

claimants who met basic criteria were presumed injured and could obtain a \$50,000 payout, debt forgiveness, tax benefits, immediate termination of any foreclosure proceedings, and injunctive relief, including one-time priority loan consideration and technical assistance.¹⁴⁷ Track B participants could enter into a more intensive arbitration process and present additional evidence to claim a higher monetary award.¹⁴⁸ There was no cap for Track B claimants.¹⁴⁹ In its opinion approving the settlement, the Court spoke to the relationship between historic discrimination and contemporary conditions for African Americans:

Forty acres and a mule. The government broke that promise to African American farmers. Over one hundred years later, the USDA broke its promise to Mr. James Beverly. It promised him a loan to build farrowing houses so that he could breed hogs. Because he was African American, he never received that loan. He lost his farm because of the loan that never was. Nothing can completely undo the discrimination of the past or restore lost land or lost opportunities to Mr. Beverly or to all of the other African American farmers whose representatives came before this Court. Historical discrimination cannot be undone.¹⁵⁰

Even still, the *Pigford* experience has proven to be less than desirable in overall outcome and only reveals the sordid history of the African–American experience. As a result of problems with execution of the original consent decree in the *Pigford* litigation, Congress passed a second consent attempt at execution of claims, as a result of continued adjudication of legal claims by black farmers seeking

147. A claimant asserting discrimination in a credit transaction can satisfy this burden by presenting evidence of four specific things: “[1] he owned or leased, or attempted to own or lease, farm land; [2] he applied for a specific credit transaction at a USDA county office [between January 1, 1981 and December 31, 1996]; [3] the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and [4] USDA’s treatment of the loan application led to economic damage to the class member.” See *Consent Decree at* ¶ 9(a)(i), *Pigford*, 185 F.R.D. 82 (D.D.C. 1999). A claimant asserting discrimination only in a noncredit benefit program can satisfy his burden by presenting evidence that “[1] he applied for a specific non-credit benefit program at a USDA county office [between January 1, 1981 and December 31, 1996]; and [2] his application was denied or approved for a lesser amount than requested, and that such treatment was different than the treatment received by specifically identified, similarly situated white farmers.” See *Consent Decree at* ¶ 9(b)(i), *Pigford*, 185 F.R.D. 82 (D.D.C. 1999).

148. See *Pigford*, 185 F.R.D. at 95.

149. See *id.*

150. *Id.* at 112.

redress.¹⁵¹ This second set of claims is now commonly referred to as “*Pigford II*.” Claimants from the original *Pigford* claim were highly dissatisfied with the execution of the initial consent decree.¹⁵²

Yet, the *Pigford* litigation provides a useful roadmap for a possible FHA reparations lawsuit, as both concern government denial of equal credit and a wealth-building opportunity to black Americans. Where injury resulted from the denial of an opportunity or benefit, rather than some explicit action, proving causation and quantifying damages becomes more difficult. The *Pigford* consent decree deals with this issue by establishing a streamlined claims process based on a theory of group harm. The power of the class action tool to address group harm lies in the presumption of injury that results from group membership.¹⁵³ “Under this conception of reparations, proof of an express link between a plaintiff’s injury and the defendant’s acts or omissions would be unnecessary.”¹⁵⁴ Of course class certification is significantly more difficult in light of *Walmart v. Duke*’s heightened requirements for commonality.¹⁵⁵

With respect to the housing market and historic discrimination, the opportunity can be explored using the *Pigford* model. Information related to housing discrimination in the past is likely still available, and additional research will likely reveal even more exacting evidence of the destruction.

FHA reparations litigation modeled on *Pigford* would involve a class of African–American plaintiffs who either (1) applied for FHA-insured mortgages and were denied between 1934 and 1968 or (2) who applied for a loan to purchase a home in a redlined neighborhood and were either denied or awarded a presumptively predatory loan, or perhaps any other viable category identified in research efforts.

