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Unsavory White Omissions? A Review of Uncivil Wars

David Boyle

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UNSAVORY WHITE OMISSIONS? A REVIEW OF *UNCIVIL WARS*

*David Boyle**

Uncivil Wars: The Controversy Over Reparations for Slavery. By David Horowitz. San Francisco: Encounter Books, 2002. Pp. 147. \$21.95.

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INTRODUCTION

"Some might regard this book¹ as an act of literary masochism. In the spring of 2001, I attempted to place an ad in college newspapers opposing the idea of paying reparations for slavery² . . . [b]ut when my ad appeared on col-

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¹ DAVID HOROWITZ, *UNCIVIL WARS: THE CONTROVERSY OVER REPARATIONS FOR SLAVERY* (2002).

² Reparations for slavery, and compensatory payments for various causes, are an oft-seen news and legal topic of late. As for reparations, "About 200 Louisiana residents identifying themselves as descendants of slaves filed a federal lawsuit seeking reparations from companies [e.g., Lloyds of London, Brown Brothers Harriman & Co., and R.J. Reynolds] that allegedly profited from slave labor." Brett Martel, *Slave Descendants File Lawsuits*, ASSOCIATED PRESS (Sept. 4, 2002), at <http://archiver.rootsweb.com/th/read/pocsouth/2002-09/1031144594>. Supporters of reparations held a rally in Washington, D.C., on August 17, 2002, featuring U.S. Representative John Conyers and Nation of Islam leader Minister Louis Farrakhan as speakers. Kathleen Koch, *Kathleen Koch: Slave Reparations Rally*, CABLE NEWS NETWORK (Aug. 17, 2002), at <http://www.cnn.com/2002/US/08/17/koch.otsc/index.html>; *African-Americans Rally in Nation's Capital for Slavery Reparations*, CABLE NEWS NETWORK (Aug. 18, 2002), at <http://www.cnn.com/2002/US/08/17/slave.reparations.ap/index.html>. Also, California has recently granted public access to insurance records of policies that list slaves and their owners, a measure which may help research into reparations measures. Mark Sappenfield, *California Tests Racial Boundaries*, CHRISTIAN SCIENCE MONITOR (May 6, 2002), at <http://www.csmonitor.com/2002/0506/p01s01-ussc.html>. Perhaps even better known than the California measures is the government compensation fund for the families of victims of the September 11, 2001 terrorist attacks on the World Trade Center towers in New York City, a fund out of which each family receives at least \$250,000 for "pain and suffering." Geraldine Baum & Elizabeth Mehren, *Payouts in Trade Center Cases Bring Hope, Anger*, L.A. TIMES (Dec. 23, 2001), at <http://ktla.trb.com/news/nationworld/nation/la-122301charity.story>. It will be possible, one hopes, for a country that can accept these compensation payments, also to approve of payments and possibly other reparations, such as an apology, to the victims of slavery and segregation, and to their descendants.

Recently, more than 600 relatives of the September 11 victims have filed a \$116 trillion

lege campuses, the reactions were volcanic and the attacks on me were savage.”³ With this opening passage of *Uncivil Wars*, author David Horowitz has taken the obvious trouble to position himself as a martyr; whether he is truly a martyr or not is another question. *Uncivil Wars* relates the story, from the point of view of Horowitz, of his placing in campus newspapers an advertisement opposing payment of reparations, whether by the United States government or by anyone else, to African Americans for the slavery that their ancestors endured in this country and in the colonies which existed before the Declaration of Independence⁴ in 1776. The title of the book refers to the rancor and debate which surrounded the publication of the advertisement, including massive public criticism of Horowitz, and actions such as those of university students who destroyed, *en masse*, copies of the newspapers containing the advertisement.⁵ In an ironic fashion which counterposes “uncivil” to “civil,” the title also refers to the American Civil War which led to the freeing of the slaves—though the war did not lead to the restitution which could or should have been theirs, or their descendants,’ for the slaves’ hundreds of years of unpaid or badly paid labor.

Perhaps the most significant contribution that Horowitz makes in *Uncivil Wars* is his demonstration that the arguments supporting reparations are not above challenge. He makes some case that reparations may be unnecessary, racially divisive, burdensome on modern taxpayers who never held slaves in the first place, and altogether inappropriate. Furthermore, Horowitz adds to the discussion of “race-and-law” or, “law-and-race,” as one might – drawing on the term “law-and-economics”⁶ – term that field of legal academic inquiry which

dollar lawsuit against the bin Laden family and their construction company, alleging that Saudi royal family members helped Osama bin Laden and the al-Qaida terrorist group. Allan Dodds Frank contributing, *\$116 Trillion Lawsuit Filed by 9/11 Families*, CABLE NEWS NETWORK (Aug. 15, 2002), at <http://www.cnn.com/2002/LAW/08/15/attacks.suit/index.html>. If \$116 trillion, or even a fraction of that amount, is fair compensation for roughly 3000 instantaneous or near-instantaneous deaths on or around September 11, and considering as well that not all families have filed, one wonders what adequate compensation for hundreds of years of brutal slavery and millions, perhaps tens of millions, of violent or unnaturally early deaths of slaves would be—or whether any adequate compensation on earth could exist.

³ HOROWITZ, *supra* note 1, at 1.

⁴ A well-known and popular founding legal document of the country, which includes the invigorating words,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed

THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Whether these inspiring rights applied to everybody in the country, regardless of color, is a separate issue entirely.

⁵ See *infra* notes 30, 34-35 and accompanying text.

⁶ For an example of the way that law-and-race and law-and-economics have already interacted in discussion of reparations, see Richard A. Posner, *The DeFunis Case and the Constitu-*

meshes the legal and the racial and includes such subfields as Critical Race Theory. The meaning of the American Constitution – including its clause that slaves were considered each to be 3/5 of a human being⁷ – and of other legal

tionality of Preferential Treatment of Racial Minorities, 1974 SUP. CT. REV. 1. Posner, the “father” of modern law-and-economics, discusses reparations in relation to affirmative action, *see infra* notes 23, 125-128, 144-147 and accompanying text (comparing reparations to affirmative action), asserting that affirmative action burdens, Posner, *supra*, at 16 n.33, “university students, schoolchildren, and members of the working class, who are being asked in this country to subsidize certain racial minorities.” *Id.* at 17 n.33. He argues that this is less fair than, say, the reparations of Germany to Israel for the Holocaust of Jews during World War II, which are paid for by all German taxpayers, not just by a select group. *Id.* at 16 n.33.

However, Posner discounts, among other factors, the possibility that a racially integrated academic environment may be richer for all attending it. *See, e.g.*, *Grutter v. Bollinger*, 288 F.3d 732, 743, 752 (6th Cir.) (holding that the value of a diverse student body contributing to vigorous exchange of ideas is a factor allowing the University of Michigan Law School to continue its affirmative action program), *cert. granted*, 123 S.Ct. 617 (2002). This enrichment of environment is a benefit that may possibly outweigh any societal burdens. *Id.* at 738-39 (“It is not too much to say that the ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.”) (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (Powell, J. concurring and quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967))).

More markedly, Posner speaks, with apparent concern, of “members of the working class,” Posner, *supra*, at 17 n.33, but previously in his footnote, he mentions “white workers” as a group bearing the burden, *id.* at 16 n.33, of what Posner calls “reverse discrimination.” *Id.* at 7. He fails to note that “workers” in general, and “white workers” more often than “workers of color,” may be in highly lucrative and powerful positions, e.g., in a partnership or on a partnership track at a law firm, so that they are not always actually in the “working class” or in a lower-income bracket. *See, e.g.*, Sylvia A. Law, *White Privilege and Affirmative Action*, 32 AKRON L. REV. 603, 618-19 (1999) (discussing “white privilege” and hiring standards which systematically and unfairly favor whites). Posner uses “working [class]” and “workers” in unclear, potentially mutually exclusive ways that obscure or even make false his argument. Those who would wear the mantle of “law-and-economics” with dignity may, it seems, need to discriminate intellectually more clearly at times, in order to avoid discriminating racially by, in any form, shallowly attacking reparations.

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Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

U.S. CONST., art. I, § 2, cl. 3; *see HOROWITZ, supra* note 1, at 5.

Whether a constitution can be redeemed, or given more dignity, by drawing on some of the spirit of its later, more progressive elements in order to make up for the backwardness of some of its earlier elements, may be a matter of debate. Some have presumed that such a redemption can and should occur, though. For instance, Andrea Dworkin, in *Brief Amicus Curiae* of Andrea Dworkin, *American Booksellers v. Hudnut* [Am. Booksellers Ass’n v. Hudnut, 771 F.2d 323 (7th Cir. 1985)], Indianapolis, Indiana (Excerpt), in *IN HARM’S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS* 310 (Catharine A. MacKinnon & Andrea Dworkin, eds., 1997), speaks of the need, especially in the light of fairly recent court rulings against sex discrimination, to value women’s First Amendment rights at least as much of those of pornographers, *id.* at 317-20, and to preserve

documents or aspects of the law is discussed extensively in Horowitz's book, especially as such meaning relates to race. However, Horowitz's analysis is both insensitive towards its topic of reparations (and to African Americans), and unfairly selective in its understanding or presentation of history. Horowitz ignores or discounts, when discussing race, slavery, and reparations, the unsavory omissions of whites,⁸ including himself, in the field of justice towards African Americans. His failure fully to deal with or take account of such omissions creates the unintentional irony that in *Uncivil Wars*, he himself is promulgating conflicts, or even "wars" of a sort, of an arguably less-than-polite nature.⁹ Horowitz's "uncivil" take on the issue of reparations taints his analysis and his image, as will be seen below.

the dignity of the Constitution: "It [the ordinance she proposes, which allows a right of sex-discrimination complaint or lawsuit against pornographers, *id.* at 310-20] saves our constitutional system from the indignity of protecting sex-based abuse." *Id.* at 320.

The particular ordinance Dworkin was promoting, it should be noted, arguably restricted (pornographers') freedom of speech, *id.* at 310-12, 314-15, 317-20, but this book review advises no restrictions on Horowitz's right either to advertise in newspapers, or to publish books, at will; it merely asks whether reparations for slavery might vindicate the best interpretation, at this moment, of the Constitution.

⁸ For one instance of white ("Caucasian") omissions which prevent or hinder racial justice, see Susan Scafidi, *Native Americans and Civic Identity in Alta California*, 75 N.D. L. REV. 423, 433 (1999). Scafidi notes that the Treaty of Guadalupe Hidalgo (the Treaty of Peace, Friendship, Limits, and Settlement, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922) failed to recognize the absence of racial distinctions in Mexican law, an absence which was itself absent in the racially discriminatory law of the Americans to whom the Treaty ceded Alta California. See *id.* Accordingly, "[t]his noble but toothless document [the Treaty] notably failed to reference the lack of legal distinction among citizens on the basis of race, an omission that would later adversely affect the degree and manner of incorporation of the mission Indians into the new polity." *Id.*

The "omission" Scafidi observes in the Treaty is reminiscent, in an inverse way, of Horowitz's omission in *Uncivil Wars* of due recognition for the way that the history of African Americans has been one of great and continuing suffering, suffering to an extent which may legitimate the "special treatment" of African Americans through reparations. See *infra passim*. That is, America may at present have to extend special treatment towards African Americans in order to provide reparations and equality, whereas the Treaty of Guadalupe Hidalgo should have recognized the lack of special treatment towards races in Mexico—a lack of distinction which promoted interracial equality in Mexico. Scafidi, *supra*, at 432-34. But whether equality is promoted sometimes by racial distinctions, such as a reparations program might have to make in deciding who counts as "African American," or promoted at other times by a lack of racial distinctions, as in Mexico of the early 1800s, thoughtful consideration of race can not simply be omitted by decisionmakers; it will in any case have to be a factor in the deliberation of the law as how best to preserve individual rights and serve society as a whole. "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot – we dare not – let the Equal Protection Clause perpetuate racial supremacy." *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 407 (1978) (Blackmun, J., dissenting).

⁹ E.g., the fierce and rancorous disputes over his stance on reparations which he records in *Uncivil Wars*, Horowitz, *supra* note 1, *passim*, and which are likely to be fueled further by the book.

Part I of this review summarizes *Uncivil Wars*, and includes a discussion of First Amendment issues relating to the book and to Horowitz's campaign against reparations. Part II analyzes the tendency of Horowitz in the book to focus on his own supposed victimization at the expense of more accurately discussing either his efforts to fight reparations to African Americans, or the victimization of African Americans over the centuries under the regimes of slavery, segregation, and racism in the United States of America. Part III catalogs and investigates the various ways in which Horowitz writes and acts in uncivil or abusive ways when discussing his campaign against reparations. Part IV goes beyond the issue of Horowitz's media campaign, in order to explore his arguments against reparations, and then presents counterarguments to his contentions. Finally, Part V suggests that reparations could be a sound alternative to things possibly worse than financial expense, such as social division or unrest caused by the lack of reparations. Part V also offers some parting comments on the role of Horowitz himself in the debate over reparations.

Since there is less law concerning, or directly apposite to, reparations for slavery than about other racially related topics,¹⁰ e.g., affirmative action (a

¹⁰ There are some extant cases on reparations. See, e.g., *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995). In *Cato*, plaintiffs Jewel, Joyce, Edward, and Howard Cato, and Charles and Leerma Patterson and Bobbie Trice Johnson, collectively "Cato," filed complaints *in forma pauperis* against the United States for damages for slavery and discrimination, for an acknowledgment of injustice and discrimination, and an apology. *Id.* at 1105. The district court had noted in its dismissal of plaintiffs' claims that the United States did not waive its sovereign immunity, *id.* at 1106; that any waiver of sovereign immunity by the Federal Tort Claims Act ("FTCA") is limited to claims accruing in and after 1945, *id.*; that the Civil Rights Act, 42 U.S.C. § 1981(a), applies to "individual federal officials," not to the government or nation as a whole, *Cato*, 70 F.3d at 1106; and that claims like Cato's were best answered by Congress, just as the detention of Japanese Americans in World War II was redressed by the Civil Liberties Act of 1988. *Id.*

The appeals court upheld the district court's dismissal of the claims, *id.* at 1111, on various grounds including that the claims posed "a 'policy question' which the judiciary 'has neither the authority nor wisdom to address,'" *id.* at 1106 (citing the Order Dismissing Complaint (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 537 (1980) (Stevens, J. dissenting))); plaintiffs' lack of standing under *Allen v. Wright*, 468 U.S. 737 (1984), since plaintiffs alleged a class grievance, not an individual one, and did not blame a particular official or program, so that there was no concrete, personal and redressable injury traceable to the government conduct they condemned, *Cato*, 70 F.3d at 1109-10; the lack of a waiver of sovereign immunity for claims against the United States under the Thirteenth Amendment, *id.* at 1110-11; and that claims using the logic of the case of *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (holding that when a constitutional right has been violated, there must exist a cause of action unless Congress has specifically barred it), cannot affect government agencies, therefore, such claims could not be stated against the United States either. *Id.* at 1110.

