

The Trans-Atlantic Slave Trade's Vestiges: Exploring Proposed Forms of Restitution 2016

Patricia M. Muhammad

Follow this and additional works at: <http://digitalcommons.northgeorgia.edu/issr>

 Part of the [Anthropology Commons](#), [Communication Commons](#), [Economics Commons](#), [Geography Commons](#), [International and Area Studies Commons](#), [Political Science Commons](#), and the [Public Affairs, Public Policy and Public Administration Commons](#)

Recommended Citation

Muhammad, Patricia M. () "The Trans-Atlantic Slave Trade's Vestiges: Exploring Proposed Forms of Restitution 2016," *International Social Science Review*: Vol. 92 : Iss. 2 , Article 2.

Available at: <http://digitalcommons.northgeorgia.edu/issr/vol92/iss2/2>

This Article is brought to you for free and open access by Nighthawks Open Institutional Repository. It has been accepted for inclusion in International Social Science Review by an authorized editor of Nighthawks Open Institutional Repository.

The Trans-Atlantic Slave Trade's Vestiges: Exploring Proposed Forms of Restitution 2016

Cover Page Footnote

Patricia M. Muhammad holds a Juris Doctor from the University of Baltimore and is an attorney and consultant focusing on International Law, Human Rights, and Civil Rights.

The Trans-Atlantic Slave Trade's Vestiges: Exploring Proposed Forms of Restitution 2016

The vestiges of the Trans-Atlantic Slave trade are well known in the United States as well as in the international community,¹ and continue to adversely affect Africans of the Diaspora. In the past few decades, legislators, foreign ministers,² scholars, and historians have documented the atrocities of the slave trade as crimes against humanity³ under human rights and international law. Scholar-activists have also written numerous articles regarding possible legal measures that may be used to secure tangible restitution for the legacies of the slave trade.⁴ It is important to note that this article focuses on Black Americans, not continental Africans, thus excludes those who were part of the en masse post-slavery migration to the United States which reached its apex in the 1970s. As early as American exclusive municipal⁵ slavery,⁶ free Africans distinguished themselves from enslaved Africans who would become Black American progeny; and even acted as merchants to facilitate slavery. As late as the 1930s through the 1950s, some Blacks would pretend to be continental Africans in order to avoid the threat of lynching and other forms of discriminatory practices that existed under the false designation of separate but equal.

Every movement for restorative justice has its inception and its pivotal legal and moral apex. This article will provide proposed forms of restitution that Black Americans must demand in order for them and the rest of American society to move the United States into its next stage of development as a world leader in the “free world.” The author encapsulates these introductory measures in the form of a Ten Point Program. Part I of this article will introduce the next stage in the reparations debate which must include a discussion outlining what Black Americans should do with compensation⁷ once state actors of the international community grant it. This query must be addressed in order for Black Americans to sustain long-term economic and social

viability in the global economy and in a nation-state that has yet to evolve from the superficial designation of race, color, and ethnic origin.

This article provides recommendations for the use of restitution to benefit Black Americans, as an *introductory* measure to address the legacies of the Trans-Atlantic Slave trade.⁸ As the slave trade's legacy continued to negatively influence American society, the crimes against humanity, including Black Codes,⁹ Jim Crow Laws, and institutionalized discrimination and societal racial hatred permeated every facet of Black American life since its inception.¹⁰ The psychological damage, cultural loss, economic disenfranchisement, and societal framework has had the disparate impact of maintaining Black Americans on the fringe of upward mobility.¹¹ Thus, for state actors to grant a single monetary restitution payment is less than sufficient to address these deep-rooted economic and social ills. It must be emphasized that non-ancestral mixed continental Africans and their progeny's advantages and experiences do not mirror that of the Black American, regardless of whether the United States Census defines them with the same racial designation.

Part II of this article will examine various forms of restitution under the broad categories of “tangible” and “intangible.” Although these classifications will meld into each other, it is necessary to emphasize that monetary compensation is a significant portion of the proposed restitution settlement. This section will then examine why restitution must be applied to the areas of education, housing, and employment for Black Americans. American modern society demonstrates that strong familial ties and established wealth are central to financial success, which can often times be based upon economic community development with government support to generations past. It is important that tangible restitution compensating for this advantage be at the forefront of restorative justice demands.

Part III examines the need for Black Americans to establish a Restitution and Reconciliation Commission. This section will discuss categories of persons who should comprise the proposed Commission and how they will be appointed. This article will then provide suggestions regarding various committees that are necessary in order to execute the purpose of the proposed Restitution Commission, namely monitoring to ensure proper distribution of restitution to Blacks in the United States. Part IV concludes that the reparations debate continues to wage onward, but Black Americans must intelligibly articulate a legal and economic framework in which restitution demands are met.

