Executive Summary

I. Introduction

In 1863, Abraham Lincoln signed the Emancipation Proclamation, and, in 1865, the 13th Amendment to the U.S. Constitution commanded that "[n]either slavery nor involuntary servitude ... shall exist within the United States."[i] In supporting the passage of the 13th Amendment, its co-author Senator Lyman Trumbull of Illinois said that "it is perhaps difficult to draw the precise line, to say where freedom ceases and slavery begins…"[ii] In 1883, the Supreme Court interpreted the 13th Amendment as empowering Congress "to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."[iii]

However, throughout the rest of American history, instead of abiding by the U.S. Supreme Court and the 13th Amendment to abolish "badges and incidents of slavery," the United States federal, state and local governments, including California, perpetuated and created new iterations of these "badges and incidents." The resulting harms have been innumerable and have snowballed over generations.

In 2020, California began the process of addressing its role in accommodating slavery, perpetuating the vestiges of enslavement, propogating lawful discrimination and tolerating persistent, systemic racism and implicit bias across its systems of government at the local and state level through the enactment of Assembly Bill No. 3121 (AB 3121, 2019-2020 Reg. Sess.). This law acknowledged that, as a result of the historic and continued discrimination, African Americans in California, and especially those whose lineage can be traced to an enslaved person, continue to suffer economic, educational, and health hardships that have prevented them as a people from achieving equality. AB 3121 established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States (Task Force), and directed the Task Force to study and develop reparation proposals for African Americans, taking into account:

(a) the institution of slavery, that included the federal and state governments that constitutionally and statutorily supported the institution of slavery;

(b) the legal and factual discrimination against freed slaves and their descendants from the end of the Civil War to the present, including economic, political, educational, and social discrimination;

(c) the lingering negative effects of the institution of slavery on living African Americans and on society in California and the United States;

(d) how instructional resources and technologies deny the inhumanity of slavery and the crime against humanity committed against people of African descent in California and the United States;

(e) the role of Northern complicity in the Southern-based institution of slavery; and

(f) the direct benefits to societal institutions, public and private, including higher education, corporate, religious, and associational. (Gov. Code, § 8301, subd. (b)(1).)

AB 3121 also required the Task Force to recommend appropriate ways to educate the California public of the task force's findings; recommend appropriate remedies in consideration of the Task Force's findings, and submit to the Legislature a report of its work. This is the Task Force's final report.

Part II of this report summarizes the harms caused by slavery and the lingering negative effects of the institution of slavery on descendants of persons enslaved in the United States and more broadly on living African Americans and on society in California and the United States. (Gov. Code, § 8301, subd. (b).) So thoroughly have the effects of slavery infected every aspect of American society over the last 400 years, that it is nearly impossible to identify every "badge and incident of slavery," include every piece of evidence, and describe every harm done to African Americans. In order to address this practical reality, Chapters 1-13 describe a sample of government actions and the compounding harms that have resulted, organized into specific areas of systemic discrimination.

In order to maintain slavery, government actors adopted white supremacist beliefs and passed laws to create a racial hierarchy and control enslaved and free African Americans.[iv] After the end of slavery, although the federal constitution recognized African Americans as citizens on paper, the government failed to give them the full rights of citizenship,[v] and failed to protect African Americans from widespread terror and violence.[vi] Along with a dereliction of its duty to protect its Black citizens, direct federal, state and local government actions continued to enforce the racist lies created to justify slavery. These laws and government supported cultural beliefs have since formed the foundation of innumerable modern laws, policies, and practices across the nation.[vii]

Today, 160 years after the abolition of slavery, its badges and incidents remain embedded in the political, legal, health, financial, educational, cultural, environmental, social, and economic systems of the United States of America.[viii] Racist, untrue and harmful stereotypes created to support slavery continue to physically and mentally harm African Americans today.[ix] Without a remedy specifically targeted to dismantle our country's racist foundations and heal the injuries inflicted by colonial and American governments, the "badges and incidents of slavery" will continue to harm African Americans in almost all aspects of American life.

Part III of this report discusses international standards for remedying the wrongs and injuries discussed in Part II. This well-established framework has guided the Task Force in the formulation of its recommendations so that they comport with international standards. Part III also provides examples of prior international and domestic efforts to provide reparations for human rights violations such as enslavement, apartheid, and forced sterilization. In keeping with the legal framework for reparations, Part IV discusses the required components for a formal

apology and recommends how the State of California should offer a formal apology on behalf of the People of California for the perpetration of gross human rights violations and crimes against humanity against African slaves and their descendants.

In Parts V and VI, the Task Force recommends appropriate remedies in consideration of the Task Force's findings, including (a) how any form of compensation to African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States, should be calculated; (b) what form of compensation should be awarded, through what instrumentalities, and who should be eligible for such compensation; and (c) how, in consideration of the Task Force's findings, any other forms of rehabilitation or restitution to African descendants are warranted and what form and scope those measures should take. The latter includes recommendations that the Legislature enact a range of policies needed to guarantee restitution, compensation, rehabilitation, satisfaction and non-repetition.

Part VII of the report contains a summary of the Task Force's findings and recommendations regarding implementation of the California Racial Justice Act (Assem. Bill No. 2542 (2019-2020 Reg. Sess.), and Part VIII summarizes findings from community engagement and community input regarding reparations and the work of the Task Force. Part IX recommends appropriate ways to educate the California public of the Task Force's findings, and of the legacy of enslavement and legal discrimination in California. Finally, Part X contains a compendium of California laws and policies that have and continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery.

Taken together, the components of this report are not only intended to satisfy the requirements the Legislature set out in AB 3121, but the Task Force trusts this report can serve as a blueprint for other states and eventually the federal government when they perform the critical task of reconciling with our nation's historic victimization of African Americans, especially those who are descendants of persons enslaved in the United States. While California's first-in-the-nation effort is an important step and we eagerly anticipate the California Legislature's enactment of the recommendations contained herein, ultimately this national shame can only be comprehensively redressed through action at the federal level.

II. Enslavement

A. Nationally

America's wealth was built by the forced labor of trafficked African peoples and their descendants who were bought and sold as commodities.[x] American government at all levels allowed or participated in exploiting, abusing, terrorizing, and murdering people of African descent so that mostly white Americans could profit from their enslavement.[xi]

After the War of Independence, the United States built one of the largest and most profitable

enslaved labor economies in the world.[xii]

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

Enslavers made more than $159 million between 1820 and 1860 by trafficking African Americans within the U.S.[xix] Charles Ball, an enslaved man who was bought by slave traffickers in Maryland and forced to march to South Carolina, later remembered: "I seriously meditated on self-destruction, and had I been at liberty to get a rope, I believe I should have hanged myself at Lancaster... I had now no hope of ever again seeing my wife and children, or of revisiting the scenes of my youth.''[xx]

Historians have argued that many of today's financial accounting and management practices began among enslavers in the U.S. South and the Caribbean.[xxi] In order to continually increase production and profits, enslavers regularly staged public beatings and other violent acts and provided deplorable living conditions.[xxii]

Historians have also found evidence that enslavers raped and impregnated enslaved women and girls, and profited from this sexual violence by owning and selling their own children.[xxiii] President Thomas Jefferson, who enslaved four of his own children, wrote that the "labor of a breeding [enslaved] woman" who births a child every two years is as profitable as the best enslaved worker on the farm.[xxiv]

In the census of 1860, the last census taken before the Civil War, of the about 12 million people living in the 15 slave-holding states, almost four million were enslaved.[xxv] In order to terrorize and force this enormous population to work without pay, the colonial and American governments created a different type of slavery.

Unlike in what historians call the pre-modern era, slavery in America was based on the idea that race was the sole basis for life-long enslavement, that children were enslaved from birth, and that people of African descent were naturally destined to be enslaved.[xxvi] Colonists in North America claimed and passed laws[xxvii] to maintain a false racial hierarchy where white people were naturally superior.[xxviii] Colonial laws effectively made it legal for enslavers to kill the people they enslaved.[xxix] In some states, free and enslaved African Americans could not vote or hold political office.[xxx] Enslaved people could not resist a white person, leave a plantation without permission, or gather in large groups away from plantations.[xxxi]

After the War of Independence, the American government continued to pass laws to maintain

this false racial hierarchy which treated all Black people as less than human.[xxxii] After the Civil War, the federal government failed to meaningfully protect the rights and lives of African Americans.[xxxiii] When Andrew Johnson became president after the assassination of Abraham Lincoln, he proclaimed in 1866, "[t]his is a country for white men, and by God, as long as I am President, it shall be a government for white men[.]"[xxxiv]

The Slave Codes were reborn as the Black Codes, and then as the Jim Crow laws segregating Black and white Americans in every aspect of life.[xxxv] Although many of these laws were most prominent in the South, they reflected a national desire to reinforce a racial hierarchy based in white supremacy.

B. California

Although California technically entered the Union in 1850 as a free state, its early state government supported slavery.[xxxvi] Proslavery white southerners held a great deal of power in the state legislature, the state court system, and among California's representatives in the U.S. Congress.[xxxvii]

Some scholars estimate that up to 1,500 enslaved African Americans lived in California in 1852.[xxxviii] Enslaved people trafficked to California often worked under dangerous conditions,[xxxix] lived in unclean environments,[xl] and faced brutal violence.[xli]

In 1852, California passed and enforced a fugitive slave law that made California a more proslavery state than most other free states.[xlii] California also outlawed non-white people from testifying in any court case involving white people.[xliii]

California did not ratify the Fourteenth Amendment, which protected the equal rights of all citizens, until 1959 and the Fifteenth Amendment, which prohibited states from denying a person's right to vote on the basis of race, until 1962.[xliv]

III. Racial Terror

A. Nationally

After slavery, white Americans, sometimes aided by the government, maintained the badges of slavery by carrying out violence and intimidation against African Americans for decades.[xlv] Racial terror pervaded every aspect of post-slavery Black life and prevented African Americans from building the same wealth and political influence as white Americans.[xlvi]

African Americans faced threats of violence when they tried to vote, when they tried to buy homes in white neighborhoods, when they tried to swim in public pools, and when they tried to assert equal rights through the courts or in legislation.[xlvii] White mobs bombed, murdered, and destroyed entire towns.[xlviii] Federal, state, and local governments ignored the violence, failed to prosecute offenders, or participated in the violence themselves.[xlix]

Racial terror takes direct forms, such as physical assault, threats of injury, and destruction of property. It also inflicts psychological trauma on those who witness the harm and injury.[l] Many African Americans were traumatized from surviving mass violence and by the constant terror of living in the South.[li] Lynchings in the American South were not isolated hate crimes committed by rogue vigilantes, but part of a systematic campaign of terror to enforce the racial hierarchy.[lii] Racial terror targeted at successful African Americans has contributed to the present wealth gap between Black and white Americans.[liii]

While lynching and mob murders are no longer socially acceptable, scholars have argued that its modern equivalent continue to haunt African Americans today as extrajudicial killings by the police and vigilantes.[liv] Racial terror remains a tool for other forms of discrimination and control of African Americans from redlining and segregated schools to disparate healthcare and denial of bank loans.

B. California

Supported by their government, Californian citizens also terrorized and murdered Black Californians.[lv] The Ku Klux Klan (KKK) established chapters all over the state in the 1920s.[lvi] During that time, California sometimes even held more KKK events than Mississippi or Louisiana.[lvii] Many of California's KKK members were prominent individuals who held positions in civil leadership and police departments.[lviii]

For example, in the 1920s, in Los Angeles, prominent and numerous city government officials were KKK members or had KKK ties, including the mayor, district attorneys, and police officers.[lix] Violence against Black homeowners in California peaked in the 1940s, as more Black Californians bought homes in white neighborhoods.[lx]

Today, police violence against and extrajudicial killings of African Americans occur in California in the same manner as they do in the rest of the country.[lxi]

IV. Political Disenfranchisement

A. Nationally

African Americans have pursued equal political participation since before the Civil War, but the federal, state, and local governments of the United States have suppressed and continue to suppress Black votes and Black political power.[lxii] After the Civil War, the United States protected the voting rights of African Americans on paper, but not in reality.[lxiii] During a 12-year period after the Civil War called Reconstruction, the federal government tried to give newly freed African Americans access to basic civil rights[lxiv] and, by 1868, more than 700,000 Black men were registered to vote in the South.[lxv] During Reconstruction, over 1,400 African Americans held federal, state, or local office, and more than 600 served in state assemblies.[lxvi] However, progress was short lived.

During the contested presidential election of 1876, Republicans and Democrats agreed to withdraw federal troops from key locations in the South, effectively ending Reconstruction.[lxvii] Southern states then willfully ignored the voting protections in the U.S. Constitution, and passed literacy tests, poll taxes, challenger laws, grandfather clauses, and other devices to prevent African Americans from voting.[lxviii] States also barred African Americans from serving on juries.[lxix]

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

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

For example the New Deal, a series of federal laws and policies designed to pull America out of the Great Depression, created the modern white middle class and many of the programs that Americans depend upon today, such as Social Security.[lxxvii] But the New Deal excluded African Americans from many of its benefits.[lxxviii]

Historians have argued that southern lawmakers ensured that the GI Bill was administered by states instead of the federal government to guarantee that states could direct its funds mostly to white veterans.[lxxix] Similarly, in order to secure the support of white southern lawmakers, Congress included segregation clauses or rejected anti-discrimination clauses in the Hill Burton Act of 1946, which paid for our modern healthcare infrastructure, and the Housing Act of 1949, which helped white Americans buy single family homes.[lxxx] These federal legislative decisions perpetuated the racial hierarchy which continues today.

B. California

California also passed laws and enforced them to prevent Black Californians from accumulating political power.[lxxxi]

California's law prohibiting non-white witnesses from testifying against white Californians protected white defendants from justice.[lxxxii] The California Supreme Court warned that allowing any non-white person to testify "would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls," a prospect that the court viewed as an "actual and present danger."[lxxxiii]

California did not allow Black men to vote until 1879.[lxxxiv] The state also passed many of the voter suppression laws that were used in the South. California prohibited individuals convicted

of felonies from voting,[lxxxv] added a poll tax,[lxxxvi] and put in place a literacy test.[lxxxvii]

V. The Root of Many Evils: Residential Segregation

A. Nationally

America's racial hierarchy was the foundation for a system of segregation in the United States after the Civil War.[lxxxviii] The aim of segregation was not only to separate, but also to force African Americans to live in worse conditions in nearly every aspect of life.[lxxxix]

Government actors, working with private individuals, actively segregated America into Black and white neighborhoods.[xc] Although this system of segregation was called Jim Crow in the South, it existed by less obvious, but effective means throughout the entire the country, including in California.[xci]

During enslavement, about 90 percent of African Americans were forced to live in the South.[xcii] Immediately after the Civil War, the country was racially and geographically configured in ways that were different from the way it is segregated today.[xciii] Throughout the 20th century, American federal, state, and local municipal governments expanded and solidified segregation efforts through zoning ordinances, slum clearance policies, construction of parks and freeways through the middle of Black neighborhoods, and public housing siting decisions.[xciv] Courts enforced racially restrictive covenants and prevented homes from being sold to African Americans until the late 1940s.[xcv]

The federal government used redlining to deny African Americans equal access to the capital needed to buy a single-family home at the same time that it subsidized white Americans' efforts to own the same type of home.[xcvi] As President Herbert Hoover stated in 1931, single-family homes were "expressions of racial longing" and "[t]hat our people should live in their own homes is a sentiment deep in the heart of our race."[xcvii]

The passage of the Fair Housing Act in 1968 outlawed housing discrimination, but did not fix the structures put in place by 100 years of discriminatory government policies, and residential segregation continues today.[xcviii]

The average urban Black person in 1890 lived in a neighborhood that was only 27 percent Black.[xcix] In 2019, America is as segregated as it was in the 1940s, with the average urban Black person living in a neighborhood that is 44 percent Black.[c] Better jobs, tax dollars, municipal services, healthy environments, good schools, access to health care, and grocery stores have followed white residents to the suburbs, leaving concentrated poverty, underfunded schools, collapsing infrastructure, polluted water and air, crime, and food deserts in segregated inner city neighborhoods.[ci]

B. California

In California, the federal, state, and local government created segregation through redlining, zoning ordinances, decisions on where to build schools and highways and discriminatory federal mortgage policy.[cii] California "sundown towns," like most of the suburbs of Los Angeles and San Francisco, prohibited African Americans from living in towns throughout the state.[ciii]

The federal government financed many whites only neighborhoods throughout the state.[civ] The federal Home Owners' Loan Corporation maps used in redlining described many Californian neighborhoods in racially discriminatory terms.[cv] For example, in San Diego: There were "servant's areas" of La Jolla and several areas "restricted to the Caucasian race."[cvi]

During World War II, the federal government paid to build segregated housing for defense workers in Northern California.[cvii] Housing for white workers was more likely to be better constructed and permanent.[cviii] While white workers lived in rooms paid for by the federal government, Black war workers lived in cardboard shacks, barns, tents, or open fields.[cix]

Racially-restrictive covenants, which were clauses in property deeds that usually allowed only white residents to live on the property described in the deed, were common place and California courts enforced them until at least the 1940s.[cx]

Numerous neighborhoods around the state rezoned Black neighborhoods for industrial use to keep out white residents[cxi] or adopted zoning ordinances to ban apartment buildings to try and keep out Black residents.[cxii]

State agencies demolished thriving Black neighborhoods in the name of urban renewal and park construction.[cxiii] Operating under a state law for urban redevelopment, the City of San Francisco declared that the Western Addition was blighted, and destroyed the Fillmore, San Francisco's most prominent Black neighborhood and business district.[cxiv] In doing so, the City of San Francisco closed 883 businesses, displaced 4,729 households, destroyed 2,500 Victorian homes,[cxv] and damaged the lives of nearly 20,000 people.[cxvi] And then left the land empty for many years.[cxvii]

VI. Separate and Unequal Education

A. Nationally

Through much of American history, enslavers and the white political ruling class in America falsely believed it was in their best interest to deny education to African Americans in order to dominate and control them. Enslaving states denied education to nearly all enslaved people, while the North and Midwest segregated their schools and limited or denied access to freed Black people.[cxviii]

After slavery, southern states maintained the racial hierarchy by legally segregating Black and white children, and white-controlled legislatures funded Black public schools far less than white public schools.[cxix] An Alabama state legislator stated in 1889, "[e]ducation would spoil a good

plow hand."[cxx] Black teachers received lower wages, and Black children received fewer months of schooling per year and fewer years of schooling per lifetime than white children.[cxxi]

Contrary to what most Americans are taught, the U.S. Supreme Court's landmark 1954 case, *Brown v. Board of Education*, which established that racial segregation in public schools is unconstitutional, did not mark the end of segregation.[cxxii]

After *Brown v. Board*, many white people and white-dominated school boards throughout the country actively resisted integration.[cxxiii] In the South, segregation was still in place through the early 1970s due to massive resistance by white communities.[cxxiv] In the rest of the country, including California, education segregation occurred when government supported residential segregation coupled with school assignment and siting policies.[cxxv] Because children attended the schools in their neighborhood and school financing was tied to property taxes, most Black children attended segregated schools with less funding and resources than schools attended by white children.[cxxvi]

In 1974, the U.S. Supreme Court allowed this type of school segregation to continue in schools if it reflected residential segregation patterns between the city and the suburbs.[cxxvii] In part, as result of this decision and other U.S. Supreme Court decisions that followed that further undermined desegregation efforts, many public schools in the United States never integrated in the first place or were integrated and then re-segregated.

B. California

In 1874, the California Supreme Court ruled segregation in the state's public schools was legal,[cxxviii] a decision that predated the U.S. Supreme Court's infamous "separate but equal" 1896 case of *Plessy v. Ferguson* by 22 years.[cxxix]

In 1966, as the South was in the process of desegregating, 85 percent of Black Californians attended predominantly minority schools, and only 12 percent of Black students and 39 percent of white students attended racially balanced schools.[cxxx] Like in the South, white Californians fought desegregation and, in a number of school districts, courts had to order districts to desegregate.[cxxxi] Any progress attained through court-enforced desegregation was short-lived. Throughout the mid- to late-1970s, courts overturned, limited, or ignored desegregation orders in many California districts, as the Supreme Court and Congress limited methods to integrate schools.[cxxxii] In 1979, California passed Proposition 1, which further limited desegregation efforts tied to busing.[cxxxiii]

In the vast majority of California school districts, schools either re-segregated or were never integrated, so segregated schooling persists today. California is the sixth most segregated state in the country for Black students.[cxxxiv] In California's highly segregated schools, schools mostly attended by white and Asian children receive more funding and resources than schools mostly attended by Black and Latino children.[cxxxv]

VII. Racism in Environment and Infrastructure

A. Nationally

Due to residential segregation, African Americans have lived in poor-quality housing throughout American history, exposing them to disproportionate amounts of lead poisoning and increasing their risks of infectious disease.[cxxxvi] Segregated Black neighborhoods have more exposure to hazardous waste, oil and gas production, and automobile and diesel fumes, and are more likely to have inadequate public services like sewage lines and water pipes.[cxxxvii] African Americans are more vulnerable than white Americans to the dangerous effects of extreme weather patterns like heat waves, made worse by the effects of climate change.[cxxxviii]

B. California

National patterns are replicated in California. Black Californians are more likely than white Californians to live in overcrowded housing, and near hazardous waste.[cxxxix] Black neighborhoods are more likely to lack tree canopy[cxl] and suffer from the consequences of water[cxli] and air pollution.[cxlii] For instance, Black neighborhoods in the San Joaquin Valley were historically denied access to clean water.[cxliii]

VIII. Pathologizing the Black Family

A. Nationally

Government policies and practices have destroyed Black families throughout American history. After the Civil War, southern state governments re-enslaved children by making them "apprentices" and forcing them to labor for white Americans, who were sometimes their former enslavers.[cxliv] In the past century, both financial assistance and child welfare systems have based decisions on racist beliefs about African Americans, which continue to operate as badges of slavery.[cxlv]

Government issued financial assistance has excluded African Americans from receiving benefits. In the early 1900s, state governments made support payments every month to low income single mothers to assist them with the expenses incurred while raising children.[cxlvi] Black families were generally excluded, despite their greater need.[cxlvii]

Scholars have found that racial discrimination exists at every stage of the child welfare process.[cxlviii] Studies have found that when equally poor Black and white families are compared, even where the families are considered to be at equal risk for future abuse, state agencies are more likely to remove Black children from their families than white children from their families.[cxlix] As of 2019, Black children make up 14 percent of American children, but 23 percent of children in foster care.[cl] Studies have shown that this is likely not because Black parents mistreat their children more often, but rather due to racist systems and poverty.[cli]

Meanwhile, the criminal and juvenile justice systems have intensified these harms to Black families by imprisoning large numbers of Black youth, and separating Black families.[cliii]

B. California

Trends in California match those in the rest of the country. Recent California Attorney General investigations have found several school districts punished Black students at higher rates than students of other races.[cliii] A 2015 study ranked California among the five worst states in foster care racial disparities.[cliv] Black children in California make up approximately 22 percent of the foster population, while only *six percent* of the general child population.[clv] far higher than the national percentages.[clvi] Some counties in California—both urban and rural—have much higher disparities compared to the statewide average. In San Francisco County, which is largely urban and has nearly 900,000 residents, the percentage of Black children in foster care in 2018 was over *25 times* the rate of white children.[clvii]

IX. Control Over Creative Cultural and Intellectual Life

A. Nationally

During slavery, state governments controlled and dictated the forms and content of Black American artistic and cultural production.[clviii] After the Civil War, governments and politicians embraced minstrelsy, which was the popular racist and stereotypical depiction of African Americans through song, dance, and film.[clix] Federal and state governments failed to protect Black artists, culture-makers, and media-makers from discrimination and simultaneously promoted discriminatory narratives.[clx]

Federal and state governments allowed white Americans to steal Black American art and culture with impunity—depriving Black creators of valuable copyright and patent protections.[clxi] State governments denied Black American entrepreneurs and culture-makers access to leisure sites, business licenses, and funding for leisure activities.[clxii] State governments memorialized the Confederacy as just and heroic through monument building, while suppressing the nation's history of racism and slavery.[clxiii] States censored cinematic depictions of discrimination against and integration of Black people into white society.[clxiv]

B. California

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

X. Stolen Labor and Hindered Opportunity

A. Nationally

During slavery, the labor of enslaved African Americans built the infrastructure of the nation, filled the nation's coffers, and produced its main agricultural products for domestic consumption and export.[clxx] Since then, federal, state, and local government actions directly segregated and discriminated against African Americans.[clxxi] In 1913, President Wilson officially segregated much of the federal workforce.[clxxii] While African Americans have consistently served in the military since the very beginning of the country, the military has historically paid Black soldiers less than white soldiers and often deemed African Americans unfit for service until the military needed them to fight.[clxxiii]

Federal laws have also protected white workers while denying the same protections to Black workers, setting up and allowing private discrimination.[clxxiv] Approximately 85 percent of all Black workers in the United States at the time were excluded from the labor protections passed in 1938 Fair Labor Standards Act—protections like federal minimum wage, the maximum number of working hours before overtime pay is required, and limits on child labor.[clxxv] The Act essentially outlawed child labor in industrial settings, where most white children worked at the time, and allowed child labor in agricultural and domestic work, where most Black children worked.[clxxvi]

Although federal and state laws like the Federal Civil Rights Act of 1964 and the California Fair Employment and Housing Act of 1959 prohibit discrimination, enforcement is slow and spotty.[clxxvii] Federal and state policies like affirmative action produced mixed results and were short lived.[clxxviii] African Americans continue to face employment discrimination today.[clxxix]

B. California

Several California cities did not hire Black workers until the 1940s and certain public sectors continued to avoid hiring Black workers even in 1970.[clxxx] The San Francisco Fire Department, for example, had no Black firefighters before 1955 and, by 1970 when Black residents made up 14 percent of the city's population, only four of the Department's 1,800 uniformed firefighters were Black.[clxxxi] During the New Deal, several California cities invoked city ordinances to prevent Black federal workers from working within their cities.[clxxxii] Labor unions excluded Black workers in California.[clxxxiii] Today, by some measures, California's two major industries, Hollywood and Silicon Valley, employ disproportionately fewer African Americans.

