

REPARATIONS FOR U. S. AFRICAN AMERICANS

California Task Force to Study and Develop Reparation Proposals for African American

I am Mary Frances Berry, Geraldine Segal Professor of American Social Thought, History and Africana Studies Emerita, University of Pennsylvania. As background to any California reparations discussion, “Race, Citizenship and the Colonial Roots of California,” by Camille Suarez (diss. University of Pennsylvania (2019) Is essential reading. It focuses on the displacement and elimination of indigenous people, and the perpetuation of conflict between Californios/Mexicans, Native Americans, black Americans, Chinese immigrants under the state’s first Constitution.

African-descended peoples have demanded reparations from former colonial powers, governmental agencies, and private institutions and corporations that sanctioned or engaged in slavery, slave trading, convict leasing, redlining, and other forms of economic exploitation and discrimination. In the past successful reparatory justice campaigns have resulted in the Germany’s compensation to Jews in Germany and Israel following the Holocaust and World War II; and to the U.S. federal government’s payment of reparations to Japanese Americans who were removed from their homes and placed internment camps in the far western states. When the Japanese military attacked the Aleutian Islands in 1942, the U.S. military ordered the evacuation and internment of the Aleuts in “unheated, crowded barracks and vacant buildings.” Historian Haunani-Kay Trask found that given the poor treatment and “inadequate health care... 10 percent or more of the Aleuts died in captivity.” Under the terms of the Civil Liberties Act of 1988, a formal apology was included, and Japanese American internees received \$20,000 and Aleut internees received \$12,000. However, in the case of the Native Hawaiians, following invasion and occupation in 1893, the U.S. government never recognized the indigenous peoples’

entitlement to public lands or their right of self-determination; and they are still seeking reparations and recognition as a “native nation” similar to the “American Indian nations.”ⁱ

In the name of reparatory justice, the internationally recognized “principle” of “morally just acquisitions and transfers” must be applied to the conditions for African Americans. “For whatever is acquired or transferred by morally just means is itself morally just,” Corbett pointed out, “and whatever is acquired or transferred by morally unjust means is itself morally unjust.”ⁱⁱ Reparatory justice requires restitution for the loss of personhood, property and lands. It includes damage done to people and places in relentless pursuit of financial profit. State and federal governments and private individuals and group efforts to provide reparations can include harm done by any institution. Beginning in 2012 in the United States, a reparatory justice campaign was launched against the major pharmaceutical companies for creating and profiting from the devastating opioid epidemic.

REPARATIONS FROM “BIG PHARMA”

The attorneys general in forty-eight states sued the pharmaceutical makers who sold highly addictive opioid drugs in large quantities in pursuit of huge financial profits. Purdue Pharma, the maker of the pain medication OxyContin, has been the subject of numerous lawsuits because it downplayed the addictive nature of the drug and lied about its benefits. Privately-owned by the Sackler family, prosecutors found that Purdue Pharma’s marketing agents encouraged physicians to prescribe the drug in higher and higher doses leading to a public health crisis. Then California Attorney General, Xavier Becerra, declared “Purdue [Pharma] and the Sacklers traded the health and well-being of Californians for profit and created an unprecedented national public health crisis in the process.” OxyContin came on the market in 1996 and

according to the U.S. Centers for Diseases and Prevention, between 1999 and 2017 nearly 218,000 Americans died from overdoses from prescription opioids.ⁱⁱⁱ

The broad-based damage created by the opioid crisis in the United States has been documented in numerous newspaper and magazine articles, scholarly articles, and investigative reports.^{iv} Purdue Pharma sought to address this problem with the drug OxyContin. However, the Sacklers' and other pharmaceutical manufacturers' greed led to an opioid epidemic that devastated and destroyed thousands of lives and communities.^v

The lawsuits filed by private individuals and government officials against "Big Pharma" are manifestations of an ethos of reparatory justice. Not unlike the transatlantic slave traders and the slaveholders in North and South America before 1865, the pharmaceutical companies engaged unscrupulous activities and practices to increase their profits and had deadly consequences and reparatory justice is now being sought.