151. TADLOCK COWAN & JODY FEDER, CONG. RESEARCH SERV., RS20430, THE *PIGFORD* CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS (2013) (“On February 18, 2010, Attorney General Holder and Secretary of Agriculture Vilsack announced a \$1.25 billion settlement of these *Pigford II* claims. However, because only \$100 million was made available in the 2008 farm bill, the *Pigford II* settlement was contingent upon congressional approval of an additional \$1.15 billion in funding. After a series of failed attempts to appropriate funds for the settlement agreement, the Senate passed the Claims Resolution Act of 2010 (H.R. 4783) to provide the \$1.15 billion appropriation by unanimous consent on November 19, 2010. The Senate bill was then passed by the House on November 30 and signed by the President on December 8 (P.L. 111-291).”).

152. *See id.*

153. *See* Kindaka Jamal Sanders, *Re-Assembling Osiris: Rule 23, the Black Farmers Case, and Reparations*, 118 PENN ST. L. REV. 339, 344 (2013).

154. *Id.*

155. *See* 564 U.S. 338, 352 (2011).

Advocates might attempt to include the children of applicants in the class, as some class members may no longer be living and as previously described there is a strong argument for injury to this group. The litigation would require congressional action to extend the statute of limitations, as was done in *Pigford*.¹⁵⁶

A strong outcome would be a settlement that establishes a claims process similar to that established in *Pigford*, where claimants can achieve a cash payout and other benefits such as principal reduction, loan modification, payment assistance, and an immediate hold on any foreclosure proceedings.¹⁵⁷ Such litigation could result in increased homeownership opportunity and return on investment in homeownership for participating class members, thus reducing the racial wealth gap. However, the overall sentiment of separating the housing discrimination from all of the other history and periods of racial oppression and economic devastation is a mistake. The entire history should be studied, and the people who were harmed by the actions of the state, oftentimes in conjunction with private actors, should be identified along with the economic costs and losses they suffered.

III. A LAW CLINIC

In the same manner that Jean Camper Cahn and Edgar Cahn presented a model for addressing the systemic and pervasive problem of poverty in the United States with their law review article *The War on Poverty: The Civilian's Perspective*,¹⁵⁸ this Article provides a similar model for action. The template offered below is for bold and comprehensive action for restorative justice for victims of historical racial policies and acts well known and documented.

Specifically, any law school, or any legal entity for that matter, seeking reparations for African Americans has a monumental task on its hands, and that must be accepted if this project is implemented. The challenges are vast. Yet, this Article imagines a model for a law clinic

156. See *Pigford v. Glickman*, 185 F.R.D. 82, 88-89 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), *enforcement denied sub nom.* *Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008). In *Pigford*, this was based on the fact that the United States Department of Agriculture's complaint process was not operational; a similar argument is not available here.

157. Many families victimized in the foreclosure crisis that began in 2008 were offered some of these in an effort to prevent the foreclosures.

158. See Jean C. Cahn and Edgar S. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1334 (1964).

organized for the primary goal of securing reparations for African Americans.

In such a clinic, students would spend one to four semesters identifying families impacted by historic discriminatory housing practices, gathering testimony and evidence to document the impact on those who experienced the discrimination directly, and their descendants, and crafting proposals for restorative remedies with the families. In addition, students would work with policymakers to propose broader public policy and legislative initiatives to address the massive loss of wealth in African–American communities because of the generational repercussions of state-sanctioned housing discrimination. Clinical students will gain valuable legal skills, including legal research, investigation, and interviewing skills, as well as a deeper understanding of civil rights laws and the legislative process.

A. The Proposal

What follows is a proposal for how a law school clinic dedicated to proposing and implementing restorative justice remedies for historic housing discrimination might function.

1. Identification and Documentation of Impacted Victims and Incidents (Documentation Component)

Clinical students will begin by identifying impacted families and victims. A number of strategies may be employed. Students might cross reference historic Home Owner's Loan Corporation (HOLC) maps, available online and in academic archives, with census data to determine who lived in redlined neighborhoods. These families presumably could not access conventional mortgage loans because of the federal government's racially discriminatory underwriting standards. Consequently, these families may have been barred altogether from homeownership opportunities, or they may have been subjected to exploitative financing options that had deep economic impacts on their ability to build wealth. Using local land records and research tools, such as Ancestry.com, students can attempt to locate impacted families and related mortgage and conveyance documents. Over the course of their clinical experience, students would piece together the story of an individual family's experience of housing discrimination and its economic consequences for future generations.