XI. An Unjust Legal System

A. Nationally

American government at all levels criminalized African Americans for the purposes of social control, and to maintain an economy based on exploited Black labor.[clxxxv]

After the Civil War, and throughout legal segregation, states passed numerous laws that criminalized African Americans when they performed everyday tasks, like stepping into the same waiting rooms as white Americans at bus stations or walking into a park for white people.[clxxxvi] In the South, until the 1940s, Black men and boys were arrested on vagrancy charges or minor violations, fined, and forced to pay off their fine in a new system of enslavement called convict leasing.[clxxxvii] In the words of the Supreme Court of Virginia, they were "slaves of the state."[clxxxviii]

During the tough on crime and War on Drugs era, politicians continued to criminalize African Americans to win elections. President Richard Nixon's domestic policy advisor explained that by "getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, [the Nixon White House] could disrupt those communities… Did we know we were lying about the drugs? Of course we did."[clxxxix]

The criminalization of African Americans is an enduring badge of slavery and has contributed to the over-policing of Black neighborhoods, the school to prison pipeline, the mass incarceration of African Americans, and other inequities in nearly every corner of the American legal system.[cxc]

It has also led to a rejection by police and mainstream media of accepting African Americans as victims. Law enforcement poorly investigates or ignore crimes against Black American women.[cxci] Black children on average remain missing longer and are more likely to be missing than non-Black children.[cxcii]

The American criminal justice system overall physically harms, imprisons, and kills African Americans more than other racial groups relative to their percentage of the population.[cxciii] While constitutional amendments[cxciv] and federal civil rights laws[cxcv] have tried to remedy these injustices, scholars have argued that the U.S. criminal justice system is a new iteration of legal segregation.[cxcvi]

B. California

Like the rest of the country, California police stop, shoot, kill, and imprison more African Americans than their share of the population.[cxcvii] Police officers reported ultimately taking no action during a stop most frequently when stopping a person they perceived to be Black, suggesting there may have been no legitimate basis for the stop.[cxcviii] A 2020 study showed that racial discrimination is an "ever-present" feature of jury selection in California.[cxcix] The lingering effects of California's punitive criminal justice policies, such as the state's three-strikes law, have resulted in large numbers of African Americans in prisons and jails.[cc]

XII. Harm and Neglect: Mental Physical and Public Health

A. Nationally

The government actions described in this report have had a devastating effect on the health of African Americans. Compared to white Americans, African Americans live shorter lives and are more likely to suffer and die from almost all diseases and medical conditions than white Americans.[cci] When they are hospitalized, Black patients with heart disease receive older, cheaper, and more conservative treatments than their white counterparts.[ccii]

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

In addition to physical harm, African Americans experience anger, anxiety, paranoia, helplessness, hopelessness, frustration, resentment, fear, lowered self-esteem, and lower levels of psychological functioning as a result of racism.[ccvii] These feelings can profoundly undermine Black children's emotional and physical well-being and their academic success.[ccviii]

B. California

These measures are similar in California. The life expectancy of an average Black Californian was 75.1 years, six years shorter than the state average.[ccix] Black babies are more likely to die in infancy and Black mothers giving birth die at a rate of almost four times higher than the average Californian mother.[ccx] Compared with white Californians, Black Californians are more likely to have diabetes, die from cancer, or be hospitalized for heart disease.[ccxi]

Black Californians suffer from high rates of serious psychological distress, depression, suicidal ideation, and other mental health issues.[ccxii] Unmet mental health needs are higher among Black Californians, as compared with white Californians, including lack of access to mental healthcare and substance abuse services.[ccxiii] Black Californians have the highest rates of attempted suicide among all racial groups.[ccxiv]

XIII. The Wealth Gap

A. Nationally

As described in further detail throughout this report, government policies perpetuating badges of slavery have helped white Americans accumulate wealth, while erecting barriers which prevented African Americans from doing the same.

Federal and California Homesteading Acts essentially gave away hundreds of millions of acres of land almost for free mostly to white families.[ccxv] Today, as many as 46 million of their living descendants reap the wealth benefits, approximately one-quarter of the adult population of the United States.[ccxvi] In the 1930s and 1940s, the federal government created programs that

subsidized low-cost loans, which allowed millions of average white Americans to own their homes for the first time.[ccxvii] Of the $120 billion worth of new housing subsidized between 1934 and 1962, less than two percent went to nonwhite families.[ccxviii] Other bedrocks of the American middle class, like Social Security and the GI Bill, also mostly excluded African Americans.[ccxix] The federal tax structure has in the past and continues today to discriminate against African Americans.[ccxx]

These harms have compounded over generations, resulting in an enormous wealth gap that is the same today as it had been two years before the Civil Rights Act was passed in 1964.[ccxxi] In 2019, the median Black household had a net of $24,100, 13 percent of the median net worth of white households at $188,200.[ccxxii] This wealth gap persists regardless of education level and family structure and across all income levels.[ccxxiii]

B. California

The wealth gap exists in similar ways in California. A 2014 study of the Los Angeles metro area found that the median value of liquid assets for native born Black American households was $200, compared to $110,000 for white households.[ccxxiv]

California's homestead laws similarly excluded African Americans before 1900 because they required a homesteader to be a white citizen.[ccxxv] Throughout the 20th century, federal, state and local governments in California erected barriers to Black homeownership and supported or directly prohibited African Americans from living in suburban neighborhoods.[ccxxvi] Californians passed Proposition 209 in 1996, which prohibited the consideration of race in state contracting.[ccxxvii] One study has estimated that, as a result of Proposition 209, minority- and women-owned business enterprises lost about $1 billion.[ccxxviii]

Key Findings

- In order to maintain slavery, colonial and American governments adopted white supremacy beliefs and passed laws in order to maintain a system that stole the labor and intellect of people of African descent. This system was maintained by and financially benefited the entire United States of America and its territories.
- This system of white supremacy is a badge of slavery and continues to be embedded today in numerous American and Californian legal and social systems. Throughout American history, it has been upheld by federal, state and local laws and policies and by violence and terror. All over the country, but particularly in the South during the era of legal segregation, federal state and local governments directly engaged in, supported, or failed to protect African Americans from the violence and terror aimed to subjugate African Americans.
- These government actions and dereliction of duty caused compounding physical and psychological injury for generations. In California, racial violence against African Americans began during slavery, continued through the 1920s, as groups like the Ku Klux Klan permeated local governments and police departments, and peaked after World War II, as African Americans attempted to move into white neighborhoods.
- After the Civil War, African Americans briefly won political power during Reconstruction. In response, southern states responded by systematically stripping African Americans of their power to vote. Racist lawmakers elected from southern states blocked hundreds of federal civil rights laws and edited important legislation to exclude or discriminate against African Americans, which have harmed Black Californians.
- Government actors, working with private individuals, actively segregated America into Black and white neighborhoods. In California, federal, state, and local governments created segregation where none had previously existed through discriminatory federal housing policies, zoning ordinances, decisions on where to build schools, and discriminatory federal mortgage policies known as redlining. Funded by the federal government, the California state and local government also destroyed Black homes and communities through park and highway construction, urban renewal and by other means.
- Enslavers denied education to enslaved people in order to control them. Throughout American history, Black students across the country and in California have attended schools with less funding and resources than white students. After slavery, southern states passed laws to prevent Black and white students from attending the same schools. Throughout the country, children went to the school in their neighborhoods, so education segregation was created by residential segregation. Many public schools in the United States never integrated in the first place or were integrated and then re-segregated. Today,

California is the sixth most segregated state in the country for Black students, who attend schools with less funding and resources than white students.

- Due to residential segregation and compared to white Americans, African Americans are more likely to live in worse quality housing and in neighborhoods that are polluted, with inadequate infrastructure. Black Californians face similar harms.
- Government issued financial assistance has historically excluded African Americans from receiving benefits. The current child welfare system in the country and in California, operate on harmful and untrue racial stereotypes of African Americans. This has resulted in extremely high rates of Black children removed from their families, even though Black parents do not generally mistreat their children at higher rates than white parents.
- Federal and state governments, including California, failed to protect Black artists, culture-makers, and media-makers from discrimination and simultaneously promoted discriminatory narratives. State governments memorialized the Confederacy as just and heroic through monument building, while suppressing the nation's history of racism and slavery.
- Federal, state, and local government actions, including in California, have directly segregated and discriminated against African Americans at work. Federal and state policies like affirmative action produced mixed results and were short lived. African Americans continue to face employment discrimination today in the country and in California.
- American government at all levels, including in California, have historically criminalized African Americans for the purposes of social control, and to maintain an economy based on exploited Black labor. This criminalization is an enduring badge of slavery and has contributed to the over-policing of Black neighborhoods, the school to prison pipeline, the mass incarceration of African Americans, a refusal to accept African Americans as victims, and other inequities in nearly every corner of the American and California legal systems. As a result, the American and California criminal justice system physically harms, imprisons, and kills African Americans more than other racial groups relative to their percentage of the population.
- The government actions described in this report have had a devastating effect on the health of African American in the country and in California. Compared to white Americans, African Americans live shorter lives and are more likely to suffer and die from almost all diseases and medical conditions than white Americans. Researchers have linked these health outcomes in part to African Americans' unrelenting experience of racism in our society. In addition to physical harm, African Americans experience

psychological harm, which can profoundly undermine Black children's emotional and physical well-being and their academic success.

- Government laws and policies perpetuating badges of slavery have helped white Americans accumulate wealth, while erecting barriers which prevented African Americans from doing the same. These harms compounded over generations, resulting in an enormous gap in wealth between white and African Americans today in the nation and in California.

International Reparations Framework and Examples of Other Reparations Schemes [Gov. Code, § 8301.1, subd. (b)(3)(A)]

1. Chapter 14: International Reparations Framework

AB 3121 requires the recommendations from the Reparations Task Force (RTF) to "comport with international standards of remedy for wrongs and injuries caused by the state, that include full reparations and special measures, as understood by various relevant international protocols, laws, and findings."[1]

The United Nations Principles on Reparation set forth a legal framework for providing full and effective reparations to victims of gross violations of international human rights law and serious violations of international humanitarian law. The framework takes an expansive view of what it means to be a victim. The framework does not define the violations it covers, but the International Commission of Jurists has explained that they are "types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person."[2] Examples include genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, and systematic discrimination.[3] The Convention on the Prevention and Punishment of the Crime of Genocide separately defines "genocide."[4]

According to the international legal framework established by the United Nations Principles on Reparation, a full and effective reparations program must include *all* of the following: (1) Restitution; (2) Compensation; (3) Rehabilitation; (4) Satisfaction; and (5) Guarantees of non-repetition.[5] As discussed below, the Task Force has sought to ensure that each of these components is addressed in this report, and reiterates to the Legislature that recommendations

[1] Gov. Code, § 8301.1, subd. (b)(3)(A).
[2] United Nations General Assembly, *Adopted Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, (March 21, 2006) (UN Principles on Reparation).at p. xii.
[3] *Ibid*.
[4] Office on Genocide Prevention and the Responsibility to Protect, United Nations, *Genocide* <https://tinyurl.com/GenocideUN> (as of Mar. 14, 2023).
[5] United Nations General Assembly, *Adopted Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, (March 21, 2006) (UN Principles on Reparation).

addressing each component would need to be implemented in order to achieve a reparations plan that complies with the accepted international standard for effective reparations.

1. Restitution

"Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property." [6]

According to the International Commission of Jurists' (ICJ) interpretation of the UN Principles on Reparation, where the state can return a victim to the status quo, the state has "an obligation to ensure measures for its restoration."[7] However, even though restitution is considered the primary form of reparation, the ICJ acknowledges that "in practice [restitution] is the least frequent, because it is mostly impossible to completely return [a victim] to the situation [they were in] before the violation, especially because of the moral damage caused to victims and their relatives."[8] So, the ICJ holds that where complete restitution is not possible, as will often be the case, the state must "take measures to achieve a status as approximate as possible."[9] In situations where even this is not feasible, "the State has to provide compensation covering the damage arisen from the loss of the *status quo ante*."[10]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part V of this report regarding how to appropriately calculate restitution for the whole class of individuals determined to be eligible for reparations.

2. Compensation

"Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;
(b) Lost opportunities, including employment, education and social benefits;
(c) Material damages and loss of earnings, including loss of earning potential;
(d) Moral damage;

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[6] *Id*. at pp. 7-8.
[7] International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (Revised Edition, 2018) (ICJ) at p. 173.
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."[11]

According to the ICJ's interpretation of the UN Principles on Reparation, compensation is to be understood "as the specific form of reparation seeking to provide economic or monetary awards for certain losses, be they of material or immaterial, of pecuniary or non-pecuniary nature."[12] The ICJ highlights how compensation has previously been awarded by claims commissions for cases that had claims of "material and immaterial damage" and especially for cases that had claims of "wrongful death or deprivation of liberty."[13] The United Nations has recognized a right to compensation "even where it is not explicitly mentioned" in a particular treaty, and the Human Rights Committee "recommends, as a matter of practice, that states should award compensation."[14] The basis for this recommendation comes from Article 2(3)(a) of the International Covenant on Civil and Political Rights.[15] It is important to note that international jurisprudence divides compensation into "material damages" and "moral damages."[16] Material damages include, among other things, loss of actual or future earnings, loss of movable and immovable property, and legal costs.[17] Moral damages include physical and mental harm.[18]

Per the UN Principles on Reparation, "material damages" must cover "lost opportunities, including employment, education and social benefits."[19] Additionally, according to the European Court of Human Rights, "there [generally] must be a clear and causal connection between the damage claimed by the applicant and the violation."[20] However, "as far as existence of material damage can be demonstrated, the award does not depend on whether the victim can give detailed evidence of the precise amounts, as it is frequently impossible to prove such exact figures."[21] Therefore, in the likely event that a person lacks detailed information, "compensation [ought to be] granted on the basis of equity" as long as there is a "causal link between the violation and the damage."[22]

Per the UN Principles on Reparation, compensation for "moral damages" must "encompass financial reparation for physical or mental suffering."[23] Since "this [type of] damage is not economically quantifiable, the assessment must be made in equity."[24] Furthermore, "since it is difficult to provide evidence for certain moral or psychological effects of violations, mental harm

[11] UN Principles on Reparation at p. 7.
[12] ICJ at p. 174.
[13] *Id.* at p. 176
[14] *Id.* p. 177.
[15] *Ibid.*
[16] *Id.* at p. 180.
[17] *Id.* at p. 181.
[18] *Id.* at p. 189.
[19] *Id.* at p. 187.
[20] *Id.* at p. 182.
[21] *Id.* at p. 189.
[22] *Ibid.*
[23] *Id.* at p. 204.
[24] *Ibid.*

should always be presumed as a consequence of gross violations of human rights."[25] Finally, "for persons other than close relatives, harm may have to be shown so as to limit the number of persons who may claim compensation" but "the conditions for claiming compensation should not be impossible to meet."[26]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part V of this report regarding how to appropriately compensate those who are able to demonstrate that they have suffered specific compensable injuries.

3. Rehabilitation

"Rehabilitation should include medical and psychological care as well as legal and social services." [27] According to the ICJ's interpretation of the UN Principles on Reparation, "victims are entitled to rehabilitation of their dignity, their social situation and their legal situation, and their vocational situation."[28] The ICJ also highlighted the Convention Against Torture's assessment on what constitutes rehabilitation. Accordingly, "rehabilitation must be specific to the victim, based on an independent, holistic and professional evaluation of the individual's needs, and ensure that the victim participates in the choice of service providers."[29] Furthermore, "the obligation to provide the means for as full rehabilitation as possible may not be postponed and does not depend on the available resources of the State."[30] Finally, rehabilitation "should include a wide range of inter-disciplinary services, such as medical and psychological care, as well as legal [rectification of criminal records or invalidation of unlawful convictions] and social services, community and family-oriented assistance and services; vocational training and education."[31]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part VI of this report regarding a wide variety of statutory and regulatory changes that should be effectuated by the Legislature in order to support rehabilitation of those eligible for the recommended programs.

4. Satisfaction

"Satisfaction should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

[25] *Ibid.*
[26] *Ibid.*
[27] UN Principles on Reparation at p. 8.
[28] ICJ at p. 206.
[29] *Id.* at p. 207.
[30] *Ibid.*
[31] *Ibid.*

> (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
>
> (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
>
> (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
>
> (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
>
> (f) Judicial and administrative sanctions against persons liable for the violations;
>
> (g) Commemorations and tributes to the victims;
>
> (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels." [32]

According to the ICJ's interpretation of the UN Principles on Reparation, satisfaction is a "non-financial form of reparation for moral damage or damage to the dignity or reputation" that has "been recognized by the International Court of Justice."[33] Satisfaction can take the form of a condemnatory judgment, or the acknowledgement of truth, as well as the acknowledgement of responsibility and fault.[34] The ICJ also held that satisfaction includes "the punishment of the authors of the violation."[35] Furthermore, "the UN Updated Principles on Impunity recommend that the final report of truth commissions be made public in full."[36] This is supported by the UN Human Rights Commission's resolution on impunity which recognizes that "for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including the accomplices, of these violations are essential steps towards rehabilitation and reconciliation."[37]

Another important factor when it comes to satisfaction is a "public apology" as well as a "public commemoration."[38] The public apology is to help "in restoring the honor, reputation or dignity of a [victim]." The public commemoration "is particularly important in cases of violations of the rights of groups or a high number of persons, sometimes not individually identified, or in cases of violations that occurred a long time in the past."[39] A public commemoration "in these cases

[32] UN Principles on Reparation at p. 8.
[33] ICJ at p. 207.
[34] *Id.* at pp. 207-209.
[35] *Id.* at p. 209.
[36] *Ibid.*
[37] *Id.* at p. 210; see also Human Rights Commission resolutions: 2001/70, para 8; 2002/79, para 9; 2003/72, para 8.
[38] ICJ at p. 211.
[39] *Ibid.*

has a symbolic value and constitutes a measure of reparation for current but also future generations."

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part IV of this report regarding the manner and scope of a formal apology and in Part VI of this report regarding a wide variety of statutory and regulatory changes that should be effectuated by the Legislature in order to effectuate compliance with the other factors necessary to achieve satisfaction. These recommendations are based on the fulsome accounting in Part II of this report which addresses the need for a "full and public disclosure of the truth." Additionally, Part VIII of this report serves as a first step toward a more comprehensive program of a "full and public disclosure of the truth" by bringing forward data and elevating the stories regarding the harms suffered by the community. Part IX of this report offers recommendations to the Legislature that would ensure that the public is educated about these harms and the steps needed to collectively redress the harms. And finally, Part X of this report offers a full accounting of the legal methods used to perpetuate a system of unequal justice, which the Task Force recommends the Legislature dismantle in order to ensure satisfaction.

5. Guarantees of non-repetition

"Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."[40]

[40] UN Principles on Reparation at pp. 8-9.

According to the ICJ's interpretation of the UN Principles on Reparation, the guarantee of non-repetition derives from general international law.[41] A guarantee of non-repetition is an aspect of "restoration and repair of the legal relationship affected by the breach."[42] According to the International Law Commission, "Assurances and guarantees are concerned with the restoration of confidence in a continuing relationship."[43] A guarantee of non-repetition overlaps with international human rights law because "States have a duty to prevent human rights violations."[44] A guarantee of non-repetition is "required expressly" as part of the "legal consequences of [a State's] decisions or judgments."[45] This express requirement is supported by the UN Commission on Human Rights, the Human Rights Committee, the Inter-American Court and Commission on Human Rights, the Committee of Ministers and Parliamentary Assembly of the Council of Europe, and the African Commission on Human and Peoples' Rights.[46] Another measure that falls under the guarantee of non-repetition is "the necessity to remove officials implicated in gross human rights violations from office."[47] Finally, a guarantee of non-repetition can and often must involve "structural changes" that must be "achieved through legislative measures" to ensure that the violations cannot ever happen again.[48]

While the UN Principles on Reparation are primarily based on the notion of government responsibility, the negotiators also reached a consensus that "non-State actors are to be held responsible for their policies and practices, allowing victims to seek redress and reparation on the basis of legal liability and human solidarity, and not [just] on the basis of State responsibility."[49] Principle 3(c) provides for equal and effective access to justice, "irrespective of who may ultimately be the bearer of responsibility for the violation."[50] Additionally, Principle 15 states, "in cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation for the victim."[51]

According to the international legal framework laid out by the UN Principles on Reparation, victims of gross violations of international human rights law and serious violations of international humanitarian law should be provided with full and effective reparations.[52] Victims are "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights,

[41] ICJ at p. 135.
[42] *Id.* at p. 136.
[43] *Id.* at p. 137.
[44] *Ibid.*
[45] *Ibid.*
[46] *Id.* at pp. 138-139.
[47] *Id.* at p. 140.
[48] *Ibid.*
[49] Van Boven, *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations Audiovisual Library of International Law at p. 3.
[50] UN Principles on Reparation at p. 5.
[51] *Id.* at p. 7.
[52] *Id.* at p. 7.

through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law."[53] Furthermore, "the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."[54] Additionally, "A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim."[55]

Also, the ICJ has specified that for purposes of the UN Principles on Reparation, the definition of "victim" is meant to be broad.[56] According to the ICJ, a "victim is not only the person who was the direct target of the violation, but any person affected by it directly or indirectly."[57] The ICJ cited how certain authorities "disfavor the distinction between direct and indirect victims," so "Reparations programmes should use a wide and comprehensive definition of 'victim' and should not distinguish between direct and indirect victims."[58] A comprehensive definition of the word 'victim' should include family members who have endured "unique forms of suffering as a direct result" of what happened to their families.[59]

While the UN Principles on Reparation do not formally define "gross violations of international human rights law" or "serious violations of international humanitarian law," the ICJ defines "gross violations" and "serious violations" as the "types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person."[60] Examples of these types of violations include "genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination."[61] The ICJ also held that "harm should be presumed in cases of gross human rights violations"[62]

Victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to certain remedies under international law:

(a) Equal and effective access to justice;
(b) Adequate, effective and prompt reparation for harm suffered; and
(c) Access to relevant information concerning violations and reparation mechanisms. [63]

[53] *Id*. at p. 5.
[54] *Ibid*.
[55] *Id*. at p. 6
[56] International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (Revised Edition, 2018), at p. 36.
[57] *Id.* at p. 34.
[58] *Ibid.*
[59] *Ibid.*
[60] *Id*. at p. xii.
[61] *Ibid*.
[62] *Id.* at p. 42.
[63] UN Principles on Reparation at p. 6.