Although this book review does not primarily focus on the legal mechanics of possible reparations attempts, the *Cato* case gives some "taste" of what might be expected, in all its complexity, from any forthcoming legal attempts to achieve reparations for slavery or segregation. (Some lawyers still list the *Cato* case as a considerable legal hurdle, so that legislative remedies may well prove easier to attain than judicial ones. See Jack Hitt et al., *Making the Case for Racial Reparations*, HARPER'S MAG., Nov. 2000, at 37.) *Cato* also shows that claims for reparations are not just the uncivilized or "savage" mob bayings and rantings that Horowitz might posit such

program which actually exists, unlike reparations for slavery, and therefore has a body of statute and case law, including challenges to affirmative action), much of this book review will comment on policy, moral, or other issues rather than employ strictly legal analysis.¹¹ However, the law will be referred to if possible, especially after the initial summary of the book; although *Uncivil Wars* does not present a “casebook” on reparations, despite the promises of the book’s dust jacket to that effect, this review will try in some wise to compensate for that lacuna, in exposition both legal and non-legal.

I. A SUMMARY OF *UNCIVIL WARS*

Uncivil Wars comprises two parts, “I. The Controversy” and “II. Reparations and the American Idea.” Part I relates the story of Horowitz’s taking out an advertisement, during spring 2001, in college papers throughout the United States. The advertisement, *Ten Reasons Why Reparations for Slavery Is a Bad Idea – and Racist Too*,¹² upset and enraged people across the country.¹³ The advertisement was a virtual copy of a column opposing reparations for slavery, that Horowitz had written for the online magazine *Salon* in May 2000, following the Chicago city council’s passing a resolution favoring reparations for slav-

claims to be, but instead, often well-thought-out, if not yet successful, legal and intellectual formulations of African Americans’ posited rights under the Constitution for redress and justice concerning the matter of slavery and its aftermath.

¹¹ Boris Bittker, Sterling Professor of Law Emeritus at Yale Law School, is one commentator who heralds the usefulness of “moral philosophy,” as opposed to mere legalism, in addressing the problem of reparations. BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* 26 (1973). He notes, in relation to the question of the government’s responsibility through “state action” for the doings of any private slaveholders, due to the government’s official conduct and laws, which tacitly encouraged private slaveholders, *id.* at 25-26, that “reliance on the Fourteenth Amendment [to work for reparations] implies acceptance of its ethical underpinnings.” *Id.* at 26. Reparations advocates who draw on the resources of the Fourteenth Amendment must deal with the “hurdle” that that amendment is meant merely to stop official misconduct, not to pay compensation for it, so they must also:

contend that justice requires compensating past injuries rather than merely forbidding their repetition . . . [Advocates] can persuasively assert that the Fourteenth Amendment is a national commitment to a standard of conduct, whose scope has been made definite for our day by the decision in *Brown v. Board of Education* [347 U.S. 483 (1954)], and that the only open question is of the proper remedy for its breach.

Id.

¹² HOROWITZ, *supra* note 1, at 12-16.

¹³ A slightly altered, and perhaps even more strongly worded, version of the advertisement, David Horowitz, *Ten Reasons Why Reparations for Blacks is a Bad Idea for Blacks – and Racist Too*, can be found on the Internet at <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=1153> (Jan. 3, 2001). Some examples of the fury caused by the advertisement follow in this review.

ery.¹⁴ Horowitz then noticed, several months later, that various universities were sponsoring rallies or forums about reparations, and he decided to place a slightly abbreviated version of the *Salon* column as a newspaper advertisement in campus newspapers at the schools sponsoring the reparations events and also in the newspapers of some other schools. His stated intent was to present “the other side” of the reparations issue, as he felt that the forums or rallies were one-sided.¹⁵

Essentially, the advertisement argued in favor of the following ten points:

1. No one group is responsible for slavery;¹⁶
2. No one group solely profited from slavery;¹⁷
3. Only a few Americans owned slaves, and others sacrificed their lives to free slaves;¹⁸

¹⁴ See HOROWITZ, *supra* note 1, at 10.

¹⁵ See *id.* at 11, 16.

¹⁶

I. There Is No Single Group Responsible for the Crime of Slavery.

Black Africans and Arabs were responsible for enslaving the ancestors of African-Americans. There were 3,000 black slave-owners in the antebellum United States. Are reparations to be paid by their descendants too? There were white slaves in colonial America. Are their descendents [sic] going to receive payments?

Id. at 12.

¹⁷

II. There Is No Single Group That Benefited Exclusively from Slavery.

The claim for reparations is premised on the false assumption that only whites have benefited from slavery. If slave labor has created wealth for Americans, then obviously it has created wealth for black Americans as well, including the descendants of slaves. The GNP of black America makes the African-American community the tenth most prosperous “nation” in the world. American blacks on average enjoy per capita incomes in the range of twenty to fifty times that of blacks living in any of the African nations from which they were kidnapped.

Id.

¹⁸

III. Only a Minority of White Americans Owned Slaves, While Other Gave Their Lives to Free Them.

Only a tiny minority of Americans ever owned slaves. This is true even for those who lived in the antebellum South where only one white in five was a slaveholder. Why should their descendants owe a debt? What about the descendants of the 350,000 Union soldiers who died to free the slaves? They

4. America is multi-racial and most Americans have no relation to slavery;¹⁹

5. Precedents such as payments to Holocaust victims are inapplicable, and the reparations claim is based not on injury but on race;²⁰

6. The claim is unfounded that all African-American descendants of slaves suffer from the consequences of slavery and discrimination;²¹

gave their lives. What morality would ask their descendants to pay again? If paying reparations on the basis of skin color is not racism, what is?

Id.

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IV. Most Living Americans Have No Connection (Direct or Indirect) to Slavery.

The two great waves of American immigration occurred after 1880 and then after 1960. What logic would require Vietnamese boat people, Russian re-fuseniks, Iranian refugees, Armenian victims of the Turkish persecution, Jews, Mexicans[,] Greeks, or Polish, Hungarian, Cambodian and Korean victims of Communism, to pay reparations to American blacks?

Id. at 13.

20

V. The Historical Precedents Used to Justify the Reparations Claim Do Not Apply, and the Claim Itself Is Based on Race Not Injury.

The historical precedents generally invoked to justify the reparations claim are payments to Jewish survivors of the Holocaust, Japanese-Americans and African-American victims of racial experiments in Tuskegee, or racial outrages in Rosewood and Oklahoma City. But in each case, the recipients of reparations were the direct victims of the injustice or their immediate families. This would be the only case of reparations to people who were not immediately affected and whose sole qualification to receive reparations would be racial. During the slavery era, many blacks were free men or slave-owners themselves, yet the reparations claimants make no attempt to take this fact into account. If this is not racism, what is?

Id.

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VI. The Reparations Argument Is Based on the Unsubstantiated Claim That All African-Americans Suffer from the Economic Consequences of Slavery and Discrimination.

No scientific attempt has been made to prove that living individuals have been adversely affected by a slave system that was ended nearly 150 years ago. But there is plenty of evidence that the hardships of slavery were hardships that individuals could and did overcome. The black middle class in America is a prosperous community that is now larger in absolute terms than the black un-

7. The reparations claim will make African Americans become obsessed with the idea of their victimization;²²

8. Reparations have been paid (e.g., affirmative action);²³

9. African Americans themselves owe America;²⁴ and

derclass. Its existence suggests that present economic adversity is the result of failures of individual character rather than the lingering after-effects of racial discrimination or a slave system that ceased to exist well over a century ago. West Indian blacks in America are also descended from slaves but their average incomes are equivalent to the average incomes of whites (and nearly 25 percent higher than the average incomes of American-born blacks). How is it that slavery adversely affected one large group of descendants but not the other? How can government be expected to decide an issue that is so subjective?

HOROWITZ, *supra* note 1, at 13-14.

22

VII. The Reparations Claim Is One More Attempt to Turn African-Americans into Victims. It Sends a Damaging Message to the African-American Community and to Others.

The renewed sense of grievance – which is what the claim for reparations will inevitably create – is not a constructive or helpful message for black leaders to send to their communities and to others. To focus the social passions of African-Americans on what some other Americans may have done to their ancestors 50 or 150 years ago is to burden them with a crippling sense of victimhood. How are the millions of non-black refugees from tyranny and genocide who are now living in America going to receive these claims, moreover, except as demands for special treatment—an extravagant new handout that is only necessary because some blacks can't seem to locate the ladder of opportunity within reach of others, many of whom are less privileged than themselves?

Id. at 14.

23

VII. Reparations to African-Americans Have Already Been Paid.

Since the passage of the Civil Rights Acts and the advent of the Great Society in 1965, trillions of dollars in transfer payments have been made to African-Americans in the form of welfare benefits and racial preferences (in contracts, job placements and educational admissions)—all under the rationale of redressing historic racial grievances. It is said that reparations are necessary to achieve a healing between African-Americans and other Americans. If trillion-dollar restitutions and a wholesale rewriting of American law (in order to accommodate racial preferences) is not enough to achieve a “healing,” what is?

Id.

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IX. What About the Debt Blacks Owe to America?

10. Reparations are a separatist and ultimately anti-American claim, denying the American history, and advocacy, of freedom.²⁵

As offensive as these points may be to some, Horowitz has, under the First Amendment to the United States Constitution,²⁶ substantial right even to

Slavery existed for thousands of years before the Atlantic slave trade, and in all societies. But in the thousand years of slavery's existence, there never was an anti-slavery movement until white Anglo-Saxon Christians created one. If not for the anti-slavery beliefs and military power of white Englishmen and Americans, the slave trade would not have been brought to an end. If not for the sacrifices of white soldiers and a white American president who gave his life to sign the Emancipation Proclamation, blacks in America would still be slaves. If not for the dedication of Americans of all ethnicities and colors to a society based on the principle that all men are created equal, blacks in America would not enjoy the highest standard of living of blacks anywhere in the world, and indeed one of the highest standards of living of any people in the world. They would not enjoy the greatest freedoms and the most thoroughly protected individual rights anywhere. Where is the acknowledgement of black America and its leaders for those gifts?

Id. at 15.

25

X. The Reparations Claim Is a Separatist Idea That Sets African-Americans Against the Nation That Gave Them Freedom.

Blacks were here before the Mayflower. Who is more American than the descendants of African slaves? For the African-American community to isolate itself from America is to embark on a course whose implications are troubling. Yet the African-American community has had a long-running flirtation with separatists, nationalists and the political left, who want African-Americans to be no part of America's social contract. African-Americans should reject this temptation.

For all America's faults, African-Americans have an enormous stake in this country and its heritage. It is this heritage that is really under attack by the reparations movement. The reparations claim is one more assault on America, conducted by racial separatists and the political left. It is an attack not only on white Americans, but on all Americans—especially African-Americans.

America's African-American citizens are the richest and most privileged black people alive, a bounty that is a direct result of the heritage that is under assault. The American idea needs the support of its African-American citizens. But African-Americans also need the support of the American idea. For it is the American idea that led to the principles and institutions that have set African-Americans – and all of us – free.

Id. at 15-16.

²⁶ U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

speech which might offend others.²⁷ Given the importance of the issue of “free speech” in the book, it is appropriate, and perhaps ironic, that the first school he discusses in detail concerning placement of his advertisement is the University of California at Berkeley, home of the Free Speech Movement of the 1960’s, and a place where Horowitz himself was a campus activist as a student.²⁸ He contrasts the ideals of free speech with those of the protesters who entered the offices of the *Daily Californian*, the Berkeley campus newspaper, accused editor-in-chief Daniel Hernandez of running a racist advertisement (that of Horowitz), demanded an apology, and finally ripped up copies of the newspaper lying around the editorial office.²⁹ Later, protesters removed all the copies of the newspapers they could find from campus racks.³⁰ Horowitz then describes various incidents of left-wing activists’ threatening or disrupting right-wing speakers on campuses, such as when protesters shut down a conference of the conservative “Accuracy in Academia” organization on the Columbia University campus in 1998.³¹

During Horowitz’s March 15, 2001 visit to Berkeley to speak against reparations, an audience speaker who criticized Horowitz monopolized the microphone so that no one else could speak.³² Fearing violence and decrying the lack of freedom for other audience members to speak, Horowitz left the building.³³ At the University of Wisconsin at Madison, around the same time as the protesters’ confrontation with editor Daniel Hernandez at Berkeley, students removed large numbers of *Badger Herald* newspapers containing the advertisement from racks and threw them away, just as happened at Berkeley.³⁴ The same

²⁷ See, for example, Oliver Wendell Holmes, Jr.’s dissent in *U.S. v. Schwimmer*, 279 U.S. 644, 654-55 (1929): “[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.” Although Holmes dissented here, his basic point of view triumphed in various other cases. See, e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (Brennan, J.) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”) (overturning the conviction of a man who burned an American flag as an act of protest).

²⁸ See HOROWITZ, *supra* note 1, at 17.

²⁹ See *id.* at 18 & n.14 (citing Fred S. Dickey, *An Uncivil Discourse: The Uproar over David Horowitz’s Ad in the UC Berkeley Newspaper Has Challenged One of the Fundamentals of University Life: The Free Exchange of Ideas*, L.A. TIMES MAG., May 6, 2001 (page not given), and Daniel Hernandez, *The Ad, the Apology, and the Aftermath*, CAL. MONTHLY, June 2001 (page not given)).

³⁰ See *id.* at 20 & n.21 (citing Mark Fitzgerald, *Murdering the First*, EDITOR AND PUBLISHER, Mar. 12, 2001 (page not given)).

³¹ See *id.* at 29.

³² See *id.* at 33-41.

³³ See *id.* at 41.