Forms of Restitution

Restitution for the legacies of the Trans-Atlantic Slave trade may be categorized under tangible and intangible forms.¹² Every human being requires resources to satisfy their basic needs, including shelter, food, clothing, and in the modern world, transportation. These needs are no less significant for Black Americans and all of these necessities are usually obtained with legal tender.

Therefore, the proposed Restitution Commission must include tangible restitution, meaning individual cash or gold payments to Black Americans¹³ from state actors. Scholars, historians, and fiscal analysts must determine whether each nation-state will tender such payments to individuals as annuities or one single payment.¹⁴ This Commission must also negotiate the number of future generations of Black Americans who are entitled to restitution, i.e. determining when social and economic equality is achieved in the United States.

The second form of tangible restitution must be for the collective benefit of Black Americans. Therefore, the Ten Point Reparations Program should require nation states to issue

an agreed upon amount of restitution in a collective fund for economic community development, mental and physical health counseling, and subsidized professional training programs¹⁵ in real estate, health and nutrition, culinary arts, and medical and sociological fields of study.

It is well-documented that historical restorative justice measures included monetary awards¹⁶ to individual claimants from respective governments. Colonial powers as well as the U.S. government systematically exploited the health and labor of vulnerable populations—namely Black Americans. This resulted in the economic disenfranchisement of Blacks which undergird the financial instability of today's Black collective.¹⁷ Lack of cash flow has shown to devastate communities as consumer confidence weakens as well as necessitates individuals to incur debt for their most basic needs. America's recent economic downturn demonstrated that minorities were the most adversely affected by debt and the sub-prime lending practices of corporate entities.

Monetary settlements will not only provide a temporary economic boost for Black Americans, but will encourage innovation, creation, and development of small business and investment in retirement and savings—which will grant long-term financial benefits to Black Americans. As will be discussed, claimants will be required to undergo specific counseling and monitoring measures in order to receive and/or maintain restitution payments, depending on which manner state actors decide to render them. Of course Black Americans will have the right to dispose of the restitution as they deem fit, but as a conciliatory measure, some type of fiscal guidance must be provided for the reparations debate to fill its historical duty.

As mentioned, the proposed Restitution Funds' purpose is to provide funding and economic solutions that would benefit Black Americans as a collective.¹⁸ Focused on community development¹⁹ and supporting the Black family structure, reparations will be used to

encourage the creation and development of small businesses owned by Black Americans without debt service. Although state and federal government throughout the United States have provided small business *loans*, it has proven to be detrimental to Black enterprise. Economists have proven that most businesses usually do not generate a profit within the first year or more since inception.²⁰ Thus, it is not fiscally sound for the average Black American to incur substantial debt with the government when such businesses do not that the opportunity to thrive in a competitive landscape characterized by major corporations, in which Blacks have minuscule to no opportunity to participate, let alone lead. This issue has become even more evident since the United States' most recent economic downturn. This debt not only hinders economic development in the Black American community, but also causes financial devastation to new business owners who may become personally liable for such debts. Thus, the proposed Fund must provide sustainable financial support in the form of business grants and training, in order for entrepreneurship to flourish and provide goods and services which actually benefit the communities that support them.

The second component of the proposed Fund regards international deposits from state actors. Although the core of restitution claims is for Black Americans, the United States is not the only nation state liable for the vestiges of the Trans-Atlantic Slave trade. Therefore, other members of the international community, both European and African, are required to render payments to the Fund. These nation-states include but are not limited to: France, Great Britain, the Netherlands, Scandinavia, Sweden, Denmark, Germany,²¹ Ghana, Democratic Republic of Congo, Nigeria, Niger and Cameroon.²² This portion of the Fund would also be apportioned between individual cash settlements and community development.²³ As noted by this author in a previous article, “The most reasonable way to create and build a proposed fund for slavery's

descendants is for members of the international community to contribute an initial monetary amount followed by subsequent annual deposits for an indefinite period of time.”²⁴ This implicitly brings in the element of reparations for descendants of victims of the Atlantic Slave Trade in countries other than the United States. However, keeping our focus on the smaller, national scale, one professor suggests that it would be in the best interest of all that “[the U.S.] Congress approves a large reparations fund and the primary question is whether to pay this out to individuals or to organizations. Reasonable people will disagree as to which distribution plan is superior.”²⁵

Thus, the proposed Fund will address both individual and collective disenfranchisement of Blacks in the United States. However, tangible restitution is not the only form of restorative justice that state actors are obliged to address. Although economic in nature, other forms of restitution are intangible but are just as important in the curative process for the vestiges of the Trans-Atlantic Slave trade.