According to the Human Rights Committee, "the right to an effective remedy necessarily entails the right to reparation."[64] An effective remedy refers to procedural remedies whereas the right to reparation refers to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Also, victims "shall have equal access to an effective judicial remedy as provided for under international law."[65] This would require a state to "establish functioning courts of law or other tribunals presided over by independent, impartial and competent individuals exercising judicial functions as a prerequisite to ensuring that victims have access to an effective judicial remedy."[66] This would also require the state to have "competent authorities to enforce the law and any such remedies that are granted by the courts and tribunals."[67]

In order to satisfy this component of the international standards for an effective reparations program, the Task Force offers recommendations to the Legislature in Part VI of this report regarding a wide variety of statutory and regulatory changes that should be effectuated by the Legislature in order to ensure non-repetition of the identified historical injustices. Additionally, Part IX of this report offers recommendations to the Legislature that would ensure that the public is educated about these harms so that they are understood in context by the wider population in California. And finally, Part X of this report offers a full accounting of the legal methods used to perpetuate a system of unequal justice, which the Task Force recommends the Legislature dismantle in order to ensure non-repetition.

2. Chapter 15: Examples of Other Reparations Programs and Racial Equity Initiatives

In carrying out the Legislature's direction to address how the Task Force's recommendations comport with international standards of remedy, the Task Force has considered and addressed historical and current worldwide examples of attempts to remedy wrongs and injuries caused by the state in other contexts, looking specifically to those initiatives that have included full reparations and special measures. The Task Force examined the following initiatives:

1. International

a. Germany-Israel

This reparations program was intended to address the harms inflicted on Jewish people who lived in Germany or in territories controlled by Germany during the Third Reich, the regime that ruled Germany from 1933 to 1945. Beginning in 1933, the Third Reich implemented several provisions that were intended to control and limit the citizenship and freedom of its Jewish citizens. Initially the laws excluded Jewish citizens from certain positions, schools, and professions. Eventually, these acts culminated in the "Final Solution," the Holocaust, which

[64] Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 16.
[65] UN Principles on Reparation at p. 6.
[66] ICJ at p. 55.
[67] *Ibid.*

was the genocide of the Jewish people through systematic killing both inside and outside of concentration and extermination camps throughout Germany and territories controlled by Germany. In addition to these atrocities, it is estimated that about $6 billion in property was stolen from the Jewish people living in Germany and the territories controlled by Germany. Those that survived the concentration and extermination camps, as well as those that survived outside of camps through hiding or slave labor programs, suffered significant physical and psychological injuries.

In September 1952, representatives of the newly established State of Israel and the newly formed Federal Republic of Germany (FRG) met at Luxembourg and signed an agreement that required the FRG to pay reparations to Israel for the material damage caused by the criminal acts perpetrated by Germany against the Jewish people in the Holocaust.[68] The 1952 Agreement consisted of three parts, two of which were protocols. The first part of the Agreement required the FRG to pay Israel DM3 billion[69] to help resettle Jewish refugees in the new State of Israel. The DM3 billion sum would be paid in annual installments.[70] The second part, Protocol 1, required the FRG to enact laws to compensate individuals. And the third part, Protocol 2, required the FRG to pay the Conference on Jewish Material Claims against Germany (Claims Conference) DM450 million.[71]

The first part of Agreement required the FRG to pay the first installment due in 1952 in two parts. The first part, a payment of DM60 million, was due on the day the Agreement was entered into force.[72] The remaining DM140 million was due three months later.[73] For 1953, the FRG was required to pay DM200 million.[74] The remaining funds would be paid in nine annual installments of DM310 million plus a tenth installment of DM260 million.[75] After 1954, if the FRG determined that it could not comply with the obligation, it was required to give Israel notice in writing that there would be a reduction in the amount of the installments, but in no way could any of the installments be reduced below DM250 million.[76] The DM3 billion payment was intended to help Israel meet the costs of resettling Jewish refugees who fled Nazi Germany and other territories that were formerly under Nazi Germany control.

[68] De Greiff, *Luxembourg Agreement: Excerpts* in The Handbook of Reparations ("*Luxembourg Agreement*") (2006) page 886; Colonomos and Armstrong, German Reparations to the Jews After World War II in The Handbook of Reparations ("*German Reparations*") (2006) page 391.
[69] The Agreement sets out the FRG's financial obligations in Deutschemark. At the time of the Agreement was executed, one dollar equaled 4.2 Deutschemark. The DM3 billion was equal to $820 million. Honig, *The Reparations Agreement Between Israel and The Federal Republic of Germany* ("*Reparations Agreement*") 48 Am. J. Int'l L. 564, 566, fn. 11.
[70] De Greiff, *Luxembourg Agreement, supra* note 1, at p. 887.
[71] Colonomos and Armstrong, *German Reparations*, supra note 1 at p. 399; De Greiff, *Luxembourg Agreement, supra* note 3 at pp. 895-897. The Claims Conference is an umbrella organization comprised of 23 Jewish organizations. It was founded in 1951 after a meeting in New York. (Colonomos and Armstrong, *German Reparations*, *supra* note 4, at p. 394
[72] De Greiff, *Luxembourg Agreement, supra* note 3, at p. 888.
[73] *Ibid*.
[74] *Id.* at p. 887.
[75] *Ibid*.
[76] *Id.* at pp. 887-888.

The second part of the Agreement, Protocol 1, required the FRG to enact laws for payment of individual compensation to former German citizens, refugees, and stateless persons.[77] The Compensation Law covered harms that occurred between January 30, 1933, the beginning of the Third Reich, to May 8, 1945. [78] Claimants could pursue compensation for harm endured under each of the various categories simultaneously.[79]

In 1965, the FRG enacted the Federal Compensation Final Law. The Final Law made the following changes:

- It created a hardship fund of DM1.2 billion to support refugees from Eastern Europe who were previously ineligible for compensation, primarily emigrants from 1953 to 1965[80]
- Compensation for Health: Eased burden on claimants to prove damages to their health were caused by their earlier persecution by including a presumption that if the claimant had been incarcerated for a year in a concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime[81]
- The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after. [82]
- The ceiling for education claims increased to DM10,000[83]
- Claims already adjudicated were to be revised based on the new law. [84]

Although the Final Law still excluded the same groups as the prior versions of the compensation laws, it recognized slave or forced labor that occurred under "jail-like" conditions. [85] Compensation for their work was not recognized as a claim category, however. [86]

The third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Claims Conference DM450 million for the "relief, rehabilitation (social and cultural), and resettlement of Jewish victims of Nazi persecution living outside of Israel."[87] The money would be paid to Israel and Israel would disburse the funds to the Claims Conference.[88]

[77] Colonomos and Armstrong, *German Reparations*, *supra* note 12, at p. 403; De Greiff, *Luxembourg Agreement, supra* note 6, at p. 889.
[78] *Id.* at p. 403.
[79] *Ibid*.
[80] *Id.* at p. 407.
[81] *Ibid.*
[82] *Ibid*.
[83] *Ibid*.
[84] *Ibid*.
[85] *Ibid*.
[86] *Ibid*.
[87] *Id.* at p. 399.
[88] *Ibid.*

The Agreement was unique in many ways. It was the first reparations agreement that required a country to compensate a country that was not the victor in a war.[89] Further, it was the first reparations program where the perpetrator paid reparations "on its own volition in order to facilitate self-rehabilitation."[90] And the Agreement was formed by two states that were "descendent entities of the perpetrators and victims."[91]

The program was also the largest reparations program ever implemented.[92] The German government received over 4.3 million claims for individual compensation, of which 2 million were approved. [93] It is estimated that by 2000, Germany had paid more than DM82 billion in reparations or $38.6 billion. [94]

Moreover, the Agreement had significant economic and political consequences for both Israel and the FRG. [95] The treaty enabled a substantial trade relationship between the countries.[96] During the period of enforcement for the treaty, they did not have political or diplomatic relations. [97] When reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.[98]

The 1953, 1956, and 1965 Compensation Laws excluded compensation for forced labor and slave labor. In 2000, Germany and seven other countries enacted the Forced and Slave Labor Compensation Law.[99] The countries involved were Germany, the United States, Russia, Israel, Poland, the Czech Republic, Belarus, and the Ukraine.[100] Former slave laborers[101] received DM15,000 or $7,500.[102] Former forced laborers received DM5,000 or $2,500.[103] Payments were limited to claimants only and not extended to descendants. However, heirs of anyone who died after February 1999, the date negotiations over compensation began, could file a claim.[104] The Law also allowed for compensation of all non-Jewish survivors living outside the five Eastern European countries.[105] The International Organization for Migration processed those claims.[106] By the claims deadline it had received 306,000 claims.

[89] Barkan, Between Restitution and International Morality (2001) 25 Fordham Int'l L.J. 46, 49
[90] *Ibid*.
[91] *Ibid*.
[92] Colonomos and Armstrong, *German Reparations, supra* note 63, at p. 408.
[93] *Ibid*.
[94] *Ibid*.
[95] *Ibid*.
[96] *Id.* at p. 409.
[97] *Ibid*.
[98] *Ibid*.
[99] *Id.* at p. 433.
[100] *Id.* at p. 432.
[101] Slave labor was work performed in a concentration camp or ghetto or other place of confinement under conditions of hardship. Forced labor was work performed by force other than slave labor in the Third Reich or its territories under conditions resembling imprisonment. (Authers, *German Compensation, supra* note 85, p. 435.)
[102] *Id.* at p. 434.
[103] *Ibid*.
[104] *Id.* at p. 435.
[105] *Id.* at p. 437
[106] *Ibid.*

b. Chile

Under the 1973 to 1990 dictatorship of General Augusto Pinochet, the people of Chile were subjected to a systematic campaign of torture and state violence: an estimated 2,600 to 3,400 Chilean citizens were executed or "disappeared" while another estimated 30,000 to 100,000 were tortured.[107] In 1988, a plebiscite was held to determine whether General Augusto Pinochet should remain president of the country, and Pinochet lost. However, it was not until March 1990 that Patricio Alywin was sworn in as President of the Republic of Chile. One month after Alywin's inauguration, he created the National Truth and Reconciliation Commission. This eight-member commission was tasked with disclosing the human rights violations that occurred under the previous dictatorship, gathering evidence to allow for victims to be identified, and recommending reparations in a legal, financial, medical and administrative capacity.[108] In February 1991, the Commission delivered its first report to the President, the Retting Report. President Alywin sent a draft bill on reparations for the victims to Congress using the recommended measures of reparations from the Retting Report. The bill was approved and signed into law (Law 19.123) on February 8, 1992.

Law 19.123 established the National Corporation for Reparation and Reconciliation with the purpose of coordinating, carrying out, and promoting actions needed to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission.[109] As written in Law 19.123, the national corporation was tasked to achieve all of the following:

- Promoting reparations for the moral injury caused to the victims of the Pinochet regime and provide the social and legal assistance needed by their families so that they could access the benefits of the law;[110]
- Promoting and assisting actions aimed at determining the whereabouts and circumstances surrounding the disappearance or death of people at the hands of the Pinochet regime;[111]
- Serving as repository for the information collected by the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation, and all information on cases and matters similar that may be compiled in the future. In order to do so, it was authorized to request, collect, and process information in the possession of public or private institutions regarding human rights violations or political violence during the Pinochet regime;[112]
- Conducting research and making decisions in certain cases, regarding whether the person was a victim of human rights violations or political violence.[113]

[107] *The Center for Justice & Accountability,* Chile (as of December 27, 2022).
[108] *Greiff, The Handbook of Reparations* (2010) p. 57*; United States Institute of Peace, Truth Commission: Chile 90* (as of Dec. 23, 2022).
[109] *Id.* at p. 748.
[110] *Id.* at p. 749.
[111] *Ibid.*
[112] *Ibid.*
[113] *Ibid.*

- Enter into agreements with nonprofit institutions or corporations so that they may provide the professional assistance needed to carry out the aims of the Corporation, including medical benefits.[114]
- Make proposals for consolidating a culture of respect for human rights in the country.[115]

Law 19.123 also established a monthly reparations pension for the families of the victims of human rights violations or political violence as identified in the report by the National Truth and Reconciliation Commission.[116] The Institute of Pension Normalization was placed in charge of paying the pensions throughout the country. Article 24 of the law established that the reparations pension was compatible with any other benefits that the beneficiary was receiving at the moment, or would receive in the future, as well as any other social security benefits.[117] In 1996, the monthly pension amounted to $226,667 Chilean pesos (US $537).[118] This figure was used as a reference for estimating the different amounts provided to each type of beneficiary as defined in Law 19.123.

In the years since its enactment, there have been public criticisms of the reparations measures proposed by the government. For example, some have objected to allowing reparations based on the presumed death of some victims, while others have expressed a mistrust in the creation of a public interest corporation with little oversight and limited ability to investigate the whereabouts of disappeared detainees.[119] Others have claimed it unfair that the scheme included a single pension model that does not take into account the number of members in each family in the amount of reparations.[120] There were also notable issues with Law 19.123, which excluded certain beneficiaries (unmarried partners, victims without children, and mothers of children of unknown parentage) and lack recognition or remedy for specific victims (those illegally detained and tortured).[121]

In 2005, the Chilean government decided to provide 28,459 registered victims or their relatives with lifelong governmental compensation (approximately $200 USD per month) and free education, housing, and health care.[122]

c. South Africa

Apartheid was an institutional regime of racial segregation and systematic oppression, implemented in South Africa for the purpose of depriving the majority Black population of basic rights and securing the white minority's power over the country's government, economy, and resources.[123] Similar to the United States' system of segregation, de jure racial segregation was

[114] *Id. at p. 750*
[115] *Ibid.*
[116] *Id. at p. 59*
[117] *Ibid.*
[118] *Ibid.*
[119] *Id. at p. 58.*
[120] *Ibid.*
[121] *Id. at p. 63.*
[122] *Ibid.*
[123] Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 454-455.

widely practiced in South Africa since the first white settlers arrived in the region.[124] When the National Party gained control of the government in 1948, it expanded the policy of racial segregation, naming the system apartheid.[125] This system of "separate development" was furthered by the Population Registration Act of 1950, which classified all South Africans as either Bantu (all Black Africans), Coloured (those of mixed race), or white. [126] Another piece of legislation, the Group Areas Act of 1950, established residential and business sections in urban areas for each race, and barred members of other races from living, operating businesses, or owning land in areas designated for a different race. The law was designed to remove thousands of "Coloureds," Blacks, and Indians from areas classified for white occupation. As a result of the confluence of laws, specifically, the Population Registration Act, the Group Areas Act, and several "Land Acts" adopted between 1913 and 1955, more than 80 percent of South Africa's land was set aside for the white minority.[127]

To help enforce the segregation of the races and prevent Black South Africans from encroaching on white areas, the government strengthened existing "pass" laws, requiring "nonwhites to carry documents authorizing their presence in restricted areas."[128] Many private companies, including ones based in the United States and Europe, enabled apartheid by manufacturing the military and police vehicles[129] used to enforce segregation and by creating the document system that stripped Black South Africans of their citizenship and their rights.[130]

In 1995, following the election of Nelson Mandela as the country's first non-white president, the South African government passed the Promotion of National Unity and Reconciliation Act (Act) to help transition South Africa out of the apartheid era and into a democracy in which Black South Africans would have full participation. To make that transition, the Act created the Truth and Reconciliation Commission (Commission), which operated through three committees. One committee was the Committee on Human Rights Violations (CHRV) which investigated the gross human rights violations committed during the apartheid regime. Another was the Committee on Reparations and Rehabilitation (CRR) which developed final reparations policy recommendations to address the harms suffered by the victims of the gross human rights abuses that were committed to uphold apartheid. And the final committee of the Commission was the Amnesty Committee, which was responsible for determining which perpetrators of gross human rights violations would receive amnesty, that is, immunity from civil and criminal liability for their crimes.

[124] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[125] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[126] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023). A fourth category for Asian, that is Indian and Pakistani, was added later.
[127] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[128] See Britannica https://www.britannica.com/topic/apartheid (as of Mar. 10, 2023).
[129] A Ford plant in Port Saint Elizabeth manufactured vehicles that were used by the military and police. (Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 462-463.)
[130] Farbstein, *Perspectives from a Practitioner: Lessons Learned from the Apartheid Litigation* (2020) 61 Harv. Int'l L.J. 451, 455

In its final reparations policy recommendations, the CRR recommended financial and symbolic reparations as well as community rehabilitation programs and institutional reforms. To ensure successful implementation, the CRR also recommended that the government appoint a national body to implement the reparations programs and a secretariat within the office of the President or the Vice President to oversee implementation. The government adopted some of the CRR's symbolic reparation recommendations, community rehabilitation program recommendations, and institutional reforms. The government paid reburial expenses to 47 families of disappeared persons whose remains were found and reburied. And the government enacted regulations intended to integrate institutions. There have also been improvements made in housing, education, and access to medical care for Black South Africans.[131]

The South African government did not adopt the CRR's financial reparations recommendations nor its recommendation to appoint a national implementing body. In 2003, five years after the CRR submitted its final reparations policy recommendations, the South African government paid a one-time payment of R30,000 to some of the 22,000 victims. The payment was about one-fifth of the amount the CRR recommended that the government pay in individual reparations grants to adequately compensate victims for their suffering. By 2004, only 10 percent of the confirmed victims had received their payment.

The Commission's CRR was responsible for developing both the Urgent Interim Reparations policy program (UIR) and making final reparations policy recommendations to the President. The UIR was an interim financial reparations program. The UIR regulations required referrals to services and financial assistance to access services that were necessary to meet urgent medical, emotional, educational, material, and symbolic needs to be provided to applicants whose needs the CRR deemed urgent.[132] The UIR payments were calculated based on need and the number of dependents the person supported, ranging from a maximum of R2900 (US $250) for a victim with no dependents to a maximum of R5705 (US $713) for beneficiaries with five or more dependents.[133] The first UIR payments were made in July 1998.[134] The UIR "process was mostly completed in April 2001."[135] The President's Fund paid out about R44,000,000 (US $5.5 million) in cash payments to 14,000 victims for three years.[136] Those payments ranged from R2000 (US $250) to R5600 (US $700).[137]

Some critics of the UIR program contend that one inadequacy of the program was the lack of information shared with victims about the Commission.[138] Specifically, victims were not given information about how the Commission was organized or how it functioned.[139] Thus, they were not empowered to engage with the Commission, nor were they knowledgeable about the next

[131] Daly, *Reparations in South Africa: A Cautionary Tale* (2003) 33 U. Mem. L. Rev. 367, 383.
[132] Colvin, *Reparations Program in South Africa* in The Handbook of Reparations at pp. 188-189.
[133] *Id*. at p. 188.
[134] *Ibid*.
[135] *Id*. at p. 189.
[136] *Ibid*.
[137] *Ibid*.
[138] *Id*. at p. 190.
[139] *Ibid*.

steps in the reparations process.[140] And they received little information regarding the perpetrators the Amnesty Committee was considering for amnesty.[141]

d. Canada

Indigenous children in Canada were sent to residential schools from the 17th century until the late 1990's. First established by Roman Catholic and Protestant churches, and based on racial, cultural, and spiritual superiority, residential schools were an attempt to separate Indigenous children from their traditional cultures and convert them to Christianity. The passage of the Indian Act in 1876 formally gave the federal government the power to educate and assimilate Indigenous people in Canada, and the Act's further amendment in 1894 made attendance at residential schools mandatory. Starting in the 1880's, the Canadian government made a concerted effort to establish and expand the residential school system to assimilate Indigenous peoples into settler society and to reduce Indigenous dependence on public assistance.

There were 130 residential schools in Canada between 1831 and 1996. During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools. Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing. Children were forced to leave their homes, parents, and some of their siblings, as the schools were segregated based on gender. Their culture was disparaged from the moment they arrived at school, where children gave up their traditional clothes and had to wear new uniforms, the boys had their hair cut, and many were given new names. At some schools, children were banned from speaking their first language, even in letters home to their parents. The Christian missionary staff at these schools emphasized Christian traditions while they also simultaneously denigrated Indigenous spiritual traditions. Physical and sexual abuse were common. Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza.

Indigenous communities struggled to heal the harm done by these residential schools, and starting in 1980, former students campaigned for the government and churches to acknowledge the abuses of this system and provide some compensation. A group of 27 former students filed a class action lawsuit against the Government of Canada and the United Church of Canada in 1996. Thousands of other former students began to sue the federal government and churches. The federal government issued a Statement of Reconciliation in 1998 that recognized the abuses of the residential school system and established the Aboriginal Healing Foundation. In 2001, the federal government created the Office of Indian Residential Schools Resolution Canada to manage the abuse claims filed by former students through the alternative dispute resolution ("ADR") process.

The Indian Residential Schools Settlement Agreement was entered into by the Canadian federal government in September 2007. It acknowledged the damage Canada inflicted on its Indigenous peoples through the residential school system and established a multibillion-dollar fund to assist former students of residential schools in their recovery. It has five main components: the

[140] *Ibid.*
[141] *Ibid.*

Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services. The Settlement Agreement allocated $1.9 billion to the Common Experience Payment for all former students of the residential schools. Every former student was given $10,000 for the first year at school and $3,000 for each additional year.

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

The Settlement Agreement allocated $60 million to the Truth and Reconciliation Commission for five years so that individuals, families, and communities could tell their stories, and the Commission held national events to bring public attention to this issue. The Commission issued a report in December 2015 entitled "*Honouring the Truth, Reconciling for the Future*" that documented the experiences of the 150,000 survivors. The Settlement Agreement also allocated $20 million for commemorative projects and $125 million for the Aboriginal Healing Foundation. It also established the Indian Residential Schools Resolution Health Support Program, which provides former students with mental health resources provided by elders, Indigenous community health workers, psychologists, and social workers.

In January 2023, Canada agreed to pay $2.8 billion to settle a series of lawsuits seeking reparations. This settlement is a resolution of a class action lawsuit initially filed by 325 First Nations in 2012 seeking compensation for the destruction of their languages and culture. Under the terms of the settlement, the federal government agreed to establish a trust fund for Indigenous communities to use for educational, cultural, and language programs. A federal court judge approved the $2.8 billion settlement on March 9, 2023, noting that it is "fair, reasonable, and in the best interests" of the plaintiffs. The agreement allows the First Nations communities themselves to decide what to do with these funds "based on the 'four pillars principles outlined in the agreement: the revival and protection of Indigenous language; the revival and protection of Indigenous culture; the protection and promotion of heritage; and the wellness of Indigenous communities and their members." The settlement will go to an appeal period after which the money will be managed by a board of Indigenous leaders through a not-for-profit fund. The settlement does not release the federal government from future lawsuits involving children who died or disappeared at the residential schools.