REPARATIONS SUPERFUND AND STUDENT LOAN DEBT

The problem of the huge student debt is not just about young people taking out tens of thousands of dollars in loans to pursue a college degree or professional certification. The federal government created policies that facilitated the financial corruption in the student loan practices particularly at proprietary schools, "technical institutes," and for-profit "colleges" and "universities" over the last three decades. Many have pointed out that the U.S. Department of Education's policy allowing these online diploma mills to receive up to 90 percent of their annual income from the federally backed student loan funds, fueled the student loan debt crisis. The for-profit programs' marketing agents received huge bonuses for signing up young people eligible for federally funded student loans. In addition, these former students have been

victimized doubly because the Department of Education has refused to forgive the loans, even at schools and programs subsequently closed by federal officials.^{vi}

The disparities and disadvantages in student loan debt require repair because in many instances the students have been doubly damaged and not only have, they gone into debt, in entering the employment market with these “online degrees” from uncertified programs rarely advanced their professional careers. And the disproportionate debt owed by African Americans is the result of young people being targeted by educational recruiters hired by these for-profit schools. There was little oversight from educational or government agencies who instituted these practices and billions of dollars in federal funds flowed and continues to flow into the coffers of the owners of the for-profit online schools, while student loan debt cripples the financial future of tens of thousands of young people.^{vii}

In pursuit of reparatory justice, the twenty-first century, individual philanthropists have agreed to assume the student loan debt of graduating students at Morehouse College and medical students at New York University, the establishment of a California “Reparations Superfund” would accept financial contributions to intervene on a larger scale and provide alternative ways to discharge student loan debt for individuals and specific groups. Over the last few years, several religious and higher educational institutions have acknowledged that much of the wealth accumulated in the eighteenth and nineteenth centuries came from slavery and slave trading. Oftentimes spurred by current student activists, these schools have established “reparations funds” that will make available financial resources for the education of African-descended students. At Georgetown University the student body voted to contribute to the university’s reparations fund through their student fees; while at Virginia Theological Seminary, students unearthed the ties to slavery and slave trading and the trustees agreed to establish a reparations

fund aimed at African American students, providing scholarships and other financial resources. This is an appropriate subject for investigation to determine whether California institutions are complicit and if so to remedy any exploitation of students. ^{viii}

In the twenty-first century, no student of African descent should graduate in debt from colleges and universities whose great wealth and endowments can be traced indirectly or directly to slavery and slave trading in the eighteenth and nineteenth century or to segregated institutions since slavery. The goal of student activists should be the establishment of a “reparations fund” on each campus with the objective of having African-descended students leave debt-free. At the public state universities, reparations funds should be established to address the under-enrollment of students of color compared to their percentage in the state population. In Wisconsin, for example, African Americans are 6 percent of the population, but in Madison at the flagship university in the 2018-19 school year, there were less than 1,000 black students out of a total enrollment of 35,000. The goal of the reparatory justice campaign is to address this racial disparity in enrollment in publicly-funded state universities and colleges. ^{ix} Student activists at state universities should demand that a non-profit university foundation be established to serve as the “reparations fund” that would use the financial resources provided by the university, state legislature, and philanthropy to increase the number and percentage of African-descended students enrolled and to insure that they graduate debt free.

At the same time, the Reparations Superfund would focus on eliminating loan debt by providing scholarship funds for students from California enrolled at the historically black colleges, at community colleges and four-year private colleges, and other institutions of higher education where reparations funds have *not* been established. And whereas the reparations funds established at public state universities would seek out financial contributions from that region,

the Reparations Superfund would seek donations from national and multinational corporations incorporated in the state in question and from specific industries that have done damage to children and students of color. For example, the corporations that make up the testing industry in the United States should be targeted to provide substantial compensation for the damage that the tests have done to the education and careers of California's African Americans historically and currently.^x

REPARATIONS FROM THE TESTING INDUSTRY

It would be difficult to calculate the magnitude of the damage done by the movement for “mental testing” and the proliferation of “intelligence tests” to African-descended men, women, and children, in the twentieth century. Whereas the original “Binet-Simon Intelligence Test” was created in the early 1900s to identify “feeble-minded” children in the French public schools, when educators and psychologists translated and introduced them in U.S. public schools, the test results were used to justify racial segregation and discrimination against students and teachers of color. Oftentimes the justification for providing African Americans “separate and unequal” public schooling was based on their performance on “intelligence” tests. The argument was made that it would be a waste of (white) taxpayers’ money to spend the same amounts on the schooling of black and white children.^{xi}

Beginning in the 1930s with the assistance of NAACP attorneys, African American public school teachers who were paid less than comparably trained and experienced white educators in southern school districts filed successful lawsuits to obtain “salary equalization.”^{xii} However, with the introduction of the National Teachers’ Examination (NTE) in the early 1940s,

legal scholar Scott Baker found that the “new merit system” was based on test results, and 84 percent of the white teachers who took the NTE were placed at the highest salary rank, and 80 percent of the black teachers were in the lowest rank. In two separate court rulings, in *Turner v. Keefe* (1945) and *Reynolds v. Board of Education of Dade County, FL* (1945), the new merit system was upheld because no evidence was presented to show that the new ratings system was applied in a racially discriminatory fashion. But there has been no evidence that teachers’ scores on the NTE could predict performance in the classroom.^{xiii}

