



The Next Reconstruction

Examining the Call for a National Reparations Program

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A national reparations program offers a promising new direction for remedying past harms and disrupting entrenched gaps between Black and white people in wealth, health, and other well-being outcomes which began with the arrival of captured Africans in the English colony of Virginia (Hannah-Jones 2021). Since the end of the Civil War, political and community organizations have made numerous efforts to pass bills involving federal reparations for slavery, Jim Crow, and other federally sanctioned systems of white supremacy. On April 14, 2021, the Commission to Study and Develop Reparation Proposals for African Americans Act (H.R. 40), the most comprehensive reparations legislation in US history, advanced to the full House of Representatives for debate. Understanding the concept of reparations and how it might complete the unfinished business of Reconstruction, the period when the federal government sought to enact progressive social and economic policies in support of millions of newly freed African Americans, is essential to grasping the potential of a national reparations program. In this brief, we trace the evolution of reparations in the United States, explore how they are formulated in government policy proposals, and consider how they could help close centuries-old racial inequities and repair past harms.

After the US policy landscape of structural racism shown in figure 1, this brief has four main sections. The first section, *What Are Reparations?*, explores different definitions of reparations and explains international human rights standards designed by the United Nations to guide reparations programs.

The second section, *Policy Lessons from US Reparations Efforts (Slavery to Post-Reconstruction)*, considers how reparations proposals evolved from the era of enslavement to the post-Reconstruction period, highlighting the early building blocks of reparations policy, including pension-based, land-based, and population-based approaches.

The third section, *The Post-Civil Rights Shift to a National Reparations Program Based on International Standards*, explores the post-civil rights era shift to a program grounded in international human rights standards, commission modeling, and expanded advocacy and community engagement.

The fourth section, *Recommendations for Strengthening the Research and Policy-Development Infrastructure around Reparations*, recommends five ways to improve the research and policy-development infrastructure around reparations and promote informed public awareness and engagement.

A companion Urban Institute brief, “*How Social Science Research Can Inform a National Reparations Research Agenda*,” documents the progress made on reparations-related research for Black people in America, highlights areas that require new or additional inquiry, outlines ways that researchers from various disciplines can inform the design and evaluation of a national reparations program, and explores how to understand the roles of local governments and the private sector in complementing or informing a national program.

FIGURE 1

Policy Landscape of the Black-White Racial Gap Continuum in the United States (1619–Present)

| | | |
|---|---|--|
| 1619–1775 American slavery, pre-Revolution | | |
| 1619 | Cargo of 20–30 enslaved Africans arrives in Virginia colony | 1619–1775 Numerous colonial laws enacted governing the institution of slavery |
| 1650 | Connecticut legalizes slavery | |
| 1662 | Virginia enacts law requiring that children inherit the mother's slave status | |
| 1663 | Maryland legalizes slavery | |
| 1668 | New Jersey passes fugitive slave law | |
| 1669 | Virginia law makes it legal to kill slaves | |
| 1680 | Virginia law makes slave insurrection illegal | |
| 1684 | New York makes it illegal for slaves to sell goods | |
| 1700 | Pennsylvania legalizes slavery | |
| 1715 | Rhode Island legalizes slavery | |
| 1750 | Virginia law recognizes slaves as property | |
| 1776–1877 Pre-Civil War to Reconstruction | | |
| 1808 | Act Prohibiting the Importation of Slaves of 1807 takes effect | 1776–1865 Numerous federal laws enacted governing the institution of slavery |
| 1850 | Fugitive Slave Act strengthens owner rights in finding and returning runaway slaves | |
| 1861 | Civil War begins | 1865–1877 Reconstruction |
| 1863 | Emancipation Proclamation | |
| 1865 | Late emancipation of 250,000 Black people in Texas | |
| 1865–66 | Civil War ends | |
| 1870 | 15th Amendment to the US Constitution: voting rights for Black men | |
| | The first Jim Crow segregation law passed in Tennessee segregating state railroads | |
| 1878–1968 Civil rights era and the War on Poverty | | |
| 1896 | Supreme Court sanctions racial segregation in <i>Plessy v. Ferguson</i> | 1881–1970s Jim Crow legislation and state-sanctioned violence |
| 1946 | Hill-Burton Act sanctions "separate but equal" hospitals | |
| 1948 | Executive Order 9981 bans racial discrimination in the armed forces | 1896–1954 Separate But Equal Doctrine Upheld |
| 1954 | Supreme Court bans racial segregation in public schools in <i>Brown v. Board</i> | |
| 1960 | Supreme Court bans racial segregation in public transportation in <i>Boynton v. Virginia</i> | |
| 1964 | Civil Rights Act of 1964 enacted, outlawing discrimination based on race, color, religion, sex, or national origin; Economic Opportunity Act of 1964 enacted as part of President Johnson's War on Poverty | 1954 Separate But Equal Doctrine Overturned |
| 1965 | Voting Rights Act of 1965 enacted | |
| | Medicare and Medicaid Act of 1965 enacted, effectively banning hospital segregation | |
| 1968 | Fair Housing Act enacted | |
| 1969–1990 The rise of mass incarceration and the War on Drugs | | |
| 1969 | President Nixon signs order establishing the Office of Minority Business Enterprise in the US Department of Commerce to promote the growth and competitiveness of minority-owned businesses | Early 1970s Beginnings of mass incarceration |
| 1983 | Congressional Subcommittee on Criminal Justice of the Judiciary Committee holds hearings on police misconduct in Harlem | |
| 1986 | Anti-Drug Abuse Act funds War on Drugs and creates new mandatory minimum sentences | |
| 1991–present Modern legacies of, and efforts to address, structural racism | | |
| 1991 | Civil Rights Act of 1991 adds provisions to Title VII protections, including the right to trial by jury | 2007–present States including Alabama, Florida, Maryland, and Virginia issue public apologies for their roles in enslavement |
| 1994 | President Clinton signs Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, and signs Violent Crime Control and Law Enforcement Act of 1994, instituting punitive sentencing guidelines and enabling states to pass more punitive tough-on-crime laws | |
| 1996 | President Clinton signs welfare reform legislation that transforms the American welfare system | |
| 2007 | H. Res. 194 introduced: Apologizing for the Enslavement and Racial Segregation of African-Americans | |
| 2009 | US prison population reaches its peak of 1.6 million incarcerated people | |
| 2020 | Congressional Hearing on Policing Practices and Law Enforcement Accountability COVID-19 Racial and Ethnic Disparities Task Force Act of 2020 (H.R. 6763) introduced in Congress | |
| 2021 | Juneteenth, commemorating the end of slavery in the United States, is recognized as a federal holiday | |