2. Domestic: Federal

a. U.S. Indian Claims Commission

The United States Indian Claims Commission ("Commission" or "ICC") was established in 1946 through federal legislation.[142] The ICC was ostensibly established to redress the harms inflicted on native populations during the campaign of colonization and relocation of the late 18th and

[142] Kuykendall et al., United States Indian Claims Commission, Final Report at p. 5 (Sept. 30, 1978) ("Final Report").

19th centuries. The government transgressions during this period were as diverse as they were devastating.[143] They included not only a staggering dispossession of land, but also the widespread killing of Native Americans that many, including California Governor Gavin Newsom, have called a genocide.[144] Spurred by the doctrine of Manifest Destiny, the government acquired nearly two billion acres of land from indigenous peoples, leaving just 140 million acres under native control.[145] This dispossession was accomplished by various means, including outright conquest, treaty, executive order, and federal statute.[146] Although the government's misconduct during this period was far-reaching, the ICC's focus was solely on land transactions, mostly notably the treaty process.

The ICC was authorized to adjudicate tribal land claims, but it was limited to awarding monetary relief and thus did not have jurisdiction to restore title to land.[147] The authorizing legislation permitted various claims, including those premised on "fraud, duress, [and] unconscionable consideration" as well as those based on "fair and honorable dealings."[148] The congressional Committee on Indian Affairs stated that the bill was "primarily designed to right a continuing wrong to our Indian citizens for which no possible justification can be asserted."[149] Indeed, the majority of claims alleged that "the United States acquired valuable land for unconscionably low prices in bargains struck between unequals."[150] Another large swath of claims alleged that the government had failed to abide by treaty provisions and called for an historical accounting, including in instances where the government was alleged to have mismanaged tribal funds.[151]

The Commission initially comprised three members, all appointed by President Harry Truman.[152] The ICC acted as a "quasi-judicial branch of the legislature" that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided over trials.[153] Claims could be filed only during the first five years of the Commission, and within that filing period 370 petitions were submitted and later divided into more than 600

[143] *See, e.g.*, Cohen, Cohen's Handbook of Federal Indian Law (2005) at § 1.03[4][a] (discussing the Trail of Tears and several other forcible relocations associated with Indian Removal).
[144] Dunbar-Ortiz, Yes, Native Americans Were the Victims of Genocide (May 12, 2016) History News Network (as of Feb. 15, 2023); Dobuzinskis, California governor apologizes to Native Americans, cites 'genocide' (June 18, 2019) Reuters (as of Feb. 15, 2023).
[145] Final Report, *supra*, fn. 1 at p. 1.
[146] Saunt, The Invasion of America (Jan. 7, 2015) Aeon (as of Feb. 13, 2023).
[147] Derocher, Manifesting a Better Destiny: Interest Convergence and the Indian Claims Commission (2021-2022) 24 New York University Journal of Legislation and Public Policy 511, 535 (as of Feb. 2, 2023) (hereafter "Manifesting a Better Destiny").
[148] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050.
[149] U.S. Congress House Committee on Indian Affairs, Hearings on H R 1198 and H. R. 1341 to Create an Indian Claims Commission. 79th Cong. 1st sess. March 2, 3, 28 and June 11, 14, 1945.
[150] Final Report, *supra*, fn. 1 p. 8.
[151] *Id*. at p. 6.
[152] *Id*. at 5.
[153] *Id*. at 7.

dockets.[154] Neither the statute of limitations nor laches could be raised as a defense to tribal claims, but all other defenses were available to the government.[155]

The ICC was initially set to terminate ten years after its first meeting,[156] but was repeatedly extended until its termination in 1978.[157] Individual cases often took several years to complete,[158] and the appeal process alone typically took between eight months and three years.[159] During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60 percent of matters.[160] It awarded approximately $800 million in total compensation to tribal claimants.[161] At its termination in 1978, the Commission had not fully cleared its docket and the remaining matters were transferred to the Court of Claims.[162]

Historians and legal scholars have argued that the Commission did not go nearly far enough to address the centuries-long displacement and oppression of Native Americans.[163] The commission was not empowered to convey land back to tribes,[164] yet its rulings have barred all subsequent claims, including those to repossess land.[165] Nor did the Commission address issues such as the suppression of native languages, religions, and forms of government.[166] And even where a tribe was able to secure a financial award, the amounts were significantly reduced in various ways. For example, the awards were whittled down by offsets for monies purportedly spent by the government on behalf of the tribes, but those monies had often been spent to promote governmental rather than tribal interests.[167] Moreover, except in the rare claim premised on a Fifth Amendment "taking," the Commission ruled that interest on amounts owed was not recoverable.[168] The unpaid interest was estimated by the U.S. Solicitor General to have been several billion dollars.[169]

A core defect in the ICC's structure and practice was the adversarial rather than investigative nature of the proceedings.[170] One scholar has observed that "the Commission, submissive to the requests of the lawyers who practice before it, has provided for a bewildering series of hearings

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[154] *Ibid*.
[155] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 2, 60 Stat. 1049, 1050.
[156] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, § 23, 60 Stat. 1049, 1055.
[157] Final Report, *supra*, fn. 1 at p. iii.
[158] Final Report, *supra*, fn. 1, p. 6.
[159] Final Report, *supra*, fn. 1, p. 6.
[160] Final Report, *supra* fn. 1 at p. 21.
[161] *Ibid*.
[162] Final Report, *supra*, fn. 1 at p. iii.
[163] *See, e.g.*, Danforth, Repaying Historical Debts: The Indian Claims Commission (1973) 49 N.D. L. Rev. 359, 374-80; Lurie, The Indian Claims Commission (1978) 436 Annals of the Am. Soc. Of Poli. & Soc. Sci. 97; Vance, The Congressional Mandate and the Indian Claims Commission (1969) 45 N.D. L. Rev. 325. 332-35 (as of Feb. 14, 2023); Churchill, *Charades, Anyone? supra*, fn. XX.
[164] Churchill, *Charades, Anyone supra*, fn. XX, at p. 53.
[165] Cohen, Cohen's Handbook of Federal Indian Law (2005) § 5.06[3].
[166] Churchill, *Charades, Anyone supra*, fn. XX, at p. XX.
[167] Churchill, *Charades, Anyone supra*, fn. XX, at p. XX.
[168] Final Report, *supra*, fn. 1, p. 11.
[169] *Id*. at p. 11.
[170] Danforth, *supra*, fn. XX at p. 376-77.

on title, value offset, attorneys [sic] fees and all the motions that any party chooses present."[171] Moreover, the government's role as adversary against the claimants meant that government attorneys often aggressively fought *against* proper compensation for tribal claimants, and as a matter of policy the Attorney General did not pursue settlement.[172] Finally, the Tribes' obligation to retain counsel at their own cost diminished any eventual financial award.[173] In light of these and other inefficiencies, many have argued that the Commission should have operated as an investigative rather than quasi-judicial body.[174] Indeed, the Commission was statutorily authorized to conduct its own investigations,[175] but it rarely employed these powers and instead consistently acted as a tribunal.[176]

b. Tuskegee Study of Untreated Syphilis in the Negro Male

The Tuskegee Study of Untreated Syphilis in the Negro Male was conducted in Macon County, Alabama between 1932 and 1972 on the campus of the Tuskegee Institute. The study was intended to observe the natural history of untreated syphilis in African-American men. A total of 600 African-American men were enrolled in the study, and told by researchers that they were being treated for "bad blood," which colloquially in the region referred to a number of diagnosable ailments including but not limited to anemia, fatigue, and syphilis. The African-American men in the study were only told they were receiving free health care from the federal government of the United States. Although there were no proven treatments for syphilis when the study began, penicillin became the standard treatment for the disease in 1947; however the medicine was withheld from both groups enrolled in the study, resulting in blindness, deteriorating mental health, and in some cases, severe health issues and death.

Following a leak of the study and subsequent reporting by the Associated Press in July 1972, international public outcry led to a series of actions taken by U.S. federal agencies. The Assistant Secretary for Health and Scientific Affairs appointed an Ad Hoc Advisory Panel that concluded that there was evidence that scientific research protocols routinely applied to human subjects to ensure the safety and well-being of the men involved were either ignored or deeply flawed.

Following the Advisory Panel's findings in October 1972, a class-action lawsuit was filed on behalf of the men in the study, their wives, children and families, resulting in a nearly $10 million out-of-court settlement in 1974. Under the 1974 settlement in the Tuskegee Syphilis Study case, 70 living syphilitic participants received $37,500 each. The 46 living men in the control group received $16,000 each. The 339 deceased syphilitic participants received $15,000 each. The deceased members of the control group received $5,000 each. The settlement included

[171] Vance, The Congressional Mandate, supra, fn. XX at p. 334.
[172] Churchill, *Charades, Anyone supra*, fn. XX, at p. XX; Vance, *supra*, fn. XX at p. 334 (noting that although settlement at the ICC was authorized by statute, the prevailing Department of Justice policy at the time was to not make settlement offers).
[173] Final Report, *supra*, fn. 1 at p. 9.
[174] Vance, *supra*, fn. XX at p. 334; Danforth, *supra*, fn. XX at p. 376-77.
[175] Indian Claims Commission Act of 1946, Pub. L. No. 79-726, 60 Stat. 1049, 1052.
[176] Danforth, *supra*, fn. XX at p. 376-77.

free healthcare for life for the participants who were still living, as well as healthcare for their infected wives, widows, and children.

The federal government in 1974 enacted legislation to study and write regulations governing studies involving human participants to acknowledge and provide redress for a study conducted in Macon County, Alabama, intended to observe the natural history of untreated syphilis in African-American men. Following revelation of the study, a class-action lawsuit was filed against the government that resulted in a settlement of nearly $10 million, which was divided amongst the study participants and their families. The government subsequently enacted policy changes to better protect human subjects in biomedical and behavioral research and issued a formal apology to the surviving study victims.

In 1996, the Tuskegee Syphilis Study Legacy Committee issued its final report, presenting two goals: (1) to persuade President Bill Clinton to apologize to the surviving Study participants, their families, and to the Tuskegee community; (2) to develop a strategy to redress the damages caused by the Study and to transform its damaging legacy.

In 1997, President Clinton formally apologized and held a ceremony at the White House for surviving Tuskegee study participants. Along with the apology, President Clinton pledged a $200,000 planning grant to allow Tuskegee University to pursue building a Center for Bioethics in Research and Health Care. The President also announced the creation of bioethics fellowships for minority students and extended the life of the National Bioethics Advisory Commission until 1999. Additionally, the President directed the Health and Human Services Secretary to draft a report outlining ways to better involve all communities—especially minority communities—in research and health care. In 2022, the Milbank Memorial Fund—the foundation that paid the funeral expenses of the deceased study participants as an incentive for their participation—publicly apologized to descendants of the study's victims for its role in the study.

c. Japanese American Incarceration

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 incarcerating Japanese-Americans and creating a zone “from which any or all persons may be excluded,” at the discretion of the Secretary of War or appropriate military commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona. By the fall of 1942, all Japanese-Americans were evicted from California and sent to one of ten incarceration camps that were built to imprison them. Many incarcerated persons lost their property and assets as they were prohibited from taking more than what they could carry with them, and what remained was either sold, confiscated, or destroyed in government storage. Tens of thousands of Japanese-Americans were incarcerated in desolate camps for up to four years.

In 1980, the United States Congress and President Jimmy Carter approved the Commission on the Wartime Internment and Relocation of Civilians (CWRIC). The CWRIC was established to:

(1) review the facts and circumstances surrounding the relocation and incarceration of thousands of American civilians during World War II under Executive Order Numbered 9066 and the impact of that Order on American citizens and resident aliens; (2) review directives of United States military forces requiring the relocation and incarceration of American citizens, including Aleut civilians and permanent resident aliens of the Aleutian and Pribilof Islands; and (3) recommend appropriate remedies. In December 1982, the commission released a unanimous 467-page report titled "*Personal Justice Denied*" detailing the history and circumstances of the wartime treatment of people of Japanese ancestry and the people of the Aleutian Islands.

The findings and recommendations of the CWRIC among other events helped bring about the passage of the Civil Liberties Act of 1988. The federal government in 1988 enacted legislation to acknowledge and provide redress for the incarceration of Japanese Americans in the United States between 1942 and 1946. The federal government's plan included a cash payment of $20,000.00 for each surviving incarcerated person, a program to fund public education of the events, and an apology.

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

The Civil Liberties Act of 1988 further established the Civil Liberties Public Education Fund within the U.S. Treasury administered by the Secretary of the Treasury and available for disbursements by the Attorney General and by the newly established Civil Liberties Public Education Fund Board of Directors. The trust was authorized to be funded by appropriations totaling $1,250,000,000, and the fund would terminate once the funds were exhausted or 10 years after the enactment of the Civil Liberties Act of 1988. The Act also called upon each department and agency of the U.S. Government to review with liberality, giving full consideration to the findings of the CWRIC, any application by an eligible individual for the restitution of any position, status, or entitlement lost because of any discriminatory act of the U.S. Government against those of Japanese ancestry during the period of incarceration. Finally, the Act provided a formal apology for each surviving incarcerated person.

d. 9/11

The militant network al-Qaeda carried out four coordinated terrorist attacks against the United States on September 11, 2001, commonly known as 9/11.[177] The incineration of the Twin Towers and the crashed aircrafts released clouds of noxious toxins in lower Manhattan.[178] First

[177] Jackson, September 11 Attacks: What Happened on 9/11? (Aug. 3, 2021) BBC News (as of Feb. 14, 2023).
[178] CDC World Trade Center Health Program, Toxins and Health Impacts (as of Feb. 14, 2023).

responders, volunteers, and residents near Ground Zero inhaled harmful dust, smoke, toxic chemicals, and particle remnants.[179] This toxics exposure subsequently caused various illnesses including more than 60 types of cancer, respiratory conditions, and digestive disorders.[180] Thousands of survivors and first responders have been diagnosed with 9/11-related illnesses and thousands more have died.[181]

Almost immediately after the September 11 attacks, Congress passed the Air Transportation Safety and Stabilization Act, which enacted the September 11th Victim Compensation Fund (VCF).[182] This bill was enacted to bring financial relief to any individual, or relative of the deceased individual, who was physically injured or killed as a result of the terrorist attacks.[183] The claims window for VCF closed in 2004.

The VCF was reopened on January 2, 2011, when President Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act).[184] While the original VCF only covered the victims (or their representatives) who were either killed or injured as a direct result of the 9/11 terrorist attacks, the Zadroga Act expanded the VCF to compensate victims for injury or death related to the debris removal process conducted in the aftermath of the terrorist attacks and exposure to the toxic air in lower Manhattan and the other attack sites during that time.[185] The new claim filing deadline was October 2016.[186] The 2011 Zadroga Act also established the World Trade Center Health Program (WTCHP) to provide medical monitoring and treatment for responders and survivors with chronic health conditions arising from the 9/11 attacks.[187] In contrast to the WTCHP, the VCF does not cover mental health conditions.[188]

In 2015, the Zadroga Act was reauthorized and extended until December 2020. Certain award calculations were changed.[189] The original VCF paid an average death claim award of over $2 million[190] and awarded anywhere from $500 to over $8.6 million in personal injury claims.[191] Due to budgetary considerations, the reauthorization of the Zadroga Act in 2015 reduced victim compensation.[192] It capped awards for non-economic loss from cancer conditions at $250,000, awards for non-economic loss from non-cancer conditions at $90,000, and awards for loss of annual income at $200,000.[193]

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[179] *Ibid.*
[180] *Ibid.*
[181] *Ibid.*
[182] *Virgilio v. City of New York*, 407 F.3d 105, 109 (2d Cir. 2005).
[183] September 11th Victim Compensation Fund, 20th Anniversary Special Report (September 2021) at p. 4 (as of Feb. 14, 2023).
[184] *Ibid.*
[185] *Ibid.*
[186] *Ibid.*
[187] 20th Anniversary Special Report, *supra* at p. 4.
[188] September 11th Victim Compensation Fund, Annual Report 2022 at p. 14 (as of Feb. 14, 2023).
[189] 20th Anniversary Special Report, *supra* at p. 4
[190] September 11th Victim Compensation Fund of 2001, Compensation for Deceased Victims (as of Feb. 14, 2023).
[191] CNN Editorial Research, September 11 Victim Aid and Compensation Fast Facts (Sept. 7, 2022) CNN (as of Feb. 14, 2023).
[192] September 11th Victim Compensation Fund, About the Victim Compensation Fund (as of Feb. 14, 2023).
[193] *Ibid.*

The VCF was designed to be a compensation scheme in lieu of tort litigation for the economic and noneconomic losses incurred by victims who were physically injured and families of victims whose lives were taken as a result of the terrorist attacks.[194] Claimants who participated in this compensation scheme waived their right to sue for damages for injury or death as a result of the terrorist attacks.[195] A compensation fund was chosen as an alternative to potential class action toxic tort litigation because it was determined to be a more efficient and effective solution for compensating victims.[196] It was enacted to relieve victims and their families from navigating through the legal system and possibly having their claims rejected under government immunity or other potential bars.[197]

The most significant issue with implementation of the VCF has been the inconsistency in its funding. In the two decades since the 9/11 attacks, the Fund has struggled to meet rising medical costs and cancer rates.[198] Many exposure symptoms and 9/11-related diseases took years to manifest.[199] The VCF's most recent five year extension only lasted until 2020. In February 2019, a Special Master determined that the then-current funding was insufficient to pay the remaining pending and projected VCF claims and announced that award amounts would need to be reduced. In response to public outrage, the VCF was permanently authorized in July 2019, ensuring that the VCF has sufficient funding to pay all pending claims and all future claims filed by October 1, 2090. It also allows for supplemental compensation to any victim whose previous award had been reduced due to the previous budgetary restrictions.[200]

Another issue that has impacted the efficacy of the VCF has been claimants providing inadequate documentation for their claim or filing premature claims. According to the VCF's 2022 Annual Report, 54% of claims are deactivated for failure to provide the minimum required information, 41.9% of all claims are submitted with insufficient proof of presence documents, and 32.2% do not have a certified physical condition at the time the claim is filed.[201]

e. Sandy Hook Elementary School

On December 14, 2012, a gunman shot and murdered 20 children and 6 adult staff members, including the school principal and school psychologist, at Sandy Hook Elementary School in Newton, Connecticut, after killing his own mother.[202] The gunman had gathered an AR-15, two semi-automatic pistols, as well as several hundred rounds of ammunition stored in high-capacity

[194] Isaacson, Terrorism and Mass Toxic Torts: An Examination of the James Zadroga 9/11 Health and Compensation Act, 25 Fordham Envtl. L. Rev. 509 (2014).
[195] *Ibid.*
[196] *Ibid.*
[197] *Ibid.*
[198] Goldmacher, With Ground Zero Payments Slashed, a Push to Replenish a 9/11 Fund (Feb. 28, 2019) New York Times (as of Feb. 14, 2023).
[199] Gordy, The 9/11 Cancer Conundrum: The Law, Policy, & Politics of the Zadroga Act, 37 Seton Hall Legis. J. 33, 50 (2012).
[200] September 11th Victim Compensation Fund, VCF Permanent Authorization Act: Questions and Answers (Aug. 2019) (as of Feb. 14, 2023).
[201] Annual Report 2022, *supra* at p. 8.
[202] Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. Times (Dec. 14, 2012) <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html> (as of Feb. 14, 2023).

magazines; his mother had purchased several of the guns.[203] When he arrived at the school, he shot and killed the school's principal and school psychologist.[204] Teachers, who heard the gunshots, entered lockdown procedures, but he was able to enter a classroom where he killed the teacher and fourteen children.[205] He entered a second classroom and killed the teacher and six students; he also killed a special education aide and a behavioral therapist.[206] When police arrived at the school, they discovered that the gunman had killed himself.[207] It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall.[208] The school was demolished in 2014 and replaced by a new building in 2016.[209]

In 2013, Connecticut Governor Dannel P. Malloy established the Sandy Hook Advisory Commission and directed it to investigate the facilities and recommend public policy and law enforcement changes.[210] The Commission concluded that the shooter acted alone, but did not identify a motive.[211] The Commission made several recommendations, including investment in mental health professionals and funding for short-term and long-term recovery plans and behavioral health and education responses to crisis events.[212]

After the shootings the federal government gave the town of Newton and several agencies related to Sandy Hook over $17 million in aid, used primarily to enhance mental health services and school security, in the two years following the shooting.[213] Much of the money from the grants went directly to opening the new Sandy Hook Elementary.[214]

In December 2013, the federal DOJ granted $1.5 million to reimburse organizations and agencies that provided direct support to victims, first responders and the Newton community, granted by

[203] Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) < https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting> (as of Mar. 13, 2023).
[204] *Ibid.*
[205] *Ibid.*
[206] *Ibid.*
[207] Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. Times (Dec. 14, 2012) <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html> (as of Feb. 14, 2023).
[208] Gamio & Hubler, *Texas Massacre Is the Second-Deadliest School Shooting on Record*, N.Y. Times (May 24, 2022) <https://www.nytimes.com/interactive/2022/05/24/us/texas-school-shooting-deaths.html> (as of Feb. 14, 2023).
[209] Encyclopedia Britannica, *Sandy Hook Elementary School shooting* (last updated Feb. 16, 2023) < https://www.britannica.com/event/Sandy-Hook-Elementary-School-shooting> (as of Mar. 13, 2023).
[210] Sandy Hook Advisory Commission, Final Report (March 6, 2015) at p. 1 < <https://portal.ct.gov/-/media/Malloy-Archive/Sandy-Hook-Advisory-Commission/SHAC_Final_Report_3-6-2015.pdf?sc_lang=en&hash= BDF55EC4ACE382E87941870AD9BF2A34> (as of Feb. 15, 2023).
[211] *Id.* at pp. 10-12.
[212] *Id.* at pp. 211-213.
[213] Altimari, *Sandy Hook Two Years Later: Where is the Aid Going?*, Hartford Courant (Dec. 14, 2014) <https://www.courant.com/news/connecticut/hc-sandy-hook-shooting-two-years-later-20141214-story.html> (as of Feb. 15, 2023).
[214] *Ibid.*

the Department of Justice's Office for Victims of Crime to the Connecticut Judicial Branch.[215] The grant was distributed through the Antiterrorism and Emergency Assistance Program, which grants awards for crisis response, and is funded by the Crime Victims Fund for the Antiterrorism Emergency Reserve Fund.[216] The DOJ also provided $2.5 million in funding for Connecticut and Newtown law enforcement agencies through the Bureau of Justice Assistance.[217]

In June 2014, the federal DOJ issued another grant for $7.1 million through its Office for Victims of Crime.[218] This grant was for victim services, school safety efforts, and new mental health services.[219] Additionally, the town of Newton and the state received $2.5 million from the DOJ for police overtime costs.[220]

School Emergency Response to Violence (SERV) Grants from the Department of Education totaled $6.4 million; $1.3 million was earmarked for mental-health providers working with student survivors.[221] The remainder was used to hire teachers, security guards and other personnel. In total, as noted, the federal government has given $17 million in additional aid for mental health services and school security.[222]

f. Iranian Hostages

On November 4, 1979, 3,000 Iranians stormed the U.S. embassy in Tehran and took 63 American men and women hostage, including diplomats.[223] The seizure took place shortly after the Iranian Revolution. In early 1981, Algerian diplomats brokered an agreement, the Algiers Accords, and the hostages were released on January 20, 1981, minutes after the inauguration of Ronald Reagan as U.S. President. The Algiers Accords included, among other items, a provision preventing the freed hostages from seeking compensation from Iran in U.S. courts.[224] As a result, former hostages and their families have never successfully won judgments or collected damages from the harms of the hostage crisis.