³⁴ HOROWITZ, *supra* note 1, at 45 & n.57 (citing Julie Bosman, *The (No) Free Speech Move-*

thing happened at Brown University, with one professor defending the action by saying that since the *Brown Daily Herald* was free of charge, students could take as many copies as they liked.³⁵

At the Massachusetts Institute of Technology, Horowitz had a somewhat friendlier reception, since he was invited by the Alpha Phi Alpha black fraternity, one member of which, Christopher D. Smith, told a reporter that he (Smith) found “reparations to be inappropriate.”³⁶ At Duke University, though, protesters, while they did not destroy copies of the *Duke Chronicle* with the advertisement in it, occupied the newspaper office until they were ejected by police.³⁷

When Horowitz submitted a “friendlier,” shorter and supposedly less stringent version³⁸ of his advertisement to various campus newspapers,³⁹ he had little better luck.⁴⁰ The *Daily Tar Heel* at the University of North Carolina ran *The Debt* and also ran beside it a critique of it by several student leaders, as well as criticism of the advertisement as “despicable and shameful” by a university

ment, WALL ST. J., Mar. 14, 2001 (page not given)). Clay Calvert and Robert D. Richards, in *Free Speech and the Right to Offend: Old Wars, New Battles, Different Media*, 18 GA. ST. U. L. REV. 671 (2002), observe that at Wisconsin, and also at Duke, anti-Horowitz protesters also used more conventionally acceptable ways of protest, including “counter-speech.” *Id.* at 692 & n.129 (citing Rebecca Trounson, *Agitation by Ad*, L.A. TIMES, Apr. 10, 2001, at B1); *id.* at 692 & n.130 (citing Jonathan Alter, *Where PC Meets Free Speech*, NEWSWEEK, Apr. 2, 2001, at 31). This counter-speech included holding demonstrations against the newspapers and, in Wisconsin’s case, demanding the resignation of the editor-in-chief. Counter-speech has a lengthy legal tradition as an alternative to suppression of speech, as Calvert and Richards note, quoting a venerable Supreme Court justice, “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.” *Id.* at 691 (quoting *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring)).

³⁵ HOROWITZ, *supra* note 1, at 59-61 & n.84 (citing Andy Golodny, *Coalition Seizes Nearly 4,000 Copies of Herald*, BROWN DAILY HERALD, Mar. 16, 2001 (page not given)).

³⁶ *Id.* 70-71 & n.110 (quoting A.S. Wang & Dana Levine, *Horowitz, Benton-Lewis Debate*, THE TECH, Apr. 6, 2001 (page not given)).

³⁷ *Id.* at 75 & n.121 (citing Amika Kubar, *Community Members Protest Chronicle Ad*, DUKE CHRON., Mar. 22, 2001 (page not given), and Amika Kubar, *Ad Protesters Submit Demands, Get Responses*, DUKE CHRON., Mar. 23, 2001 (page not given)).

³⁸ On inspection, the shorter version may not really be less hostile or abrasive than the longer version; one sample sentence is, “Behind the [reparations] movement, finally, is an irrational fear and hatred of America.” Horowitz could instead have said, for example, that some individuals in the reparations movement may have such a fear and hatred, which might hypothetically be true; but by stereotyping the whole movement—a form of racial stereotyping?—as being paranoid or insane, he lessens the strength of his point.

³⁹ The shorter version was called *The Debt*, perhaps in imitation of the title of reparations and anti-apartheid activist Randall Robinson’s book *THE DEBT: WHAT AMERICA OWES BLACKS* (2000), which advocated reparations to African Americans.

⁴⁰ See HOROWITZ, *supra* note 1, at 84-94.

official.⁴¹ Nevertheless, campus protesters were not satisfied with their opportunities for rebuttal, and attacked the *Daily Tar Heel* as being racist for even running the advertisement in the first place (protesters were especially angered because the newspaper did not even take any money from Horowitz to run the advertisement).⁴² Finally, at Princeton University, there were no protests, but this might only be, Horowitz speculates, because the *Daily Princetonian* editors themselves attacked him in print as being racist, perhaps preempting other campus criticism.⁴³

Concerning the issue of Horowitz's free speech rights to run the advertisement, Horowitz raises one legal precedent in his favor when he quotes a letter from Ben Sheffner, a Berkeley alumnus,⁴⁴ that mentions *New York Times v. Sullivan*,⁴⁵ a case upholding freedom of speech in newspaper advertisements. There are numerous other legal precedents which uphold Horowitz's freedom to say even injurious or stupid things that may offend historically oppressed or discriminated-against minority group members: for example, in *Brandenburg v. Ohio*,⁴⁶ the conviction of a group of Ku Klux Klan members in Ohio for advocating violence was overturned by the Supreme Court in a *per curiam* opinion including Justice Thurgood Marshall, the first African American on the high court. The Klan members used the "n-word" deriding African Americans various times during the televised films in question in the case, even making apparent threats such as "Bury the n-----s" and "This is what we are going to do to the n-----s," and some Klansmen were even recorded by the camera as carrying weapons.⁴⁷ However, the Court held that as "derogatory" and vile as the language was, the Klan members were merely advocating violent or lawless action, not inciting anyone to imminent, immediate lawless action.⁴⁸ And as misguided or mean-spirited as Horowitz's advertisement may have been, neither the adver-

⁴¹ *Id.* at 86 & n.143 (quoting James Moeser, *UNC Should Foster Intellectual Debate*, DAILY TAR HEEL, Apr. 2, 2001 (page not given)).

⁴² *Id.* at 86 & n.144 (citing Brian Frederick, *Running Horowitz Column Gave Legitimacy to His Views*, DAILY TAR HEEL, Apr. 18, 2001 (page not given)).

⁴³ *See id.* at 88-91.

⁴⁴ *Id.* at 23.

⁴⁵ 376 U.S. 254 (1964). Some examples of *Sullivan*'s attitude toward freedom of speech in newspapers are as follows: "The publication here [an advertisement criticizing Montgomery, Alabama officials for harassing a march by Martin Luther King's supporters] was not a [purely] 'commercial' advertisement It communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern." *Id.* at 266; "An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment." *Id.* at 297 (Black, J., concurring).

⁴⁶ 395 U.S. 444 (1969).

⁴⁷ *Id.* at 444-47.

⁴⁸ *Id.* at 446-49.

tisement nor Horowitz was using racial epithets, carrying a weapon, or suggesting violence, so that Horowitz's speech is even less subject to legal interference than that in *Brandenburg*.

Some protesters complained that Horowitz was buying free speech, and that his apparently having more money than they did made it unfair that he was able to purchase the advertisements.⁴⁹ Fairly or not, though, those with money are often not limited in using it to "purchase speech," in the spirit of the case of *Buckley v. Valeo*,⁵⁰ which overturned laws restricting candidate spending in political elections.⁵¹ Presumably, there is even more freedom to "purchase speech" when a mere advertisement like Horowitz's is at stake, than when there is a situation like a competitive election. In an election there might be only two candidates, and one much wealthier than the other, but the wealthier would still be able to outspend the poorer under *Buckley*. Therefore, no significant legalistic complaint seems possible about Horowitz being able to outspend students.

Finally, Horowitz himself cites law, and uses it in his favor, regarding the issue of his freedom to advertise; while he does not mention the exact case, he says that he utilized a ruling that "if a paper is funded and overseen by a state institution and prints an ad on one side of a political debate, it cannot deny ad space to the other side" to force the *Minnesota Daily* at the University of Minnesota to print his advertisement after it initially denied him the right to print it.⁵²

In part II of *Uncivil Wars*, "Reparations and the American Idea," Horowitz discusses whether one can even consider reparations to be viable in the first place. He mentions, as past examples of reparations or attempts to procure reparations, both the efforts of black activist James Forman in 1969 to demand \$500 million from churches and synagogues as reparations to African Americans,⁵³ and the paying of reparations to Japanese Americans following their internment in concentration camps during World War II.⁵⁴ Following the

⁴⁹ See, e.g., HOROWITZ, *supra* note 1, at 85 & n.141 (quoting Patricia Chen, a student at Duke who demonstrated against the advertisement, who made the following statement: "You say you want to encourage open debate, but it's not a debate when someone spends \$1,000." DUKE CHRON., Mar. 22, 2001 (page not given)). Clay Calvert and Robert D. Richards suggest that although buying advertisements could have been costly for protesters, writing letters to the offending newspapers could have served as an effective and inexpensive form of counter-speech. Calvert & Richards, *supra* note 34, at 693.

⁵⁰ 424 U.S. 1 (1976).

⁵¹ Recent campaign reform efforts in Congress may change spending limits, but what the courts do regarding these efforts remains to be seen.

⁵² HOROWITZ, *supra* note 1, at 93-94. Horowitz presumably means the case of *Board of Regents v. Southworth*, 529 U.S. 217 (2000), in which the University of Wisconsin was allowed to charge a student activity fee only as long as programs supporting extracurricular student speech were viewpoint-neutral in their funding support.

⁵³ HOROWITZ, *supra* note 1, at 106 & n.186 (citing JAMES FORMAN, *THE MAKING OF BLACK REVOLUTIONARIES* 343-52 (2000)).

⁵⁴ *Id.* at 106.

success of the reparations bill for Japanese Americans, John Conyers, a Democratic U.S. Representative from Michigan, attempted, unsuccessfully, to pass through Congress H.R. 40, a bill to establish a commission to study the idea of reparations⁵⁵ for African Americans.⁵⁶

However, Horowitz claims, asking for reparations is an improper response to the continuing crises of African Americans who are in the “underclass” or who otherwise cannot escape poverty or other difficulties; is “continuing American racism” a problem, he inquires, or might there be other, more important problems, such as the “astronomical out-of-wedlock” birth rates of black Americans?⁵⁷ He quotes Martin Luther King to the effect that not all of black people’s problems are due to white people, since some problems are inflicted by African Americans upon themselves.⁵⁸

Horowitz also brings up the history of slavery in Africa itself, observing that it began roughly a thousand years before it began in America, and calls Thomas Jefferson not just a mere slaveholder among many American slaveholders, but also a leader who really believed in freedom for African Americans and for others.⁵⁹ Horowitz mentions yet another, later President as a proponent of freedom when he calls both the struggle of Abraham Lincoln against slavery, culminating in his assassination, and the death of over 350,000 Union soldiers during the Civil War, forms of atonement for slavery.⁶⁰ Finally, he quotes Lyndon Johnson to the effect that the anti-poverty programs of the “Great Society” were meant to put African Americans “at the same point in the race” as other Americans, using the metaphor of an athletic contest.⁶¹ Thus, with the efforts

⁵⁵ On the topic of study and discussion of reparations, see BITTKER, *supra* note 11, at 136-37: “I have used the term ‘a second American dilemma’ [evoking Gunnar Myrdal’s AN AMERICAN DILEMMA (1944), a famous work about African Americans and American society] to describe the situation in which we find ourselves [regarding reparations] We are, or ought to be, at the beginning of a national debate on these questions. I have sought to open the discussion, not to close it.” Bittker wrote *The Case for Black Reparations* as perhaps the first piece of book-length legal scholarship on reparations for slavery. (As per its using the word “case” in its title, Bittker’s book may be the closest thing extant to the “casebook” on reparations that *Uncivil Wars* boasts of being. Cf. HOROWITZ, *supra* note 1, dust jacket, front flap.) Yet, almost three decades after the appearance of Bittker’s work, the country is still seemingly unwilling even to approve a mere study and debate commission on reparations, much less approve an actual reparations measure, despite Bittker’s desire for a national debate on the issue.

⁵⁶ See HOROWITZ, *supra* note 1, at 106-07 (citing RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* 201 (2000)).

⁵⁷ *Id.* at 108, 126.

⁵⁸ See *id.* at 108 (citing quotation of King by Jason L. Riley, *Don’t Replace Jesse Jackson*, WALL ST. J., Apr. 18, 2001 (page not given)).

⁵⁹ See *id.* at 111-14.

⁶⁰ *Id.* at 114-20.

⁶¹ See *id.* at 122 & n.232, 123 (citing President Lyndon B. Johnson, Commencement Address at Howard University, “To Fulfill These Rights,” (June 4, 1965), in 2 PUB. PAPERS, LYNDON B. JOHNSON, 1965, entry 301, at 635, 636 (1966), *reprinted at* National Archives and Records Ad-

and intentions of Jefferson, Lincoln, and Johnson, no further reparations are necessary, Horowitz contends.

He then advances multifarious reasons – the failures of American welfare policy in keeping black families together; the possibly low profit rate of slavery for white slaveholders, given the cost for the upkeep of slaves; and the cruelty of slavery in Africa – as additional factors militating against reparations for slavery in America.⁶²

Horowitz ends *Uncivil Wars* with a call for the unity of all American people, regardless of race, instead of what he considers to be a racially divisive, and even anti-American, claim of African Americans for reparations.⁶³ However, although he claims to decry divisiveness, serious analysis must ask the question: Has Horowitz himself shown, in his work, a spirit of true unity with others, and attempted to understand their history on a profound and thorough level? Or has he failed to do so?

II. HOROWITZ'S SELF-VICTIMOLOGY: "THE WHINE THIS TIME"

African-American writer James Baldwin (1924-1987),⁶⁴ in his celebrated book-length essay, *The Fire Next Time*, notes, "The paradox – and a fear-

ministration: The Lyndon B. Johnson Library and Museum, *President Lyndon B. Johnson's Commencement Address at Howard University: "To Fulfill These Rights" – June 4, 1965*, at <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp> (last updated Mar. 18, 2002)).

⁶² See HOROWITZ, *supra* note 1, at 126-33. He does not give details on how welfare policy has supposedly split up black families – he simply asserts that it has done so. See *id.* at 127. Horowitz also cites figures purporting to show that only about 12% of the income of slaves was not paid back to them, considering the need to feed and house slaves in a fashion that would keep the slaves healthy enough to do their work, see *id.* at 128-29, and he cites phenomena such as human sacrifice of slaves, and castration of slaves, in Africa, see *id.* at 133.

⁶³ See *id.* at 134-37. "[There is a possibility] that the American Founders did create a crucible so powerful in its principles that it could – out of the multiracial, multiethnic variety of our remarkable people – finally make them one." *Id.* at 137 (from the concluding sentence of the book).

⁶⁴ Baldwin's work, one notes, is a frequent "guest" in law journal articles on race, and on reparations, due to that writer's insight and articulateness. See, e.g., Denise C. Morgan, *Jack Johnson: Reluctant Hero of the Black Community*, 32 AKRON L. REV. 529, 556 & n.111 (1999) (describing the reaction of the black and white communities to the violations by early 20th century boxer Jack Johnson of segregative color lines, and quoting Baldwin, "[c]olor is not a human or personal reality, it is a political reality," JAMES BALDWIN, *THE FIRE NEXT TIME* 104 (Vintage Int'l ed., 1993) (1962) [hereinafter BALDWIN, *THE FIRE NEXT TIME*]); Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429, 466 & n.154 (1998) (discussing the persistence of racial stereotyping of African Americans even long after slavery, and quoting Baldwin:

In our image of the Negro breathes the past we deny, not dead but living yet and powerful, the beast in our jungle of statistics. It is this which defeats us, which lends to interracial cocktail parties their rattling, genteel, nervously smiling air: in any drawing room at such a gathering the beast may spring, filling the air with flying things and an unenlightened wailing. . . . Wherever the

ful paradox it is – is that the American Negro can have no future anywhere, on any continent, as long as he is unwilling to accept his past.”⁶⁵ Horowitz disregards both these wise words and the corollary that anyone, regardless of the group from which she comes, who wishes to deal with race issues in American history would do well not to ignore the past and its lessons. Instead, Horowitz largely focuses on his own history, not on that of others; part I of the book is 95 pages, largely about his advertisement and the criticisms it engendered, while part II of the book, making policy arguments or moral arguments against reparations, is only 35 pages. This disproportion of emphasis, or omission of detail on an important topic, hardly makes for a “casebook on reparations,”⁶⁶ though there may be material for a casebook on Horowitz.