The discourse concerning intangible restitution for slavery often entails a demand for an apology and to require primary and secondary schools not only to teach about the history of the slave trade, but to also depict historical accounts accurately.²⁶ Although this form of restitution is important, this article will focus on tangible-intangible reparations that entails state actors to include acts which have a positive financial impact, but does not necessarily contain a physical component—unlike individual cash settlements. The recommended intangible restitution will encompass education, employment, and housing of Blacks in the United States.²⁷

The first tangible intangible form of restitution is for the federal government to immediately forgive all student loans incurred by Black Americans who pursued an education at an accredited university. The exorbitant rate of higher education costs has steadily increased

throughout the past several decades. This has resulted in more Black students with higher education debt, who are still being paid less than their white counterparts, and is part of an endless cycle of inequality that has contributed to a greater disparate income to the detriment of Black Americans.²⁸ With the majority of Black Americans unable to garner the benefit of inter-generational wealth,²⁹ they are forced to depend on debt service in order to not just obtain an education, but also for a mere chance to compete in a job market which has shunned them for centuries.³⁰ However, mainstream news outlets have poignantly exposed that Black Americans do not receive the benefit of the higher education³¹ whose debt requires a lifetime of servitude. This recommendation is not a quid pro quo option. Black Americans have been discriminated against since before the formation of the United States in the area of education (in addition to unpaid toil in labor, enduring laws forbidding enslavers to teach Blacks how to read, separate but unequal; accommodations, public transportation and education including lack of, insufficient or substandard supplies, books and funding despite being declared American citizens decades earlier). Therefore, the federal and state governments must cancel all of its issued student loans to Black Americans³² as part of the proposed Ten Point Reparations Program.

The next requirement the proposed Reparations Commission must include in the Ten Point Program is mortgage loan forgiveness by the federal government. It is of immediate concern that Black Americans, despite being qualified for mortgage loans with amenable lending conditions, were steered to disadvantageous sub-prime loans which contributed greatly to America's recent recession. The proposed Commission must negotiate with quasi-governmental lending agencies better known as Freddie Mac, Fannie Mae, and other government insured mortgage companies.³³ As a result of the federal government subsidizing these mortgages, it has, over an extended period of time, perpetrated racial discrimination against Black Americans in

housing. In addition, this restitution demand must also include an independent investigator of state and local governments' facilitation of discriminatory practices through legal instruments which contained restrictive covenants. Communities, with government sanction, used this racially discriminatory legal tool to specifically ban Black Americans from purchasing real property or white homeowners from selling their property to Black Americans, which long predated the recent economic crisis by generations. This act of government hindered Blacks from gaining upward mobility as “The possession of real property is universally accepted as the foundation of any sovereignty or community.”³⁴

Housing restitution claims should not only include cancellation of such mortgages, but an investigation of the lending practices of Fannie Mae and Freddie for the past seventy-five years with analyses and plans to impose fines and/or jail time for historic violations. The Commission must also demand a task force designated to curtail racial discrimination in lending practices that adversely affect Black Americans when they have met or exceeded standard lending requirements.

In addition, “there remain slave descendants who still desire land accession in order to form a true identity and foundation for economic equality in relation to mainstream society.”³⁵ Although some activists have supported this recommendation, it may be the least feasible³⁶ to include in the proposed Ten Point Program as Black Americans are already U.S. citizens and ambiguity arises as to where the land would stem from. However, the federal government has two options should the Commission desire to pursue this claim: it may use federally reserved land to fulfill the land accession claim or use eminent domain to seize certain real property and equitably re-distribute such lands among Black Americans. At the outset, this suggestion may appear impractical but there are two types of land that would likely be excluded, real property

(both land and improvements) legally acquired by landowners and certain federal properties which are home to endangered species. For those whom the federal government has designated as “Black” and currently represent 13 percent of the United States' population,³⁷ the Commission would have to enlist statisticians and economists to calculate the amount of land needed for equitable distribution including such factors as family size, education levels and current geographic locations. The fact remains, housing is one of the vital cornerstones of upward mobility in the United States and both the federal and state governments have consistently discriminated against Blacks in this realm.

As a result of state actors' involvement in the Trans-Atlantic Slave trade, Blacks have lost much of their ancestral history.³⁸ This denial of genealogical memory, coupled with the acts which constituted crimes against humanity have, in varying degrees, annihilated the self-worth, self-value, and camaraderie of Black Americans. When the American President Barack Hussein Obama was elected, Black Americans filled the news outlets with stories of how for generations they were treated as second-class citizens in a land they cultivated and helped build. So much so that entertainer Will Smith revealed that as a Black man, it was not until that moment that he actually could 'take ownership' of this country. It is intelligible how many generations of Black Americans were never afforded the opportunity to do so and forced to sever their ties with their ancestral homeland. Therefore, the Ten-Point Program should also include “Genealogical analysis for slave descendants”³⁹ as it would bridge the gap between their current cultural status and ancestral homeland.”⁴⁰ As descendants of historic victims are nominally integrated into Western mainstream society, genealogical analysis could create a greater understanding that although they are a part of recent Western culture, they have a heritage that transcends and extends back in time long before the Trans-Atlantic Slave trade.⁴¹ Once completed, the federal

government must provide grants for Black Americans who desire to visit their ancestral homeland and gain a greater understanding of their individual cultural heritage.