Another approach would be to place an advertisement in a local newspaper asking for people to contact the law clinic if they were barred from buying a home or obtaining a mortgage loan because of their race from 1934 to 1968 or if they suspect as much. The clinic might also conduct community outreach to assisted living facilities, senior living communities, and religious institutions to solicit participation from impacted families. There is evidence that testimonials are available in this regard.

For instance, in 2017, a fifteen-year-old high school student from East Lansing, Michigan, wrote an essay about historical housing discrimination in East Lansing, Michigan, that uncovered that city's efforts to exclude blacks from purchasing houses there.¹⁵⁹ According to the essay, which is widely disseminated now, "Blacks were denied the ability to purchase property in East Lansing until April 8, 1968 . . ." ¹⁶⁰ The student's grandparents wanted to purchase a home in East Lansing well before that date; however, they were denied such an opportunity because of the existing laws at the time.¹⁶¹ The student's grandparents are still alive today and reside in East Lansing. This demonstrates again that there are living witnesses to the injustices of this era who can be identified and provide the specific details of these discriminatory practices.

Next, students would work with clinical staff to document the damages resulting from discriminatory housing practices. The clinic should have documentary capabilities and expertise. In seeking to enact a law, evidence needs to be marshaled in order to justify restorative justice. We envision that the documentary segment would include writers, researchers, and filmmakers, or at least someone with the skills to record video evidence that can be preserved. The clinic would document historical events through the testimony of directly impacted families in much the same manner that historical accounts of formerly enslaved people helped to preserve the evidence of slavery in the United States.

Our particular focus would be on how the FHA system caused damage to those African Americans denied an opportunity to participate in the nation's mortgage market. The writers and researchers would assist the filmmaker in accomplishing this goal.

159. See Alex Hosey, *Why I Sit*, LANSING ST. J. (Feb. 12, 2018), <https://www.lansingstatejournal.com/story/news/local/2018/02/12/teen-basketball-players-essay-leads-east-lansing-apology-racism/328701002/> [<https://perma.cc/UM6Y-8QRC>] (last visited Feb. 18, 2019).

160. *Id.*

161. See *id.*

Considering that some of the witnesses to these events are aging, it is important to consider acting as soon as possible in this regard. Perhaps, some effort of this nature can actually begin even before the legal component of the clinic is in place.

The story of Dempsey Travis also demonstrates that details of what occurred are likely readily available and living witnesses can be contacted. Travis was a leading African–American businessman in Chicago for much of the second half of the twentieth century. Travis was heavily involved in the city’s real estate market during a period of intense racial discrimination and was able to assist blacks with obtaining mortgages and purchasing homes at a time when blacks were being systematically denied access to credit for the housing market.¹⁶² He was a witness to redlining by the banks because he was directly involved in seeking to change the manner in which the industry treated African Americans.¹⁶³ While Travis died in 2009, his life was entwined in the struggle for a mortgage system not implemented using racist beliefs and goals.

In addition to gathering testimony from impacted victims, their families, and their contemporaries, students working in the clinic will investigate local mortgage and conveyance records; review property tax assessments, census records, FOIA FHA documents, and transcripts; and otherwise assemble evidence to build support for restorative justice and restitution. One valuable resource will be the transcripts and documentation of the 1962 United States Civil Rights Commission hearings on housing discrimination.¹⁶⁴ Through a combination of testimony and written documentation, students will piece together the story of the economic impact of racially discriminatory housing policies on African–American families and communities. This component of the clinic likely would make use of historians, data gatherers, journalists, filmmakers, and other individuals with skills and talents in the areas of historical documentation.

162. See DEMPSEY TRAVIS, AN AUTOBIOGRAPHY OF BLACK CHICAGO 144-46 (2013).

163. See JOHN N. INGRAM AND LYNN FELDMAN, AFRICAN-AMERICAN BUSINESS LEADERS: A BIOGRAPHICAL DICTIONARY 628 (2004).

164. See Brian Gilmore, *Chances Are: Lessons from the 1962 United States Civil Rights Commission 1962 Hearings on Housing Discrimination in Washington D.C. for the Current Foreclosure Crisis*, 3 COLUM. J. RACE, REL., GENDER, & CLASS 1, 5 (2013).