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Source: Authors' research on federal and state laws, court decisions, executive orders, and other government policies and actions instituting and/or addressing structural racism.

What Are Reparations?

Despite important victories, America continues to struggle with its racial past. Rectifying the legacies of slavery and other forms of structural racism has posed one of the longest-running social policy dilemmas in American history. For nearly every measure—from life expectancy¹ to wealth²—reliance on ostensibly race-neutral social policies has failed to close racial inequities that have endured since slavery and Reconstruction ended. A race-specific national reparations program could achieve what even the most well-intentioned federal policies have been unable to do for centuries.

Definitions of Reparations Differ but Share a Theme

In popular American culture, the concept of reparations is often loosely defined to mean providing monetary payment to African Americans for the enslavement of their ancestors. Though this definition shares with broader definitions the notion of providing compensation for unpaid labor during chattel slavery, it is a reductionist definition. It compresses the lived experiences of Black people, distilling the value of Black life into the mere cost of lost wages adjusted for inflation. Conceptions that limit reparations to lost wages ignore or deny federal accountability for the fuller scope and severity of human rights violations against Black people from slavery to the present.

Broader definitions of reparations have been proposed which involve more than compensation for unpaid labor. For instance, the National African American Reparations Commission defines reparations as “compensation and restoration of African American communities that were plundered by the historical crimes of slavery, segregation and colonialism and that continue to be victimized by the legacies of slavery and American apartheid.”³ And in a 2005 resolution, the United Nations General Assembly held that multiple types of reparations are due to African Americans for the federal government’s participation or complicity in an array of “gross violations of international human rights,”⁴ including

- the forced displacement of enslaved Africans and their descendants from their African regions of origin;
- the loss or fusion of their original languages, religions, and cultures;
- 246 years of unpaid labor;
- social and economic deprivations brought about by the dehumanizing system of racial apartheid known as Jim Crow;
- the persistent national pattern of racist policing and inequities in criminal justice; and
- other forms of systemic racism and violence.

At the core of these concepts of reparations is the notion that some kind of repair, if formulated well, can go toward rectifying the most egregious human rights violations perpetrated against a population. Indeed, H.R. 40, the most comprehensive reparations bill in US history, does seek compensation for centuries of unpaid labor and lost intergenerational wealth. But it also puts forward a far more expansive conception of reparations and seeks multiple dimensions of restitution, including social, cultural, and

physical and psychological restitution. To address the larger consequences of the exploitation of Black people, and federal complicity in that exploitation, the framers of H.R. 40 and many reparations advocates have adopted comprehensive international standards for conceptualizing reparations.

International Standards Inform the Development of a National Reparations Program in the United States

The United Nations has produced a number of reports and resolutions on the subject of reparations in general and in the United States specifically. In 2005, the UN General Assembly passed a resolution laying out principles and guidelines for reparations.⁵ In its 2016 report on its mission to the United States, the UN Working Group of Experts on People of African Descent formally declared that the United States owes reparations to African Americans for a history of “racial terrorism.”⁶ In the report, the working group writes that it “remains extremely concerned about the human rights situation of African Americans” and notes there has been “no real commitment to reparations and truth and reconciliation for people of African descent” in the United States. The working group “encourages Congress to pass H.R. 40—the Commission to Study Reparation Proposals for African-Americans Act—which would establish a commission to examine enslavement and racial discrimination in the colonies and the United States from 1619 to the present and to recommend appropriate remedies.”⁷

The UN Human Rights Council is the lead entity for mandating protections of human rights worldwide. In a 2021 report, Michelle Bachelet, the then-UN high commissioner for human rights, reasserted the UN’s call for reparations for African Americans. Bachelet wrote reparations “should not only be equated with financial compensation” but should be comprehensive in scope and provision.⁸

In contrast to the UN Human Rights Council’s concept of reparations, the popular wages-only concept is merely one component of what should be a much more comprehensive, holistic agenda. To better understand the more comprehensive international standards for reparations, we examined the UN General Assembly’s 2005 resolution on reparations principles and guidelines.⁹ Five forms of reparations are included in that resolution: (1) restitution, (2) compensation, (3) rehabilitation, (4) satisfaction, and (5) guarantees of nonrepetition. Below, we briefly describe these forms and highlight their implications for eliminating racial inequities in the United States.