Horowitz’s main complaint in the first section of his book is that he did not tend to receive point-by-point refutations of his argument, but instead was harassed and abused as a result of his placing the advertisement.⁶⁷ He does present a plausible case that protesters consistently abused him and his rights; his March 2001 visit to Berkeley during which he feared violence, and left the building, his “censorship” by the Wisconsin students who threw away newspapers running his advertisement, and similar instances of harassment or overblown protest hardly flatter the students or audiences who treated him as they did.⁶⁸

In all, Horowitz seems, *prima facie*, to be more sinned against than sinning, at least as far as his free speech rights. It is fortunate for the protesters that they only threw away copies of newspapers with his advertisement, and did not go on to burn them, as that would have allowed Horowitz to compare them, not just to fascists in general as he does,⁶⁹ but directly to the Nazis who destroyed free speech in Germany by burning books of Jews (who could possibly be relatives of Horowitz, he being Jewish) and others during Adolf Hitler’s Third

Negro face appears a tension is created, the tension of a silence filled with things unutterable.

James Baldwin, *Many Thousands Gone*, in 18 *PARTISAN REV.* 665, 668 (1951), reprinted in JAMES BALDWIN, *NOTES OF A NATIVE SON* 28-29 (rev. vol. 1984) (1955)). See also *infra* note 159 on the importance of non-legal narratives and literature in contributing to legal thought.

⁶⁵ BALDWIN, *THE FIRE NEXT TIME*, *supra* note 64, at 81.

⁶⁶ See HOROWITZ, *supra* note 1, dust jacket, front flap (labeling *Uncivil Wars* a “casebook” on its topic).

⁶⁷ See HOROWITZ, *supra* note 1, *passim*. For example, Horowitz notes, “Despite the ruckus that the ad had caused, its ‘Ten Reasons’ had not really been answered, or even addressed. . . . The radicals applied the epithets ‘racist’ and ‘bigot’ not only to anyone who supported my ideas, but also to those who printed them or defended my right to express them.” *Id.* at 24.

⁶⁸ See HOROWITZ, *supra* note 1, at 41, 45.

⁶⁹ See *id.* at 34 (relating how he referred, during his Berkeley campus speech, to “campus fascists” trying to curtail his free speech on a college campus).

Reich.⁷⁰ Even without burnings, though, descending to the level of stealing copies of newspapers from racks raises the suspicion that the stealers have no better way to refute the speaker's arguments.

However, returning to *Uncivil Wars*' opening statement, "Some might regard this book as an act of literary masochism,"⁷¹ analysts might ask whether Horowitz simply complains too much. How much has he truly suffered, readers of *Uncivil Wars* might be tempted to wonder, compared to the tens, or hundreds, of millions of African Americans who suffered, or died, from slavery and suffered or suffer still from segregation and racism and their effects or aftereffects?⁷² African Americans are, in context, the most significantly hurt victims, not Horowitz, something which he might have done well to recall. Bad publicity, harsh criticism, and stolen newspapers simply do not rank as serious suffering compared with kidnapping, shackles, the lash, and summary execution for trying to escape the master's hand, or the unfortunate legacy of these latter punishments, and their milieu, in the present day.⁷³

As Baldwin observes in *The Fire Next Time*, "How can the American Negro past be used? . . . A bill is coming in that I fear America is not prepared to pay."⁷⁴ Baldwin is not some mindless extremist or monger of race hatred; in his book, he criticizes, for example, the doctrine of the Nation of Islam that all white people are devils.⁷⁵ But he does appreciate the importance of recognizing

⁷⁰ See, e.g., MICHAEL BURLEIGH, *THE THIRD REICH: A NEW HISTORY* 328-29 (Hill and Wang paperback ed., 2001) (2000) (describing the Nazis' burning of synagogues and Jewish books).

⁷¹ HOROWITZ, *supra* note 1, at 1.

⁷² As for the interconnection of slavery and segregation, in Donald Aquinas Lancaster, Jr., Comment, *The Alchemy and Legacy of the United States of America's Sanction of Slavery and Segregation: A Property Law and Equitable Remedy Analysis of African American Reparations*, 43 How. L.J. 171 (2000), Lancaster observes, "Segregation is the offspring of slavery." *Id.* at 182 (citing Joseph William Singer, *No Right to Exclude: Public Accommodations and Private Property*, 90 Nw. U. L. REV. 1283, 1350-52 (1996)). Lancaster also concludes, "[t]he common thread that weaves slavery and segregation together is the right-in-being-white, or the *Plessy* [*Plessy v. Ferguson*, 163 U.S. 537 (1896)] factor." Lancaster, *supra*, at 184. This factor of "whiteness as property," a form of property distinguishing whites from blacks and slaves from free, continues the oppressive and divisive "American apartheid" tradition of the *Dred Scott* case, *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), which "not only sanction[ed] slaves as a valid form of property, but . . . actually protect[ed] that property pursuant to the Fifth Amendment of the Constitution, which prohibits the federal government from depriving a person of their [sic] property without due process of law." Lancaster, *supra*, at 182.

⁷³ On slavery's bequeathal of suffering down to the present day, see, as one example, *NAACP v. Lansing Bd. of Educ.*, 429 F. Supp. 583 (W.D. Mich. 1976), which held that a school board could not repeal its own desegregation plan, and noted, "Although disproportionate racial concentration of Black children in the schools might not have adverse consequences in all times and places, it certainly does in the context of the present forms of social organization, which are conditioned by legacy of slavery." *Id.* at 587.

⁷⁴ BALDWIN, *THE FIRE NEXT TIME*, *supra* note 64, at 103.

⁷⁵ See *id.* at 66-68.

the history of African-American deprivation and suffering. Horowitz, by contrast, seems to be largely “whining” about his own suffering, which is virtually nothing compared with that of many of the descendants of slaves, not to mention that of the slaves themselves.⁷⁶ He does not use African-American history in the ameliorative way that Baldwin seems to suggest, but rather uses it as a backdrop for his own self-pitying tale of “victimization” by others.⁷⁷ Unfortunately for him, the first victim of his book is perhaps not African Americans – although his work does abuse them – but rather, his own image and integrity as a writer and thinker.⁷⁸

⁷⁶ See, for example, a poignant and horrific portion of the story of a slave ship:

The words of the Englishman Phillips that some slaves had a “greater apprehension of Barbados than we can have of hell” were borne out by captives’ frequent attempts to escape overboard, even though it meant certain death in the turbulent and shark-filled waters. Perhaps they did it to avoid a lifetime of slavery; perhaps they did it out of fear of being eaten by white cannibals; or perhaps they did it out of a belief that death would return them to their own country. In any case, the captives seemed to view suicide more as a form of martyrdom and an affirmation of their faith than as simple escapism.

ROBERT HARMS, *THE DILIGENT: A VOYAGE THROUGH THE WORLDS OF THE SLAVE TRADE* 261 (2002).

⁷⁷ On the theme of “backdrop,” the back cover of the book jacket shows Horowitz, misspelled as “Horiwitz,” speaking on reparations at a Boston University forum, with a black bodyguard in the background, in hazy focus. It is hard not to take this image as emblematic, inadvertently, of the way in which Horowitz sometimes puts African-American concerns in the background in the book – just as the black bodyguard is behind him in the photograph – and puts his own publicization of his views and advertisement in the foreground. The photograph on the front cover of the book shows an opened shackle, as if not only slavery but all of its aftereffects were completely over, a questionable proposition, for reasons discussed in this review.

There are various other errors in the book, by the way, besides the misspelling of Horowitz’s own name; for example, a building at the University of California at Berkeley is misspelled as “Eshelman Hall” instead of as “Eshleman Hall.” HOROWITZ, *supra* note 1, at 18. Many other such errors abound, still further lessening the credibility of the work, errors not only orthographical or typographical, but even historical, and basic at that, such as, “America is the first predominantly white society to free its black slaves,” *id.* at 74, when it is hardly unknown that England abolished slavery back in 1833—thirty years before America’s Emancipation Proclamation. See, e.g., HENRY M. STANLEY, *SLAVERY AND THE SLAVE TRADE IN AFRICA* 9 (1893) (mentioning the date of abolition in England).

⁷⁸ A look at the website of Horowitz’s *FrontPage Magazine* tends to confirm the impression of unreliability and self-contradiction. See Center for the Study of Popular Culture, FRONTPAGE MAGAZINE, at <http://www.frontpagemag.com> (last visited Aug. 28, 2002). For example, the site at one fairly recent point included a feature which quoted a racist who sells violent and racist video games:

“No, not a hate group at all,” said William Pierce, who owns both enterprises [National Alliance, a white-supremacist group, and Resistance Records, a National Alliance organ which sells the video game “Ethnic Cleansing”]. “ADL [the Anti-Defamation League] is a hate group. They peddle hate. They make their living by trying to frighten their supporters, by trying to get their supporters to hate people like us.”

“The theme of the [‘Ethnic Cleansing’] game is race war; it’s urban guerilla warfare, essentially, with a racial basis,” Pierce explained. “It’s a violent game. There is a lot of shooting and killing in it. But it’s not atypical of video games generally, which tend to involve a lot of combat situations, a lot of shooting.”

Christine Hall, “*Racist*” *Video Games Rile Anti-Defamation League*, at <http://www.conservativenews.org/ViewCulture.asp?Page=\Culture\archive\200202\CUL20020220a.html> (Feb. 20, 2002) (formerly locatable at Center for the Study of Popular Culture, FRONTPAGE MAGAZINE, at <http://www.frontpagemag.com>).

But bizarrely enough, and in contradiction to the featuring of the previously mentioned story decrying violent racist video games, the *FrontPage Magazine* website was also connected, at the same time, to a “Slap Osama” video game wherein participants could not only “slap” a silly-looking cartoon figure of Osama bin Laden but could also “Nuke Osama,” send a missile “To Osama With Love,” or launch an “Air Strike.” See Center for the Study of Popular Culture, *Slap Osama*, FRONTPAGE MAGAZINE, at <http://www.slaposama.com/> (last visited Apr. 28, 2002) (evidence of the existence of *Slap Osama* at *The Self-Gratification of the Day Award—The Winner for December 3, 2001*, at www.savethehumans.com/selfgratification/01dec/3.shtml) (last visited Aug. 27, 2002).

See also David Horowitz, *An Enemy Within*, FRONTPAGE MAGAZINE, Sept. 19, 2001, at <http://www.frontpagemag.com/Articles/Printable.asp?ID=4520>. In *An Enemy Within*, Horowitz claims of Congresswoman Barbara Lee, the only Congressperson to vote against H.R. 64, which ceded control of the combat actions against Afghanistan to President Bush instead of keeping the war powers with Congress, “Barbara Lee is not an anti-war activist, she is an anti-American communist who supports America’s enemies,” simply because she voted against the resolution. He provides no further proof that she actually supports any enemies of America or is a communist. (Some of the earlier-visited links may be difficult or impossible to find, as FrontPageMag.com has been redesigned.) In fact, as Lee notes on her own website, she voted against the resolution not in order to prevent America from fighting the terrorists, but to prevent a needless escalation of violence. See Barbara Lee, *The Office of Congresswoman Barbara Lee Representing the Ninth District of California* [hereinafter “*Office*”] – *Rep. Barbara Lee’s (D-CA) Votes on Legislation Responding to the Terrorist Threat*, at <http://www.house.gov/lee/votes.htm> (last visited Aug. 27, 2002).

And last but not least, Lee also features on her website information about reparations for slavery, including her cosponsorship of H.R. 40, the Commission to Study Reparation Proposals for African Americans Act, see Barbara Lee, *Office – Slavery Reparations: Legitimate Legislation in Congress Addressing Reparations for African Americans*, at <http://www.house.gov/lee/reparations.htm> (last visited Apr. 16, 2003), and her warnings to taxpayers not to fall prey to scams by promoters alleging that taxpayers can file slavery reparations claims with the Internal Revenue Service, see Barbara Lee, *Office – Slavery Reparations: News from the Internal Revenue Service About the Slavery Reparations Hoax*, at <http://www.house.gov/lee/reparations.htm> (last visited Apr. 16, 2003) (linking to Internal Revenue Service, *News Release: Slavery Reparation Scams Surge, IRS Urges Taxpayers Not to File False Claims*, at <http://www.irs.gov/pub/irs-news/ir-02-08.pdf> (Jan. 24, 2002)). Perhaps some of Horowitz’s apparent hostility to Lee is due to her careful and responsible championing of the reparations cause.

III. HOROWITZ'S INCIVILITY IN *UNCIVIL WARS*

Again drawing from the first page of the book: "In the spring of 2001, I attempted to place an ad in college newspapers opposing the idea of paying reparations for slavery . . . [b]ut when my ad appeared on college campuses, the reactions were volcanic and the attacks on me were savage."⁷⁹ Horowitz uses the possibly racially stereotypical and dangerous term "savage"⁸⁰ when dealing with reparations to African Americans, and with the protesters against his advertisement, many of whom were African American.⁸¹ He does this instead of using a more neutral term such as "unkind" or "abrasive" to describe the "attacks" of African Americans and others on his advertisement. Although Horowitz does contribute positively to the reparations debate by offering plausible (if sometimes exaggerated) criticisms of his opponents' arguments, he also exhibits a tone of incivility and bellicosity which consistently undermines his own credibility as a fair and balanced spokesperson against reparations to African Americans.

One example of material with this tone is the following excerpt from his advertisement:

During the last half-century Americans have voted equal rights to African-American citizens and supported massive compensations to African-Americans and others who have lagged behind.

⁷⁹ HOROWITZ, *supra* note 1, at 1.

⁸⁰ See D. Marvin Jones, *Darkness Made Visible: Law, Metaphor, and the Racial Self*, 82 GEO. L.J. 437, 484 n.185 (1993) ("At some future period, not very distant as measured by centuries, the civilized races of man will almost certainly exterminate and replace the savage races throughout the world." (quoting GEORGE M. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND* 230 (1971) (quoting CHARLES DARWIN, *THE DESCENT OF MAN* (no page or year given)); referring to "Social Darwinism's gospel of doom for blacks").