2. Law and Policy Proposals (Legal Component)

Students would also work with clinical staff to network with policymakers and even draft proposals for legislation to address the economic impact of historic housing discrimination. The leader of the clinic should be a legal advocate with knowledge of consumer housing topics, the legislative process, and the ability to litigate as well. Ultimately, the clinic is concerned with a policy shift that likely must occur if reparations for the injustices that occurred in the housing market are to be studied and then awarded.

In the case of Japanese reparations, a law was passed that enabled the process. A commission was created that studied the topic. This clinic needs an individual who understands the policymaking process historically as well as procedurally within the political systems and institutions of the United States. Ideally, this part of the law school clinic is where a lawyer (or lawyers) and school legal scholars would make their contribution to the effort.

3. Economic Reparations and Other Restorative Remedies (Economic Component)

Finally, clinical students would work with impacted families to propose restorative remedies that should include explorations by the clinic regarding monetary restitution. At the *Michigan State Law Review*'s recent symposium entitled "Is it Time for Truth and Reconciliation in Post-Ferguson America," Professor Girardeau Spann of Georgetown University Law Center specifically raised the point of whether it was time to advance the discussion regarding reparations to actual monetary restitution for the wrongs committed over the centuries.¹⁶⁵ For this reason, the clinic must also have the skills of an economist available to build a case for the financial component critical to reparations.

Reparations are important because of the economic impact of racially discriminatory laws and policies. Discriminatory federal housing policies, adopted by private lending institutions, siphoned wealth and wealth-building potential out of African-American communities and into the bank accounts of white families.

Reparations for chattel slavery should not be ignored either in any reparations effort, though the nation's housing discrimination

165. Question and comments by Professor Spann occurred during one of the panels in which the author was present.

policies over the years and the effects are more recent in nature. As noted, African Americans, considered property for decades in the United States (before the nation's founding and after 1776), created wealth, assets, and the future possibility of wealth for generations of Americans without compensation:

Goods and services that were produced by slaves benefited most whites indirectly and passively. It happened through the process of human capital formation. Slaves made it possible for many whites to go into more rewarding occupations, to gain increased skills, and to generate greater lifetime earnings for themselves and their descendants. In these indirect and passive ways, slavery produced enormous benefits beyond those usually considered.¹⁶⁶

Free labor built the initial infrastructure that allowed the United States and individual citizens to achieve their own successes. Those who provided that benefit were never compensated in any manner for their role and forced servitude. This component and contribution to the wealth disparity for African Americans is often overlooked but is becoming more documented despite the loss of time and records. An economist could focus on the economic disparities and provide accurate estimates of economic reparations from a variety of vantage points.

Historian Daina Ramey Berry recently provided important historical information on the actual monetary value of Africans enslaved in the United States.¹⁶⁷ Enslaved Africans, according to Berry's research, actually do and did have value that likely can be quantified on some level and considered in any argument or effort regarding reparations for chattel slavery.

B. The Challenges

1. *Legal Roadblocks*

Preservation of the fast-disappearing historic record would be a major accomplishment that would contribute to present and future reparations efforts. Realistically, however, the prospects of actually obtaining some movement on the issue of reparations are elusive at the present time. We have already identified the various voices that reacted to Ta-Nehisi Coates's essay. The tenor of the opposition is fierce and widespread despite the fact that few contest the injustice of

166. Richard F. America, *Racial Inequality, Economic Dysfunction, and Reparations*, 1995 CHALLENGE 40, 41 (1995).

167. See generally BERRY, *supra* note 32

what happened to African Americans during chattel slavery, in the nation's caste system, and through many other institutions.

Yet, it must be stressed that, while the acts perpetuated against African-Americans are immoral acts, deeply unjust, and destructive, the acts were legal. Chattel slavery was legal in the United States until the various states declared it illegal. Ultimately, President Abraham Lincoln's Emancipation Proclamation and the Thirteenth Amendment resolved the legality of human bondage in the United States.

In addition, the Jim Crow laws of the American South were legal until the laws were essentially repealed, or at least muted by the federal government. Housing discrimination on the basis of race was not necessarily illegal, though there were federal and state laws in place that should have effectively addressed the issue to a certain degree. The technical legality of the harms the clinic would address, as well the expiration of statutes of limitations for illegal acts, complicates efforts for legal redress. The clinic will address these legal roadblocks by proposing restorative remedies that are policy and community based rather than litigation based.