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[215] U.S. Dept. of J., Attorney General Holder Announces $1.5 Million to Reimburse Support Efforts to Victims of the Sandy Hook Elementary School Shooting (December 17, 2013) <https://www.justice.gov/opa/pr/attorney-general-holder-announces-15-million-reimburse-support-efforts-victims-sandy-hook> (as of Feb. 15, 2023).
[216] *Ibid.*
[217] U.S. Dept. of J., Attorney General Holder Announces $2.5 Million to Connecticut Law Enforcement for Costs Related to Sandy Hook School Shootings (August 28, 2013) <https://www.justice.gov/opa/pr/attorney-general-eric-holder-announces-25-million-connecticut-law-enforcement-costs-related> (as of Feb. 15, 2023).
[218] New Haven Register, *Newtown receives $7.1M federal grant to support Sandy Hook Victims* (June 17, 2014) <https://www.nhregister.com/connecticut/article/Newtown-receives-7-1M-federal-grant-to-support-11380111.php> (as of Feb. 15, 2023).
[219] *Ibid.*
[220] Altimari, *supra*. 1
[221] *Ibid.*
[222] *Ibid.*
[223] Encyclopedia Britannica, *Iran Hostage Crisis* <https://www.britannica.com/event/Iran-hostage-crisis> (as of Feb. 14, 2023).
[224] P.L. 96-449, 94 Stat. 1967 (1980); see also Elsea, Congressional Research Service, The Iran Hostages: Efforts to Obtain Compensation (November 2, 2015) at p.1 <https://sgp.fas.org/crs/misc/R43210.pdf> (as of Feb. 15, 2023).

On the same day that the Algiers Accords were signed, then-U.S. President Jimmy Carter created the President's Commission on Hostage Compensation, with the goal of providing recommendations on financial compensation to former hostages. The commission issued a report that the United States, as the employer of the former hostages, should not be held liable in a "tort sense" but that the former hostages should receive a payment of tax-exempt detention benefits in the amount of $12.50 per day of captivity, similar to benefits paid to Vietnam War prisoners of war.[225] These recommendations were debated in Congress, but ultimately not adopted.[226]

In 2015, Congress passed the United States Victims of State Sponsored Terrorism Act, establishing a fund through the Consolidated Appropriations Act of 2015 to compensate American diplomats and staff who had been abducted and held hostage at the U.S. Embassy in Tehran for 444 days between 1979 and 1981.[227] The Fund initially included an appropriation for $1.025 billion for Fiscal Year 2017.[228] Further funding has been provided by proceeds of federal enforcement actions.[229] At the time of passage, 39 former hostages were still alive.[230] Each hostage is entitled to receive $10,000 per day of captivity, and spouses and children are each entitled to a lump sum of $600,000.[231] Some of the appropriated money came from a $9 billion penalty assessed on Paris-based bank BNP Paribas, for violating sanctions against Iran, Sudan, and Cuba.[232]

In November 2019, Congress enacted the United States Victims of State Sponsored Terrorism Fund Clarification Act, amending the original legislation by extending the life of the Fund and expanding eligibility to receive payments from the Fund.[233] The Consolidated Appropriations Act of 2021 again amended the legislation.[234]

The Fund distributed $1 billion between 2017 and 2019, and another $1.2 billion between 2019 and 2022. As of the latest report, $93.4 billion in compensatory and statutory damages remained unpaid for the former hostages, judgement holders and 9/11 victims eligible for compensation

[225] *Ibid.*
[226] H.R. No. 2851, 99th Cong. (1985).
[227] Originally 42 U.S.C. § 10609; now, as amended, 34 U.S.C. § 20144.
[228] Feinberg, United States Victims of State Sponsored Terrorism Fund, Report from the Special Master (Jan. 2017) <http://www.usvsst.com/docs/USVSST%20Fund%20Congressional%20Report%201-9-17.pdf> (as of Feb. 14, 2023) (2017 Report).
[229] United States Victims of State Sponsored Terrorism Fund, Special Master's Supplemental Report Regarding the Third Distribution (Dec. 2022) <http://www.usvsst.com/docs/USVSST%20Fund%20Supplemental%20Congressional%20Report%20Dec%202022.pdf> (as of Feb. 15, 2023) (2022 Report).
[230] Herszenhorn, *Americans Held Hostage in Iran Win Compensation 36 Years Later*, N.Y. Times (Dec. 25, 2015) p. A1 <https://www.nytimes.com/2015/12/25/us/politics/americans-held-hostage-in-iran-win-compensation-36-years-later.html> (as of Feb. 15, 2023).
[231] 34 U.S.C. § 20144, subds. (c)(2)(B) – (c)(2)(C).
[232] Herszenhorn, *supra*.
[233] 2022 Report, *supra*.
[234] *Id.*

from the fund.[235] The Fund is scheduled to terminate in 2039, and the Special Master predicts authorizing annual payments if sufficient funds are available.[236]

The Act was amended to include 9/11 victims who had won judgments against Iran and the Fund was converted to be disbursed on an equal portion basis.[237] Following the amendment, the Fund was to be divided in half: half to be provided for 9/11 related victims of state sponsored terrorism and half to non-9/11 victims.[238] The half allocated to non-9/11 related victims is further divided equally, based on the amounts outstanding and unpaid on eligible claims, until such amounts are paid in full.[239]

As a result of the inclusion of 9/11-related claimants to the fund, only a fraction of the amount entitled to former Iranian hostages and their families has been distributed.[240] The former hostages have gotten occasional payments; Fund administrators estimate that the non-9/11 beneficiaries, including the former hostages, have received about 24% of what they are eligible for.[241] As of September 26, 2021, only 35 hostages remained alive.[242] As long as the Fund is maintained and there are outstanding payments, the Special Master will authorize payments on an annual basis; the Fund sunsets on January 2, 2039.[243]

3. Domestic Programs: State and Local

a. North Carolina Sterilization

In 1919, North Carolina passed its first forced-sterilization law, which was amended in 1929 to allow the head of any penal or charitable institution that received even some state support to "have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof."[244] The North Carolina Supreme Court invalidated the law in 1933 because it failed to provide any notice or opportunity for appeal.[245] In response, the North Carolina Legislature created the North Carolina Eugenics Board, to implement the newly amended forced-sterilization law with very limited appeal rights.[246]

The five members of the Board heard petitions brought by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians arguing that individuals should be

[235] *Id.* at p. 12.
[236] *Id.* at p. 13.
[237] 34 U.S.C. § 20144, subd. (d)(3).
[238] 34 U.S.C. § 20144, subd. (d)(3)(A)(i).
[239] 34 U.S.C. § 20144, subd. (d)(3)(A)(i)(II).
[240] Parvini, *They were hostages in Iran for 444 days. Decades later, they're waiting for compensation*, L.A. Times (Nov. 3, 2019) <https://www.latimes.com/world-nation/story/2019-11-03/iran-hostages-444-days-decades-later-waiting-compensation> (as of Feb. 15, 2023).
[241] Gearan, *40 years later, a dwindling band of Iran hostages awaits a promised payment*, Wash. Post (Sept. 26, 2021) <https://www.washingtonpost.com/politics/2021/09/26/40-years-later-dwindling-band-iran-hostages-awaits-promised-payment> (as of Feb. 15, 2023).
[242] *Ibid.*
[243] United States Victims of State Sponsored Terrorism Fund, Important Dates, <http://www.usvsst.com/important.php> (as of Mar. 13, 2023).
[244] North Carolina P.L. 1929, c. 34.
[245] *Brewer v. Valk*, 204 N.C. 186 (1933).
[246] North Carolina P.L. 1933, c. 224.

sterilized due to being either epileptic, "feebleminded," or mentally diseased.[247] There was a very limited appeal process, but the board approved about 90 percent of the petitions.[248] The state ultimately sterilized around 7,600 persons, the third-largest number in the country.[249] The program was somewhat unique in that it also sterilized non-institutionalized individuals, not just those residing in penal or mental facilities. Moreover, the vast majority of sterilizations took place after World War II.[250]

In 2003, Governor Mike Easley apologized for forced sterilizations performed under the purview of the State of North Carolina's Eugenics Board. Governor Bev Perdue established the North Carolina Justice for Sterilization Victims Foundation as part of the North Carolina Department of Administration in 2010 to function as a clearinghouse to help victims of the former state Eugenics Board.[251] During 2011 and 2012, the Foundation also supported the separate Gubernatorial Task Force on Eugenics Compensation established under Executive Order 83.[252] This effort culminated in the State Legislature creating the Eugenics Asexualization and Sterilization Compensation Program in 2013.[253] North Carolina was the first state to pass legislation to compensate victims of state-sponsored eugenic sterilizations. The law set aside a $10 million pool for compensation payments, and at least 215 victims received $20,000 in 2014, $15,000 in 2015, and a final payment of around $5,000 in 2018.

The statute set out a program to compensate individuals who were asexualized involuntarily or sterilized involuntarily under the authority of the Eugenics Board of North Carolina under either the 1933 or 1937 version of the laws.[254] This requirement that the State Eugenics Board have been involved and/or have a record of the sterilization caused implementation issues, as it turned out that many individuals were sterilized at the county level without the involvement of the State Board.[255]

The State Legislature allocated $10 million to pay compensation claims, with payments to be made in waves.[256] The first payment was to be made to those claimants deemed qualified by the Commission by October 31, 2014.[257] Any claimants determined to be qualified recipients after

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[247] North Carolina P.L. 1933, c. 224.
[248] Railey & Begos, *"Still hiding," Against their Will: North Carolina's Sterilization Program, Part One*, Winston-Salem Journal (Mar. 13, 2003) at https://www.journalnow.com/news/local/still-hiding/article_e26e967e-8fe4-11e2-b104-0019bb30f31a.html [as of Jan. 23, 2023].
[249] Bakst, *North Carolina's Forced-Sterilization Program: A Case for Compensating the Living Victims*, John Locke Found. Policy Rep. (2011), p. 7, at https://www.johnlocke.org/wp-content/uploads/2016/06/NCeugenics.pdf [as of Jan. 20, 2023].
[250] *Ibid*.
[251] Brochure, N.C. Justice for Sterilization Victims Foundation (Sept. 2014), at https://ncadmin.nc.gov/media/3165/download [as of Jan. 23, 2023].
[252] Ibid.
[253] N.C.S.L. 2013-360, sec. 6.18, subd. (a), creating N.C.G.S. §§ 143B-426.50 – 143B-426.57.
[254] N.C.G.S. § 143B-426.50, subd. (5).
[255] Mennel, *Why Some NC Sterilization Victims Won't Get Share of $10 Million Fund*, WUNC.org (Oct. 6, 2014) at https://www.wunc.org/2014-10-06/why-some-nc-sterilization-victims-wont-get-share-of-10-million-fund.html [as of Jan. 24, 2023].
[256] N.C.G.S. § 143B-426.51, subd. (a).
[257] N.C.G.S. § 143B-426.51, subd. (a). This initial payment was $20,000, see Craver, *N.C. Eugenics Victims Projected to Get Final State Compensation Payment Soon*, Winston-Salem Journal (Jan. 17, 2018) at

that date were to receive their initial payment within 60 days, and final payment checks splitting the remaining funds among qualified recipients were to be remitted within 90 days of the exhaustion of the last appeal.[258] Applications needed to be received by September 23, 2014 in order to be considered for the program.[259] The financial reparations were specifically limited to those who were themselves directly harmed by the State Eugenics Board and still alive at the time the legislation was passed.[260]

Claims were first assessed by a deputy commissioner to determine eligibility, and if the claim was not approved, the deputy commission had to set forth in writing the reasons for the disapproval and notify the claimant.[261] If not approved, a claimant could submit additional documentation and request a redetermination by the deputy commissioner.[262] A claimant whose claim was not approved at either previous stage had the right to request a hearing before the deputy commissioner, where the claimant could be represented by counsel, present evidence, and call witnesses.[263] The deputy commissioner who heard the claim had to issue a written decision of eligibility.[264]

A claimant could then file a notice of appeal with the Commission within 30 days, such appeal to be heard by the full Commission, and the Commission had to notify all parties concerned in writing of its decision.[265] A claimant could appeal the decision of the full Commission to the Court of Appeals within 30 days of the date notice of the decision is given.[266] Decisions favorable to the claimant were final and not subject to appeal by the State.[267]

b. Virginia (Eugenics)

In 1924, Virginia passed its Eugenical Sterilization Act, which authorized the sexual sterilization of inmates at state institutions. The Act provided that the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded could impose sterilization when he had the opinion that it was for the best interest of the patients and of society that any inmate of the institution under his care should be sexually sterilized and

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https://www.journalnow.com/n-c-eugenics-victims-projected-to-get-final-state-compensation-payment-soon/article_87e3c891-7828-5f2d-856f-498b6405781a.html [as of Jan. 23, 2023].

[258][258] N.C.G.S. § 143B-426.51, subd. (a). A second payment of $15,000 went out in 2015, but the final payment did not go out until 2018. See Craver, *N.C. Eugenics Victims Projected to Get Final State Compensation Payment Soon*, Winston-Salem Journal (Jan. 17, 2018) at https://www.journalnow.com/n-c-eugenics-victims-projected-to-get-final-state-compensation-payment-soon/article_87e3c891-7828-5f2d-856f-498b6405781a.html [as of Jan. 23, 2023].

[259] N.C.G.S. § 143B-426.51, subd. (e).

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

[261] N.C.G.S. § 143B-426.53, subd. (b).

[262] N.C.G.S. § 143B-426.53, subd. (c).

[263] N.C.G.S. § 143B-426.53, subd. (d).

[264] Ibid.

[265] N.C.G.S. § 143B-426.53, subd. (e).

[266] N.C.G.S. § 143B-426.53, subd. (f).

[267] N.C.G.S. § 143B-426.53, subd. (h).

the requirements of the Act were met.[268] The Act responded to fifty years of scholarly debate over whether certain social problems, including shiftlessness, poverty, and prostitution, were inherited and ultimately could be eliminated through selective sterilization.[269] The Act was passed alongside the Racial Integrity Act, which banned interracial marriage by requiring marriage applicants to identify their race as "white," "colored," or "mixed" with "white" being defined as a person "who has no trace whatsoever of any blood other than Caucasian." The Racial Integrity Act was bolstered by the eugenics efforts like the Eugenic Sterilization Act, which saw non-White people as having inferior genes. One inmate, Carrie Buck, appealed her order of sterilization, but U.S. Supreme Court upheld the Virginia state law in *Buck v. Bell* (1927) 274 U.S. 200.[270] [271] The controversial ruling was never overturned, but the law was repealed in 1974.[272] Between 1927 and 1972, about 8,300 Virginians were sterilized. [273]

In 2002, 75 years after *Buck v. Bell*, Virginia Governor Mark R. Warner issued an apology for the state's embrace of eugenics and denounced the state's practice that involuntarily sterilized persons confined to state institutions from 1927 to 1979.[274] In 2015, the Virginia Legislature voted to enact the Virginia Victims of Eugenics Sterilization Compensation Program (VESC)[275] and allocated $400,000 from the state general fund for compensation to individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015.[276] As written in the budget, the funds were to be managed by the Department of Behavioral Health and Developmental Services and limited to $25,000 instead of the proposed $50,000.[277] Furthermore, should the funding provided for compensation be exhausted prior to the end of fiscal year 2016, the department was directed to continue to collect applications.[278] The department was mandated to provide a report to the Governor and the

[268] Encyclopedia Virginia, Chapter 46B of the Code of Virginia § 1095h–m (1924), https://encyclopediavirginia.org/entries/chapter-46b-of-the-code-of-virginia-%c2%a7-1095h-m-1924/
[269] Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/
[270] Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/
[271] On October 19, 1927, John H. Bell, the colony's superintendent, performed a salpingectomy, sterilizing Carrie Buck. She was released from the institution a month later. Historians have since found evidence that neither Carrie Buck nor her daughter suffered from any mental illness and that Bell's sterilization relied on a false diagnosis. Vivian Dobbs, Carrie Buck's daughter, was placed on the honor roll at her elementary school in 1931, a year before she died at the age of eight. Carrie Buck Eagle Detamore, who married twice, died in a nursing home in Waynesboro on January 28, 1983, and is buried in Oakwood Cemetery in Charlottesville. Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/
[272] Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/
[273] Encyclopedia Virginia, Buck v. Bell (1927), https://encyclopediavirginia.org/entries/buck-v-bell-1927/

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

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[276] https://budget.lis.virginia.gov/bill/2015/1/
[277] https://budget.lis.virginia.gov/bill/2015/1/

[278] https://budget.lis.virginia.gov/bill/2015/1/

Chairs of the House Appropriations and Senate Finance Committees on a quarterly basis on the number of additional individuals who applied. As of the enactment, there were only 11 surviving victims.[279]

An individual or lawfully authorized representative is eligible to request compensation under this program if the individual was:

1. Involuntarily sterilized pursuant to the 1924 Virginia Eugenical Sterilization Act;
2. Living as of February 1, 2015; and
3. Sterilized while a patient at Eastern State Hospital; Western State Hospital; Central State Hospital; Southwestern State Hospital; or the Central Virginia Training Center (formerly known as the State Colony for Epileptics and Feeble-Minded; now closed).

c. California Sterilization Compensation Program

California's eugenic sterilization program began in 1909, and authorized medical superintendents in state homes and state hospitals to perform "asexualization" on patients.[280] This allowed medical personnel to perform vasectomies on men and salpingectomies on women who were identified as "afflicted with mental disease which may have been inherited and is likely to be transmitted to descendants, the various grades of feeblemindedness, those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."[281]

California maintained 12 state homes and state hospitals that housed thousands of patients who were committed by the courts, family members, and medical authorities. While many sterilizations included the use of consent forms, such consent was often a condition for release from commitment, and this along with other conditions prevented true consent.[282] Moreover, though the law did not target specific racial or ethnic groups, in practice, "labels of 'mental deficiency' and 'feeblemindedness' were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women."[283]

California's eugenic sterilization law was repealed in 1979, but sterilization without proper consent continued in state institutions. In 2003, the State of California formally apologized for California's eugenic sterilization program up to 1979, including apologies from Governor Gray Davis, Attorney General Bill Lockyer, and a resolution passed by the State Senate expressing profound regret over the program.[284]

In 2014, the California State Auditor released an audit of female inmate sterilizations that occurred in the state prison system's medical facilities between fiscal years 2005–06 and 2012–

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[280] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subds. (a), (b).
[281] *Ibid*.
[282] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (c).
[283] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subd. (e).
[284] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 34, subds. (g)-(h).

13.[285] The auditor discovered 144 women imprisoned by the State were sterilized through bilateral tubal ligation, which is not medically necessary and is solely used for female sterilization.[286] Following this report, the Legislature prohibited the sterilization for the purpose of birth control any individual under the custody of the California Department of Corrections and Rehabilitation (CDCR).[287] There are an estimated 244 survivors of illegal prison sterilization.[288]

The California Legislature passed, and the Governor signed, AB 137 in the 2021-2022 legislative session apologizing for sterilizations at state prisons, ordering the creation of memorial plaques, and allocating $4.5 million for financial reparations to those sterilized by the State.[289] AB 137 created the California Forced or Involuntary Sterilization Compensation Program (FISCP or Program), which financially compensates survivors of state-sponsored sterilization. The California Victim Compensation Board (CalVCB) administers the Program. AB 137 sets out specific criteria for those who can apply for compensation from the Program: "(1) Any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. (2) Any survivor of coercive sterilization performed on an individual under the custody and control of the Department of Corrections and Rehabilitation after 1979."[290]

Each approved applicant receives an initial payment of $15,000 within 60 days of notice of confirmed eligibility.[291] After all applications are processed and all initial payments are made, any remaining program funds will be disbursed evenly to the qualified recipients by March 31, 2024.[292] Applications to the program are being accepted from January 1, 2022, through December 31, 2023.[293]

d. Chicago Police Department

Jon Burge was a high ranking Chicago Police Department officer who, between 1972 to 1991 led a group of detectives and officers to torture and abuse over 120 African Americans, many of

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[285] Cal. State Auditor, *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed* (June 2014), at https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf [as of Jan. 12, 2023].
[286] Id. at 19.
[287] Assem. Bill No. 1135 (2013-2014 Reg. Sess.).
[288] Sen. Com. On Judiciary, Analysis of Assem. Bill. No. 1007 (2021-2022 Reg. Sess.) Jul. 1, 2021, p.6.
[289] Galpern, *Social Justice Coalition Key to Success in California's New Sterilization Compensation Program*, Genetics and Society (Jan. 26, 2022), at https://geneticsandsociety.org/biopoliticaltimes/social-justice-coaltion-key-success-californias-new-sterilization-compensation [as of Jan. 12, 2023].
[290] Assem. Bill No. 137 (2021-2022 Reg. Sess.) § 21, subd. (b), codified at Health & Saf. Code § 24210, subd. (b)(1), (2).
[291] Beam, *California Trying to Find, Compensate Sterilization Victims*, A.P. News (Jan. 5, 2023), at https://apnews.com/article/politics-health-california-state-government-prisons-b560ec0a0155d8cc13730310e1073d9d [as of Jan. 12, 2023].
[292] CalVCB, *Forced or Involuntary Sterilization Compensation Program Frequently Asked Questions*, at https://victims.ca.gov/fiscp/#:~:text=your%20eligibility%20reviewed.-,CalVCB%20will%20accept%20applications%20from%20January%201,%2C%20to%20December%2031%2C%202023.&text=Applicants%20may%20submit%20documentation%20demonstrating,state%20records%20for%20eligibility%20documentation [as of Jan. 17, 2023).
[293] *Ibid.*

which led to coerced confessions.[294] Mr. Burge led operations of abuse that included physical and psychological abuse such as "trickery, deception, threats, intimidation, physical beatings, sexual humiliation, mock execution, and electroshock torture."[295] Moreover, evidence suggests judges and some city officials were complicit in these abuses for many years.[296] As a result, many African American victims ended up in prison due to coerced confessions and some were sentenced to the death penalty.[297] There was an effort to hold Mr. Burge specifically accountable for his actions, however the statute of limitations had expired on many of the alleged cases of torture and community members started to seek alternative methods to tackle this issue, which eventually led to the reparations ordinance.[298]

Community activist organizations in Chicago, including the Chicago Torture Justice Memorial (CTJM), and attorney Joey Mogul of Peoples Law Office, fought for years. Frustrated activists petitioned the Inter-American Commission for Human Rights and the United Nations Committee Against Torture.[299] Although the IACHR did not take official action, the UNCAT issued a report affirming the advocates' position and urged the United States to provide redress to the survivors of torture "by supporting the passage of the Ordinance entitled Reparations for the Chicago Police Torture Survivors."[300] The UNCAT also noted its concern although Burge was convicted for perjury and obstruction of justice, because there was not sufficient evidence for a constitutional rights violation prosecution, no police officer has been convicted for their crimes and the majority of victims still did not receive "compensation for the extensive injuries suffered."[301]

In 2015, the Chicago City Council "approved a municipal ordinance giving reparations to Burge torture survivors,"[302] and the $5.5 million package awarded claimants $100,000 in financial payments along with other non-financial reparations such as psychological counseling, healthcare, and a memorial site. [303] The ordinance passed by the city only applies to the local government and not the entire state. There is no explicitly stated temporal limit in the ordinance.