⁸¹ See HOROWITZ, *supra* note 1, *passim*. One example concerns African-American student at Duke protesting against Horowitz's advertisement: "The fact is that far from being members of a helpless victim class at Duke, [African-American student] Sarah Wigfall and her fellow [African-American] protesters are privileged youth, attending an elite university where the cost of an education is over \$100,000." *Id.* at 77. However, Horowitz, although he asserts that many of the protesters may be at Duke on full scholarships because of their minority status, *see id.* at 77, does not offer proof that any of them are (and if some are not on scholarship, the \$100,000 bill may be particularly onerous for them, so that Horowitz's allegation of "privilege" rings hollow), and he ignores the fact that whether minority students have a scholarship or not, life can be difficult for them even at a "privileged" school. See, e.g., Theo Emery, *Harvard Law Professor Steps Aside Following Racial Flap*, ASSOCIATED PRESS, Apr. 22, 2002, at <http://www.lawschool100.com/nesson.htm> (describing Harvard law professor Charles Nesson's decision to stop teaching his torts class at Harvard Law School following his offering to conduct a "mock trial" of, and also to represent, a student who made a derogatory comment to an African-American classmate who complained about the posting of a version of the "n-word" on the Internet notes for the class; the posting of the word, and the subsequent problems that this posting fomented, caused considerable student protest, including a walkout by over 400 students on April 15, 2002).

To be indicted after such efforts . . . is offensive and insulting . . .

The reparations claim is a hostile assault on America and its history. Its divisive message and fallacious views can only have a profoundly adverse effect on those who embrace it, making it impossible for them to see their own past clearly, or to find a way to an American future.⁸²

Though speaking of a “hostile assault,” Horowitz here fails to take account of many things. Were the “equal rights” voted to African Americans followed through on and enforced by the law, or not? Has there been rollback of, or have there been threats to, those laws (e.g., affirmative action laws)? Why is it inherently insulting or offensive for African Americans, and social critics in general, to question whether the “equal rights” and “massive compensations” mentioned have truly been enough, or just minimal and deficient? Is Horowitz comparing the “hostile assault” of reparations to, say, some sort of terrorist attack on America itself? Will the reparations movement obscure American history for African-American students of that history, or, by contrast, might the movement help them understand American history on a deeper and more significant level?

Unless he answers questions like these in detail, Horowitz does not show that the reparations movement is hostile; quite to the contrary, by painting that movement, without substantiation, as somehow treasonous or unacceptable, he shows both his own possible hostility to African Americans and their causes, and his lack of attention to reasoned argument.

He does not explain, either, why he felt especially qualified to present an advertisement on the issue, much less to write a [“case”]book, although he apparently felt so qualified.⁸³ No speaker is obliged to present qualifications before speaking, but seeing Horowitz’s apparent need to launch a “preemptive strike” against reparations even before a Congressional commission or other such body has been established to consider reparations, one would tend to assume that Horowitz might want to legitimate his ideas by presenting evidence of special knowledge of the field he covers. Horowitz, a journalist, presents no proof that he has the high level of special expertise on reparations that one might expect from, for example, a professor of African-American studies, or an experienced civil rights lawyer on either the “liberal” or the “conservative” side, or a United Nations official sitting on a commission that deals with reparations issues.⁸⁴

⁸² HOROWITZ, *supra* note 1, at 134.

⁸³ See *id.* at dust jacket, front flap (mentioning the putative “casebook on reparations” status of *Uncivil Wars*; the ability to write a “casebook” would seem tacitly to assume the author’s exceptionally high level of expertise on the particular topic).

⁸⁴ Some sample works on reparations, law journal articles by law professors or students, who

In addition, Horowitz could also have made the advertisement an offer to debate on the issues, or a call for more even-handed debate, rather than a forceful and demeaning denunciation of reparations and its adherents. One of the more potentially alienating examples of the style of his advertisement is this:

How are the millions of non-black refugees from tyranny and genocide who are now living in America going to receive these claims [reparations], moreover, except as demands for special treatment—an extravagant new handout that is only necessary because some blacks can't seem to locate the ladder of opportunity within reach of others, many of whom are less privileged than themselves?⁸⁵

However, if reparations are due for what was taken from African Americans, then reparations would be a “hand-back,” a returning of what was unjustly taken, rather than the “handout” Horowitz speaks of, much less an “extravagant handout.” Also, the language about blacks not being able “to locate the ladder of opportunity” wrongly makes blacks sound blind or incompetent, and ignores the fact of ongoing racism, e.g., the Texaco oil company’s racist treatment of black employees, resulting in filing of suit against the company and a settlement of \$176.1 million to plaintiffs in 1996.⁸⁶ The manner of verbiage that Horowitz has chosen to use does not tend to encourage a reasoned and civil type of debate; and an issue as important and potentially contentious as reparations could benefit greatly from civil and rational exposition.⁸⁷

might, due to their legal studies, be supposed to have some actual expertise in the legal ramifications of reparations, are the following: Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597 (1993) (tracing the African-American author’s family history, and discussing African-American consciousness, as elements of why reparations are worthy of consideration); Westley, *supra* note 64 (arguing for plebiscites of African Americans concerning reparations, and advocating a trust fund as the repository of reparations monies); Tuneen E. Chisholm, Comment, *Sweep Around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677 (1999) (recommending a Congressional bill, rather than lawsuits, as the optimum way to attain reparations, and discussing the need for America to show the same concern for human rights and equality to African Americans as it does, at least in speeches, to residents of foreign countries); Lancaster, *supra* note 72 (discussing slavery, segregation, and reparations in terms of property law, constitutional law, and African-American history). As previously noted, there is also Boris Bittker’s full-length book on reparations. See BITTKER, *supra* note 11, *passim*.

⁸⁵ HOROWITZ, *supra* note 1, at 14.

⁸⁶ See Macaw Landing Foundation, *Ecuadoran Plaintiffs Accuse Texaco of Racism*, at <http://www.cnnw.net/~mlf/racism.html> (Sept. 23, 1999) (mentioning the Texaco settlement with black employees, and also revealing that Ecuadoran rainforest Indians are themselves suing Texaco for racist and destructive actions including toxic poisoning of the Indians’ environment).

⁸⁷ During his 2002 book tour for *Uncivil Wars*, Horowitz delivered a lecture, attacking reparations, in the Michigan Union Ballroom at the University of Michigan, Ann Arbor, on March 19, 2002. See Tyler Boersen, *Horowitz Lecture Stirs Controversy*, MICH. DAILY, Mar. 20, 2002, at

Although, as previously noted, Horowitz does not violate the law by his speech, he arguably abuses his legal freedom of speech, and his own trustworthiness as an advocate.⁸⁸ First, he has consistently used insulting language of the

http://www.michigandaily.com/vnews/display.v/ART/2002/03/20/3c98423ad27c9?in_archive=1. "Horowitz commented that several questions were 'smart-assed.' . . . Some students were disappointed that the discussion was not more constructive. 'There was too much yelling and too much rhetoric,' said LSA [College of Literature, Science and the Arts] sophomore Eli Segall."

Horowitz did not foster debate because he refused to thoroughly answer audience questions, often sinking to personal attacks on the questioner - he called [an African-American student] a 'black racist'

Horowitz spits the same sort of rhetoric that he vehemently denounces when it comes from liberals

. . . [And he] is guilty of presenting himself as a provocateur.

Aubrey Henretty et al., *Chatting With the Enemy: Horowitz and the State of Liberalism*, MICH. DAILY, Mar. 21, 2002, at http://www.michigandaily.com/vnews/display.v/ART/2002/03/21/3c997c9b5ec3d?in_archive=1.

The author of this book review attended the lecture and noted that Horowitz also: called former U.S. President Bill Clinton "white trash from Arkansas"; asked whether poor people with names like Juan Martinez should pay reparations to financially successful African-American musician Sean "Puffy" Combs, *see infra* notes 118-121 and accompanying text (discussing the issue of paying reparations to African Americans who are not impoverished); claimed that seeking reparations would "set blacks against everyone else"; indicted reparations activists for "not looking at the bright side, but the gloomy side" and for considering the "glass" of American life "half-empty" rather than half-full for African Americans; and indeed called an African-American student not only a "black racist," but also a "bad leader" (the student, Agnes Aleobua, was a vocal member of the Defend Affirmative Action Party, a campus political party with members on the Michigan Student Assembly at the University of Michigan, Ann Arbor). David Boyle, Notes from David Horowitz Lecture at Ann Arbor, Michigan (Mar. 19, 2002) (on file with author).

⁸⁸ On the need to use one's free speech responsibly, see, for example:

[R]egulation of hate speech may lead to unfair censorship and coerced conformity; failure to regulate may lead to the oppression of minority groups. . . . [T]here is an interdependence between the right to speak and the responsibility to speak honestly. In so doing, the dignity of the target of the speech must be preserved. If the relationship between the right of free speech and the responsibility for free speech is ignored, the traditional justification for protecting it - that it promotes the quest for truth - is denied.

Kenneth Lasson, *Holocaust Denial and the First Amendment: The Quest for Truth in a Free Society*, 6 GEO. MASON L. REV. 35, 81 (1997).

In France, it is a crime to deny the Holocaust. *See, e.g.,* Calvin Peeler, *The Politics of Memory: Reconstructing Vichy and the Past the French Chose to Forget*, 19 WHITTIER L. REV. 353, 363 (1997) ("The French public was so opposed to . . . neo-Nazi revisionists that on June 30, 1990, the French legislature passed a law to prevent revisionists from denying the existence of the Holocaust."). On that note, critics may be driven to wonder whether an unreasoned or histrionic denial of the validity of reparations for slavery is, in some sense, also an irresponsible denial of the reality of that slavery, or even a *de facto* devaluing, at least of the words and ideas of those who demand a serious societal examination of the reparations issue, if not quite a devaluing of those advocates' free speech *per se*.

type designed to goad and degrade. Second, although he does make the case that some left-wing activists use oppressive tactics, he does not really mention the long history of right-wing groups who attacked free speech, such as the Nazis, and, to cite a more recent example, the DINA secret police in Chile, who, under the right-wing dictator General Augusto Pinochet, whom the United States supported, took protesters or “subversives” and threw them out of helicopters into the ocean,⁸⁹ slitting open their stomachs so that they would sink faster.⁹⁰ Since groups of any political orientation can make free speech difficult, Horowitz’s idea that the political left is near-uniquely responsible for suppressing freedom of speech is unsubstantiated, and his accusations seem irresponsible. In addition, he does not address any “chilling effect” that the actions of the Bush administration, such as the USA PATRIOT Act, may have had on free speech in this country⁹¹ since the terrorist attacks of September 11, 2001, either; given his history of supporting Republican causes and administrations, his omission places his evenhandedness in question.⁹²

Horowitz himself seems content to censor or censure the free speech of others with whom he does not agree. He ends section I of *Uncivil Wars* by holding up the example of Randall Robinson as an over-privileged complainer who went to Harvard Law School but still feels insulted when, in 1995 in a store in

⁸⁹ See, e.g., Politex, *Politex’s Bush Watch for Letters to DUBYA*, at <http://www.bushwatch.net/nancynov.htm> (last visited Aug. 27, 2002).

⁹⁰ See MAI-NOT Forum, *London Sunday Times on Pinochet*, at <http://mai.flora.org/forum/7532> (Oct. 25, 1998).

⁹¹ See, e.g., Association of American Publishers, *Freedom to Read Committee—The PATRIOT Act and the First Amendment: A Statement from the Freedom to Read Committee of the Association of American Publishers: Why the Book Community Is Concerned*, at <http://www.publishers.org/abouta/patriot.htm> (last visited Sept. 4, 2002) (“[T]he USA PATRIOT Act [The Uniting and Strengthening America by Providing Appropriate Tools Required to Interrupt and Obstruct Terrorism Act] . . . passed by Congress in the wake of the horrific events of September 11, 2001, contains provisions that threaten the First Amendment-protected activities of book publishers, booksellers, librarians, and readers.”)

⁹² Horowitz claims he finished the book on July 4, 2001, see HOROWITZ, *supra* note 1, at 6, 135-36, but many months passed between then and the publication of the book, during which he could presumably have composed and inserted some commentary on the attacks and their ensuing effects on free speech in America, since he claims to care so deeply about preserving free speech rights. See *id. passim*.

As for Horowitz’s party loyalties, he describes himself as a conservative and a Republican. See DAVID HOROWITZ, *Dealing with Racism*, in HATING WHITEY: AND OTHER PROGRESSIVE CAUSES 69, 73 (1999) [hereinafter HATING WHITEY]. He seems to take his Republicanism to somewhat virulent lengths, though. See, e.g., DAVID HOROWITZ, *Amen Corner*, in HATING WHITEY, *supra*, at 56, 61 (deploring a supposed tendency of African Americans to be unthinking supporters of the Democratic Party, and asking, “What if African-Americans were to see that . . . Republican values like personal responsibility might work to the benefit of their communities?”). Observers may query which assertion is more offensive, the claim that African Americans lack personal responsibility or the claim that the Republican Party has a monopoly on personal responsibility.

Virginia, a white store worker calls Robinson “boy.”⁹³ Horowitz contrasts this example with that of Zora Neale Hurston (1891-1960), the African-American author of the famous novel *Their Eyes Were Watching God* (1937), who, as Horowitz presents her, shrugs off racial prejudice and does not act like a victim, she choosing instead to have a “positive attitude.”⁹⁴ What, however, necessitates that a black man has to forego his right to protest freely, has to swallow in silence a racist insult, simply because he has been successful in his career? Robinson’s First Amendment right to protest racism may not be for Horowitz to decide, but, rather, for Robinson himself to decide, and to use as he sees fit.

Perhaps more disturbingly, while Horowitz touts the “spunkiness” of a Hurston, he ignores or omits key features of her later history, in which ironically, and horribly, for a woman who had so advocated independence and forgetting the legacy of slavery, Hurston found difficulty making money, partially because of white racist hostility. For example, a white judge became resentful that author Hurston, being black, could ghost-write his biography better than he could write it himself, and this resentment caused the failure of the project and her not being paid the fee. She died in a welfare home and was buried in a racially segregated cemetery.⁹⁵

On balance, not blacks seeking reparations, but Horowitz himself, may be characterized as unreasonably resentful; in this vein, an incident he describes early in the book becomes more important in the shadow of all his later accusations against blacks. He mentions at one point that the Black Panthers murdered a friend of his, Betty Van Patter, and that this resulted in his “departure from the left.”⁹⁶ While one can, at least if his allegations are true, somewhat sympathize with this stance, it hardly seems fair that he feels entitled to vilify the entire left and everything that it does, just because a portion of the left may have hurt him badly at one point.⁹⁷ And, if Horowitz was so desperately hurt by the killing of a

⁹³ HOROWITZ, *supra* note 1, at 100.

⁹⁴ *Id.* at 101.