2. Witness Availability

Moreover, the availability of victims to testify is a challenge because of the aging population of impacted parties. The fact that actual victims are unavailable to testify in person regarding the damages of chattel slavery is a difficult obstacle for the slavery reparations movement. The comparative success of the movement for reparations for Japanese Americans can be partially attributed to the fact that several victims appeared—and testified—at the Senate hearings.

By contrast, despite the fact that victims of historic housing discrimination are aging, many are still living. Their children are even more likely to be available to testify. There is also extensive evidence already available through hearing transcripts of the United States Civil Rights Commission.¹⁶⁸ These transcripts likely can identify other sources of prior wrongdoings that can be investigated further. For these reasons, efforts by clinical students to gather testimony from families impacted by housing discrimination from the 1930s through the 1960s have a higher likelihood of success than efforts to document the economic impacts of slavery. However, it is critical that such

168. See Gilmore, *supra* note 164, at 1, 5.

efforts commence soon while members of the directly impacted generation, who are likely in their eighties and nineties, are still living.

3. *Public Resistance*

The clinic will likely face resistance because of general pushback against proposals for economic reparations for past harms. Perhaps the strongest evidence of this reluctance to study and implement reparations is the fact that John Conyers introduced a bill that only sought to study reparations for slavery and that has never advanced to any level of consideration, even at the committee level. While evidence of specific injury to specific individuals has never been fully developed, the fact that the issue is casually dismissed by the power brokers of the nation and the public is proof that this project likely remains difficult. The clinic will seek to address this resistance by focusing on the clearly documented economic impacts of historic housing discrimination in African–American communities and putting a face on racial inequity through the testimony of impacted families.

4. *Feasibility of Law School Participation*

As this proposal relates to a law school clinic, the feasibility of such a project at a law college, especially a law college connected to a research university, must be considered. Schools that are financially stable are the likely candidates for this kind of project, as are law colleges where outside funds could be provided to establish the project. Foundations and grantmakers historically have funded special projects originated by law schools that addressed difficult legal and societal issues. The Open Society Institute has established twenty clinics in twelve countries throughout the world to address a variety of societal issues.¹⁶⁹

A private law college might also be an ideal entity for pursuing this kind of clinic. A law college with connections to the state, even if it is a research institution, might create conflict as well as controversy in pursuing the goals of this clinic, especially if the law school receives any taxpayer funding.

169. OPEN SOC'Y JUSTICE INITIATIVE, LEGAL CLINICS 2, https://www.opensocietyfoundations.org/sites/default/files/legalclinics_20090101.pdf [https://perma.cc/GT66-YVP7].

C. One Model: The Civil Rights and Restorative Justice Project at Northeastern University School of Law

There are available models for a project of this nature. For example, the Civil Rights and Restorative Justice Project (CRRJ) at Northeastern University School of Law presents one model for a law-school-based clinic charged with investigating historic racial discrimination and proposing restorative justice-based remedies.¹⁷⁰ Founded and directed by Professor Margaret Burnham, the Project works with clinical students each summer on civil-rights-era, cold-case homicides. Professor Burnham and her staff scour historic newspapers for articles that mention violence against black Americans, primarily from 1930 to 1960. Each student receives as little as one line about the homicide. Then students use research tools, such as Ancestry.com and academic search engines, to piece together the victim's story. Students frequently access information from the United States Department of Justice and the Federal Bureau of Investigation (FBI) through the FOIA process. Finally, students travel to the cities and towns across the South where the homicides occurred to track down "sworn statements, court transcripts and coroners' reports . . . stored in dusty courthouses, threatened by fires, floods[,] and rodents."¹⁷¹ Where possible, students interview families and witnesses.

Where CRRJ students are able to make contact with family members and acquaintances of the victim, they work closely with families to develop restorative justice-based remedies. In Atlanta, Georgia, CRRJ investigated the homicide of a young black World War II veteran named Madison Harris on a city bus in 1946.¹⁷² CRRJ is now working with the City of Atlanta to commemorate the homicide and

170. See *The Civil Rights and Restorative Justice Project*, NE. U. L. SCH., <http://www.northeastern.edu/civilrights/> [<https://perma.cc/ZPA8-WAY3>] (last visited Feb. 18, 2019).