Restitution involves the restoration of substantial losses. This includes the restoration of liberty, enjoyment of human rights, identity, family life, and citizenship, as well as the option to return to one’s geographic origin of residence. Restitution could

- improve the destabilizing and intergenerational effects of structural racism on the social, cultural, and psychological well-being of Black families and communities;
- strengthen Black families’ and communities’ resilience against the oppressive nature of structural racism; and

- provide educational options to Black young people and adults to restore the loss of African cultures and traditions, including opportunities to travel to, and to receive training or education in, Caribbean and African nations.

Compensation means payment for harms and should be proportional to the gravity of human rights violations. This can include compensation for physical or mental harm; for lost opportunities, such as employment and education; for material damages and loss of earnings, including loss of earning potential; for the costs of health care and social services; and for the costs of legal aid or other expertise. Compensation could

- help close intergenerational Black-white wealth gaps, including in income, savings, homeownership, entrepreneurship, and college debt;
- help eliminate the persistent racial gap in access to high-quality health care by providing monetary benefits that can go toward health care costs; and
- cover the legal and administrative costs to Black people of documenting their ancestral relationships to the descendants of enslaved Africans or to descendants who experienced gross human rights violations under Jim Crow.

Rehabilitation involves delivering appropriate medical and psychological care as well as legal and social services. Rehabilitation could involve

- ensuring the delivery of high-quality health care to Black people by addressing nonfinancial barriers to health care delivery, including the need for culturally competent health care and a more racially diverse health care work force; and
- ensuring the delivery of equitable human services, including child care and early childhood education, adolescent programs, and elder care.

Satisfaction involves remedial actions needed to bring closure. This includes measures designed to end the human rights violations; full public disclosure of the violations, public apology,¹⁰ and acknowledgment of responsibility; sanctions against liable parties; memorialization and commemoration of the victims; and an accurate accounting of violations in legal and academic venues and in educational materials. Satisfaction could involve

- creating a truth-and-reconciliation path to national healing and closure regarding the human rights violations of chattel slavery and other forms of structural racism;
- establishing an evidence-based archive on those human rights violations and their documented consequences for the health and wealth of the descendants of enslaved Africans in the United States;
- promoting nationwide efforts to inform the public—including through primary, secondary, and postsecondary education—about the roles of slavery, Jim Crow, and other forms of structural racism in creating and sustaining racial inequality; and

- dedicating new monuments or public memorials that acknowledge the efforts and legacies of reparations pioneers and others who have worked to rectify the harms of enslavement and Jim Crow.

Guarantees of nonrepetition are efforts to ensure the human rights violations don't happen again. These preventive efforts include effective civilian control of policing forces; strengthening the judiciary; providing human rights training in all sectors, including law enforcement; promoting codes of conduct and ethical norms; and reviewing and reforming laws contributing to or allowing the human rights violations. Guarantees of nonrepetition could

- involve doing the multisector work needed to reform policies, programs, and practices with the aim of dismantling structural racism and promoting human rights and racial equity; and
- promote a society that systematically rejects the human rights violations of structural racism and intentionally pursues a transformative future that protects the descendants of enslaved Africans.

Policy Lessons from US Reparations Efforts (Slavery to Post-Reconstruction)

Looking ahead to the potential of a national reparations program to make progress on closing long-standing racial gaps in health, wealth, and other outcomes for Black Americans, it is important to reflect on past efforts to advance reparations as a policy solution for Black Americans in the United States. In this section, we discuss three routes to a federally funded national reparations program. We then discuss how historical examples of enslaved and freed people's efforts to advance reparations as a policy solution fell short of achieving restitution, compensation, or other types of reparations. Lastly, we discuss failed efforts to secure land for newly emancipated Black Americans as an early form of reparations.

Three Federal Routes to a National Reparations Program

The United States has three intersecting routes to a federally funded national reparations program: the legislative, executive, and judicial branches of government. This brief focuses primarily on the legislative route, but here we briefly explain the importance of the other two routes.

In the executive branch, an executive order could expedite the establishment of a reparations commission, which is the primary federal action sought by the framers of H.R. 40 and its companion Senate bill, S. 40. To date, no executive order or presidential commission has called for the creation of a national reparations program for African Americans. But in a letter to President Biden, Senator Booker and colleagues called for an executive order to establish a commission to study such a program.¹¹ An executive order, which could bypass a legislative process through which it has taken three decades to move H.R. 40 to the House floor where it now sits, is the fast-track approach favored by reparations proponents, including the National African American Reparations Commission, the National Coalition of Blacks for Reparations in America, and more than 300 national organizations.¹²

In the judiciary, the Supreme Court could weigh in on the constitutionality of a national reparations program. (Lower appellate courts have weighed in and rejected claims for reparations against some of the nation’s largest slave-trade financiers, including insurers, banks, and transportation companies.¹³) In the Supreme Court’s docket database, using the search term “reparations,” we found at least two cases involving claims for reparations from private companies that helped finance the transatlantic slave trade.¹⁴ We also found an *amici curiae* brief (filed by the National Coalition of Blacks for Reparations in America and the National Conference of Black Lawyers) in support of race-conscious policies.¹⁵

Enslaved and Freed People’s Ideas Are among the Earliest Building Blocks of Reparations Policy

In our primary focus on legislative paths to a national reparations program, we sought to understand the evolution of ideas about reparations in the United States. We were particularly interested in how early ideas for legislative, executive, or judicial involvement in restorative justice for slavery inform current legislative policy proposals for a comprehensive national reparations program.