⁹⁵ ROBERT E. HEMENWAY, ZORA NEALE HURSTON: A LITERARY BIOGRAPHY 337, 347-48 (Illini Books ed., 1980) (1977). Horowitz briefly mentions that Hurston died in poverty, *see* HOROWITZ, *supra* note 1, at 101, but says nothing more about the circumstances of her death.

⁹⁶ HOROWITZ, *supra* note 1, at 29-30.

⁹⁷ On the topic of vengefulness, see:

In 1989, fourteen years after Betty Van Patter disappeared, Huey [Newton, a famous Black Panther leader,] was gunned down by a drug dealer he had burned. . . . It was not justice. He should have died sooner; he should have suffered more . . . [but I was] grateful for that which did occur, however belated and insufficient.

DAVID HOROWITZ, *Black Murder, Inc.* (1993), *reprinted in* HATING WHITEY, *supra* note 92, at 95, 114. This ode to violent revenge comes three pages before Horowitz condemns Black Panther leader Elaine Brown for being too vengeful and violent toward a fellow Panther member. *See id.* at 117.

friend not apparently related to him by blood, then it stands to reason that blacks on the whole could be even more desperately hurt, much more, by the slavery or even extermination of so many of their own blood ancestors, and on a time scale going back centuries.⁹⁸

An author who, by choosing the book title he does, seems to condemn incivility and insensitivity, would, presumably, do well to be civil and sensitive himself, especially given the controversial and complex topics, such as reparations and race relations, that he addresses. Horowitz's arguable "racial libel" against African Americans merely for their daring to seek reparations continues a long and dishonorable tradition of racial insult in American life, dating from before the Civil War and extending into the present.⁹⁹

IV. REASONS AGAINST REPARATIONS IN HOROWITZ'S ADVERTISEMENT AND *UNCIVIL WARS*

While an author could write an entire book, or several books, refuting in copious detail the arguments against reparations in Horowitz's advertisement and *Uncivil Wars*, only so much is possible in the space of a book review. However, at least some abbreviated discussion and refutation of the logic of Horowitz's arguments is due and proper. This part will address first the anti-reparations arguments of the advertisement, then will address those in part II of *Uncivil Wars*, which differ somewhat from those of the advertisement.

A. *The Advertisement*

1. "There Is No Single Group Responsible for the Crime Of Slavery"¹⁰⁰

On the question of responsibility for slavery, history shows that whites were the primary group responsible for slavery, not, say, free African-American

⁹⁸ The first slaves in America arrived in Jamestown in 1619. See, e.g., A. Leon Higginbotham, Jr., *The Legal Status of African Americans During the Colonial Period*, in WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE 317, 317-24 [hereinafter WHEN SORRY ISN'T ENOUGH] (Roy L. Brooks ed., 1999) (discussing colonial-era slavery in Virginia and other American colonies).

⁹⁹ On "racial libel," see, for example, Derrick Bell, *The Foulston & Siefkin Lecture: Racial Libel as American Ritual*, 36 WASHBURN L. J. 1 (1996). Bell traces the history of libeling Africans and African Americans as being inferior, in order to justify slavery, see *id.* at 1, and shows that the libeling continued during the post-Reconstruction era, see *id.* at 9-13, 16, up through today, when books such as Dinesh D'Souza's *THE END OF RACISM* (1995) portrays blacks as pathologically dysfunctional, barbaric, dangerous, and unwise. See Bell, *supra*, at 2-4. In *Uncivil Wars*, Horowitz often seems to agree with D'Souza's point of view.

¹⁰⁰ HOROWITZ, *supra* note 1, at 12.

indentured servants, Native Americans, or other non-European groups who may occasionally have held slaves.¹⁰¹

2. “There Is No Single Group That Benefited Exclusively from Slavery”¹⁰²

Although Horowitz alleges that various groups benefited from slavery,¹⁰³ whites received most of the wealth benefits from slavery.¹⁰⁴

¹⁰¹ See George P. Fletcher, *The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt*, 111 *YALE L.J.* 1499, 1568-69 (2002):

[W]hat . . . would [it] be like to live as African Americans in the United States if the dominant white political class felt no guilt – no unease whatever – about having used guns and chains to bring their ancestors to American soil[?] Suppose the whites expressed the attitude: “You are free now; the past is irrelevant.” I should think that this mass amnesia of the dominant culture toward the crimes of the past would be unbearable, both to blacks and whites.

See also Lancaster, *supra* note 72, at 177 (“The Dutch and English acquired Africans for the sole purpose of slave labor in the New World. . . . Europeans . . . refrained from recognizing slaves as having any claim to freedom or legally recognized personal status.”); Robert Chrisman & Ernest Allen, Jr., *Ten Reasons: A Response to David Horowitz by Robert Chrisman and Ernest Allen, Jr.*, at <http://www.umass.edu/afroam/hor.html> (Apr. 2, 2001) (“[T]he principal responsibility for internationalization of that trade [slavery] and the institutionalization of slavery in the so-called New World rests with European and American individuals and institutions. . . . As historian James Oakes noted, “By 1830 there were some 3,775 free black slaveholders across the South. . . . The evidence is overwhelming that the vast majority of black slaveholders were free men who purchased members of their families or who acted out of benevolence.”).

¹⁰² HOROWITZ, *supra* note 1, at 12.

¹⁰³ See *id.* at 12.

¹⁰⁴ For example,

English law in the colonies detained slaves in the common law action of “trover,” an action for detaining chattel.

. . . .

The language in Article IV, Section 2, Clause 2 [of the Constitution] states that a slave shall be returned to “whom such services or labor may be due.” This language implies that the Constitution recognized that the product of slave property belonged to the owner of that property.

Lancaster, *supra* note 72, at 177, 181; see Chrisman & Allen, *supra* note 101 (“Slaveholders benefited primarily from the institution, of course, and generally in proportion to the number of slaves which they held. But the sharing of the proceeds of slave exploitation spilled across class lines within white communities as well.”). Chrisman and Allen also make the point that even if some wealth benefits of slavery have come back to African Americans,

[Horowitz’s] argument that, “the GNP of black America makes the African-American community the 10th most prosperous ‘nation’ in the world[.]” is based upon a false analogy. GNP is defined as “the total market value of all the goods and services produced by a nation during a specified period.” Black Americans are not a nation and have no GNP.

3. “Only a Tiny Minority of White Americans Owned Slaves, While Others Gave Their Lives to Free Them”¹⁰⁵

Horowitz notes that relatively few Americans were slaveowners, and that other, non-slaveowning Americans gave their lives for the Union and the cause of ending slavery.¹⁰⁶ However, his contention that these facts should prevent reparations is refutable by noting that even if only a few Americans owned slaves, still, if slavery was legal, the whole country was responsible in a sense (partially because of the ill-gotten wealth of slavery being spread even to poor, non-slave owning whites, as discussed in the response to Horowitz’s second claim).¹⁰⁷ And although some Americans sacrificed their lives during the Civil War, does that sacrifice, noble as it may be, necessarily pay off all the debt owed to slaves and their descendants, or perhaps only part of it, if any at all?¹⁰⁸ Finally, blacks to some considerable extent actually liberated themselves: “Some 170,000 blacks served in the Civil War, representing nearly one third of the free black population.”¹⁰⁹

4. “Most Living Americans Have No Connection (Direct or Indirect) to Slavery”¹¹⁰

Horowitz discusses America’s multi-racial nature (e.g., the various waves of immigration of Southern Europeans, Asians, and other groups who did not tend to hold slaves¹¹¹), and he mentions the similar point that most Americans lack any direct connection to the evils of slavery.¹¹² He is correct in that the United States are certainly highly racially diverse. However, if the ideals of

Id.; see also Earl Ofari Hutchison, *Debt Wrong*, SALON, at <http://www.salonmag.com/news/feature/2000/06/05/reparations/index.html> (June 5, 2000) (“The U.S. government encoded slavery in the Constitution, and protected and nourished it for a century. Traders, insurance companies, bankers, shippers and landowners made billions off of it. Those ill-gotten profits fueled America’s industrial might. Meanwhile, white labor groups benefited for decades after slavery insured that blacks were excluded from unions and the trades and confined to the dirtiest, poorest-paying jobs.”).

¹⁰⁵ HOROWITZ, *supra* note 1, at 12.

¹⁰⁶ See *id.* at 114-20.

¹⁰⁷ See *supra* notes 102-04 and accompanying text.

¹⁰⁸ See also Verdun, *supra* note 84, at 601 n.6 (noting Lincoln’s desire to send emancipated slaves to Africa or Central America, instead of letting them stay in the United States); Chrisman & Allen, *supra* note 101 (asserting that Northern troops fought more to preserve the Union than to end slavery, and that Union troops plundered slaves’ property).

¹⁰⁹ Chrisman & Allen, *supra* note 101.

¹¹⁰ HOROWITZ, *supra* note 1, at 13.

¹¹¹ See *id.*

¹¹² See *id.*

fairness (e.g., “those who receive benefit should also render benefit in return”), patriotism, civic commitment, and democratic participation in national life all strongly suggest that people of all races in a country take on not only the nation’s benefits but also its debts – including, say, serving in the armed forces, if one takes the word “debt” in a broad sense – of the country when they emigrate there, those debts may include the country’s debt to African Americans which dates from the time of slavery.¹¹³ Thus, there is in fact a “connection” between Americans and slavery, even though no American alive in fact participated in the antebellum slavery of African Americans.

5. “The Historical Precedents Used to Justify the Reparations Claim Do Not Apply, and the Claim Itself Is Based on Race Not Injury”¹¹⁴

Horowitz claims that Holocaust reparations are inapplicable as a model for reparations, and that the request for reparations is based “merely” on race instead of any present-day injury (no ex-slaves are currently alive).¹¹⁵ These arguments are answerable by noting that reparations to African Americans may not be exactly like those to Holocaust victims, or those to Japanese-American World War II victims of internment, but those precedents may still be usable in some way in a reparations claim¹¹⁶—and also by noting that if the injury was based on singling out people by race, reparations too can rely on racial classifications.¹¹⁷

¹¹³ See, e.g., Verdun, *supra* note 84, at 654 (“[T]he arguments that have prevailed against reparations to African Americans [including the presence of “people who immigrated after slavery ended,” as a subgroup of those required to pay for reparations] would have thwarted reparations to Japanese Americans.”); Chrisman & Allen, *supra* note 101 (suggesting that since the government (the provider of restitution), which legalized slavery, survives from generation to generation, it is irrelevant how long ago the violations of slavery occurred, or how much connection living individuals have to slavery; and that since people who were not alive during World War II are now paying, by way of their taxes, reparations to Japanese Americans who were in relocation camps during the war, it is wrong to attack reparations for slavery simply because the slaveholders themselves are not still alive).

¹¹⁴ HOROWITZ, *supra* note 1, at 13.

¹¹⁵ See *id.*

¹¹⁶ See Verdun, *supra* note 84, *passim* (offering numerous parallels between the Japanese-American reparations experience and possible efforts at reparation for African-Americans, e.g., noting that “[t]he report of the Commission on Wartime Relocation and Internment of Civilians concluded that black-white racial relationships set the stage for the racist treatment of Japanese Americans,” *id.* at 651); Chrisman & Allen, *supra* note 101 (showing the usefulness of the Japanese-American reparations experience in contemplating reparations efforts for African Americans); see also *supra* note 113 and accompanying text.

¹¹⁷ See, e.g., *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 407 (1978) (Blackmun, J., concurring in part and dissenting in part) (“In order to get beyond racism, we must first take account of race. There is no other way.”); Lancaster, *supra* note 72, at 176 (“[I]f an individual would have been classified as a Slave, [“N-word”], Negro, Colored, Afro American, black or African

6. “The Reparations Argument Is Based on the Unsubstantiated Claim That All African-Americans Suffer from the Economic Consequences of Slavery and Discrimination”¹¹⁸

Even if, as Horowitz thinks, not all African Americans today suffer from slavery’s effects,¹¹⁹ one may challenge his use of this assertion by noting that even if some highly wealthy African Americans do not economically suffer much, millions of African Americans presently live in poverty or other undesirable conditions, traceable to the legacy of slavery and the ensuing official or unofficial segregation, even to this day.¹²⁰ Even if an “income cap” were placed on reparations, so that, for example, black millionaires or billionaires were not given reparations, that would still allow reparations to the vast majority of African Americans, many of whom could use the money greatly. However, since the reparations “claim is one of entitlement, not need,”¹²¹ perhaps even wealthy African Americans should receive reparations.

7. “The Reparations Claim Is One More Attempt to Turn African-Americans into Victims. It Sends a Damaging Message to the African-American Community and to Others”¹²²

Horowitz’s idea that seeking reparations will obsess African Americans with the idea of their victimization,¹²³ does not make as much sense as the oppo-

American, and that individual would have been enslaved or subjected to compulsory discrimination, that individual [should be] entitled to reparations under an African American reparations paradigm.”); Chrisman & Allen, *supra* note 101 (“[T]he injury in question – that of slavery – was inflicted upon a people designated as a race. The descendants of that people – still socially constructed as a race today – continue to suffer the institutional legacies of slavery some one hundred thirty-five years after its demise.”).

¹¹⁸ HOROWITZ, *supra* note 1, at 13-14.

¹¹⁹ *See id.*

¹²⁰ *See, e.g.,* Chrisman & Allen, *supra* note 101 (“As of 1998, median white family income in the U.S. was \$49,023; median black family income was \$29,404, just 60% of white income.... Further, the costs of living within the United States far exceed those of African nations.”) (citing 2001 NEW YORK TIMES ALMANAC 319 (2002)); Hutchison, *supra* note 104 (“The beatings of black motorist Rodney King, the shooting of Amadou Diallo, the torture-beating of Abner Louima and the racial profiling of young black males by the police are ample proof that African-Americans are still at mortal risk from police violence. This raw, naked institutional racism is the ugly byproduct of slavery.”).

¹²¹ Westley, *supra* note 64, at 471-72 (pointing out that although reparations may benefit some “Blacks [Westley capitalizes “Blacks”] who enjoy relatively privileged and discrimination-free lives . . . [t]he claim is one of entitlement, not need . . . [T]he goal of social equality is enhanced when the beneficiary group is also a group such as Blacks that suffers continuing economic subordination despite advances made by some individuals.”)

¹²² HOROWITZ, *supra* note 1, at 14.