171. Margaret A. Burnham & Margaret M. Russell, *The Cold Cases Left Behind by the Civil Rights Era*, N.Y. TIMES (Aug. 28, 2015), http://www.nytimes.com/2015/08/28/opinion/the-cold-cases-of-the-jim-crow-era.html?_r=1 [<https://perma.cc/X5K4-H3HQ>].

172. See Brian MacQuarrie, *Northeastern Students Uncover Forgotten Killings from Jim Crow Era*, BOS. GLOBE (Dec. 21, 2014), <https://www.bostonglobe.com/news/nation/2014/12/20/northeastern-university-students-uncover-forgotten-killings-from-jim-crow-era/UpDDLzmhmfad2pcrQRqLJN/story.html> [<https://perma.cc/HL8Y-9LWN>].

the legacy of segregation on public transit in coordination with a \$99 million project to resurrect Atlanta's historic streetcar loop.¹⁷³

In Mobile, Alabama, CRRJ investigated the homicides of two other young military service people, Rayfield Davis and Prentiss McCann, in 1948 and 1945, respectively.¹⁷⁴ CRRJ has worked with the Davis family to attempt to rename a city street after their loved one.¹⁷⁵ In addition, CRRJ is collaborating with the History Museum of Mobile to commemorate the lives of black World War II service members who were victims of racial violence on the home front.¹⁷⁶ CRRJ was able to provide Prentiss McCann's children with information about their father's death in the forms of an extensive file from the National Association for the Advancement of Colored People, FBI investigation documents, and a United States Department of Justice report.¹⁷⁷ They never knew what happened to their father, and their efforts to obtain information prior to CRRJ involvement were unsuccessful.¹⁷⁸

CRRJ also collaborates with scholars, activists, and policymakers around the country to research and propose policy measures to redress the harms of the Civil Rights Era. These include criminal prosecutions in the limited cases where they are feasible,

173. *See id.*

174. Rayfield Davis, *Mobile, Alabama 1948*, C.R. & RESTORATIVE JUST. PROJECT, https://repository.library.northeastern.edu/downloads/neu:m042hf911?datastream_id=content [<https://perma.cc/A3Y9-ZMQR>] (last visited Feb. 18, 2019); Prentiss McCann, *Mobile, Alabama, 1945*, C.R. & RESTORATIVE JUST. PROJECT, https://repository.library.northeastern.edu/downloads/neu:m0428515b?datastream_id=content [<https://perma.cc/6GF8-PW37>] (last visited Feb. 18, 2019).

175. *See* Erin B. Logan, *A Black Family Confronts a 70-Year-Old Killing and a White Man's Exoneration*, WASH. POST (Aug. 11, 2008), https://www.washingtonpost.com/news/post-nation/wp/2018/08/11/a-black-family-confronts-a-70-year-old-killing-and-a-white-mans-exoneration/?noredirect=on&utm_term=.f0dbcd6ff931 [<https://perma.cc/VH59-SBXV>].

176. *See* Casey Toner, *Alabama's Jim Crow Era Murders Under New Spotlight*, ALABAMA.COM (Jan. 8, 2015, 3:51 PM), https://www.al.com/news/index.ssf/2015/01/alabamas_jim_crow_era_murders.html [<https://perma.cc/B9GA-Q3G2>].

177. *See* DRS Digital Repository Services, NE. U., <https://repository.library.northeastern.edu/collections/neu:cj82nf04n> [<https://perma.cc/E65M-HPKP>] (last visited Feb. 18, 2019).