The fundamental notion of reparations in the United States precedes Emancipation. We found a simple iteration of reparations in the late 18th century, set in the idea of monetary compensation for formerly enslaved individuals (not groups). In 1783, Belinda Sutton, who had been born in modern-day Ghana, kidnapped as a child “by an armed band of white men,” shipped across the Middle Passage, and sold into slavery in Massachusetts, petitioned the commonwealth for a pension after being freed after 50 years of bondage.¹⁶ The state legislature ordered the estate that had enslaved her to pay her an annual pension of 15 pounds and 12 shillings.¹⁷ Facing the estate’s unwillingness to pay, Sutton pursued subsequent claims to enforce the pension’s payment plan.

We found a similar individual case for reparations in the post-Emancipation period. In 1878, after eight years of litigation, Henrietta Wood, a formerly enslaved woman, prevailed in federal court for her reparative-justice claim for lost wages. Wood, who had been freed from slavery in 1848, was kidnapped at gunpoint in 1853 in Ohio, a Free State, and resold into slavery, remaining in bondage throughout the Civil War. According to historian W. Caleb McDaniel, a federal appellate court ultimately awarded Wood \$2,500 in compensation for damages—“the largest known sum ever awarded by a US court in restitution for slavery” (McDaniel 2019, 4). But that sum was substantially smaller than Wood’s initial claim for \$20,000 in lost wages, marking the early norm of structural interference with Black women’s post-Emancipation efforts to fully secure rightful earnings and build wealth, a structural pattern that persists today.¹⁸

The cases of Sutton and Wood show that enslaved people sought and were awarded meager reparations during these early periods, but the systems they appealed to never addressed other dimensions of enslavement or the need for comprehensive reparations approaches.

Early Land-Based and Population-Based Proposals for Federal Reparations

To understand reparations proposals in addition to individual claims, we considered nine reparations initiatives (table 1), most of which had similar outcomes. Emancipation and the Civil War ushered in new

ideas for group reparations.¹⁹ For example, in 1862, to provide reparations for lost investments in the slave trade, the District of Columbia Compensated Emancipation Act freed enslaved Black people in DC and compensated their enslavers up to \$300 for each freed person. If calculated as a share of total federal expenditure, the \$1 million President Lincoln allocated to pay enslavers is comparable to \$12 billion today.²⁰

TABLE 1

Nine Selected Proposals for Federal Reparations in the United States (1865–2021)

| Year | Proposal | Beneficiaries | Benefits | Status |
|--------------|---|---|--|---|
| 1865 | General Sherman's Special Field Orders, No. 15 ^a | Newly freed Black people living on a coastal strip between Charleston, SC, and Jacksonville, FL | Roughly 40,000 acres of federally confiscated property, distributed in 40-acre parcels | Order rescinded; land returned to white owners |
| 1866 | Southern Homestead Act of 1866 ^b | Whites and newly freed Black people | Preferential access to public land sale in five Southern states | Repealed 1876; only options were high-cost, poor-quality land; discriminatory access for Black people |
| 1878 | Lawsuit filed by formerly enslaved Henrietta Wood ^c | One person (Wood) | Damages and lost wages for being kidnapped from a Free State and re-enslaved | Awarded \$2,500 (about \$70,000 in today's dollars) |
| 1890 | The Ex-Slave Pension Bill (H.R. 1119) ^d | Black people who were formerly enslaved | Pension formulary using a sliding age-based scale and modeled after the post-Civil War program for disabled veterans established by the Bureau of Pensions | Bill did not advance in Congress |
| 1896 | Petition to Congress by the National Ex-Slave Mutual Relief, Bounty and Pension Association ^e | Black people who were formerly enslaved | An aged-based pension with an initial payment (up to \$500) and monthly payments of \$4–\$15 | US Bureau of Pensions denied petition, claimed the association was engaged in fraud |
| 1974 | Class-action lawsuit for the Tuskegee syphilis experiment ^f | Surviving Black men who participated in the unethical study and their surviving infected family members | \$10 million and free medical treatment to surviving participants/family members | Settlement reached in 1974 |
| 1988 | Civil Liberties Act of 1988 ^g | Japanese Americans interred during World War II | \$20,000 per person plus a formal apology from the federal government | Enacted 1988; 82,219 Japanese Americans received payment |
| 1989–present | Commission to Study and Develop Reparation Proposals for African Americans Act (H.R. 40) ^h | Descendants of enslaved Africans | The bill does not propose specific benefits; it proposes a federal commission to develop reparations proposals | Bill reintroduced in Congress each year since 1989; last hearing was May 2021; bill sent to full House for debate |
| 2021 | Sgt. Isaac Woodard, Jr., and Sgt. Joseph H. Maddox G.I. Bill Restoration Act of 2021 (H.R. 5905) ⁱ | Black veterans of World War II, and surviving spouses and certain direct descendants of such veterans | Eligibility for certain housing loans and educational assistance previously denied due to racially discriminatory G.I. Bill | Introduced to the House on November 5, 2021 |