¹²³ *See id.*

site claim that paying reparations may help end a sense of victimization, not perpetuate it.¹²⁴

8. “Reparations to African-Americans Have Already Been Paid”¹²⁵

Although one could partially agree with Horowitz that some social programs may have served as reparations already,¹²⁶ to what extent have those programs done so? Affirmative action and other programs may have restituted some lost wealth or rights to African Americans,¹²⁷ but perhaps not completely, and those programs were not labeled or considered as reparations *per se*, so that they may lack the psychological significance that actual reparations or apologies might have.¹²⁸

¹²⁴ See, e.g., Chisholm, *supra* note 84, at 703 (“[I]s healing the racial divide, without addressing the underlying sources of racial animosities, as unlikely as healing a festering wound by applying bandages, without first cleaning away the infectious pus?”); *id.* at 725-26 (proposing that an affirmative action reparations remedy not be drawn out endlessly – as an advocate of “perpetual victim” status might have done – but rather, that the remedy end in roughly seventy years’ time); Jason Schultz, Student Paper, *Can Women Judges Help Make Civil Sexual Assault Trials More Therapeutic?*, 16 WIS. WOMEN’S L.J. 53, 60 (2001) (noting that desire for empowerment and control over their situations motivates assault victims who file civil claims, and postulating timely “reparations and closure” as elements in therapeutic outcome); Chrisman & Allen, *supra* note 101 (“Black people have certainly been victimized, but acknowledgment of that fact is not a case of ‘playing the victim’ but of seeking justice. . . . [M]any [immigrants], such as Chileans and Salvadorans, direct their energies for redress toward the governments of their own oppressive nations—which is precisely what black Americans are doing.”); Hutchison, *supra* note 104 (“Most Americans agree that slavery was a morally monstrous system that wreaked severe pain and suffering on America.”). For one possible method of avoiding polarization between parties on “both sides” in the aftermath of violence or oppression, see also Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1444 (1993) (recommending not unfairly favoring either the victims or the victimizers, but rather, “[t]reating all participants as more than mere victims and more than mere perpetrators, recognizing the capacity of the most victimized for choice, redressing the structures of constraint, and treating responsibility not as blame but as the ability to respond”).

¹²⁵ HOROWITZ, *supra* note 1, at 14.

¹²⁶ See *id.* at 14, 122-23.

¹²⁷ See, e.g., Westley, *supra* note 64, at 429 (calling affirmative action “a form of remediation for perpetuation of past injustice”).

¹²⁸ As for the importance of reparations and apologies *per se* in the Japanese-American experience, see, for example,

In terms of its impact on the direct beneficiaries and its reaffirmation of all citizens’ constitutional rights, the historical significance of the [1988] Civil Liberties Act’s passage is self-evident. . . .

. . . .

By framing redress as an attempt to remedy a deprivation of the fundamental principle of equal opportunity, rather than as a . . . form of affirmative action, redress supporters appealed to members [of Congress] across the political spectrum.

9. "What about the Debt Blacks Owe to America?"¹²⁹

While Horowitz asserts African Americans' supposed "debt" to America, e.g., that they are better off here than in Africa,¹³⁰ this idea does not reflect the possibility that America may owe far more to African Americans, due to slavery and segregation, than the other way around, even if African Americans derive some benefit from being in this country rather than in another, poorer or less-free, country.¹³¹

10. "The Reparations Claim Is a Separatist Idea That Sets African-Americans Against the Nation That Gave Them Freedom"¹³²

Horowitz posits reparations as separatist and anti-American, reasoning that African Americans will become fixated on the history and idea of their vic-

American Redress Bill, in WHEN SORRY ISN'T ENOUGH, *supra* note 98, at 190, 192. For Hatamiya, one may note, "reparations" and "affirmative action" seem to be somewhat at odds.

¹²⁹ HOROWITZ, *supra* note 1, at 15.

¹³⁰ See *id.* at 15, 111-12.

¹³¹ Moreover, see Chisholm, *supra* note 84, at 703-04, 707-08, for the observation that Americans owe to Africa itself (and to African Americans) at least an apologetic attitude for America's participation in the slave trade and slavery. See also Chrisman & Allen, *supra* note 101, for a discussion of the self-liberating efforts of blacks during various slave rebellions, expostulating:

The idea of black debt to U.S. society is a rehash of the Christian missionary argument Following their [blacks'] partial conversion, their moral and material lot were improved, for which black folk should be eternally grateful Please excuse the analogy, but if someone chops off your fingers and then hands them back to you, should you be "grateful" for having received your mangled fingers, or enraged that they were chopped off in the first place?

In addition, Horowitz erroneously claims that white Anglo-Saxon Christians founded the anti-slavery movement, see HOROWITZ, *supra* note 1, at 15, and did so in 1787, see *id.* at 58-59 (citing ROBERT WILLIAM FOGEL, WITHOUT CONSENT OR CONTRACT: THE RISE AND FALL OF AMERICAN SLAVERY 205 (1989)). However, these facts are at least partially erroneous, as proved by the following examples: the protest of German (as opposed to "Anglo-Saxon") 17th-century colonists against slavery, see *Africans in America: Resource Bank—People & Events, Founding of Pennsylvania Abolition Society 1775*, at <http://www.pbs.org/wgbh/aia/part3/3p249.html> (last visited Aug. 19, 2002) (noting that "As early as 1688, four German Quakers in Germantown near Philadelphia protested slavery in a resolution that condemned the 'traffic of Men-body'"); and the fact of Anthony Benezet being a leader of the Pennsylvania abolitionist movement in 1775 and earlier, see *id.*, he being a Quaker of French Huguenot descent, thus another non-Anglo-Saxon, see *African American Odyssey (Library of Congress): Abolition, Anti-Slavery Movements, and the Rise of the Sectional Controversy*, at <http://memory.loc.gov/ammem/aaohhtml/exhibit/aopart3.html> (last visited Aug. 22, 2002). "White Anglo-Saxon Christian" may be a resonant stock phrase to use, and it may flatter many white Anglo-Saxon Christians in this country, but when its use is not accurate, Horowitz should eschew it.

¹³² HOROWITZ, *supra* note 1, at 15.

timization and start to hate America.¹³³ However, he presents no reasons why reparations must absolutely mean black separatism; in fact, in response to Horowitz, one could say that reparations may be a fulfillment of the American dream¹³⁴ of “justice for all,”¹³⁵ rather than a denial of the American dream.¹³⁶

B. “Reparations and the American Idea”

As for the claims Horowitz makes near the end of *Uncivil Wars*, which are separate from those he makes in the advertisement but may have similar emphases, responses follow below:

1. Martin Luther King on Reparations

Although Horowitz quotes Martin Luther King to the effect that not all of black people’s problems are due to white people but some are self-inflicted,¹³⁷ one Martin Luther King quote Horowitz does not bother to mention comes from King’s greatest speech: “When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir.”¹³⁸ King may display a deeper comprehension here than does Horowitz about what our country’s central legal documents mean, and how reparations could make up, in some way, for the Constitution’s calling blacks 3/5 of a person each, and for all the suffering that followed and complemented that decision. In addition, as Boris Bittker noted, “[I]n proposing a ‘Bill of Rights for the

¹³³ See *id.* at 15-16, 134-37.

¹³⁴ See Chisholm, *supra* note 84, at 700-02 (evoking not separatism, but “a national patriotism that supersedes state and local affiliations, as well as a mutual respect and priority for each individual’s rights, regardless of the individual’s race, ethnicity, or gender[.]” and asking only that African Americans be able to “enjoy the dignity of full membership in the American community,” a full membership which could be enabled by reparations).

¹³⁵ Pledge of Allegiance to the Flag, 4 U.S.C.A. § 4 (2003).

¹³⁶ For an additional point to this effect, see Chrisman & Allen, *supra* note 101, for the observation that “Blacks are already separated from white America in fundamental matters such as income, family wealth, housing, legal treatment, education, and political representation. . . . To ignore such divisions, and then charge those who raise valid claims against society with promoting divisiveness, offers a classic example of ‘blaming the victim.’” Chrisman and Allen also mention historian John Hope Franklin’s idea that the history of slavery perhaps continues in a sense, with white advantage and black disadvantage still continuing today, and the struggle for justice going on. *Id.*

¹³⁷ See *supra* note 58 and accompanying text.

¹³⁸ Martin Luther King, Jr., “I Have a Dream” speech (Aug. 28, 1963). As for the Declaration of Independence, Horowitz’s point that Thomas Jefferson, the document’s author, repeatedly wrote or promulgated sentiments, such as those in the Declaration, that favored liberty and equality, see HOROWITZ, *supra* note 1, at 106, 112-14, 116, 137, still ignores the simple and trenchant truth that Jefferson held slaves, despite what he claimed to believe in.

Disadvantaged,' Martin Luther King, Jr., argued that '[t]he moral justification for special measures for Negroes is rooted in the robberies inherent in the institution of slavery.'"¹³⁹ King may never have mentioned "reparations for slavery" as such, but his words show that he would likely not have been uncomfortable with the idea.

2. Lincoln and the Civil War

Horowitz cites the deaths of Abraham Lincoln and of many Union soldiers as a form of reparations,¹⁴⁰ echoing the third point of his advertisement, "Only a Tiny Minority of White Americans Owned Slaves, While Others Gave Their Lives to Free Them."¹⁴¹ This may be a valid point, but to conclude automatically, as does Horowitz, that those sacrifices serve as *full* reparations for slavery, is an omission of logic. If full reparations had been made, then why were "40 acres and a mule" assigned to ex-slaves by the government?¹⁴² And, further, one must recognize that even that relatively modest payment was rarely, if ever, given to ex-slaves as promised.¹⁴³

¹³⁹ BITTKER, *supra* note 11, at 8-9 & 141 n.8 (citing MARTIN L. KING, JR., WHY WE CAN'T WAIT 152 (1964)).

¹⁴⁰ See HOROWITZ, *supra* note 1, at 12, 114-20.

¹⁴¹ *Id.* at 12.

¹⁴² See I.M. Dayton, Assistant Adjutant-General, Headquarters, Military Division of the Mississippi, in the Field, Savannah, Georgia, *Special Field Order No. 15: "Forty Acres and a Mule"* (Jan. 16, 1865), in WHEN SORRY ISN'T ENOUGH, *supra* note 98, at 365, 365-66.

The mule may still have some currency as a symbol of the discrimination that African Americans face in American life, including in agriculture. For example, one protesting farmer brought a mule to the protest on August 22, 2002, in Washington, D.C. in front of the Agriculture Department building, against the discrimination that African-American farmers face when applying for loans. See Emily Gersema, *Black Farmers Rally at USDA*, SALON, Aug. 22, 2002, at <http://salon.com/news/wire/2002/08/22/farmers/index.html>. The National Black Farmers Association is filing a class-action lawsuit alleging racial discrimination in the issuance or non-issuance of loans to black farmers, and "is seeking a moratorium on foreclosures until the payment situation is resolved. . . . [M]any of the farmers have lost to foreclosure land that had been in their families for generations, and . . . many have been unable to maintain their farms." *Id.*

¹⁴³ See Joe R. Feagin & Eileen O'Brien, *The Growing Movement for Reparations*, in WHEN SORRY ISN'T ENOUGH, *supra* note 98, at 341, 342 (mentioning Lincoln's assassination as a reason that the land and farm animals were not distributed to ex-slaves—although not specifically saying whether the reason is that Lincoln was not alive to lend his support to the distribution, or, alternatively, that the assassination was a factor in some other way (citing Salim Muwakkil, *Time to Redress Slavery's Damage*, CHICAGO SUN-TIMES, Feb. 21, 1994, at 45)). Whether ex-slaves would consider the President's assassination to be a form of atonement for slavery sufficient to outweigh the loss of their forty acres and a mule would be perhaps best left to those ex-slaves or their descendants to decide, not to a journalist.

3. Race-Conscious Remedial Programs

Horowitz calls Lyndon Johnson's "War on Poverty" a type of reparations,¹⁴⁴ and this point resembles point eight of his advertisement, "Reparations to African-Americans Have Already Been Paid."¹⁴⁵ Again, this is a sensible point, but Horowitz does not establish that the programs, and their continuations-or-successors such as affirmative action,¹⁴⁶ have gone on long enough yet, or that they have transferred a sufficient amount of wealth to serve as full reparations for the damages done. Horowitz's assertions can serve as a starting point, but the amount of calculation of African Americans' net losses (i.e., value of wealth involuntarily extracted during slavery) versus returns (i.e., cash value of wealth transfer to African Americans from affirmative action or other programs) that Horowitz, or those who believe him, have left to add up is considerable.¹⁴⁷

¹⁴⁴ See HOROWITZ, *supra* note 1, at 15, 118-122.

¹⁴⁵ *Id.* at 14.

¹⁴⁶ For example,

Today, by upholding this race-conscious remedy [an affirmative action set-aside for minority contractors], the Court accords Congress the authority necessary to undertake the task of moving our society toward a state of meaningful equality of opportunity, not an abstract version of equality in which the effects of past discrimination would be forever frozen into our social fabric.

Fullilove v. Klutznick, 448 U.S. 448, 522 (1980) (Marshall, J., concurring); *United States v. Paradise*, 480 U.S. 149, 185 (1987) ("[T]he District Court . . . properly determined that strong measures were required in light of the Department's long and shameful record of delay and resistance.") (referring to the Supreme Court upholding the lower court's decision to ensure that in the Alabama Department of Public Safety, one black trooper would be promoted for every white trooper, due to the Department's racism and the ensuing lack of proper job opportunities for blacks; the "long and shameful record" is analogous to that of America in general towards African Americans).

In *Adarand Constructors v. Peña*, 515 U.S. 200, 237 (1995), the Court interpreted *Fullilove* as "no longer controlling" to the extent that *Fullilove* allowed federal racial classifications to follow a less stringent standard than that of strict scrutiny. *Adarand*, 515 U.S. at 235. However, the *Adarand* Court declared:

Finally, we wish to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact." The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.

515 U.S. at 237 (citation omitted). *But see id.* at 239 (Scalia, J., concurring) ("Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or a debtor race. . . . In the eyes of government, we are just one race here. It is American.").

¹⁴⁷ On the amount owed to African Americans, see, for example, CHARLES W. MILLS, *THE RACIAL CONTRACT* 39 (1997), which cites James Marketti, *Estimated Present Value of Income Diverted During Slavery*, in *THE WEALTH OF RACES: THE PRESENT VALUE OF BENEFITS FROM PAST INJUSTICES* (Richard F. America ed., 1990): "An estimate for the total 'diverted income' from

4. Welfare

While Horowitz says, without offering much detail, that welfare policy is one of the real problems for African Americans,¹⁴⁸ he does not prove that reparations would not help African Americans out of poverty anyway. That is, the country could try to reform welfare policy, or other policies which supposedly break up African-American family life, and simultaneously pay reparations, which wealth could help make African-American families stable, by keeping them out of poverty. The dichotomy of “welfare reform vs. reparations” is a false one, since both could co-exist, and the latter might facilitate the former.¹⁴⁹

5. Whites’ Rate of Profit from Slavery

Even if one assumes that, as Horowitz asserts, only some 12% or so of what slaves earned was truly extorted by the masters, due to food and other costs for slaves,¹⁵⁰ does that “low rate” imply in itself that all that money should not be returned to its creators in its entirety, or that any profit at all to whites from slavery should not be returned to blacks?—and, possibly, with several centuries of compound interest?¹⁵¹ Whether 1%, 12%, or 50%, whatever the rate of extortion, there is no reason not to return what was taken, or perhaps a larger amount to account for time elapsed.

slavery, 1790 to 1860, compounded and translated into 1983 dollars, would yield the sum of \$2.1 trillion to \$4.7 trillion.”