Consequently, as Blacks gain more knowledge of their specific ancestral history, the Ten Point Program must include the claim for the federal government to facilitate Black American's citizenship of their various Native American tribes, as applicable. During the United State's municipal slavery, Africans fought alongside and at times assimilated with Native Americans, especially in South Carolina, North Carolina, Georgia and Florida. Although colonial powers designated some mixed Blacks as Maroons, mestizos or mulattoes, the budding American nation state deprived others who were genetically mixed with Native American ancestry of their cultural heritage as well. Therefore, the federal government failed to include certain Blacks as part of the tribal rolls maintained by the U.S. Bureau of Indian Affairs,⁴² or even more recently have altogether removed their names because certain Black Americans *do not* possess a high percentage of white heritage.⁴³ The Ten Point Program should include that the federal government facilitate “...dual or trilateral citizenship among Native American tribes, America, other Western nations, and the ancestral continent could produce similar psychological and cultural benefits as genealogical analysis and a greater sense of cultural identity in all aspects of descendants' heritage.”⁴⁴

Proposed Restitution and Reconciliation Commission

The purpose of the proposed Restitution and Reconciliation Commission (“Commission”) is to facilitate and ensure the receipt of restitution from state and federal governments to Black Americans for the vestiges of the Trans-Atlantic Slave trade. The Commission must be elected in order to guarantee the best interests of *all* Black Americans are

met. As Black Americans range in socio-economic status, religion, and subcultures, a cross-section of the Black American experience must comprise the proposed Commission.

The selection of the proposed Restitution Commission should be held as any mainstream election within the United States, but at the grassroots level, not with state or federal government bureaucracy. Scholars must work in conjunction with these non-governmental organizations in order to nominate candidates they have deemed qualified based on several criteria such as: (1) academic or historical knowledge of the Trans-Atlantic Slave trade and its legacy, (2) whether the nominee has worked diligently in the legislative process in order for state and federal governments to provide remedial measures for the slave trade's vestiges, (3) whether the candidate has actively participated in community activism to address these issues and whether their selection will further substantiate reparations negotiations without distraction such as undiplomatic tactics and distasteful rhetoric.

After nominees are selected they may be placed on community ballot for election.⁴⁵ Community ballots are to be disseminated among social media registrants who qualify as Black Americans, non-profit organizations who are able to guarantee anonymity of votes and reach disenfranchised Blacks, historically black colleges and universities (HBCUS), soup kitchens, low-income housing developments, and other organizations⁴⁶ who may support the quest for restitution, such as the Restitution Study Group and N'Cobra.⁴⁷ Once the proposed Restitution Commission is officially established, it will require branch(es) to execute the aim of the Ten Point Program. These committees will service the primary issues of restitution such as individual case settlements, psychological needs of Black Americans, and facilitation reparations not only from the federal government, but also from the international community.

The formation of the Finance and Accounting Committee and other supporting

committees must be based on similar criteria as described in the previous section. This Committee will be responsible for ensuring that Black Americans receive individual cash settlements. The Committee itself will not be involved in accepting or distributing such funds as the federal government will issue these payments directly to the claimants. The Committee's payments role is to require the federal government to issue an annual accounting demonstrating substantial or complete compliance with the terms of settlement payments. Upon showing whether it has reasonably complied, the Finance and Accounting Committee will work in conjunction with the Government Relations Committee on how to ensure *all* who are designated Black Americans receive the determined cash settlements. This may include locating homeless, recently deceased whose rights to a claim through estate would become ripe, or mentally-ill claimants whom the federal government is unable to locate as well as confirming racial classification.⁴⁸

The Finance and Accounting Committee will also be responsible for providing financial education, workshops, and requiring Black Americans to avail themselves of these courses as a condition precedent to receiving reparations settlement. Depending on the type of payment the government issues, payments to claimants may be suspended until such requirements are fulfilled. Lastly, this Committee will facilitate the use of the general reparations fund to ensure economic and health programs are properly funded at no cost to Black Americans based in an agreed upon term, including annual deposits to the Fund until equity is achieved.

The Government Relations Committee shall be comprised of historians, attorneys, and seasoned arbitrators which will be responsible in conjunction with the Finance and Accounting Committee for communicating with the federal and state governments regarding compliance of payment to the general restitution fund. This Committee will also be responsible for

coordinating and negotiating settlements with state actors of the international community.

The Community Relations Committee work will mostly take place in the early stages of developing the proposed restitution fund. This Committee, with the Restitution Commission's input and approval, will identify areas where the general fund can provide the most effective and immediate benefit to Black Americans. Such suggestions will include libraries focused on Black history and ancient African civilizations, holistic health and medicine, linguistics, physical health disciplines such as martial arts, as well as youth employment initiatives.

This Committee will also act as an outreach coordinator to ascertain Black Americans' concerns regarding continued racial discrimination in areas of education, employment, and housing. The Committee will then liaise with the Government Relations Committee for further negotiations as deemed necessary, to address these legacies of the international slave trade.