The debt owed to black students and teachers in California and across the United States from the testing industry is enormous, especially since the introduction of “high stakes testing” following the implementation of the Bush administration’s “No Child Left Behind” program and the funding for “Race to the Top” during the Obama years. The Educational Testing Service, the Pearson Corporation, and other testing companies spent millions lobbying the U. S. Congress to require more and more testing and they reaped billions of dollars in profits. And in California and school systems throughout the country there has been the widespread substitution of courses and instruction in the arts, music, science, history and other subjects not included in the high stakes testing with hours upon hours devoted to “test preparation.”^{xiv}

The increasing classroom time spent on “test prep” and the amount of testing taking place has spawned the “Opt-Out” movement in which tens of thousands of middle- and upper-class parents requested that their children not take the “standardized tests” because they do not measure the things, they sent their children to school to learn. African American and other children of color have been *the most harmed* by “the testing charade” and they too need to boycott - “Opt out” - of the standardized testing until the testing corporations have paid reparations for the damage they have done in the past and currently to African Americans and

other children of color.^{xv} Reparations payments made to individual school districts from the testing corporations should be used to support alternative educational spaces and programs that do not depend on standardized testing to achieve mastery. Indeed, these would be places where the educators are held accountable for their practices and *participate in* the creation of specific forms of evaluation.

The demands for reparations to repair the damage done in the past and currently to African Americans and other people of color by colleges and universities that amassed great wealth from slavery and slave trading should be joined by campaigns mounted by those who have been damaged by the greedy and fraudulent practices of the pharmaceutical industry, the petrochemical companies, the for-profit online schools, and the testing industry. The reparatory justice movement is needed to bring about a redistribution of the wealth in the United States and to repair the damage that corporate capitalists and federal and state government have done to individuals, groups, and communities in the past and present.

In 1988 Imari Obadele and Adjoa Aiyetoro with other black nationalists founded N’Cobra the national coalition of blacks for reparations in America. N’Cobra initiates legislation, publishes a newsletter and sponsors national and regional conferences and has its own website. Harvard law professor Charles Ogletree became counsel for the organization ¹³

As a result of the Japanese American redress law, in 1989 Congressman John Conyers of Detroit introduced the precursor of the current H. R. 40, his own bill to establish a commission to consider reparations for African Americans. Conyers had long been urged by Christopher Alston and “reparations” Ray Jenkins, a self-employed businessman and community activist who led the cause after Alston’s death, to introduce legislation. Jenkins promoted the

idea in churches, community meetings and at the NAACP and wherever people gathered. people “laughed” at first at his persistent devotion.¹²

in recent years, there have been lawsuits against the federal government so far confounded by sovereign immunity like the cotton tax case. turning against suing the federal government, a group of lawyers who support reparations have targeted insurers or employers of slaves. the most important work is being done by Deadria Farmer-Paellmann who has sued Aetna insurance company, Fleet Boston financial and the CSX railroad and Wachovia among other companies. The claims allege that these companies conspired with slave traders and illegally profited from slavery. Fleet Boston is the successor to Providence Bank, founded by Rhode Island businessman and slave trader John Brown. Even if they do not win these cases the advocates hoped the public relations impact might influence the passage of at least the study commission proposed by Congressman Conyers.¹⁴

Deadria Farmer-Paellman has successfully gained apologies from several companies including Wachovia bank, which in June, 2005 conceded that they had put hundreds of slaves to work on railroads and accepted slaves as collateral for loans in the 1800. they have agreed to funding scholarships as reparation. Ruth Simmons at Brown appointed a study commission on the role the university played in the trade and slavery but disavowed any interest in using the information for reparations.

Reparationists also have succeeded in having resolutions passed in city councils in Los Angeles, Chicago, Detroit and other cities requiring companies that do business with the city to disclose profits made from slavery. Chicago city councilwoman Dorothy Tillman led the campaign for local legislation and during black history month 2002, the New York city council took up the Queen Mother Moore reparations resolution for descendants of enslaved Africans.

lawyers hoped the data collected as a result of these resolutions would provide information to strengthen the reparations claims in court or in the congress.¹⁵

Focusing on other historical wrongs against African Americans, a legal team of African American attorneys including Johnnie Cochran, Willie Gary, one of the most successful plaintiffs' negligence lawyers, and Harvard law professor and n'Cobra counsel Charles Ogletree filed a reparations suit on behalf of 126 living survivors of the 1921 Tulsa, Oklahoma riot. the oldest, among their clients was 102 and the youngest 81 in 2003. the argument presented is that state and city officials abetted the actions of a rampaging white mob that burned and looted much of Tulsa's black community. the mob killed as many as 300 people.¹⁶