178. *See* Hannah Adams, *The Ones Left Behind, The Homicide of Prentiss McCann and NAACP Strategy in Post-War Mobile*, C.R. & RESTORATIVE JUST. 2-4 (Aug. 2014), <https://repository.library.northeastern.edu/downloads/neu:m040dr41w> [<https://perma.cc/5ZWY-RB4Y>] (unpublished essay) (on file with the Northeastern University Library system).

truth and reconciliation proceedings, state and federal pardons, and apologies by state and private entities.¹⁷⁹ Burnham reflects that “[o]ur opportunity to capture their stories—and an important part of our nation’s history—is quickly vanishing as memories fade, witnesses die and evidence disappears. Time is running out to achieve some measure of justice.”¹⁸⁰

There are other law schools that have taken on restorative justice efforts in their curriculum. John Marshall School of Law in Chicago¹⁸¹ and Campbell University Law School¹⁸² are two schools with restorative justice clinics. Vermont Law School offers a certificate in restorative justice to law graduates.¹⁸³ However, the focus of these institutions is on criminal matters. The kind of effort this clinical program contemplates has not yet been attempted.

D. Way(s) Forward

While the future of reparations advocacy remains uncertain, several recent developments provide possible paths to restorative justice on the issues discussed here, especially housing discrimination. The importance of this cannot be taken lightly, as the reparations debate continues to evolve. Just a few years ago, a civilized discussion of reparations for any aspect of America’s racial history and racial injustices that have been inflicted upon many African Americans in variety of ways was not possible. Today, that has changed, if only slightly.

1. *Georgetown*

Georgetown University’s recent admission that it sold 272 African slaves to southern plantations in order to save the University

179. See *The Civil Rights and Restorative Justice Project*, *supra* note 170.

180. Burnham & Russell, *supra* note 171.

181. See *The Restorative Justice Project*, J. MARSHALL L. SCH., <https://www.jmls.edu/restorative-justice/> [<https://perma.cc/X9Q4-P28U>] (last visited Feb. 18, 2019).

182. See *The Restorative Justice Clinic*, CAMPBELL U., NORMAN ADRIAN WIGGINS SCH. L., <https://law.campbell.edu/advocate/clinical-programs/the-restorative-justice-clinic/> [<https://perma.cc/RFB9-AK3K>] (last visited Feb. 18, 2019).

183. See *Center for Justice Reform*, VT. L. SCH., <https://www.vermontlaw.edu/academics/centers-and-programs/center-for-justice-reform/> [<https://perma.cc/82EA-UF8R>] (last visited Feb. 18, 2019).

reveals again that the chattel slavery system is discoverable.¹⁸⁴ It was, at its core, a business, and business transactions can likely be traced through historical records that are available if the process is allowed to proceed. This is another argument that supports passage of the Conyers bill discussed above. The historical event is described as follows: “The enslaved African–Americans had belonged to the nation’s most prominent Jesuit priests. And they were sold, along with scores of others, to help secure the future of the premier Catholic institution of higher learning at the time”¹⁸⁵ The discovery of the sale of human beings in order to save the University resulted in student activism and the removal of the names of the Presidents of the University involved in the sale from University property.¹⁸⁶ Other institutions are aware of their own roles in the slave trade, and it is quite easy to obtain information related to this activity as well.

2. CARICOM

The Caribbean Community and Common Market (CARICOM) is a grouping of twenty countries (fifteen member states and five associate members) located in the Caribbean region.¹⁸⁷ The members stretch from Barbados to Suriname in South America.¹⁸⁸ Some of the more well-known countries include Jamaica, Haiti, Trinidad and Tobago, Belize, and Barbados. The countries that are part of CARICOM are intimately and historically connected to the Transatlantic Slave Trade.¹⁸⁹ For that reason, the organization formed a reparations committee and hired the law firm of Leigh Day to explore a reparations action against the countries that were involved in the trade of human beings for centuries.¹⁹⁰ Using international human rights laws and the World Court as a venue for possible resolution of the demand for reparations, CARICOM initially contacted Great Britain regarding reparations with a letter stating the

184. See Rachel L. Swans, *272 Slaves Were Sold to Save Georgetown*, N.Y. TIMES (Apr. 16, 2016), <https://www.nytimes.com/2016/04/17/us/georgetown-university-search-for-slave-descendants.html> [https://perma.cc/4HWC-HF6M].

185. *Id.*

186. *See id.*

187. See Karen Juanita Carillio, *CARICOM Wants Slavery Reparations*, AMSTERDAM NEWS (Feb. 13, 2014, 11:24 AM), <http://amsterdamnews.com/news/2014/feb/13/caricom-wants-slavery-reparations/> [https://perma.cc/R9C9-8WT6].