The final proposed committee is the Mental Health Committee which, under the auspices of the Restitution Commission, will be responsible for providing mental health assessments and diagnoses to Black Americans who seek such services. As mental health awareness has been historically discounted for its value by the Black collective, with a focus on spiritual measures as the sole agent for psychological well being, these services will provide a unique opportunity.. Counseling, physical therapy and similar mental health measures are proven methods of providing stability and improved mental health for those who avail themselves of these services.

Sociologists, psychologists, medical doctors, and social workers will comprise this Committee in order to develop health practices that are consistent with their respective fields and tailored towards individual needs with a focus of on the legacy of racial discrimination. The Mental Health Committee may also facilitate a requirement that Black Americans must undergo a preliminary counseling session as an additional condition precedent in order to receive their

individual cash settlement. This requirement is to ensure claimants are of sound mind and are equipped with the fiscal understanding to accept restitution. Upon the Committee's finding that a potential recipient is unable to appreciate the responsibility of the individual cash settlement, the Committee may then recommend with the Government Relations Committee, to the appropriate federal agency that the latter contact the claimant(s)' guardian or appropriate next of kin, in order for the settlement to be properly disbursed.

Conclusion

Restitution is a plausible remedy for the historical injustices and atrocities of the slave trade. The exploitation and genocide of Native Americans in North America, the internment and torture of those of Japanese descent during World War II,⁴⁹ the exploitation and usurp of indigenous lands of the Waikato people in New Zealand, and the torture, murder, and genocide of the Jews during the Holocaust were in some way responded to with restitution through activism and structured negotiations. While not able to make up for the outrages suffered, governments engaged in various and multiple forms of restitution to the populations that were harmed by the callous discrimination of state actors. For example:

The government of New Zealand is another entity that has paid reparations for historical wrongs committed against indigenous peoples. In 1863, New Zealand initially made an agreement with the Waikato people concerning land accession. The New Zealand government then declared the Waikato people to blame for acts promoting anarchy. As a result, New Zealand officials invaded and seized Waikato lands. Nearly a century and a half later, in 1995, the Crown of New Zealand announced an official apology, a restoration of lost lands and financial compensation through the Waikato Raupatu Claims Settlement Act.⁵⁰

As intellectual fervor gains momentum to obtain similar results for the Trans-Atlantic Slave trade's crimes against humanity and its vestiges, Black Americans must establish

comprehensive plans to enter into valid negotiations with state actors in order to successfully garner amends for these crimes against humanity. These proposed recommendations are intended as introductory measures designed to provide a framework in which the Black collective may issue its demands.

The importance of reparations is well beyond monetary settlements, as the atrocities of the Trans-Atlantic Slave trade are immeasurable in terms of compensation. However, in order for the United States and other nation states to achieve a post racial society,⁵¹ they must make amends for its legacies—beyond expressing official 'regret' as a temporal pacifier. Thus, restitution is the next logical stage in the moral and economic growth and development of state actors,⁵² while benefiting descendants of the Diaspora who continue to be affected the slave trade's vestiges.

ENDNOTES

¹ Patricia M. Muhammad, “The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations,” *Columbia Journal of Race and Law* 3, no. 2 (2013)147-202.

² F. Michael Higginbotham, “A Dream Revived: The Rise of the Black Reparations Movement,” *New York University Annual Survey of American Law* 58, no. 4 (2003) 449. “The using of reparations has been raised since the beginning of the Civil War of 1860. Calls for reparations come from abolitionists, freed slaves, and republican party leaders.”

³ *Ibid.*, 451. “Jordan argues that lynching, like slavery, was a crime against humanity.”

⁴ The issue of reparations for slavery in America continues to garner increasing attention in both academic and popular literature. In the legal scholarship, a growing number of scholars and activists have contributed to the discourse around the issue by exploring the justice claims and the legal basis for reparations as well as the societal and psychological basis for reparations. The following sources provide a well-developed overview of the topic. Muhammad, “The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparation”; David C. Cray, “A No-Excuse Approach to Transnational Justice: Reparations as Tools of Extraordinary Justice,” *Washington University Law Review* 87, no. 3 (2010) 1043-103; Carlton M. Waterhouse, “Avoiding Another Step in a Series of Unfortunate Legal Events: A Consideration of Black Life Under Law from 1619 to 1972 and a Challenge to Providing Notions of Legally Based Reparations,” *Boston College Third World Law Journal* 26, no. 2 (2006) 220; Alfred L. Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81, no. 3 (2006) 811-49; Joe Feagin, “Documenting the Costs of Slavery, Segregation and Contemporary Racism: Why Reparations Are in Order for African-Americans,” *Harvard Blackletter Law Journal* 20 (2004) 49-81; Keith