¹⁴⁸ See HOROWITZ, *supra* note 1, at 123-24, 126-27.

¹⁴⁹ Cf. Chisholm, *supra* note 84, at 719 (noting historically, “The [Reconstruction-era] proponents of the [Freedmen’s] Bureau Acts and the Fourteenth Amendment subscribed to the promotion of self-sufficiency, so as to preclude an indefinite dependence on public assistance,” so that the proponents supported “special assistance for freedmen,” of a kind comparable to the aid that reparations might provide for today’s African Americans, aid which could help their families avoid reliance on public assistance).

¹⁵⁰ See HOROWITZ, *supra* note 1, at 128-29.

¹⁵¹ For an example of plaintiffs in a reparations lawsuit against various companies, including Aetna and CSX, which are claimed to have profited from slavery, see *Slavery and the Law: Time and Punishment: Are Reparations a New Way to Atone for the Legacy of Slavery? Or a New Way to Fleece Companies and Taxpayers?*, THE ECONOMIST (Apr. 11, 2002), at <http://www.uwec.edu/geography/ivogeler/w188/south/slaverylawsuit.htm>. (The lawsuit seeks “compound interest [on money that should have been paid to slaves] at a rate tied to the firms’ growth”).

6. Slavery in Africa¹⁵²

Similarly, although Horowitz makes a good historical case for the misery of slavery in Africa,¹⁵³ atrocities by black slavers or slaveholders in Africa, no matter how bad, do not excuse atrocities here in America by slaveholders, or by the European or American slavers who procured the slaves. One set of atrocities does not necessarily excuse another. If, say, someone kidnaps someone else from a place where the kidnappee would have been tortured for 20 years, and the kidnapper then decides, himself, to torture the kidnappee for 10 years, the kidnapper-torturer should get no medal for torturing the victim only half as long as the victim would have been tortured in the victim's homeland, and the kidnapper-torturer should get the appropriate punishment for torturing an innocent human being for a decade. And the victim should receive appropriate compensation. Therefore, even if conditions in Africa were worse for slaves, white American or European slaveholders or slave traders are still guilty for keeping or selling slaves, so that their descendants or nations are plausibly bound to make reparations to the slaves' descendants.

7. Reparations as Division

Horowitz offers a plea for interracial unity of all Americans, and decries reparations as being socially destructive and un-American,¹⁵⁴ as he also implied in part ten of his advertisement, "The Reparations Claim Is a Separatist Idea That Sets African-Americans Against the Nation That Gave Them Freedom."¹⁵⁵ He may be right to condemn excesses of separatism or other extremism, but he paints a nightmare scenario of reparations turning all African Americans into a hostile separatist nation within America, without giving proof that this would

¹⁵² See, e.g., PAUL E. LOVEJOY, *TRANSFORMATIONS IN SLAVERY: A HISTORY OF SLAVERY IN AFRICA* 27 (2d ed. 2000) (mentioning "Cadamosto, a member of a Portuguese mission to the Senegal River in 1455-56, who reported that the king of a small Wolof state raised revenue through 'raids which resulted in many slaves from his own as well as neighbouring countries'" (citing A. DA CADAMOSTO, *THE VOYAGES OF CADAMOSTO* (G.R. Crone trans., 1937))).

According to Vincene Verdun,

There is a ring of propriety in having African-Americans share in the benefits and burdens [of reparations]. Opponents of reparations are quick to point out that Africans participated in the slave trade and African Americans owned slaves. . . . When society is identified as the wrongdoer, Vincent Verdun [author Vincene Verdun's father] will pay as a member of a society that benefited from the wrongs of the institutions of slavery, and he will be compensated as a member of the injured group.

Verdun, *supra* note 84, at 638-39.

¹⁵³ See HOROWITZ, *supra* note 1, at 111-12, 131-33.

¹⁵⁴ See *id.* at 15-16, 134-37.

¹⁵⁵ *Id.* at 15-16.

actually happen.¹⁵⁶ Thus, his claimed wish for unity is belied by his desire that American unity be only on his terms; that is, without fair repayment for the monstrous treatment of blacks during slavery and afterwards.¹⁵⁷ This omission of justice towards African Americans hardly seems in the best traditions of America, although it would continue some of America's worst traditions of denial of equity and fairness towards African Americans.

V. CONCLUSION: "THE FINE NEXT TIME"? OR, WHAT HOROWITZ MAY OWE

Calling on the genius of James Baldwin one last time, one will note that his book ends with the quote that gave it its name, a quote from an old African-American hymn: "*God gave Noah the rainbow sign, No more water, the fire next time!*"¹⁵⁸ This apocalyptic scenario, bringing to mind the Biblical Book of Revelation and the end of the world, is what Baldwin suggests will happen if African Americans do not boldly rise to the demands and dynamics of their history and stand up for their dignity and their civil rights.¹⁵⁹ Better, perhaps, that

¹⁵⁶ See HOROWITZ, *supra* note 1, at 15-16, 134. However, there is admittedly a strain of separatism or possible racial stereotyping in some reparationist thought. See, e.g., Verdun, *supra* note 84, at 625-26 (emphasizing group-centered and benevolent "Afrocentric" values over greedy and competitive "European" values). Verdun at least acknowledges, though, that "[n]ot all proponents of reparations are African Americans," *id.* at 610 n.36, and that one need not be African-American in order to understand issues from an African-American perspective, see *id.* In regard to some speakers at the August 17, 2002 Washington D.C. reparations rally, see also:

New York City Councilman Charles Barron followed with a confession that he was so mad he wanted to go up to a white person – "any white person" – and "slap them," while explaining "it's a black thing."

... One black rapper chanted, "Show me the money, or I'll show you my Glock ["Glock" is a famous brand of pistol]."

David Horowitz, *Reparations Buffoons on the Washington Mall*, FRONTPAGE MAGAZINE (Aug. 19, 2002), at <http://frontpagemag.com/Articles/ReadArticle.asp?ID=2436>.

¹⁵⁷ One resonant present-day example of the ill-treatment of African Americans is the dragging to death of African-American James Byrd, Jr. in Texas in 1998 at the hands of white supremacists. See, e.g., Roy Bragg, *Jasper Trial Defendant Says Byrd's Throat Was Cut*, SAN ANTONIO EXPRESS-NEWS, Sept. 17, 1999, available at <http://www.texasnaacp.org/jasper.htm> (last updated November 11, 2002).

¹⁵⁸ BALDWIN, *THE FIRE NEXT TIME*, *supra* note 64, at epigraph page and at 106.

¹⁵⁹ Another especially plangent appeal to the importance of bearing moral witness from the past to the future is DAVID E. WHITE, *Spirit of the Dead, on SANKOFA: THE SOUNDTRACK* (Mypheduh Films 1993) (film directed by Haile Gerima). "*Sankofa* [the title of the film whose soundtrack is excerpted here] is an Akan word that means, 'We must go back and reclaim our past so we can move forward; so we understand why and how we came to be who we are today,'" *About Sankofa*, at <http://www.sankofa.com/about.shtml> (last visited Aug. 28, 2002). An excerpt from *Spirit of the Dead*, which is chanted to the background of drums and rhythmic hooting, is disturbing, yet hopefully more wholesome and healing than eerie or truly threatening:

Spirit of the dead, rise up; lingering spirit of the dead, rise up and possess your bird of passage. Those stolen Africans, step out of the ocean, from the wombs

there be a “fine” next time America carefully considers race relations, that is, that there be a fair and adequate “taxation” of all the wealth of America, and the unearned wealth of whites in particular, stolen from the slaves and their descendants over the centuries, and that that “fine,” that justly “punitive” (or is it really so “punitive”?) sum be returned to African Americans—better that there be a “fine,” which would be fair and remedial, than that there be a “fire,” which could hurt or even potentially destroy many people, not only in America but elsewhere as well.¹⁶⁰ Horowitz suggests that paying reparations will bring on a disaster. But if justice is denied to African Americans, it is possible that such failure, such insult, could itself bring on disaster or exacerbate current problems of racial tension, poverty, and discrimination.

In conclusion, while David Horowitz raises some provocative and interesting questions in his book, the omissions, or easily avoidable mistakes, in *Uncivil Wars* are unsavory, just as the omissions of decency by whites, and the injustices, whether deliberate or reckless, of whites toward blacks in America, have been unsavory for centuries now, from Jamestown to the present. Horowitz repeatedly offers relatively valid commentary, whether on the American Civil War,¹⁶¹ or welfare programs,¹⁶² or slavery on the African continent,¹⁶³ but then

of the ships, and claim your story. . . . Those Africans shackled in leg irons and enslaved, step out of the acres of cane fields and cotton fields, and tell your story. . . . Those lynched in the magnolias, swinging on the limbs of the weeping willows. . . . Those in Jamaica, in the fields of Cuba, in the swamps of Florida, the rice fields of South Carolina, you waiting Africans, step out and tell your story. . . . From Alabama to Surinam, up to the quays of Louisiana, come out, you African spirits, step out and claim your stories, you raped, slave-bred, castrated, burned, tarred and feathered, roasted, chopped, lobotomized, bound and gagged, you African spirits . . . rise up, and possess your bird of passage.

WHITE, *supra*.

Telling stories to express the truth is a crucial part of Critical Race Theory. *See, e.g.*, Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 10 (2000) (“[V]arious critical theory movements . . . emphasize the importance of voice and narrative. Critical race theory scholarship tends towards very personal expression and relies heavily on personal experience in seeking to change the law and the place of people of color in legal structures.”). Even if legal documents do not exist to record either every instance of slave-selling, or the amount of wealth that slaves created and their masters expropriated, the stories and commentary of present-day African Americans about their suffering and the suffering of their ancestors could be helpful, “informal” or “outside of traditional legal discourse” as the narrative may be, in considering and formulating responses and solutions to the issue of reparations for slavery.

¹⁶⁰ *See, e.g.*, CLARENCE J. MUNFORD, RACE AND REPARATIONS: A BLACK PERSPECTIVE FOR THE 21ST CENTURY 415-17 (1996) (predicting likelihood of global race war unless reparations are paid to Africans and to African Americans, because reparations will “jumpstart” the world economy and prevent massive and disastrous social unrest).

¹⁶¹ *See* HOROWITZ, *supra* note 1, at 12, 116-20.

¹⁶² *See id.* at 14, 123-24.

omits showing either a truly fair range of counterarguments to his assertions, or the wide extent of possible outcomes to the scenarios he describes. His omissions greatly lower the value of his observations, as do his omissions of mannerliness and of coolness and fair-mindedness of appraisal.¹⁶⁴

Although this review questions the extent and nature of Horowitz's focus on his own unpleasant experiences instead of on those of others, no attempt is made here to belittle any real pain or discomfort Horowitz himself has suffered throughout his advertisement campaign, or earlier in his life as an activist, even if some of his pain came from people whom he goaded or belittled, and who attempted to defend themselves or reacted aggressively to his advertisement.¹⁶⁵ Still, *Uncivil Wars*, true to its name, literally adds insult to injury, and

¹⁶³ See *id.* at 111-12, 131-33.

¹⁶⁴ Even if there is a place for incivility in the law, or in advocacy, such uncivil behavior is circumscribed and hopefully rare. Only something like, say, a spirited defense of somebody who is a member of a racial minority group and in danger of an unfair trial might legitimate some fiery and unconventional courtroom, or public, passion and behavior, such as that shown by Atticus Finch, the attorney defending accused African-American rapist Tom Robinson in Harper Lee's fictional novel *TO KILL A MOCKINGBIRD* (1960); see also Thomas L. Shaffer, *Growing Up Good in Maycomb*, 45 ALA. L. REV. 531, 534-35 (1994) (mentioning Finch's confrontational, unpopular and "uncivil" defense of Robinson against the racist milieu and people of the town of Maycomb). Horowitz, by contrast, is not defending African Americans' effort at rectifying injustice, he is attacking it.

Uncivil Wars is not a legal work, and David Horowitz not a lawyer, but to hold him and his work to a high standard of tactfulness and responsibility, as this review consistently does, in a matter such as reparations which may have considerable legal significance and repercussions, may be not only appropriate but even advisable.

¹⁶⁵ Without going so far as to suggest that any recent sufferings through which Horowitz has had to go may merely count as a form of personal reparations to African Americans for his insulting their character, ignoring their history, and attacking their rights to redress, an observer may at least note that – since Horowitz spoke of his "literary masochism," as mentioned in the first paragraph of his book and of this review – perhaps Horowitz was expecting, at least part-consciously, any negative criticism he has received or will receive about his book, especially after his unpleasant experience with his advertisement, so that Horowitz can hardly claim he was not "warned" at all about what further criticism or public disapproval might happen to him if he published *Uncivil Wars*.

Reflection on how one's sufferings may sometimes be arguably self-inflicted ("masochistic") might lead those reflecting to a deeper understanding not only of the complexity of human life in general, but also of the tangled and often frightening history of the sufferings of African Americans over the centuries – both the suffering inflicted by others over hundreds of years and any suffering inflicted by African Americans against each other – in the despair, material deprivation, and moral murk of a environment created by racism and slavery and their concomitants. See *supra* notes 58, 137 and accompanying text (on self-inflicted suffering). See also:

Few whites are able to identify with blacks as a group—the essential prerequisite for feeling empathy with, rather than aversion from, blacks' self-inflicted suffering, as expressed by the poet Maya Angelou in this introduction's epigraph[:

while some might consider it disrespectful to Horowitz to say that any eventual reparations to African Americans should be larger because of what Horowitz has said in his advertisements and in his book, it would be inaccurate for a review of his work to omit his part in distorting the debate over reparations, and in distorting his own role in that debate.

“In these bloody days and frightful nights when an urban warrior can find no face more despicable than his own, no ammunition more deadly than self-hate and no target more deserving of his true aim than his brother, we must wonder how we came so late and lonely to this place.”]

Unable or unwilling to perceive that “there but for the grace of God, go I,” few whites are ready to actively promote civil rights for blacks. Because of an irrational but easily roused fear that any social reform will unjustly benefit blacks, whites fail to support the programs this country desperately needs to address the ever-widening gap between the rich and the poor, both black and white.

DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 4 (1992); Maya Angelou, *Epigraph*, in BELL, *supra*, at 1.