Sources: ^a "Order by the Commander of the Military Division of the Mississippi," Freedmen and Southern Society Project, last revised December 22, 2022, <http://www.freedmen.umd.edu/sfo15.htm>; ^b Warren Hoffnagle, "The Southern Homestead Act: Its

Origins and Operation,” *The Historian* 32, no. 4 (August 1970): 612–29; ^c W. Caleb McDaniel, *Sweet Taste of Liberty: A True Story of Slavery and Restitution in America* (Oxford, GBR: Oxford University Press, 2019); ^d Miranda Booker Perry, “No Pensions for Ex-Slaves,” *Prologue Magazine*, last reviewed December 15, 2017, <https://www.archives.gov/publications/prologue/2010/summer/slave-pension.html>; ^e Perry, “No Pensions for Ex-Slaves”; ^f “The Syphilis Study at Tuskegee Timeline,” Centers for Disease Control and Prevention, last reviewed December 5, 2022, <https://www.cdc.gov/tuskegee/timeline.htm><https://www.cdc.gov/tuskegee/timeline.htm>; ^g Civil Liberties Act of 1987, Pub. L. No. 100-383, 102 Stat. 904 (1987); ^h Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 117th Cong. (2017); ⁱ Sgt. Isaac Woodard, Jr. and Sgt. Joseph H. Maddox GI Bill restoration Act of 2021, H.R. 5905, 117th Cong. (2021–22).

However, enslavers’ demands for reparations were ultimately overshadowed by the larger crisis facing the South. The Civil War (1861–1865) was “the costliest and deadliest war ever fought on American soil” and left the South in desperate need of repair.²¹ By the end of the war, roughly 620,000 soldiers from the Confederate and Union armies, including 40,000 Black soldiers fighting for their freedom, had perished.²² Reconstruction (1865–1877) ushered in an array of new federal policies and expenditures aimed chiefly at repairing Southern ruins and reintegrating Confederate states into the Union. Reconstruction policies were intended to alleviate the economic downfall, the poverty, and the destruction and confiscation of land facing white Southerners after the war.

A secondary objective of Reconstruction was to address the expanding crisis of destitution, homelessness, and hunger facing 4 million newly freed African Americans across the South. These restorative efforts focused on emergency distribution of food and clothing, temporary shelter, and the establishment of segregated hospitals and schools for newly freed people.²³ The government’s economic intervention for freed people was the replacement of the “master-slave” relationship with a sharecropping system in which “white landowners hoarded the profits of Black workers’ agricultural labor, trapping them in poverty and debt for generations.”²⁴

Land acquisition became an urgent issue for white and Black people during this period and a new focal point for reparations proposals. The federal government faced the dual crises of substantial land loss among resentful white Southerners and widespread homelessness among displaced Black people. It responded by pursuing an ostensibly race-neutral reparations strategy: redistribute land to both white and Black people. But the strategy’s implementation demonstrated the federal government’s continued prioritization of white over Black people throughout Reconstruction.

The first such redistribution to Black people occurred in the final months of the Civil War. In January 1865, Union Army general William T. Sherman issued Special Field Orders, No. 15. The unprecedented orders declared that some areas of land confiscated by the Union Army on the coastline from Charleston, South Carolina, to Jacksonville, Florida, would be redistributed to Black families in 40-acre parcels of “tillable ground.”²⁵ The landmark wartime orders became the basis for the popular claim of “40 acres and a mule” for reparations to be paid to African Americans.²⁶

Sherman’s race-specific policy called for the creation of protected Black settlements along the 245-mile coastline where “no white person whatever, unless military officers and soldiers detailed for duty, will be permitted to reside.”²⁷ After Lincoln’s assassination in the spring of 1865, his successor, Andrew

Johnson, who viewed America as “a country for white men,” quickly revoked the special orders, returning the land to white Confederate landowners as reparations for their losses.²⁸

A second effort at postwar land redistribution occurred via the legislative route. The Southern Homestead Act of 1866 was intended to reallocate federal land to white and Black people. The Homestead Act of 1862 had been intended to redistribute hundreds of millions of acres of western land—violently stolen from Native Americans—primarily to white people to create or relocate homesteads in states like Iowa, Minnesota, Nebraska, and South Dakota. Homesteaders were required to live on, improve, and cultivate their plots of land. After paying fees and spending five years on the land, they were entitled to the property. Optionally, homesteaders could acquire a land title after only a six-month residency, with only minor land improvements, by paying the government \$1.25 per acre.²⁹

After the war ended, the Southern Homestead Act of 1866 expanded land redistribution for white families while creating a path to land ownership for formerly enslaved families. Under the administration of the General Land Office, the act expanded available federal land by 46 million acres in Alabama, Arkansas, Florida, Louisiana, and Mississippi (Hoffnagle 1970). The restorative legislation granted priority access to formerly enslaved African Americans until January 1, 1867. But across the South and West, Black people had scarce access to the agricultural resources needed to improve and cultivate the land, including fertile soil, seeds, planting equipment, and farm animals. And most of the redistributed land was of poor quality and not suitable for farming. In addition, the brief period for priority access (six months) was not feasible for newly freed people because most were still locked in sharecropper contracts managed by the Freedmen’s Bureau.³⁰ And those who were eligible to apply for homesteading faced racial harassment and systemic discrimination from the General Land Office.