N. Hylton, "A Framework for Reparations Claims," *Boston College Third World Law Review* 24, no. 1 (2004) 31-42; Eric J. Miller, "Representing the Race: Standing to Sue in Reparations Lawsuits," *Harvard Blackletter Law Journal* 20 (2004) 91-144; Alfred L. Brophy, "Some Conceptual and Legal Problems in Reparations for Slavery," *New York University Annual Survey of American Law* 58, no. 4 (2003) 497-556; Higginbotham, "A Dream Revived"; Charles J. Ogletree, "Repairing the Past: New Efforts in the Reparations Debate in America," *Harvard Civil Rights and Civil Liberties Law Review* 38, no. 2 (2003) 279-320; Charles J. Ogletree, "The Current Reparations Debate," *University of California-Davis Law Review* 36, no. 4 (2003) 1051-72; Charles J. Ogletree, "Reparations for the Children of Slaves, Litigating the Issues," *University of Memphis Law Review* 33, no. 4 (2003) 245; Eric A. Posner and Adrian Vermeule, "Reparations for Slavery and Other Historical Injustices," *Columbia Law Review* 103, no. 3 (2003) 689-748; Adrienne Davis, "The Case for United States Reparations to African Americans," *Human Rights Brief* 7, no. 3 (2003) 3-5, 11; Robert Westley, "Many Billions Gone, Is it Time to Reconsider the Case for Black Reparations," *Boston College Third World Law Review* 19, no. 1 (1998) 472-535; Vincene Verdun, "If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans," *Tulane Law Review* 67 (1993) 597-698, & Daisy L. Collins, "The United States Owes Reparations to its Black Citizens," *Howard Law Journal* 16 (1970) 82-114.

⁵ See Patricia M. Muhammad, "The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law," *American University International Law Review* 19, no. 4 (2004) 883. "Similarly, U.S. law is municipal and the Court may apply it to U.S. territories and vessels, but cannot apply it internationally."

⁶ Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade: 1440-1870*, at 568 (1997), "The United States Slave Trade Act of 1807 only prohibited the international slave trade. It condemned neither the internal nor the coastal traffic."

Although the United States prohibited its participation of the Atlantic slave trade in 1808, not necessarily for benevolent reasons, breeding of slaves and thus continuous slavery within its borders continued before and after President Abraham Lincoln declared the Emancipation Proclamation as the reigning law of the nation with regards to the trade of human commodities in 1865. Thus, sole municipal slavery for the United States is calculated between 1808-1865. However, municipal slavery predated the 1808 international prohibition, only outlawed the importation of more slaves and did not include slaves which colonizers imported before 1808. Historians have accepted that the first slave to arrive to what is now the United States is in 1619 in Jamestown, Virginia. However, from 1619 to 1808, the colonies of North America participated in both the Trans-Atlantic Slave trade and municipal (within its borders) slavery. Thus, municipal slavery overlapped from the inception of the colonies of the Americas until its claimed cessation of 1865—which in action did not stop municipal slavery.

⁷ Higginbotham, 447. "First, much has been written recently about the rise of the black reparations, but there has been little focus on comparative or practical considerations."

⁸ Muhammad, 198. "The proposed remedies to address the Trans-Atlantic Slave Trade and its legacy vary from tangible and intangible, just like the injuries they are designed to redress. Each proposed remedy is an introductory measure aimed at remedying the harm of the slave trade and its residual effects."

⁹ See Encyclopedia Britannica, Encyclopedia Britannica, Inc. (2017). "**Black code**, in U.S. history, any of numerous laws enacted in the states of the former Confederacy after the American

Civil War and intended to assure the continuance of white supremacy. Enacted in 1865 and 1866, the laws were designed to replace the social controls of slavery that had been removed by the Emancipation Proclamation and the Thirteenth Amendment to the Constitution.”

<https://www.britannica.com/topic/black-code>.

Oft-times historians take a reductionist approach in defining Black Codes, but the ‘restrictions’ placed on Black Americans included a curfew, having ‘papers’ to prove your identity and usually required a white male to vouch for the authenticity of the papers or the Black individual himself and discrimination in the workforce which kept Black Americans in involuntary agriculture work known as sharecropping. White landowners usually made agreements, stating that Black Americans could toil their land in exchange for room, board, and a wage. At the end of the agreed term, white Americans would then charge the Black laborer for all of these amenities and more and claim that the laborer actually *owed* the white laborer and thus must stay to repay the new “debt” rendering Black Americans into debt servitude, which is a slave in fact though not under the U.S. Constitution.

10 Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81, 845. “That perspective ought to focus on harm, not the substantially more limited benefits that are retained. It is much easier to see continued harm than continued retention of benefit because one of the many tragedies of slavery and of Jim Crow is that harm continues for generations. The evils of slavery-destruction of families, of hope, of desire for education, of humanity-continue across generations.

Higginbotham,448. “Freed slaves were subjected to widespread racial discrimination and intimidation. From lynchings, cross burnings, and night raids destroying their homes, to black codes that subjected them to convict labor farms and prisons, freed slaves experienced onerous burdens that other Americans did not. Oftentimes, American law sanctioned such practices, At other times, laws were ignored or circumscribed.”