The intended recipients of the reparations included all torture survivors that have credible claim of torture or physical abuse at the hands of Job Burge or his subordinates . . . [], their immediate family members, and "in some cases, to their grandchildren." The ordinance requires the individual

[294] Baer, *Dignity Restoration and the Chicago Police Torture Reparations Ordinance* (2019) 92 Chi.-Kent L.Rev. 769, 769-70.
[295] *Id.* at 769.
[296] *Id.* at 770.
[297] *Id.*
[298] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 340; Macaraeg & Kunichoff, *How Chicago Became the First City to Make Reparations to Victims of Police Violence* (Mar. 21, 2017) Yes Magazine.
[299] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 337-38.
[300] *Id.* at 337, 346.
[301] U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the third to fifth periodic reports of United States of America, U.N. Doc. CAT/C/USA/CO/3-s (Nov. 2014).
[302] Taylor, *supra*, at p. 771.
[303] *Id.*

must have a credible claim of torture or physical abuse by Jon Burge or one of the officers under his command . . . [] between May 1, 1972, and November 30, 1991.[304]

The holistic reparation ordinance includes many components. First, there is a formal apology and acknowledgement that describes the police abuse and admits that the city and other players, were complicit in the abuse of over 100 African Americans.[305] Second, there is financial reparations totaling $100,000 for each survivor with a credible claim of torture or abuse from Mr. Burge or one of the officers under his command.[306] The ordinance also created the "Chicago Police Torture Reparations Commission" to administer these financial reparations to the survivors. Third, the ordinance provides free tuition at the City Colleges of Chicago and free access to job training, certification programs, and access to City programs that offer formerly incarcerated individuals job placements as well as other support services and programs.[307] Fourth, the ordinance provides psychological services to survivors and family members at a dedicated community center.[308] Finally, the City of Chicago promised to work with CTJM to "construct a permanent memorial to the Burge victims; and beginning in the 2015-2016 school year, Chicago Public Schools began incorporating into their existing U.S. history curriculum for eighth-grade and tenth-grade students a lesson about the Burge case and its legacy" [309] The only remaining unfulfilled reparation is the memorial. As of 2021, the memorial has still not been built but individuals at CTJM are meeting with the Mayor and remain hopeful the process will start soon. [310] This is, in part, because the resolution did not specify the timeline for the memorial and specific funding was not provided.[311]

e. Evanston, Illinois

The Evanston, Illinois City Council enacted the Restorative Housing Program to redress the injustices found in the report commissioned for the City Council's Reparations Subcommittee, Evanston Policies and Practices Directly Affecting the African American Community, 1900-

[304] Chicago Ord. No. SO2015-2687.
[305] *Id.* (The apology included the following language: "Whereas, The City Council wishes to acknowledge this exceedingly sad and painful chapter in Chicago's history, and to formally express its profound regret for any and all shameful treatment of our fellow citizens that occurred; and whereas, The City Counsel recognizes that words alone cannot adequately convey the deep regret and remorse that we and our fellow citizens feel for any and all harm that was inflicted by Burge and the officers under his command. And yet, words do matter. For only words can end the silence about wrongs that were committed and injustices that were perpetrated, and enable us, as a City, to take the steps necessary to ensure that similar acts never again occur in Chicago; and whereas, The apology we make today is offered with the hope that it will open a new chapter in the history of our great City, a chapter marked by healing and an ongoing process of reconciliation . . . Be it resolved, that we, the Mayor and Members of the City Council of the City of Chicago, on behalf of all Chicagoans . . . apologize to the Burge victims for these horrific and inexcusable acts . . .").
[306] *Id.*
[307] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 349; https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf
[308] Taylor, *Symposium: Police in America: Ensuring Accountability and Mitigating Racial Bias: The Long Path to Reparations for the Survivors of Chicago Police Torture* (2016) 11 Nw. J. L. & Soc. Pol'y 330, 349.
[309] https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf.
[310] Evans, *Chicago Promised Police Torture Survivors A Memorial. Nearly 6 years Later, They're Still Waiting For Funding* (Feb. 26, 2021)
[311] *Id.*

1960 (and Present).[312] According to the report, "the City of Evanston officially supported and enabled the practice of segregation"[313] with specific actions such as passing a zoning ordinance in 1921 that condoned implicit race-based housing segregation; the demolition of homes owned by Black families for economic development on the grounds that they were "unsanitary" or "overcrowded"; providing permits to Northwestern University to develop temporary, segregated housing for veterans after World War II; segregating post-World War II temporary housing for veterans; and failing to enact a fair housing ordinance to outlaw housing discrimination until the late 1960s.[314]

The City of Evanston passed the Restorative Housing Program (37-R-27), in March 2021 to redress the city's discriminatory practices in housing, zoning and lending that created a wealth and opportunity gap between white and Black Evanstonians.[315] Under this initiative, Black Evanstonians, their descendants, or other residents who experienced housing discrimination by the City of Evanston are provided $25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage.[316] The Restorative Housing Program was the first reparations program enacted by the City, but Evanston has also studied its discriminatory past, created a City Reparations Fund, honored local historical African-American sites, and issued an apology.

The Program was aimed at increasing Black homeownership in order to revitalize and preserve Black owner-occupied homes in Evanston.[317] To be eligible, the home must be located in Evanston and be the applicant's primary residence.[318] The program will eventually extend funds to all intended recipients: Evanston residents over the age of 18 years, of Black/African American ancestry, and, in order of priority, either (1) an Ancestor, a resident who lived in Evanston between 1919 and 1969, was at least 18 years old at the time, and experienced housing discrimination due to the City's polices/practices; (2) a Direct Descendant of an Ancestor (e.g., child, grandchild, great-grandchild, and so on); or (3) a resident that does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to City ordinance, policy or practice after 1969.[319]

At the close of the first round of applications, 122 Ancestor-applicants were verified by the city, and 16 were randomly selected on January 13, 2022 via the City's lottery to receive the first round of payments.[320] In March 9, 2023, Evanston planned its second round of disbursements for 35-80 Ancestors.[321]

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[312] Gavin, *Report Examines the City of Evanston's Practices That Impacted the Black Community, 1900-1960*, (Oct. 12, 2020) Evanston RoundTable, (as of Oct. 4, 2022).
[313] Robinson and Thompson, Evanston Policies and Practices Directly Affecting the African American Community, 1900 - 1960 (and Present), (Aug 2020) p. 39.
[314] *Id.* at pp. 35-57.
[315] Evanston Resolution No. 37-R-27.
[316] *Ibid*.
[317] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) p. 3.
[318] *Id.* at p. 8.
[319] City of Evanston, Local Reparations: Restorative Housing Program: Official Program Guidelines (2021) pp. 6-7.
[320] Brown and Cahan, *Evanston Reparations Begin: Random Drawing Selects 16 Black 'Ancestors' to Receive $25,000 Grants* (Jan. 13, 2022) Evanston RoundTable, (as of Oct. 4, 2022).
[321] Castro, *Reparations Committee Approves Cash Payments for 2 Ancestors* (Mar. 2, 2023) Evanston RoundTable, (as of Mar. 9, 2023).

In November 2022, the City Council passed a resolution to dedicate $1 million annually from the graduated real estate transfer tax collected from all property purchased above $1.5 million to the City Reparations Fund for a period of 10 years.[322] More funding came in December 2022 when the City Council passed Resolution 125-R-22 to transfer $2 million from the City's General Fund to the Reparations Fund.[323] Evanston Mayor Daniel Biss launched a survey to assess Evanston residents' views on the reparations program on February 16, 2023.[324] Respondents answered questions about their political views, thoughts on racism, support and understanding of Evanston's reparations program, and their personal demographics and housing information.[325]

Prior to implementing a reparations scheme, the City Council of Evanston created the Equity and Empowerment Commission in 2018 to address systemic inequalities and adopted Resolution 58-R-19, "Commitment to End Structural Racism and Achieve Racial Equity." In Resolution 58-R-19, Evanston's City Council apologized for the damage caused by its history of racially-motivated policies and practices such as zoning laws that supported neighborhood redlining, municipal disinvestment in the black community, and a history of bias in government services; declared itself an anti-racist city; and denounced White Supremacy.[326] The Resolution begins with findings laying out the foundation for an apology and then proceeds with a series of pronouncements against anti-Black racism.[327]

Some experts have critiqued the Evanston reparations program as being piecemeal and potentially distracting from the priority of a comprehensive national reparations program.[328]

f. Asheville, North Carolina

In June 2021, the City Council of the City of Asheville, North Carolina voted to allocate $2.1 million of the city's proceeds from the sale of city-owned land (a portion of which includes land the city purchased in the 1970s through urban renewal, a policy that "resulted in the displacement of vibrant Black communities and the removal of Black residents and homeowners, many into substandard public housing") to support a Reparations Commission.[329] The city anticipates that of the $2.1 million, $200,000 will fund the Reparation Commission's planning and engagement process, leaving approximately $1.9 million in initial funding for reparations.[330] The City's Reparations Commission is working on a report that is scheduled to be completed by October 31, 2023.[331]

The Commission is required to consider reparations for the city's participation in and sanctioning of the enslavement of Black people, its enforcement of segregation and accompanying discriminatory practices, and carrying out an urban renewal program that destroyed multiple

[322] Evanston Resolution No. 120-R-22.
[323] Evanston Resolution No. 125-R-22.
[324] Biss, Mayor Daniel Biss Newsletter (Feb. 16, 2023) (as of Mar. 10, 2023).
[325] *Ibid*.
[326] Evanston Resolution No. 58-R-19.
[327] Evanston Resolution No. 58-R-19.
[328] Lydersen, *Can Liberal Evanston, Illinois, Atone for Its Racist Past?* (Sept. 26, 2022) New Republic, (as of Oct. 4, 2022).
[329] Traynum-Carson, *Asheville City Council makes initial $2.1 million in reparations funding appropriation* (Jun. 8, 2021) The City of Asheville (as of Oct. 3, 2022) (hereinafter "Traynum-Carson"); *Davis*, *supra*.
[330] Traynum-Carson, *supra*.
[331] 2023 Reparations Project Timeline and IFA Recommendation Development, January 9, 2023 Meeting, City of Asheville and Buncombe County Community Reparations Commission (as of Feb. 10, 2023).

successful Black communities, as well as for a long list of other types of harms to Black people living in Asheville.[332] The Commission is charged with making short-, medium-, and long-term recommendations to "make significant progress toward repairing the damage caused by public and private systemic racism," so that the City of Asheville and local community groups may incorporate these recommendations into their short- and long-term priorities and plans.[333] The resolution states the "report and the resulting budgetary and programmatic priorities may include but not be limited to increasing minority homeownership and access to other affordable housing, increasing minority business ownership and career opportunities, strategies to grow equity and generational wealth, closing the gaps in health care, education, employment and pay, neighborhood safety and fairness within criminal justice."[334]

g. Providence, Rhode Island

After the murder of George Floyd by police in the summer of 2020, the mayor of Providence, Rhode Island signed an executive order to launch a truth-telling, reconciliation, and reparations process to "eradicat[e] bias and racism" against its Black and Indigenous residents and other people of color.[335] Following that three-part process, the city issued a formal apology and enacted a 2023 city budget that includes $10 million earmarked for reparations programs, but does not include direct cash payments to descendants.[336]

Beginning with a truth-telling phase, the Rhode Island Black Heritage Society collaborated with city and state historical institutions to publish a 200-page report, titled, *A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020)*.[337] The report documents the history of harm that Providence sought to remedy, including the lasting wounds caused by slavery, the genocide of indigenous people, and the ongoing racial discrimination from 1620 to 2020 throughout the City of Providence and the State of Rhode Island.[338]

In the reconciliation phase, the Providence Cultural Equity Initiative and Roger Williams University published a report detailing their efforts to survey Providence community members, develop guiding principles for reparations, and develop a model and proof of concept to continue reconciliation in perpetuity, including through a multimedia initiative.[339] For its guiding principles on reconciliation, the Reconciliation Report noted the need for ongoing, communal

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[332] Asheville Res. No. 20-128 (hereinafter "Asheville Resolution"); Davis, *Asheville reparations resolution is designed to provide Black community access to the opportunity to build wealth* (Jul. 20, 2020) The City of Asheville (as of Oct. 3, 2022) (hereafter "Davis"); see also Honosky, *'Slap in the face;' Asheville Reparations Commission balks at proposed timeline changes*, Citizen Times (Jan. 10, 2023) (as of Mar. 9, 2023) (hereinafter "Honosky").
[333] *Ibid.*
[334] *Ibid.*
[335] Providence, Rhode Island Mayor's Exec. Order No. 2020-13 (Jul. 15, 2020).
[336] Kalunian, *Providence Finalizes Plan to Invest $124M in Federal COVID Money*, WPRI.com (May 20, 2022) (as of Oct. 3, 2022).
[337] Rhode Island Black Heritage Society, A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020) (2021), pp. 1-2 (as of Oct. 7, 2022).
[338] *Ibid.*
[339] Roger Williams University & Providence Cultural Equity Initiative, Truth-Telling and Reconciliation: Proposing a Framework for the City of Providence (Feb. 9, 2022), p. 10 (as of Oct. 7, 2022).

learning, a focus on particular people, places, and the importance of efforts to cross barriers of identity and empathy.[340] The city's reconciliation principles also rejected depictions of participants that reduce them to racialized categories or tropes, while celebrating resilience both past and present.[341] Finally, Providence's reconciliation principles underscored action, emphasizing a community-owned but institutionally supported process, and the principle that reconciliation cannot be accomplished without reparations.[342]

With regard to the third and final phase—reparations—the mayor of Providence's 2022 executive order created the Municipal Reparations Commission (Commission), consisting of 13 members from the local community.[343] The Commission held over a dozen public meetings, discussing the justifications for reparations and the form they might take.[344] Among other topics, presenters at the public meetings discussed the international framework for reparations and its five elements, as well as international treaties and reports, including the Universal Declaration for Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (which the United States ratified in 1994), the Civil Rights Congress's petition to the United Nations for *Relief from Crimes Against Humanity by the United States Government*, and a UNESCO publication titled, *Healing the Wounds of Slave Trade and Slavery*.[345]

In November 2022, the mayor of Providence signed a city budget allocating $10 million—provided to the city from the American Rescue Plan Act—to fund programs across seven of the Commission's recommendations:[346] The mayor of Providence also issued an executive order recognizing and apologizing for the city's role in discriminating against African Heritage and Indigenous people.[347]

How the State of California will offer a formal apology on behalf of the people of California for the perpetration of gross human rights violations and crimes against humanity on African slaves and their descendants. [Gov. Code, § 8301.1, subd. (b)(3)(B)]

Chapter 16: Apologies

[340] *Id.* at pp. 4-8.
[341] *Id.* at p. 8.
[342] *Id.* at pp. 8-9.
[343] Providence, Rhode Island Mayor's Exec. Order No. 2022-4 (Feb. 28, 2022). Seven of the Commission's members were appointed by the mayor, while six were appointed by the city council. *Ibid.*
[344] Providence Municipal Reparations Commission (as of Oct. 7, 2022).
[345] See Providence Municipal Reparations Commission (May 31, 2022), *Testimony of Robin Rue Simmons* (as of Oct. 7, 2022); see also Providence Municipal Reparations Commission (May 16, 2022), *Testimony of Linda J. Mann* (as of Oct. 7, 2022) (also discussing the Durban Declaration, the UN General Assembly's Resolution proclaiming an International Decade for People of African Descecnt, and the UN's creation of the Permanent Forum of People of African Descent).
[346] City of Providence, Ordinance 38099 COVID-19 Equities Program Budget (as of Oct. 7, 2022); Russo, *Elorza Signs Providence's $10M Reparations Budget. Here's What's in It*, The Providence J. (Nov. 18, 2022) (as of Mar. 13, 2023); Abdul-Hakim et al., *Providence Establishes Reparations Program to Praise and Criticism*, ABC News (Jan. 31, 2023) (as of Mar. 13, 2023).
[347] Providence, Rhode Island Mayor's Exec. Order No. 2022-6 (Aug. 25, 2022) (as of Mar. 13, 2023).

The Legislature directed the Task Force to recommend appropriate remedies in consideration of the Task Force's findings. In making recommendations, the Legislature required the Task Force to address, among other issues, how the State of California will offer a formal apology on behalf of the people of California for the perpetration of gross human rights violations and crimes against humanity on African slaves and their descendants. (Gov. Code, § 8301.1, subd. (b)(3)(B).)

Reparative apologies situate the harms of the past in society's present injustices, pay tribute to victims, and encourage communal reflection to ensure the historic wrongs are never forgotten and never repeated. In 2005, the United Nations adopted General Assembly Resolution 60/147 setting forth the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[348] The Basic Principles and Guidelines include the principle of satisfaction. "Satisfaction" can include a public apology that constitutes an "acknowledgement of the facts and acceptance of responsibility," judicial and administrative sanctions against perpetrators, and commemorations and tributes to the victims, among others.[349]

Apologies alone are inadequate reparations to victims.[350] But when combined with material forms of reparations, apologies provide an opportunity for communal reckoning with the past and repair for moral, physical, and dignitary harms.[351] An effective apology should both acknowledge and express regret for what was done to victims and their relatives and take responsibility.[352] Subtle differences in phrasing can denote unequivocal acceptance of responsibility for providing redress to victims and for making the changes necessary to guarantee non-repetition.[353] An apology should also be accompanied by a request for forgiveness.[354]

A universally satisfactory apology does not exist because each victim group has unique needs. However, in 2012, the Inter-American Court of Human Rights determined that the following elements form a "good" apology: (1) it must be made publicly; (2) it must be made at the place where the events occurred; (3) it must acknowledge responsibility for the violations that have been committed; (4) it must be made in the presence and with the participation of a considerable number of survivors and next of kin; (5) it must involve the highest state authority and senior state officials; and (6) it must be broadcast and disseminated fully throughout the state.[355]

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[348] U.N. Gen. Assem., Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005) Res. 60/147.
[349] *Id*. at (IX)(22)(e)-(g). See also U.N. Gen. Assem, Responsibility of States for Internationally Wrongful Acts, (Dec. 12, 2001) Res. 56/83, Art. 37 ("Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality").
[350] International Center for Transitional Justice, Reparative Justice: More Than Words: Apologies as a Form of Reparation (2015), p. 1 (hereafter "Reparative Justice").
[351] Wijaya, *Public Apology as a Form of Reparation* (July 2019) 2 Internat. J. of Global Community 2, p. 1 (as of Mar. 9, 2023).
[352] Reparative Justice, *supra*, p. 12.
[353] *Id.* at p. 13.
[354] Reparative Justice, *supra*, p. 5.
[355] *Id.* at p. 18, quoting *Case of the Massacres of El Mozote and Nearby Places v. El Salvador* (Oct. 25, 2012) Inter-American Court of Human Rights, para. 357.

The Task Force recommends the Legislature build upon the structure of previous state apologies and conform to international standards for the principle of satisfaction. The Legislature must apologize on behalf of the State of California and the People of California for the perpetration of gross human rights violations in California of Africans who were enslaved and their descendants through public apology, requests for forgiveness, censure of state perpetrators, and tributes to victims.

With regard to the work of the Task Force, the Task Force recommends that the Legislature formally apologize on its own behalf, and on behalf of the State of California, for all of the harms delineated in Part II of the Final Report, and for the atrocities committed by California state actors who promoted, facilitated, enforced and permitted the institution of chattel slavery and its legacy of ongoing badges and incidents of slavery that form systemic structures of discrimination. The Task Force has found that California, its executive branch, courts, and Legislature denied African Americans their fundamental liberties and denied their humanity throughout the state's history, from before the Civil War to the present. By participating in these horrors, California further perpetuated the harms African Americans faced, imbuing racial prejudice throughout society through segregation, public and private discrimination, and unequal disbursal of state and federal funding. The apology should also include a censure of the gravest barbarities carried out on behalf of the State by – or with the knowledge or support of – its representative officers, governing bodies, and the people, as documented in this report.

In addition to acknowledging these and other atrocities committed by the State or which the State, through its appropriate law enforcement mechanisms failed to deter or punish, the apology should also acknowledge California's responsibility to repair the harms and guarantee non-repetition. To be effective, a considerable number of survivors and their relatives should participate in the development of the apology. The Task Force recommends that the Legislature accomplish this by establishing a program or government body, such as the California American Freedmen's Affairs Agency, to facilitate listening sessions that allow victims and their relatives to narrate personal experiences and recount specific injustices caused by the State of California and elected and appointed officials at the state and local levels. The listening sessions should inform the language of the Legislature's apology and the methods enacted by the Legislature to satisfy victims.

Finally, the Legislature should order the commission of plaques or other commemorative tributes to secure communities' memory of the victims and the injustices, as occurred in California's apology for forced sterilizations. Physical markers of past atrocities serve as reminders of the terror and harm and ensure the collective memory does not gloss over the past. Created in collaboration with stakeholders, plaques and memorials can honor survivors and raise awareness of Descendants' ongoing struggle for justice.

Importantly, however, the Task Force reminds the Legislature that an apology on its own, no matter how forceful or detailed, is not enough; to have any effect under existing standards for reparations and reconciliation, the apology must take place within the same legislative effort that

results in compensation and the enactment of policy recommendations to ensure non-repetition of the significant atrocities that would be addressed by the apology.

Economic Expert Analysis and Final Recommendations of Task Force Regarding Calculations of Reparations and Forms of Compensation and Restitution

Chapter 17: Recommendations Regarding Calculations of Reparations and Forms of Compensation and Restitution

In enacting AB 3121, the Legislature charged the Task Force with recommending appropriate remedies in consideration of the Task Force's findings, including (a) how any form of compensation to African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States, is calculated; (b) what form of compensation should be awarded, through what instrumentalities, and who should be eligible for such compensation; and (c) how, in consideration of the Task Force's findings, any other forms of rehabilitation or restitution to African descendants are warranted and what form and scope those measures should take. (Gov. Code, § 8301, subds. (b)(3)(E), (F), (G).)

In preparing the recommendations for this chapter of the report, the Task Force consulted with a team of preeminent economists and policy experts including Dr. Kaycea Campbell, Dr. William Spriggs, and Dr. William A. Darity Jr., Dr. Thomas Craemer, and A. Kirsten Mullen, who is a writer, folklorist, museum consultant, and lecturer whose work focuses on race, art, history, and politics. The Task Force also relied upon its own expertise, the public comments via in-person hearings, telephone or other remote access and email, and the testimony of dozens of witnesses who were invited to appear before the Task Force.

In developing the recommendations in this chapter, the Task Force considered, among numerous other factors, the attributability to the State of California and its local jurisdictions of the harms to California African Americans, especially Descendants of persons enslaved in the United States, and the availability of data. In many instances of atrocities, California has not collected data that would allow for precise calculations, and for those areas the Task Force recommends, as AB 3121 directs, how the Legislature should calculate reparations in drafting and implementing a future state-level reparations scheme.

In determining its recommendation to the Legislature, the Task Force voted to restrict eligibility to individuals who are able to demonstrate their lineage as descending from an individual enslaved in the United States. Noting the challenges with tracing lineage in this manner, the Task Force determined that the State of California, potentially through the recommended new California American Freedmen's Affairs Agency, should take responsibility for facilitating through whatever means necessary the process of assisting any requester in establishing whether

they qualify by funding or otherwise handling the tracing and confirmation of this lineage. While the data available to the Task Force and its experts did not separate out Descendant status from other racial or ethnic data, the Task Force generally recommends that the Legislature begin to collect data on the basis of Descendant status and, when calculating reparations as recommended by the Task Force, take this data into account in formulating the most accurate amount of needed reparations as possible.