A historical study of the Tulsa riot led the state to establish a commission to make recommendations for a response. the Commission reported two years ago in favor of reparations for the victims. however, the legislature has refused to enact legislation for the payment of compensation. the "dream team" lawyers used the fact-finding of the Commission as a basis for a damage claim. they hoped that a victory would establish a legal basis for other reparations claims based on government culpability for the abuse or exploitation of African Americans. however, to date they have lost in the courts.¹⁷

Hopefully, the federal government will assume a responsibility under HR 40 to seriously consider reparations. In the meantime, state and local efforts are proceeding apace. In the twenty-first century, reparations movements are a promising way to address the extreme economic inequality that currently exists in the United States and other developed and developing countries.

*This submission is based upon Mary Frances Berry, VP Franklin and Sundiata Cha-Jua, ed., *Reparations and Reparative Justice*, (forthcoming University of Illinois Press)

ⁱ Haunani[Kay Trask, "Restitution as a Precondition of Reconciliation: Native Hawaiians and Indigenous Human Rights," in *Who Should Pay? Slavery and the Raging Debate on Reparations*, ed. Raymond A. Winbush (New York: Amistad/ Harper Collins, 2003), quote on 34.

ⁱⁱ J. Angelo Corlett, "Reparations for African Americans," in *Redress for Historical Injustices in the United States: On Reparations for Slavery, Jim Crow, and Their Legacies*, ed. Michael T. Martin and Marilyn Yaquinto (Durham, NC: Duke University Press, 2007), quote on 180.

ⁱⁱⁱ Berkeley Lovelace, "Nearly Every U.S. State Is Now Suing OxyContin-Maker Purdue Pharma," *CNBC*, June 4, 2019.

^{iv} Listed in its bibliography are hundreds of sources on the opioid epidemic, see Beth Macy, *Dopesick: Dealers, Doctors, and the Drug Company That Addicted America* (New York: Little Brown, 2018), 313-363.

^v *Ibid.*, quote on 20-21; see also Jonathan M. Metzler, *Dying of Whiteness: How the Politics of Racial Resentment Is Killing America's Heartland* (New York: Basic Books, 2019).

^{vi} Democrats in Congress pressed the Education Department to discharge the loans of defrauded students, see Erica Bacon, "After Months of Delay, [Betsy] DeVos Touts Limited Student Loan Forgiveness," *Roll Call*, December 12, 2019.

^{vii} Zack Friedman, "Why 100,000 People Never Got Student Loan Forgiveness," *Forbes Magazine*, December 19, 2019.

^{viii} For a summary of the formation of reparations funds at Georgetown and other universities, see Carolyn Thompson, "Reparations Mark New Front for U.S. Colleges Tied to Slavery," *Times Picayune/New Orleans Advocate*, December 15, 2019.

^{ix} Julie Bosman, et al, "In a Homecoming Video Meant to Unite Campus, Almost Everyone Was White," *New York Times*, January 1, 2020. While African American students at the University of Wisconsin participated in making the video, they were not included in the final version.

^x V. P. Franklin, "Introduction: African Americans and Movements for Reparations: From the Ex-Slave Pensions to the Reparations Superfund," *Journal of African American History* 97 (Winter-Spring 2012): 1-12.

^{xi} V. P. Franklin, "Black Social Scientists and the Mental Testing Movement, 1920-1940," in *Black Psychology*, 2nd Edition, ed. Reginald Jones (New York: Harper and Row, 1980), 201-15.

^{xii} John A. Kirk, "The NAACP Campaign for Teachers' Salary Equalization: African American Women Educators and the Early Civil Rights Struggle," *Journal of African American History* 94 (Fall 2009): 529-552.

^{xiii} Scott Baker, "Testing Equality: The National Teachers' Examination and the NAACP's Legal Campaign to Equalize Teachers' Salaries in the South," *History of Education Quarterly* 35 (Winter 1996): 49-64; Michael Fultz, "The Displacement of Black Educators Post *Brown*: An Overview and Analysis," *History of Education Quarterly* 44 (Winter 2004): 11-45; and V. P. Franklin, "The Tests Are Written for the Dogs: *The Journal of Negro Education*, African American Children, and the Intelligence Testing Movement in Historical Perspective," *The Journal of Negro Education* 76 (Summer 2007): 216-29.

^{xiv} Diane Ravitch, *The Death and Life of the Great American School System: How Testing and Choice Are Undermining Education* (New York: Basic Books, 2010); and *Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools* (New York: Vintage Books, 2013).

^{xv} Daniel Koretz, *The Testing Charade: Pretending to Make Schools Better* (Chicago, IL: University of Chicago Press, 2017).