11 Feagin,51. “These racialized advantages are both material and symbolic, and they penetrate and encompass many interactions among whites and between whites and others over the course of lifetimes. White privilege is ubiquitous and embedded even when most whites cannot see it, it is the foundation of this society. It began in early white gains from slavery and has persisted under legal segregation and contemporary racism.”

12 Muhammad,201.

13 Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81, 814. “Reparations are designed to address historical injustices; they include a broad range of programs, such as apologies, truth commissions, civil rights legislation, and payments to communities and individuals.”

14 Feagin,74. “There are at least two approaches to individual reparations. Government reparations funds could be paid out directly on a one time per capita basis to African Americans, or alternatively, they could be put into income-earning investments whose returns could be paid out each year on a per capita basis.

15 Ibid. “In 1969 James Foreman, another African American civil rights leader, made his appeal for reparations by interrupting a service at New York's Riverside Church. He addressed a *Black Manifesto* to the “white Christian churches and Jewish synagogues in the United States of America and All Racist Institutions.” It called for a beginning of reparations and derailed economic demands such as the creation of banks, universities, and training centers for African Americans.”

16 Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81,814. “They cite the Civil

Liberties Act of 1988, which provided compensation to every then-living Japanese American person interned during World War II, as an example of such a reparations plan. In that case, the victims are identified (even though there was no effort made to link harms they suffered to specified damages), but there is little connection between the payers (i.e., those taxed by the federal government) and the people who interned the victims.” & Charles J. Ogletree, “Repairing the Past: New Efforts in the Reparations Debate in America,” *Harvard Civil Rights and Civil Liberties Law Review* 38, 294. “However reparations have been brought under this traditional rights-based model. Most notably, the Japanese American internment reparations claims closely fit the structure of the traditional civil rights suits...” Hylton, 32-3. “The justice approach views reparations lawsuits as efforts to identify uncorrected or uncompensated cases of injustices and to seek “correction” in the Aristotelian sense of returning the parties to positions roughly similar to the pre-injury setting... Yet another example is the Civil Liberties Act of 1988 providing compensation for Japanese Americans held in internment camps during World War II.”

17 Waterhouse, 242. The most extensive legal constraints on “free” blacks’ economic opportunities, however, related to employment as enterprise in the South. These laws restricted a wider range of engagements for “free” blacks including handicraft, pioneering, trading, print setting, retail clerking, home repairs, masonry, mechanics, home construction and repair, law, and carrying or handling the United States mail.

18 Feagin, 70. “The data presented above provide the justification for making reparations the form of dramatic new building programs for African Americans both individually and collectively.

19 Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81, 840. “However, the programs that are seriously proposed—like a trust fund for community development—have some likelihood of passing equal protection scrutiny, for programs designed to repair specific past discrimination are acceptable.”

20 Eric T. Wagner, “Five Reasons 8 Out Of 10 Businesses Fail,” *Forbes Magazine*, September 12, 2013. “According to Bloomberg, 8 out of 10 entrepreneurs who start businesses fail within the first 18 months. A whopping 80% crash and burn.”
<http://www.forbes.com/sites/ericwagner/2013/09/12/five-reasons-8-out-of-10-businesses-fail/#5296509d5e3c>

21 Patricia M. Muhammad, “The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law,” *American University International Law Review* 19, no. 4 (2004) 883.

22 Henry Louis Gates, Jr., ‘Ending the Blame Game,’ *The New York Times*, Opinion, April 23, 2010. <http://www.nytimes.com/2010/04/23/opinion/23gates.html>. “While we are all familiar with the role played by the United States and the European colonial powers like Britain, France, Holland, Portugal and Spain, there is very little discussion of the role Africans themselves played. And that role, it turns out, was a considerable one, especially for the slave-trading kingdoms of western and central Africa. These included the Akan of the kingdoms of western and central Africa. These included the Akan of the kingdom of Asante in what is now Ghana, the Fon of Dahomey (now Benin), the Mbundu of Ndongo in modern Angola and the Kongo of today’s Congo, among several others.”

23 Ogletree, “Repairing the Past: New Efforts in the Reparations Debate in America,” *Harvard Civil Rights-Civil Liberties Law Review*, 308. “Financial remedies such as the creation of business funds to aid African Americans and broad-ranging educational, housing, and health care initiatives might overcome individual remedy difficulties and assist in combating racial

inequality.

24 Patricia M. Muhammad, "The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations," 199.

25 Saul Levmore, "Privatizing Reparations," University of Chicago Law School *Chicago Unbound Journal Articles Faculty Scholarship*, 2004, p. 1305.