The Task Force also offers specific preliminary estimates for the Legislature's consideration, regarding losses to Black Californians, due to (a) health disparities, (b) disproportionate Black mass incarceration and over-policing, and (c) housing discrimination. Further, with regard to two other atrocities, unjust property takings by eminent domain, and devaluation of Black businesses, the Task Force recommends a method of calculation for such reparations.

1. Health Harms

The difference in life expectancy between Black non-Hispanics and white non-Hispanics in California can be interpreted as the cumulative effect of unequal treatment, from unequal access to health insurance and health care based on occupational discrimination, discriminatory local zoning that exposes Black neighborhoods to greater environmental harm (e.g., placement of toxic industries in residential neighborhoods, creation of food deserts, etc.), as well as explicit and implicitly discriminatory behavior of medical personnel from which the state should shield its residents. At the root of these discriminatory practices is the state of California's willing complicity in federal redlining policies that created de jure racially segregated living arrangements in and its unwillingness to meaningfully address occupational discrimination. The Task Force recommends that the Legislature estimate the cost of health differences between Black non-Hispanic and white non-Hispanic Californians and issue reparations according to that calculation, as follows:

(1) Take the value of the individual's statistical life (roughly $10,000,000) and divide it by the white non-Hispanic life expectancy in California (78.6 years in 2021), to obtain the value for each year of life absent anti-Black racial discrimination ($127,226).

(2) Then calculate the difference in average life expectancy in years between Black non-Hispanic and white non-Hispanic Californians (7.6 years in 2021).

(3) Then multiply the two to arrive at a total loss in value of life for each Black non-Hispanic due to health disparities based on racial discrimination ($966,921). A Black non-Hispanic Californian at the average life expectancy of 71 years of age who spent their entire life in California would be entitled to the full amount.

(4) For eligible recipients who spent only a number of years in California, an annual value can be obtained by dividing the full amount by the Black non-Hispanic life expectancy:

$966,921 / 71 = $13,619. This would be the value of each year spent in California, to which a Black non-Hispanic Californian would be entitled, subject to their eligibility.

2. Disproportionate Black Mass Incarceration and Over-Policing

The "War on Drugs" began in 1971. Established research shows that people of all races use and sell illegal drugs at remarkably similar rates. To measure racial mass incarceration disparities in the 50 years of the War on Drugs from 1970 to 2020, we can estimate disproportionate years spent behind bars for Black non-Hispanic compared to white non-Hispanic drug offenders, and multiply them with what a California state employee would have earned in a year on average (since incarcerated persons were forced, unpaid "employees" of the state). We add to this compensation for loss of freedom, comparable to Japanese American World War II prisoners, and arrive at $170,657 per year of disproportionate incarceration in 2021 dollars.

To estimate the number of disproportionately incarcerated Black non-Hispanic individuals:

(1) We use total California arrest figures for felony drug offenses and Black non-Hispanic drug felony arrests from 1970 to 2020, to compute the Black non-Hispanic percentage.

(2) We then compute the difference between the percentage of Black non-Hispanic drug felony arrests and the estimated Black non-Hispanic population percentage for each year. The difference between the two provides an estimate of the percentage of excess Black non-Hispanic drug felony arrests.

(3) We obtain the number of Black-non-Hispanic excess drug felony arrests by multiplying the percentage of excess Black non-Hispanic drug felony arrests times the total number of drug felony arrests.

(4) We then multiply Black non-Hispanic excess drug felony arrests by the average drug-possession related prison term of 1.48 years and the annual reparations amount (see above), and add the annual amounts up over the entire time period from 1970 to 2020 to arrive at a total sum of $246,476,420,795 in 2021 dollars.

(5) Disproportionate law enforcement reduced the quality of life for all Black Californian descendants of the enslaved in the United States who lived in California during the "War on Drugs." We therefore divide the total sum by the estimated 1,976,911 Black non-Hispanic California residents who lived in the state in 2020, for an amount per recipient of $124,678 in 2021 dollars, or $2,494 for each year of residency in California. The Task Force also recommends that Black California residents who served time for the possession or distribution of substances now legal (e.g., cannabis) should additionally be entitled to sue for compensation for their time in prison, or that the State of California create a special compensation fund to allow for specific redress of specific harms.

3. Housing Discrimination

Nefarious housing discrimination has always existed in the United States, including in California even before the state's founding in 1850. Individual participants in the housing market discriminated against Black buyers or renters, local zoning rules enforced segregation, and the state allowed this discrimination to occur even though the Supreme Court ruled it unconstitutional in its *Buchanan v. Warley* (1917) 245 U.S. 60 decision. As a result, as of 2019, a year before the Reparations Task Force was established, Black Californians controlled far less of the state's average per-capita housing value than did white Californians.

The Task Force considers losses specifically due to redlining as a conservative method for estimating appropriate reparations. Redlining is a clear case of legally-sanctioned homeownership discrimination that began with the New Deal in 1933 and lasted for at least 44 years until the Community Reinvestment Act of 1977 formally (although not effectively) banned redlining practices. While redlining was sanctioned by federal law, Congress allowed almost complete discretion to the states on implementation, in order to allow for a guaranteed application of Jim Crow laws in the Southern states. Thus, California could have opted not to implement redlining, but chose to do so. This reaffirms California's moral obligation to engage in reparations for redlining.

To calculate damages in this category, the Task Force recommends that the Legislature proceed as follows:

(1) The Task Force estimates the average per capita Black-white homeownership wealth gap by subtracting average per capita Black homeownership wealth from average per capita white homeownership wealth. This will arrive at average per capita homeownership wealth for each group by multiplying the mean home value for the group with the number of homeowners in the group. Then divide the total homeownership wealth of the group by all group members in the California population.

(2) This calculation can be performed for the year 2019, one year before the Reparations Task Force was established and one year before the Covid-19 crisis hit. We arrive at an average per-capita Black non-Hispanic /white non-Hispanic homeownership wealth gap of $141,462 in 2019 dollars, which compounded up to 2021 at the annual 30-year mortgage interest rates (Miller, 2022), would have represented $150,222 in 2021 dollars.

(3) Further, to isolate the wealth effect of redlining, we do the same for the year 1930, three years before the start of redlining ($969), and for 1980, three years after the official ban of redlining practices ($17,920). We subtract the 1930 average per capita Black-white homeownership wealth gap from 1980 average per capita Black-white homeownership wealth gap. This figure of $16,951 in 1980 dollars is the average per capita homeownership wealth that Black Californians lost due to California's willing complicity in federal redlining discrimination.

(4) To reflect that reparations for redlining discrimination should have been paid after the injustice officially (although not effectively) ended, we compound the resulting estimates up

to 2021 using annual 30-year mortgage interest rates, and arrive at an average per-capita Black-white redlining gap of $312,960 in 2021 dollars. The fact that this amount is larger than the 2019 estimate is due to the exponential effect of compound interest over long periods of time. Thus, although the assumptions here are more cautious (only representing redlining as an injustice, ignoring local zoning discrimination prior to 1933, and ignoring gentrification and the mortgage interest crisis after 1977), the loss-estimate in 2021 dollars is more than double the 2019 estimate in 2021 dollars. Thus making more cautious assumptions and being more specific can lead to higher loss-estimates.

(5) To estimate the maximum liability for the State of California for reparations based on housing discrimination, we take the larger amount (based on redlining between 1930 and 1980) and multiply the resulting gap-estimate with the total Black non-Hispanic California population in 1980 (after redlining had officially albeit not effectively ended) to obtain the outstanding total ($569 billion in 2021 dollars). Then we divide the total by the Black California population in 2021 (2,550,459) to estimate the per-capita amount owed each Black individual who lived in California in 2021 ($223,239) under the assumption that all Blacks in California are eligible and lived in the state from 1930 to 1980 or are the heir of someone who did. We arrive at an annual estimate by dividing that amount by the 44 years during which redlining was California's official policy ($5,074 for each year between 1933 and 1977 spent as a resident of the state).

4. Unjust Property Takings

With regard to unjust takings of property from Black people in California, the Task Force recommends that the Legislature arrive at a measure of required compensation utilizing the following calculations. First, start with the rolls of Blacks—initially confined to city centers — who were forced to leave following the use of eminent domain to make room for convention centers, city halls, and museums; and/or look at where they eventually resettled—many settled in newly established Black neighborhoods circa 1980, where they hoped to have lower mortgages and property taxes, better schools, and safety. In some cases, their children and grandchildren still live in the homes their grandparents built during this period, when they were pushed off their property.

Second, the Task Force offers two potential approaches the Legislature could choose to calculate the amount of compensation: 1) Examine the market value at the time the property was taken, then determine the amount that was paid to the owner and subtract that figure from the value of the property. Increase the net value of the property by adding in a fair measure of the estimated appreciation to the present day, and use that amount to determine lost value; or 2) Use the current full value of the property as a measure of compensation due. However, if the Legislature chooses to use this methodology, it could be complicated by potential decline in the property value or it is being used for infrastructural purposes that will make it difficult to quantify the value of the property.

5. Devaluation of Black Businesses

The most reliable data on businesses by race comes from the U.S. Census Bureau's Survey of Business Owners. The most recent data is from the 2012 Survey. At that time, the U.S. Census Bureau reported that there were 1,875,847 white non-Hispanic owned firms in California, compared to 166,553 Black non-Hispanic owned firms. Given California's population in 2012, that means a business ownership rate of roughly 806.7 firms per 10,000 population for whites and 738.9 per 10,000 for Blacks. The white non-Hispanic owned firms had total sales, receipts or value of shipments totaling $1,141,498,757,000, while Black non-Hispanic owned firms had total sales, receipts or value of shipments totaling $14,037,184,000.

Business formation is a combination of demand factors—public sector, household and business (business-to-business transactions) and the entrepreneurial environment—rules, regulations and taxes. Blacks and whites in California live in this same milieu. But entrepreneurial opportunity differs because of differences in access to capital, the owners' equity, and knowledge regarding both business and regarding programs available to business owners. Though the Census only offers a snapshot of differences in business ownership in 2012, that reflects cumulative effects in access to capital, the development of equity and knowledge that are the subject of this inquiry into racial inequalities resulting from actions of the state of California. As such, it is an adequate guide as to that portion of the wealth portfolio of Black people in California that differs from whites in California.

A portion of the business wealth gap comes from the over-representation of Black firms in some industries. For instance, the leading industry for Black businesses was Health and Social Services, which includes home health aides, both in the number of businesses (32,420) and receipts ($2,356,300,000). Blacks have a much higher share of businesses in this industry than is true for whites. But it is also an industry with a very low enterprise value to sales ratio, which is 0.69 compared to non-financial firms having an average of 2.35. The next highest industry for Black companies is Professional, Scientific, and Technical Services which includes lawyers, accountants, architectural and engineering design and computer services with 18,465 businesses, and receipts of $1,434,304,000. These are industries that are not capital intensive, and for many of the Black-owned businesses, they include only the owner as the employee.

Black firms are not overrepresented in the type of ethnic enclave industries of accommodations and food services, or retail sales catering towards a Black market. So, we assume that if there were no restrictions on access to capital or the accumulation of assets that could have been part of owners' equity, the industry of Black and white businesses would be far more similar, reflecting the business opportunities that exist in California.

The Task Force recommends that the Legislature develop an estimate for reparations for the devaluation of Black businesses by implementing an equation using each sector as a separate observation, based on the general demand environment of state and local government contracting

and household income. Controlling for each sector allows a way to control for differences in state business environment. Then estimates will be made of businesses formed, and sales and receipts generated on those factors. This is an approach used by many sociologists researching differences in business formation using the business environment.

In a world with equal opportunity there would be additional Black business formation, and based on the gap in firms and sales one can estimate the gap to be averaged over California's Black population of that missing portfolio element. In 2012, that would amount to a gap of 67.8 more firms per 10,000 people, with an average sales volume of $608,524. Given that volume of sales, the average non-financial industry-wide establishment value to sales is near 2.3, giving a wealth of $1,399,605 missing. Averaged over the Black population, the missing business wealth would be $140, or $185 in 2023 dollars, per individual. It does not estimate the volume of businesses that would be expected for a state with California's public expenditures and household income. That figure is an estimate based on the raw number of businesses and the gap in ownership between Blacks and whites.

6. Conclusion

Since this list of harms/atrocities is not exhaustive, the total of the estimated losses to Black Californians is not a final estimate of losses, nor, given the Task Force's determination of eligibility for compensation, is it is a recommendation of an amount of reparations payments. Rather, it is an economically conservative initial assessment of what losses, at a minimum, the State of California caused, or could have prevented but did not. Further data collection and research of that data once collected, would be required to augment these initial loss-estimates. And then the Legislature would have to decide how to translate loss-estimates into proposed reparations amounts and who would ultimately be eligible to receive those amounts.

The Task Force also recommends that the Legislature provide reparations for less quantifiable harms. For example, pain and suffering from generations of discrimination represents real harm measured by the subjective experience of the descendants. Also, because in some instances more data and research are required to calculate the just amount of reparations, the Task Force recommends that the Legislature make a substantial, initial down-payment on reparations, to be augmented over time with additional payments as new evidence becomes available. It should be communicated to the public that the substantial initial down-payment is the *beginning* of a conversation about redressing the economic and societal harm of historical injustices, not the end of it. Delay of reparations is in and of itself an injustice that causes more suffering and may ultimately deny justice, especially to the elderly among the harmed. For this reason, the Task Force recommends prioritizing elderly recipients in the monetary reparations program.

Policy Recommendations to the Legislature [Gov. Code, § 8301, subd. (b)(3)(C), (b)(3)(D)] Appropriate policies, programs, projects, and recommendations for the purpose of reversing the injuries]

The Legislature directed the Task Force to recommend appropriate remedies in consideration of the Task Force's findings, and to address how California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated, and how the injuries resulting from matters described in this subdivision can be reversed and how to provide appropriate policies, programs, projects, and recommendations for the purpose of reversing the injuries. (Gov. Code, § 8301.1, subds. (b)(3)(C), (D).)

In Part VI of the report, the Task Force recommends that the Legislature adopt the following policy proposals:

3. Chapter 18: Introduction/General Proposals
    i. California American Freedman Affairs Agency
    ii. Repeal or Amend Proposition 209
    iii. Conduct Racial Impact Analyses
    iv. Agency Transparency
    v. Legislative Findings
4. Chapter 19: Enslavement
    i. Issue a formal apology from the Legislature for allowing enslavement, adopting a fugitive slave law, and subsequent enforcement; apology must include censure of first elected California Governor, Peter Hardeman Burnett
    ii. Issue a formal apology for opposing Congress's Reconstruction civil rights laws and for delaying ratification of the 14th and 15th Amendments
    iii. Enact legal resolution affirming the state's protection of Descendants and guaranteeing protection of the civil, political, and socio-cultural rights of Descendants
    iv. Enact legislation to create compensation fund for all direct descendants of American slaves forced to labor specifically in the state of California (i.e. Descendant legacy families in Coloma, CA)
    v. Amend the California Constitution to prohibit involuntary servitude
    vi. Pay fair market value for labor provided by incarcerated (whether in jail or prison) persons
    vii. Emphasize the "Rehabilitation" in the California Department of Corrections and Rehabilitation (CDCR)
    viii. Abolish the death penalty
    ix. Prohibit private prisons from benefiting from contracts with CDCR to provide reentry services to incarcerated or paroled individuals
5. Chapter 20: Racial Terror
    i. Establish and Fund Community Wellness Centers in Black Communities

ii. Fund Research to Study the Mental Health Issues within California's Black Youth Population, and to Address Rising Suicide Rates among Black Youth
iii. Expand the Membership of the Mental Health Services Oversight and Accountability Commission (MHSOAC) and Require the Appointment of an Expert in Reducing Disparities in Mental Health Care Access and Treatment to the MHSOAC
iv. Fund Community-Driven Solutions to Decrease Community Violence at the Family, School, and Neighborhood Levels
v. Proposals to Address Discrimination, Harassment, and Violence Against Black Californians Who Identify or Appear as LGBTQ+ and to Reduce Disparities in Mental Health and Health Care Outcomes for Black members of the LGBTQ Community. [in progress]
vi. Implement Procedures to Address the Over-diagnosis of Emotional Disturbance Disorders, Including Conduct Disorder, in Black Children
vii. Proposals to Disrupt the Mental Health Crisis and County Jail Cycle
viii. Eliminate Legal Protections for Peace Officers Who Violate Civil or Constitutional Rights
ix. Assess and Remedy Racially Biased Treatment of Black Adults and Juveniles in Custody in County Jails, State Prisons, Juvenile Halls, and Youth Camps

6. Chapter 21: Political Disenfranchisement
   i. Formal Apology on Behalf of the State of California—Exclusion as Witness
   ii. Formal Apology on Behalf of the State of California—Opposition to the 14th and 15th Amendments
   iii. Formal Apology on Behalf of the State of California—Disenfranchisement
   iv. Formal Apology on Behalf of the State of California—Monuments of White Supremacy
   v. Formal Apology on Behalf of the State of California—Black Panther Party
   vi. Require District-Based Voting and Independent Redistricting Commissions to Safeguard Against the Dilution of the Descendant Voting Bloc
   vii. Increase Funding to Support the California Department of Justice's Enforcement of Voting Rights in California
   viii. Pass Legislation Aligning with the Objectives of AB 2576 and Establish Separate Funding to Support Educational and Civic Engagement Activities
   ix. Provide Funding to NGOs Whose Work Focuses on Increasing Civic Engagement Among Descendants
   x. Declare Election Day a Paid State Holiday and Provide Support to Essential Workers to Increase Access to the Polls

xi. Remove the Barrier of Proving Identity to Vote
xii. Increase Jury Participation of Persons with Felony Convictions and Discourage Judges and Attorneys from Excluding Potential Jurors Solely for Having a Prior Felony Conviction
xiii. Increase Efforts to Restore the Voting Rights of Formerly Incarcerated Persons and Provide Access to Those Who Are Currently Incarcerated and Eligible to Vote

7. Chapter 22: Housing Segregation and Unjust Property Takings
   i. Prioritize Responsible Development and Environmental and Public Health in Communities and Housing Development
   ii. Enact Policies Overhauling the Housing Industrial Complex
   iii. Collect Data on Housing Discrimination
   iv. Provide Anti-Racism Training to Workers in the Housing Field
   v. Expand Grant Funding to Community-Based Organizations to Increase Home Ownership
   vi. Provide Property Tax Relief to Increase Home Ownership
   vii. Provide Direct Financial Assistance to Increase Home Ownership
   viii. Require State Review and Approval of Residential Land Use Ordinances by Municipalities with High Levels of Segregation
   ix. Repeal Crime-Free Housing Policies
   x. Increase Affordable Housing for Black Californians
   xi. Provide Restitution for Racially Motivated Takings
   xii. Provide a Right to Return for Displaced Black Californians
   xiii. Provide Funding to Assist Black Californians With Making Residential Homeownership a Reality
8. Chapter 23: Separate and Unequal Education
   i. Increase Funding to Schools Through the Local Control Funding Formula to Address Racial Disparities
   ii. Fund Grants to Local Educational Agencies to Address the COVID-19 Pandemic's Exacerbating Impacts on Education Disparities
   iii. Implement Systematic Review of School Discipline Data
   iv. Improve Access to Educational Opportunities for All Incarcerated People
   v. Adopt Mandatory Curriculum for Teacher Credentialing and Trainings for School Personnel and Grants for Teachers
   vi. Employ Proven Strategies to Recruit African American Teachers
   vii. Require that Curriculum at All Levels Be Inclusive and Free of Bias
   viii. Advance the Timeline for Ethnic Studies Classes
   ix. Adopt a K-12 Black Studies Curriculum
   x. Adopt the Freedom School Summer Demonstration Pilot Program

xi. Reduce Racial Disparities in the STEM Fields for African American Students
xii. Expand Access to Career Technical Education for Descendants
xiii. Improving Access to Public Schools
xiv. Fund Free Tuition to California Public Colleges and Universities
xv. Eliminate Standardized Testing for Admission to Graduate Programs in the University of California and California State University Systems
xvi. Identify and Eliminate Racial Bias and Discrimination in Statewide K-12 Proficiency Assessments

9. Chapter 24: Racism In Environment and Infrastructure
    i. Increase Greenspace Access and Recreation Opportunities in Black Communities
    ii. Test For and Eliminate Toxicity in Descendant Communities
    iii. Increase Trees in Redlined Communities
    iv. Develop Climate Resilience Hubs in Redlined Communities
    v. Remove Lead in Drinking Water
    vi. Prevent Highway Expansion and Mitigate Transportation Pollution
10. Chapter 25: Pathologizing Black Families
    i. Reduce and Seek to Eliminate Racial Disparities in the Removal of African American Children From Their Homes and Families
    ii. Establish and Fund Early Intervention Programs That Address Intimate Partner Violence (IPV) Within the African American Community
    iii. Eliminate Interest on Past-Due Child Support and Eliminate Back Child Support Debt
    iv. Eliminate and/or Curtail Law Enforcement Activity in California Schools
    v. Eliminate or Reduce Charges for Phone Calls Between County Jail Inmates and Their Families
    vi. Address Disproportionate Homelessness Among Black Californians
    vii. Address Disparities and Discrimination Associated with Substance Use Recovery
11. Chapter 26: Control Over Creative, Cultural, and Intellectual Life
    i. Formal Apology on Behalf of the State of California—Minstrel Shows
    ii. Formal Apology on Behalf of the State of California—Discrimination in the Arts
    iii. Formal Apology on Behalf of the State of California—Discrimination in Law Enforcement & Regulations
    iv. Formal Apology on Behalf of the State of California—Bias in Cinematic Depictions

v. Formal Apology on Behalf of the State of California—Targeted Harassment of Artists & Businesses
vi. Formal Apology on Behalf of the State of California—Disruption of Leisure Activities
vii. Provide State Funding to Descendants to Address Disparity in Compensation Among Athletes in the University of California and State System
viii. Prohibit Discrimination Based on Natural and Protective Hair Styles In All Competitive Sports
ix. Provide State Funding to Support Descendant Athletes in Capitalizing on their Name, Image, and Likeness and Intellectual Property
x. Identify and Remove Monuments, Plaques, State Markers and Memorials Memorializing and Preserving Confederate Culture; Erect Monuments, Plaques and Memorials Memorializing and Preserving Reconstruction Era and the Descendant Community
xi. Provide Funding to the Proposed California American Freedmen Affairs Agency, Specifically for Creative, Cultural, and Intellectual Life
xii. Eliminate the Practice of Banning Books Maintained by the California Department of Corrections and Rehabilitation
xiii. Public Disclosure of Compensation and Benefits for Artists Across All Media Industries in California

12. Chapter 27: Stolen Labor and Hindered Opportunity
    i. Greater Transparency in Gubernatorial Appointments
    ii. Guaranteed Income Program for Descendants
    iii. Licensure for People with Criminal Records
    iv. Transforming the Minimum Wage Back into a Living Wage
    v. Advancing Pay Equity through Employment Transparency and Equity in Hiring/Promotion
    vi. Professional Career Training
    vii. Apprenticeship Grant Program
    viii. Funding Black Businesses
    ix. Funding African American Banks
13. Chapter 28: An Unjust Legal System
    i. Allocate Funds to Remedy Harms and Promote Opportunity
    ii. Provide Voting Rights to Incarcerated Individuals
    iii. Abolish Involuntary Servitude from the California Constitution
    iv. End Discriminatory Gatekeeping at the State Bar
    v. Prohibit Cash Bail and Reimburse Those Acquitted or Exonerated
    vi. Recommend Abolition of the Qualified Immunity Doctrine and Provide a Remedy for Victims

vii. Dismantle the School to Prison Pipeline and Decriminalize the Youth Justice System
viii. Clarify and Confirm Decriminalization of Transit and Other Public Disorder Offenses
ix. Move Public Disorder Infractions and Low-Level Crimes Outside of Police Jurisdiction
x. Prohibit Pretextual Traffic and Pedestrian Stops, Probation Inquiries, and Consent-Only Searches
xi. Enhance Laws that Require Bias Elimination Training
xii. Mandate Policies and Training on Bias-Free Policing
xiii. Promulgate Model Law Enforcement Policies Designed to Prevent Racial Disparities in Policing
xiv. Strengthen and Expand the Racial Justice Act
xv. Repeal Three Strikes Sentencing

14. Chapter 29: Mental and Physical Harm and Neglect
    i. Address Health Inequities among Black Californians
    ii. Improving Health Insurance Coverage
    iii. Evaluate Recently-Passed Health Care Laws
    iv. Address Anti-Black Discrimination in Health Care
    v. Mandate Standardized Data Collection
    vi. Provide Medical Social Workers/Health Care Advocates
    vii. Improving Diversity Among Clinical Trial Participants
    viii. Remedy the Higher Rates of Injury and Death among Black Birthing People and Infants
    ix. Advance the Study of the Intergenerational, Direct, and Indirect Impacts of Racism
    x. Remedy the High Rates of Mental Health Issues/Suicide Among Black Youth
    xi. Meet the Health Needs of Black Elders
    xii. Remedy Disparities in Oral Health Care
    xiii. Fix Racially Biased Algorithms and Medical Artificial Intelligence in Health Care
    xiv. Fund and Expand the UC PRIME-LEAD-ABC Program to be Available at All UC Medical Campuses
    xv. Create and Fund Equivalents to the UC-PRIME-LEAD-ABC Program for Psychologists, Licensed Professional Counselors, and Licensed Professional Therapists
    xvi. Permanently Fund the California Medicine Scholars Program and Create and Fund Equivalent Pathway Programs for Students in the CSU and UC Systems

xvii. Review and Prevent Racially Biased Disciplinary Practices by the Medical Board of California
xviii. Address Food Injustice

15. Chapter 30: The Wealth Gap

Report on Racial Justice Act Implementation

Chapter 31: Report on Racial Justice Act Implementation

AB 2542, the California Racial Justice Act of 2020 (Act or RJA), codified in Section 745 of the California Penal Code, prohibits California, through any criminal prosecutor acting in the name of the People or the State, from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity, or national origin. The Act allows an accused person to seek dismissal of pending charges, or vacatur of a conviction or sentence, through a claim alleging that a charge, conviction, or sentence was tainted by racial bias. The Act originally applied prospectively to cases in which judgment had not been entered prior to January 1, 2021. However, AB 256, the Racial Justice Act for All, enacted in 2022, extended the Act's protections to apply retroactively to most cases in which judgment was entered before January 1, 2021.