Perhaps more significantly, the freed people—who were now competing for land and labor in an intensely racialized postwar economy—faced waves of “racial terror attacks.” Between 1865 and 1877, more than 2,000 Black women, men, and children were lynched. Thousands of others were assaulted, raped, and injured (Equal Justice Initiative 2020). Virulent racism in the postwar period—and the lack of federal protection for Black families and the prioritization of white families—made homesteading nearly impossible for newly freed people.

During the 12 years of Reconstruction, the entrenchment of new forms of structural racism and deadly waves of anti-Black terrorism ensured there would be no viable legislative or administrative path to reparations for African Americans in that period. Similarly, federal and local court systems opened no judicial doors for freed people to document their plight and bring claims for reparations to white-controlled courts. Sociologist W. E. B. DuBois described the systemic dilemma: “The chief witness in Reconstruction, the emancipated slave himself, has been almost barred from court. His written Reconstruction record has been largely destroyed and nearly always neglected.”³¹

The Push for an “Ex-Slave” Pension-Based Reparations Program in the Post-Reconstruction Era

Nearly a century after Sutton won her individual claim for a pension against her enslaver’s estate in 1783, the idea of a pension-based remedy for unpaid labor emerged in post-Civil War America as a potential legislative, administrative, and judicial path to reparations. Historian Mary Frances Berry reported that by 1899, “about 21 percent of the black population nationally had been born into slavery” (Berry 2006, 115). Historian and archivist Miranda Booker Perry describes the sentiment among formerly enslaved people still living during this period: “If disabled elderly veterans were compensated for their years of service during the Civil War, why shouldn’t former slaves who had served the country in the process of nation building be compensated for their years of forced, unpaid labor?”³²

In the late 1890s, the National Ex-Slave Mutual Relief, Bounty and Pension Association, an organization intended to secure pensions from the federal government for formerly enslaved people, was cofounded by Isaiah H. Dickerson and Callie House. Risking her life, House—a formerly enslaved woman, widow, and mother of five—traveled across the South to organize hundreds of thousands of African Americans to push for a congressional bill that would grant pensions to formerly enslaved people for their unpaid labor. House also filed (and lost) a class-action lawsuit for reparations, seeking damages equal to the amount of taxes that had been collected by the federal government on cotton between 1862 and 1868 (Berry 2006).

The National Ex-Slave Mutual Relief, Bounty and Pension Association, headquartered in Nashville, widely promoted an “ex-slave pension bill,” calling for an age-based pension payment scale like the one used for Civil War veterans with disabilities. Perry writes,

Ex-slaves 70 years and older at the time of disbursement were to receive an initial payment of \$500 and \$15 a month for the rest of their lives; those aged 60–69 years old would receive \$300 and \$12 a month; those aged 50–59 years old would receive \$100 and \$8 a month; and those under 50 would receive a \$4 a month pension. If formerly enslaved persons were either very old or too ill to care for themselves, their caretakers were to be compensated.³³

But as the association grew—in membership and national visibility—the federal government made coordinated efforts to suppress the burgeoning national reparations movement. Three administrative agencies—the Bureau of Pensions, the Department of Justice, and the Post Office Department—collaborated in the late 1890s and into the early 20th century to investigate the association, principally targeting Callie House and other leaders and the association’s mobilizing efforts. As House’s national campaign for reparations persisted, the US government “accused her, without evidence, of mail fraud.”³⁴ In September 1917, an all-white male jury convicted House. She was sentenced to a year in jail, effectively discrediting and ending America’s first major campaign for a national reparations program.³⁵ Scholars at the Harvard Kennedy School and Harvard Law School are pursuing a posthumous presidential pardon for House.³⁶

The Post–Civil Rights Shift to a National Reparations Program Based on International Standards

During and after the civil rights movement, reparations remained a concern for many Black advocacy organizations and activists. Rosa Parks, for example, befriended and attended social justice gatherings with Queen Mother Moore, a well-known reparations advocate in the Black community. In 1965, John Conyers, a newly elected House representative from Detroit, hired Parks as a receptionist and secretary at his legislative office, where she worked for 23 years before retiring in 1988 (Theoharis 2015). In January 1989, Conyers introduced in the House of Representatives the first-ever legislation for a comprehensive national reparations program for the descendants of enslaved Africans.³⁷

That bill was introduced as H.R. 3745 and titled Commission to Study Reparation Proposals for African Americans Act.³⁸ In 1997, Conyers renumbered it H.R. 40, a nod to General Sherman’s Special Field Orders, No. 15. He also changed its name to Commission to Study and Develop Reparation Proposals for African Americans Act, adding “and Develop” to denote the processes required for policy development. Days after Conyers died in October 2019, Representative Jackson Lee, in her remembrance remarks on the House floor, picked up the torch on H.R. 40, pledging to be the bill’s new lead sponsor and mentioning Conyers’s long-term employment of Parks at his congressional office.³⁹

In April 2021, after 32 years, the House Judiciary Committee approved H.R. 40 and sent it to the full House for debate for the first time. In the 116th Congress (2019–2021), Senator Booker had introduced the companion bill S. 40, and he reintroduced S. 40 in the 117th Congress.⁴⁰ In 1989, H.R. 3745 had 24 cosponsors, and the number of cosponsors reached a record high of 196 for H.R. 40 in 2022. The Senate companion bill has 23 cosponsors as of 2023.