26 Brophy, "Reconsidering Reparations," *Indiana Law Journal*, 839. "Even beyond the power of apologies and truth commissions to shape the public's understanding of history and the current effects of that history, apologies and truth commissions shape our identity. They tell us how we view ourselves and how those left "outside of history—left outside the American dream are included (or excluded.)" Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore and London, The Johns Hopkins University Press, 2000) 306. "The United States is tentatively examining the potential of such an intangible restitution. The recent discourse is the most vibrant of this century. The teaching about slavery, the growing tourism surrounding the history of slavery, and the expanding cultural production from movies to museums all increase the awareness of the need to amend this historical injustice, to reach a settlement and to bring it to a close."

27 Brophy, "Reconsidering Reparations," *Indiana Law Journal* 81, 841. "Computing the value of transfer payments requires substantial attention. Here one might begin with several alternative formulas roughly in ascending order of expense: (1) value of slaves' services still retained; (2) money needed to bring African-American poverty rate to the non-Hispanic white poverty rate; (3) differences in per capita wealth of African Americans non-Hispanic white Americans; (4) amount needed to bring African American educational performance, healthcare, and wealth to that of non-Hispanic whites."

28 Shahien Nasiripour, "Student Debt May Be Contributing to Racial Inequality: Black college grads owe more on their student loans while being paid less than their white counterparts." *Bloomberg* October 24, 2016. <https://www.bloomberg.com/news/articles/2016-10-24/student-debt-may-be-contributing-to-racial-inequality>.

29 Feagin, 50. "There is a similar connection between the great immiserations of African Americans and the enrichment and prosperity of most European Americans. Over several centuries, most whites, as individuals and families, have benefited handsomely from anti-black oppression and the transmission of ill-gotten wealth and privilege from one generation to the next."

30 Waterhouse, 242. The most extensive legal constraints on "free" blacks' economic opportunities, however, related to employment as enterprise in the South. These laws restricted a wider range of engagements for "free" blacks including handicraft, pioneering, trading, print setting, retail clerking, home repairs, masonry, mechanics, home construction and repair, law, and carrying or handling the United States mail.

31 Natalie Kitroeff, "It's Hardest for Black Students to Get the Financial Benefits of College," *Bloomberg Businessweek*, September 2, 2014 <http://www.businessweek.com/articles/2014-09-02/student-debt-affects-black-students-more-than-other-racial-groups>.

32 Muhammad, "The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations," 199. "Student loan forgiveness by United States government and other Western nation-states that sponsor similar funding would serve to reconcile generations of systematic discrimination in education."

33 *Ibid.*, 190.

34 Ibid., 200.

35 Ibid.

36 Brophy, “Reconsidering Reparations,” *Indiana Law Journal*, 840.

37 United States Census Bureau, QuickFacts

<https://www.census.gov/quickfacts/table/PST045216/00>.

38 Muhammad, “The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations,” 165.

39 Ibid., 201.

40 Ibid.

41 Ibid.

42 Circe Sturm, “Race, Sovereignty, and Civil Rights: Understanding the Cherokee Freedmen Controversy,” *Cultural Anthropology*, 29, no. 3 (2014) 577. “For the past three decades, the descendants of Cherokee Freedmen have argued in cases before federal and tribal courts that this decision violates not only the Treaty of 1866 but also the Cherokee Nation’s own constitution, and that this relatively new blood requirement places an undue burden on Freedmen descendants. Even those with proof of Cherokee ancestry in other documents cannot satisfy the requirements for tribal citizenship because their relatives were racially misclassified on the Dawes Rolls in the first place—meaning they were placed on the Freedmen rolls, rather than on the Cherokee by Blood rolls.” <https://culanth.org/articles/751-race-sovereignty-and-civil-rights-understanding>

43 Alex Kellogg, “Cherokee Nation Faces Scrutiny for Expelling Blacks,” *NPR* September 19, 2011.

<http://www.npr.org/2011/09/19/140594124/u-s-government-opposes-cherokee-nations-decision>

“The majority of folks who are members of the tribe ... have lived lives of white privilege,” says Marilyn Vann, who heads the Descendants of Freedman Association. She says many Cherokees are largely white and are “people who have never been discriminated against in their lives.”

The Cherokee Nation’s Supreme Court ruled in late August that the black Freedmen could be stripped of their citizenship because they can’t prove they have Indian blood. The tribe first voted in favor of this effort in 2007. While turnout for Cherokee elections tends to be low, more than 75 percent of all voters were in favor of the move.”

44 Ibid.

45 Feagin, 76.

46 Ibid., 76.

47 Muhammad, “The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations,” 161-162 & Higginbotham, 451.

48 Feagin, 76.

49 Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81, 814; Ogletree, “Repairing the Past: New Efforts in the Reparations Debate in America,” *Harvard Civil Rights and Civil Liberties Law Review* 38, 294; Hylton, 32-3.

50 Muhammad, “The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations,” 160.

51 Brophy, “Reconsidering Reparations,” *Indiana Law Journal* 81, 849.

52 Ibid., 82 & Higginbotham, 455.