The Racial Justice Act offers different pathways to demonstrating a violation. Some involve showing overt bias or animus, such as use of discriminatory language by a courtroom actor. Others allow for claims that arise from implicit bias. A central purpose of the Act was to respond to *McCleskey v. Kemp* (1987) 481 U.S. 279, in which the U.S. Supreme Court accepted racial disparities as "an inevitable part of our criminal justice system" and held that these disparities generally do not violate the Constitution in the absence of proof of discriminatory intent. With the Racial Justice Act, California rejected the acceptance of racial disparities and sought to begin the process of reforming our unjust legal system. Under the Act, the law is violated when an accused person has been charged with or convicted of a more serious offense than similarly situated persons of other races, ethnicities, or national origins who commit similar offenses, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the accused person's race, ethnicity, or national origin. The Act similarly forbids sentencing disparities arising from race, ethnicity, or nationality, including that of victims.

Racial Justice Act violations can occur at a number of different decision points, including the decision regarding which charges to bring, the convictions obtained, and in sentencing. Where claims of violations involve comparisons to the treatment of others, information about an accused individual's race, the race of the complainant or victim, and information about race, decisions, and outcomes in comparable cases can be critical to establishing a prima facie case that a violation has occurred. A lack of data on race in comparable cases can severely limit the ability of an accused or convicted person to support claims of racial bias. The same is true when

agencies do not track or share data on key decisions made by the prosecutor, judge, or jury in comparable cases. This lack of critical information impedes implementation and diminishes the efficacy of the Racial Justice Act. Without access to data, the promise of the Act has the potential to ring hollow for many. Gauging the availability of RJA-relevant data is thus critical to understanding the landscape for potential claims that may be raised under the Act.

In order to establish a baseline regarding the collection of RJA-relevant data, the AB 3121 Reparations Task Force requested that the California Department of Justice Research Center (DOJRC) survey all 58 California Superior Courts and District Attorney Offices, as well as a select group of 11 of the largest City Attorney offices regarding what data elements their agencies regularly collect when dealing with criminal cases. The 126 responding criminal justice agencies and courts completed an online questionnaire pertaining to data collected and maintained by their agency, with a focus on what racial data the agencies hold as well as data on factors that may involve prosecutorial or judicial discretion. Chapter 31 of the Task Force's report describes and summarizes the findings.

Notably, the DOJRC conducted the survey prior to the retroactive application of the Act and prior to implementation of AB 2418 (2021-22), the Justice Data Accountability and Transparency Act. The latter statute sought to mandate that agencies collect and transmit specified data, including data on the race of accused persons and victims, to the Department of Justice. These data collection and transmission requirements were set to commence in 2027. However, AB 2418 conditioned the operation of its provisions upon an adequate appropriation by the Legislature. As of the time of this Report's issuance, there has not been an appropriation to this effect. As set forth in Part VI, the Task Force's recommendations to the Legislature include full funding of AB 2418 and any further data collection, extraction, analysis, and dissemination that is needed for the Racial Justice Act to be implemented and applied without limitation. An unfunded or otherwise unfulfilled mandate will gravely undermine the law and risk the persistence of unacceptable racial bias in the criminal legal system.

Overall, in the absence of requirements like those set forth in AB 2418, there appears to be a large amount of discretion, and likewise variability, in what data elements are collected across California District Attorneys Offices, Superior Courts, and select City Attorney's offices and between counties. This lack of consistency and absence of data on key variables could present substantial challenges to presenting and evaluating claims of racial discrimination in the criminal justice system, and could increase the difficulty of sustaining claims of Racial Justice Act violations in some California counties more than others.

Bunche Center Report on community engagement and input through Community Listening Sessions

Chapter 32: Bunche Center Report

The Task Force engaged the Ralph J. Bunche Center[356] at the University of California, Los Angeles, to design and implement a plan in which it could facilitate the collection and documenting of important community perspectives independent of the formal meetings of the Task Force, through: (1) holding community listening sessions; (2) collecting oral histories and personal testimonies; and (3) administering surveys. The fundamental goal of this work was to give the community voice in the ongoing statewide conversation concerning reparations – to create space for communities to express their concerns, desires, wishes, and experiences – and to provide the Task Force and the Legislature with additional community input as it explored and deliberated reparations proposals.

Through this multi-pronged approach to community engagement, the Bunche Center focused its data collection on four areas deemed important by the Task Force: (1) Identifying forms of race-based harm through those who experienced it; (2) gauging support for reparations; (3) determining support for different types of reparations; and (4) determining perspective from the wider impacted community regarding eligibility for reparations.

An analysis of the results of the community listening sessions, personal testimonies, oral histories, and statewide survey revealed the following:

- There are five major types of racially-driven harm that communities consistently identified. Study participants named lack of educational opportunity, discriminatory policing and law enforcement, economic disenfranchisement, housing inequality, and healthcare disparities most often when asked about racially-driven harms that Black people experience. The participants also consistently cited the following harms: food inaccessibility, employment and workplace disparities, inadequate business support infrastructure, the cycle of municipal disinvestment in Black neighborhoods, and displacement.
- There is broad community support for reparations. The survey found that over 60 percent of Californians support some form of reparations, including financial compensation, community investments, educational opportunities, investments for Black businesses and organizations, and land and property ownership. Furthermore, community listening session participants overwhelmingly supported reparations initiatives.
- While a majority of Californians support reparations measures, they are divided on which types should be used. The survey queried respondents on the specific forms of reparations to be applied and found that California residents are largely in support of the three primary types of reparations measures – direct cash payments (66 percent of respondents); monetary reparations without cash measures (77 percent); and non-monetary reparations, such as an apology or monuments (73 percent). Support was

[356] Ralph J. Bunche (1903-1971) was the first African American and the first person of color to win the Nobel Peace Prize, an honor he received in 1950 in recognition of his successful mediation of the Armistice Agreements between Arab nations and Israel. It was the first and only time in the long history of the Middle East conflict that peace agreements were signed by all of the nations involved. For almost two decades, as Undersecretary General of the United Nations, Bunche was celebrated worldwide for his contributions to humanity, particularly in the areas of peacekeeping, decolonization, human rights and civil rights. UCLA's Center for African American Studies was renamed after Bunche in 2003, in commemoration of the centenary of his birth.

consistently highest for remedies incorporating monetary measures, but without direct cash payments, among all Californians, including Black participants. The community listening sessions produced similar results except that direct cash payments were the most frequently mentioned form of reparations followed by other monetary measures.

- There is a lack of consensus about who should be eligible for reparations. Community members consistently expressed concern regarding who would be eligible for reparations, generally dividing into two camps: those who supported reparations based on lineage claims to ancestors enslaved in America and those who supported reparations for all Black people, regardless of lineage, to address harms suffered by the community as a whole.

The Task Force urges the Legislature, in formulating a state reparations statute or program, to ensure that the widest possible community engagement takes place, in order to ensure that what is enacted in carrying out the recommendations of this report reflect the input of the community intended to be served by this initiative.

Concept or Themes for Curriculum Built Around the Task Force's Report and other Recommendations for Educating the Public [Gov. Code, § 8301, subd. (b)(2)]

Chapter 33: Educating the Public

In enacting AB 3121 the Legislature directed the Task Force to recommend appropriate ways to educate the California public regarding the Task Force's findings. (Gov. Code, § 8301.1, subd. (b).) To achieve this goal, the Task Force sought out the expertise of academic experts to develop a concept for educating the public through a curriculum specifically designed to make the Task Force's work accessible. The Task Force recommends that the Legislature adopt the concepts developed by these experts and fund the implementation of such a curriculum, as well as the delivery of this curriculum in schools in California. Additionally, in order to facilitate ongoing conversations in communities across California that will hopefully follow the publication of this report, the Task Force has developed materials included within this chapter that will help answer some questions about reparations from those who might be skeptical about the need or lawfulness of a program of reparations.

PART X (Chapter 34) or Appendix: Compendium of Statutes and Case Law that Contributed to an Unjust Legal System (prepared by consulting experts Dr. Marne Campbell and Eric Miller) [reference for recommendations covered in PART VI, pursuant to Gov. Code, § 8301, subd. (b)(3)(C)]

The Legislature also directed the Task Force to address how California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated. (Gov.

Code, § 8301.1, subd. (b)(3)(C).) To assist with this component of the Task Force's mandate, the Task Force engaged Dr. Marne L. Campbell, Associate Professor and Chair of African American Studies and Loyola Marymount University, and Eric Miller, Professor of Law at Loyola Marymount University.

Dr. Campbell and Mr. Miller conducted an exhaustive summary of the legal history of Black people in California, and prepared a compendium of cases and laws that subjected and continue to subject Blacks to inferior legal status. The list included as part of this chapter includes only a subset of the innumerable court cases in which Black people had their rights infringed in the state and federal justice systems. The cases cited here were tried either in the California Supreme Court or the United States Supreme Court. They represent Black people's struggle for equality in California, dating back to the earliest years of statehood. In addition to these cases, the compilation includes laws, policies, state constitutional amendments, propositions, and other legal codes essential for understanding how California's legal history shaped race relations. This compilation, therefore, serves as additional evidence of California's history of discrimination against black people and how, even with legal gains, black people have been fighting an uphill battle since the state's accession into the United States.

Beginning with the 1850 State Constitution, California enacted laws denying black people's rights while creating and maintaining white privilege and supremacy. As the State Constitution began taking shape, lawmakers in California created a racial hierarchy that reinforced enslavement and denied black people freedom and citizenship rights. California even adopted a Fugitive Slave Law in 1852 that would return runaway slaves to their owners. Free Black people throughout the state were forced to live along the margins of society and were granted only the most menial economic opportunities. Black people throughout the state were denied voting and homesteading rights, could not testify in court, and were not allowed to enroll their children in the public school system. Black people were also prevented from inheriting property, thereby stifling economic stability, not to mention eliminating the potential for accumulating generational wealth.

The racial hierarchy was reinforced and broadened in the 1879 State Constitution. Many laws were expanded to clarify white men's rights and privileges. And, as black people were granted certain legal rights by the Reconstruction Amendments to the US Constitution (13th, 14th, and 15th), California solidified racial differences and white privileges by excluding black people and other people of color from public participation. Even though African Americans were given the right to vote by the 15th Amendment to the US Constitution, for example, Black people in California were often prevented from voting because they had to prove citizenship under federal naturalization laws and establish residency in the state of California to be eligible. It took a few more decades before black people could vote, and by then, they had little to no political representation in local, state, or national politics.

The compendium is divided thematically based on five major AB 3121 Task Force Report issues. They are Housing, Employment, Education, Political Participation, and an Unjust Legal System. Even when black people made gains in certain areas, full equality has not been accomplished even today.

The Fair Employment Practice Act (FEPA) was passed in 1959. It intended to eliminate discrimination in employment. In *Alcorn v. Anbro Engineering, Inc*. (1970) 2 Cal.3d 493, 496-97, the Court determined that FEPA was meant to eliminate discrimination in hiring decisions, but not on the job. This decision only contributed to the mistreatment of workers by their employers, such as being the subject of the extensive use of racial epithets, which caused tremendous mental and physical stress. Other issues black people faced include, but are not limited to, exclusion from labor unions, being denied job contracts, and being prevented from seeking damages for violations of laws meant to end discrimination. Often, court decisions would make progress for black workers and business owners but worsen the situation by creating loopholes that subjected them to more discrimination. In addition to the emotional and mental distress, many of the decisions discussed in this section resulted in further economic impairment for black people.

African Americans in California were also excluded from many educational opportunities, beginning in the 1870's when the state established common or public school systems (see *Ward v. Flood* (1874) 48 Cal. 36). Black people continued fighting to end discrimination in education throughout the 20th century. Still, as they made gains, new hurdles were placed before them.

Several of the rulings discussed in this section suggest that efforts to desegregate were taking root, but similar to the employment and housing contexts, people and local governmental entities found ways to avoid doing so. For example, in *National Ass'n for Advancement of Colored People v. San Bernardino City Unified School Dist.* (1976) 17 Cal.3d 311, the California Supreme Court ruled that the state had a "constitutional obligation" to take the necessary steps toward desegregation. This did not stop people from creating predominantly white school districts, as we learned in *Fullerton Joint Union High School Dist. v. State Bd. of Ed*. (1982) 32 Cal.3d 779. The Fullerton High School District fought to block Yorba Linda from forming a separate district that would erase attempts to desegregate, a similar tactic used throughout the country after *Brown v. Board of Education* (1955) 349 U.S. 294. *Brown* addressed decades of legal segregation that separated educational and public facilities. But, even after *Brown*, schools nationwide closed their doors, and white parents sent their children to private schools to avoid integrating with black students.

African Americans in California also faced tremendous political battles from the state's inception. California's first governor, Peter Burnett, led an unsuccessful campaign to prevent black people from living in the state altogether, a goal he unfortunately successfully achieved in Oregon. He instead focused on ensuring that Black people in California had no political rights. Initially, Black people were not considered state citizens or allowed to vote or run for office.

Only white men were considered citizens of the State of California. It was not until 1879 that the state constitution was changed to include men of African descent. But by then, white men held key positions of power in California and Black people were consigned to the margins of society. Establishing this kind of power dynamic enabled the continued propagation of an inherently discriminatory system.

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[i] Pres. Proc. No. 95, (Jan. 1, 1863); U.S. Const. amend. XIII, § 1.
[ii] The Reconstruction Amendments' Debates: The Legislative History and Contemporary Debates in Congress on the 13th, 14th, and 15th Amendments (Alfred Avins Ed., 1967), p. 122.
[iii] The Civil Rights Cases, (1883) 109 U.S. 3, 20.
[iv] Kolchin, American Slavery: 1619 – 1877 (1993) (Kolchin), at pp. 17 – 18; Kendi, Stamped from the Beginning: The Definitive History of Racist Ideas in America (2016) (Kendi) p. 38-41.
[v] See generally Chapter 3 Political Disenfranchisement
[vi] See generally Chapter 3 Racial Terror
[vii] See generally Chapters 2. Enslavement; 3. Racial Terror; Chapters 4. Political Disenfranchisement; 5. The Root of Many Evils Residential Segregation; 6. Separate and Unequal Education, 8. Pathologizing the Black Family; 9. Control Over Spiritual Creative and Cultural Life; 10. Stolen Labor and Hindered Opportunity; 11. An Unjust Legal System; 12. Harm and Neglect Mental Physical and Public Health
[viii] See generally Chapters 6. Separate and Unequal Education; 7. Racism in Environment and Infrastructure; 8. Pathologizing the Black Family; 10. Stolen Labor and Hindered Opportunity; 11. An Unjust Legal System; 12. Harm and Neglect Mental Physical and Public Health; 13. The Wealth Gap.
[ix] See generally Chapter 12. Harm and Neglect Mental Physical and Public Health;
[x] Chapter 2, section V.B, see also Baptist, The Half Has Never Been Told: Slavery and the Making of American Capitalism (2014) (Baptist) at p. xxiii.
[xi] Chapter 2, section V.B.
[xii] Baptist, *supra*, at p. xxiii.
[xiii] Chapter 2, Section IV.C.
[xiv] Baptist, *supra*, at pp. 9 – 11. For an in depth discussion, see Chapter 2, Section IV.C.
[xv] Presidents who owned enslaved people while in office included George Washington, Thomas Jefferson, James Madison, James Monroe, Andrew Jackson, John Tyler, James K. Polk, and Zachary Taylor. See Rosenwald, *Slave-owning presidents become targets of protestors* (June 3, 2020) Washington Post <https://www.washingtonpost.com/history/2020/06/23/slave-owning-presidents-become-targets-protesters/> (as of Jan. 24, 2022).
[xvi] Weil and Adrian Blanco, *More than 1,700 Congressmen Once Enslaved Black People. This Is Who They Were, and How They Shaped the Nation* (Jan. 20, 2022) Washington Post <https://www.washingtonpost.com/history/interactive/2022/congress-slaveowners-names-list/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F35b8b59%2F61dc6b2f9d2fda14d7e8b144%2F596c43ceade4e24119c923f2%2F8%2F72%2F61dc6b2f9d2fda14d7e8b144> (As of January 24, 2022) (Weil and Blanco).

[xvii] Ericson, *The Federal Government and Slavery: Following the Money Trail* (Spring 2005) 19 Stud. in Amer. Pol. Dev. 107.
[xviii] *Id.* at pp. 112 – 115.
[xix] Pritchett, Quantitative Estimates of the United States Interregional Slave Trade, 1820 – 1860 (June 2001) 61 J. of Econ. Hist. 474.
[xx] Ball, Slavery in the United States: A Narrative of the Life and Adventures of Charles Ball, a Black Man (1837), p. 69.
[xxi] Rosenthal, Reckoning with Slavery: How Revisiting Management's Uncomfortable Past Can Help Us Confront Challenges Today (2021) 20 Academy of Management Learning & Ed. 467-472.

[xxii] Baptist, *supra*, at pp. 116-124. For an in depth discussion of the horrors suffered by enslaved people, see Chapter 2, section V
[xxiii] Berry, The Price for their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation (2017) pp. 78 – 83; Douglass, Narrative of the Life of Frederick Douglass, An American Slave. Written by Himself (1845), pp. 3 – 4.
[xxiv] Thomas Jefferson, letter to Joel Yancey, Jan. 17, 1819 (as of May 9, 2022)
[xxv] U.S. Census of 1860, Introduction, p. vii (as of May 9, 2022)
[xxvi] Kendi, *supra*, at pp. 38–41.
[xxvii] Kendi, *supra*, at p. 48.
[xxviii] Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (1975) (Morgan), at pp. 369, 385 – 386.
[xxix] Commonwealth of Virginia Legislature, Act I. *An act about the casual [sic] killing of slaves* (1669) Act I. (as of Apr. 24, 2022).
[xxx] Berlin, Many Thousands Gone: The First Two Centuries of Slavery in North America (1998), pp. 123 – 124 (Berlin).
[xxxi] *An act concerning Servants and Slaves XXXIV* (1705), Records of the American Colonies, p. 459 (as of Apr. 24, 2022).
[xxxii] *See e.g.,* US Constitution, Article I, Section 2; Kolchin, *supra*, at pp. 17 – 18, *Dred Scott v. Sandford*, 60 U.S. 393; Darlene Goring, *The History of Slave Marriage in the United States*, 39 J. Marshall L. Rev. 299 (2006) (Abolitionist William Goodell described the way that American law treated the families of enslaved people in 1853 as: "The slave has no rights. Of course, he or she cannot have the rights of a husband, a wife. The slave is a chattel, and chattels do not marry. 'The slave is not ranked among sentient beings, but among things;' and things are not married."); Campbell, Making Black Los Angeles: Class, Gender, and Community, 1850-1917 (2016). (The 1850 and 1860 federal censuses did not list most enslaved people by name, as they did for white Americans, but en masse in "slave schedules.")
[xxxiii] See Chapter 3 and 4.
[xxxiv] Petrella and Loggins, "*This is a Country for White Men": White Supremacy and U.S. Politics* (Jan. 5. 2017) Black Perspectives, African American Intellectual History Society <https://www.aaihs.org/this-is-a-country-for-white-men-white-supremacy-and-u-s-politics/> (as of March 15, 2022).
[xxxv] See Chapters 2, 4, 6, 10, 11
[xxxvi] Smith, Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California (Feb. 2011) 80 Pacific Hist. Rev. 33
[xxxvii] Smith, Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction (2013), p. 8 (Freedom's Frontier).
[xxxviii] *Id.* at pp. 40, 257.
[xxxix] Rohrbough, Days of Gold: The California Gold Rush and the American Nation (1997) at pp. 136 – 138.
[xl] Baur, *The Health Factor in the Gold Rush Era* (Feb. 1949) 18 Pacific Hist. Rev. 97 – 105.
[xli] See e.g., *A Slave Flogged in San Jose* (Feb. 16, 1850) Daily Alta California, p. 2, col. 3; *Slaveholding in California* (Aug. 30, 1850), Liberator, p. 140, col. 5.
[xlii] An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, California Statutes, at 67–69, Freedom's Frontier, *supra*, at pp. 67-68.
[xliii] Freedom's Frontier, *supra*, at pp. 71 – 72.
[xliv] Waite, *Early California lawmakers also preached #resistance—but against immigration* (Aug. 3, 2018) Los Angeles Times < https://www.latimes.com/opinion/op-ed/la-oe-waite-california-14-amendment-20180803-story.html> (as of Jan. 26, 2022); Cottrell, It took 92 years for California to ratify the 15th Amendment (June 26, 2020) The Union < https://www.theunion.com/news/steve-cottrell-it-took-92-years-for-california-to-ratify-the-15th-amendment/> (as of March 15, 2022)
[xlv] See Equal Justice Initiative (EJI), Lynching in America: Confronting the Legacy of Racial Terror (2015), p. 3 <https://time.com/wp-content/uploads/2015/02/eji_lynching_in_america_summary.pdf> (as of Oct. 20, 2021) (EJI 2015).
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