The current administration has shown support for studying reparations proposals, as Vice President Harris cosponsored the first Senate version of the bill and President Biden has made comments in support of studying reparations. As presidential candidates in 2020, Biden and Harris expressed support for the idea of studying reparations.⁴¹ In a plan for Black America released during his 2020 presidential campaign, Biden pledged that his administration would support studying reparations.⁴²

In 2022, recognizing the difficulties of pushing H.R. 40 through Congress, reparations proponents, including Senator Booker and Congresswoman Jackson Lee, adopted a dual strategy: pursue a congressional roll call for H.R. 40 and S. 40, while pushing President Biden to sign an executive order authorizing a commission to study proposals for a national reparations program.⁴³ Senator Booker and colleagues wrote to President Biden in June 2022 calling for an executive order to establish the commission, and more than 300 organizations signed a letter to the president calling for the same.⁴⁴ On January 24, 2023, Senator Booker reintroduced legislation to form such a commission.

Four Core Components of the Process of Developing a National Reparations Program

In the 14-page text of H.R. 40,⁴⁵ we identified four main components of the potential development of a national reparations program for African Americans: a broader view of harms and victims, international human rights standards, incorporation of robust research in programming and planning, and input from an expanded and diverse advocacy sector.

A BROADER VIEW OF HARMS AND VICTIMS

H.R. 40 pursues a population-based national reparations program with a broad scope. It seeks reparations for (1) the present-day descendants of Black people who endured slavery, Reconstruction, or Jim Crow, and (2) African Americans who still experience contemporary forms of structural racism, such as racist policing patterns and systemic racial inequities in wealth, education, housing, the environment, and health care. In other words, H.R. 40 addresses not only enslavement, but the broader and ongoing human rights violations against Black Americans in the United States.

INTERNATIONAL HUMAN RIGHTS STANDARDS

Early reparations models were focused on either monetary compensation for unpaid labor or land redistribution. H.R. 40 marks the first time a major reparations proposal for African Americans substantially aligns with more comprehensive international human rights standards. Applying a human rights framework, reparations not only involve monetary payment but encompass an array of reparative justice actions, including

- efforts to understand nonmonetary losses, such as of one's identity and culture and knowledge of one's place of origin;
- proportional payment for harms done, such as financial compensation for lost earnings and lost earning potential;
- delivery of appropriate medical and mental health care, and legal and social services;
- remedial actions, such as public disclosure, acknowledgement of responsibility, formal apology, memorialization, and public education; and
- guarantees of nonrepetition, such as effective civilian oversight of policing forces, multisector human rights training, and public policy reform.

INCORPORATION OF ROBUST RESEARCH IN PROGRAMMING AND PLANNING

Studying and developing reparations proposals is a complex, multidisciplinary undertaking that, at its core, involves examining the impacts of four centuries of structural racism and proposing reparative-justice policies and programs. The commission H.R. 40 proposes will call on many researchers and other experts to build and strengthen the evidence base to develop new reparations policies and programs (box 1).

BOX 1

The Reparations Commission Proposed by H.R. 40

If passed by Congress (or rewritten as an executive order), H.R. 40 would establish a 13-member commission to study and develop proposals for a national reparations program. Three members would be appointed by the president, three by the speaker of the House, and one by the president pro tempore of the Senate. Six would be selected from major civil society organizations that have historically advocated for reparations. Seven members would constitute a quorum. The commission would be funded at \$12 million.

As described in H.R. 40, a reparations commission is an interdisciplinary body tasked with gathering and analyzing “the relevant corpus of evidentiary documentation” and measuring past and present harm. The proposed commission, which could obtain data and analysis from any federal agency or department head and procure the services of experts and consultants, would use the evidence base to inform reparations proposals.

H.R. 40 tasks the commission with submitting a report to Congress within one year of the commission’s first meeting. The report would be based on the commission’s findings and recommendations for remedies comports with international standards, including recommendations for how to educate the public on the commission’s findings. The report would also recommend “how the Government of the United States will offer a formal apology on behalf of the people of the United States for the perpetration of gross human rights violations and crimes against humanity on African slaves and their descendants.”

Source: Commission to Study and Develop Proposals for African Americans Act, H.R. 40, 117th Cong. (2017), Sec. 4 (a), Sec. 4 (a)(2)(d), Sec. 8, Sec. 3 (b)(7)(E), Sec 5 (c), Sec 6 (c), Sec. 3 (c), Sec. 3 (b)(6), and Sec. 3 (b)(7)(B).