188. *See id.*

189. *See id.*

190. *See id.*

demand and the justification for the reparations.¹⁹¹ While the United Kingdom failed to even acknowledge the request presented by CARICOM, the effort remains active and is not likely to end quickly through delay or through outright failure to acknowledge these human rights crimes.¹⁹² However, the University of Glasgow (Scotland), like Georgetown University, has recently acknowledged its debt relating to the Transatlantic Slave Trade and has announced that it too will pay reparations for the benefits it received.¹⁹³

3. Chicago Police Reparations

In May 2015, the Chicago City Council unanimously passed a reparations bill into the law that would provide \$5.5 million to victims of torture by the Chicago police department.¹⁹⁴ The reparations stem from the actions of police officers under the direction of Chicago police commander Jon Burge (1972–1991) who operated a torture chamber within the department that specifically brutalized black men.¹⁹⁵ Over 100 black men were subject to torture tactics that included “burning of skin on radiators[,] mock suffocations[,]” and electroshocking of genitals.¹⁹⁶ The reparations awarded in Chicago likely represent a kind of model that will become more prevalent in the future:

Representing the holistic approach proposed by community activists, the \$5.5 million reparations package awarded each of fifty-seven claimants \$100,000 in financial payments; privileged access to psychological counseling, healthcare, and vocational training; as well as provided tuition-free enrollment in City Colleges for themselves, their children, and grandchildren. The ordinance also required the City offer an apology, erect

191. *See id.*

192. *See* Elliot Ross, *It’s Time for Scotland to Make Reparations for Slavery*, AL JAZEERA (Nov. 26, 2018), <https://www.aljazeera.com/indepth/opinion/time-scotland-reparations-slavery-181126095041892.html> [https://perma.cc/5QE-8HAQA].

193. *See* Bert Wilkinson, *Caribbean Wins Reparations Payments*, AMSTERDAM NEWS (Nov. 29, 2018, 2:04 PM), <http://amsterdamnews.com/news/2018/nov/29/caribbean-wins-reparations-payments/> [https://perma.cc/9BJB-N2A4].

194. *See* Deborah Bayliss, *City Council Passes \$5.5 Million Burge Torture Reparations*, CHI. CITIZEN (May 13, 2015, 4:39 PM), <http://thechicagocitizen.com/news/2015/may/13/city-council-passes-55-million-burge-torture-repar/?page=2> [https://perma.cc/7P9G-UK3X].

195. *See* Salim Muwakil, *Justice for Jon Burge’s Victims?*, IN THESE TIMES (Feb. 10 2009), http://inthesetimes.com/article/4183/justice_for_jon_burges_victims [https://perma.cc/5M7K-UY7T].

196. *Id.*

a public memorial, create a community center to provide services for victims of police violence, and develop a public school curriculum to teach the Burge scandal to eighth- and tenth-grade students.¹⁹⁷

In effect, the Chicago award of reparations is similar to the Georgetown University reparations because it is specific in nature and focuses upon specific victims. It does entail monetary as well as social aspects, as the “apology” is psychological in nature, the memorial creates a remembrance of the injustice, and the educational components seek to provide practical redress along with the economic components.

While these examples above are just a few of the latest examples of a path to restorative justice for African Americans in the United States that do involve monetary awards or the goal of a monetary award, there are likely many other possibilities as information becomes readily available. For the first time in the history of the United States, reparations are part of the discourse. That development alone is remarkable.

CONCLUSION

While the chances of reparations for the descendants of the victims of racism historically continue to remain uncertain, the path to reparations is becoming less elusive than previously thought. As demonstrated in the Article, models for restorative justice are emerging in this evolving area of the law. And in that respect, law school clinics have proven to be unique entities for new areas of legal advocacy over the years. The unique manner in which law school clinics function make law school clinics a possible outlet for a real effort at reparations in the future, despite some obvious challenges. Yet, the private law school law clinic could be an ideal choice for experimentation with this special remedy for past human rights crimes. This Article has sought to provide guidelines and a blueprint for how such an effort can begin to be constructed.

197. Andrew S. Baer, *Dignity Restoration and the Chicago Police Torture Reparations Ordinance*, 92 CHI.-KENT L. REV. 769, 771 (2017).