Although the text of H.R. 40 does not identify the research methods to be employed, it does outline the commission’s duties and responsibilities for building evidence and making recommendations. We grouped these into five core research areas: (1) impact analysis, (2) eligibility determination, (3) monetary compensation design, (4) nonmonetary initiatives, and (5) preventive policy reform (i.e., guarantees of nonrepetition).⁴⁶ In table 2, we present overarching research questions for each area. In our companion brief, “How Social Science Research Can Inform a National Reparations Agenda,” we explore these areas in greater detail.

TABLE 2

Five Core Design and Research Areas That H.R. 40 Tasks a Reparations Commission with Focusing On

| Design and research areas | Possible research questions based on H.R. 40 |
|---------------------------------|--|
| 1. Impact analysis | What have been the harms of slavery and other forms of structural racism since 1619? What research methods are appropriate for measuring these harms? How might researchers project the outcomes of reparations programs and policies? |
| 2. Eligibility determination | What groups or individuals are eligible for reparations payments and programs? How might applicants document their ancestral lineages or meet other potential eligibility requirements? |
| 3. Monetary compensation design | What formulas could be used to calculate and distribute monetary compensation? Would compensation go to individuals and/or organizations and institutions? Could payments differ based on factors like evidence of impact or need? |
| 4. Nonmonetary initiatives | What is the most effective way to share the commission’s findings with the American public? What is the best way for the US government to offer an apology for slavery and structural racism to its citizens? How might other nonmonetary initiatives, such as investments in public education and culturally relevant programs, support the Black community’s broader goals of cultural restoration and the federal government’s interests? |
| 5. Preventive policy reform | Based on the commission’s findings, how might the US government best reform its laws and policies, such as those pertaining to policing or health care, to dismantle structural racism and prevent systemic harms to Black people? |

Source: Adapted by the authors from Commission to Study and Develop Proposals for African Americans Act, H.R. 40 (Sec. 4 [a][2][d]), 117th Cong. (2017).

INPUT FROM AN EXPANDED, DIVERSE ADVOCACY SECTOR

Today’s advocacy and community engagement around reparations is larger, more visible, and significantly more diverse than earlier forms of advocacy and engagement, such as those during Reconstruction and eras that followed. Black-led reparations organizations, such as the National African American Reparations Commission and the National Coalition of Blacks for Reparations in America, have helped center community members’ voices at congressional hearings, town hall meetings, and strategy sessions on reparations.

On February 4, 2022, reparations advocates sent a letter in support of reparations to then–House speaker Nancy Pelosi and other congressional leaders. The letter was signed by a multiracial, multiethnic, multifaith cohort of more than 300 organizations, including the American Association of Black Psychologists, the American Baptist Churches USA, the American Civil Liberties Union, Amnesty International USA, the Anti-Defamation League, Blacks in Law Enforcement, the Center for LGBTQ Economic Advancement and Research, Human Rights Watch, Indigenous Solidarity Network, the Japanese American Citizens League, the NAACP, the National Association for Black Social Workers, the Sentencing Project, and the Southern Poverty Law Center.⁴⁷ This support is indicative of the post–civil rights expansion of reparations advocacy and community engagement and signals important opportunities for potential members of the proposed reparations commission, researchers, and planners to center community voices in reparations research and policy development.

A reparations commission, if designed well, could be an important vehicle for gathering, evaluating, and presenting the evidence needed to propose the specifics of reparations policies and programs that

can sustain a national effort. Understanding how a reparations commission could be structured, including by incorporating community voices, is important for social policy researchers working to inform the commission's evidence base.

Recommendations for Strengthening the Research and Policy-Development Infrastructure around Reparations

Our review of reparations efforts since the 18th century shows substantial shifts in how reparations have been conceptualized. At a time of increased national interest in racial justice and increased support for reparations (Cox and Edwards 2022),⁴⁸ key public investments could strengthen the research and policy-development infrastructure around reparations and ensure an evidence-based national reparations program. Federal investments in understanding the legacies of slavery and other forms of structural racism—and exploring race-conscious policy options for addressing these legacies—are investments in advancing the federal commitment to equity.⁴⁹

Designing, researching and developing a national reparations program is a complex, multifaceted endeavor. The federal government could strengthen the reparations commission's capacity to draw on and develop the evidence needed to develop policies and programs by stipulating the types of multisector expertise needed on the commission, including interdisciplinary research and human rights expertise.

A systematic approach to studying reparations proposals—one in which we apply findings on the wealth gap between Black and white people, early mortality, and other well-being-related outcomes to provide people the resources they need to thrive—could save lives, time, and money. To maximize resources and apply research findings, the federal government could also pursue reparations policy analysis that considers historical events (or inaction) while building a rigorous evidence base with measurable and projected outcomes. As part of its efforts, the federal government may also need to invest in researchers' capacity to incorporate history and conduct community engaged research in ways that can inform the development of reparations policy.

Lastly, across the nation, local governments are outpacing the federal government in developing programs to close racial gaps and promote racial reconciliation. Social policy researchers could study local reparative efforts' decisionmaking structures and generate ideas for how they could help build a reparations culture, as well as local reparations or restorative justice initiatives' efforts to develop an evidence base that can inform the development of a national reparations program.

Notes

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