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REPARATIONS FOR SLAVERY AND POST-SLAVERY RACIAL DISCRIMINATION IN THE UNITED STATES: INCORPORATING INTERNATIONAL HUMAN RIGHTS STANDARDS INTO DOMESTIC LAW

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ABSTRACT

The pursuit of reparations for slavery and post-slavery racial discrimination in the United States is associated with a range of grassroots, civil, and political initiatives. Some are anchored in Civil Rights activism and domestic law, others in the Black nationalist tradition, which has consistently drawn on the language of universal human rights and international law of repair. This paper discusses the incorporation of international human rights standards into three interconnected realms of politics: reparations for slavery litigation, Black nationalist reparations discourse and activism, and reparations legislation. These efforts reveal an awareness of reparations precedents in the post-World War II period, at home and abroad, as well as a determination to frame historical grievances and reparative justice demands in terms of evolving human rights standards, particularly with respect to the crime of genocide, crimes against humanity, and 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 (2005). My analysis of H.R. 40, the historic federal reparations study bill (1989–today), and the California Assembly Bill 3121, which passed into law in 2020, shows that both pieces of legislation exemplify what Harold Hongju Koh calls the transnational legal process—a process that results in the internalization of human rights standards into domestic law (Koh 2005: 131) —marking a shift away from America's long tradition of legal exceptionalism and exemptionalism.

Keywords: California Reparations Task Force, genocide, Holocaust restitution, H.R. 40, international human rights law, reparations for slavery, transnational legal process.

In the last two decades, the Black reparations struggles and discourses in the United States have moved from the political fringes towards the mainstream. Reparations advocates have used domestic law and—despite the long tradition of US legal exceptionalism—instruments of international human rights law to frame historical

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grievances and make reparative justice demands on behalf of African Americans. This paper offers a historical overview of the Black reparations movement.[2] While acknowledging a series of inspiring domestic post-Civil War reparations struggles, the paper's primary focus is on selected prominent slavery reparations initiatives from the post-World War II period onwards. These include attempts at incorporating international human rights standards into three interconnected realms of politics: Black nationalist reparations discourse and activism, reparations litigation and reparations legislation for slavery and post-slavery racial discrimination. A close examination of these initiatives reveals that Black reparations activism and advocacy have been fueled by the redress movements at home (the Japanese Redress Movement and Native American tribal claims) and abroad (post-apartheid South Africa, Canada, the Caribbean, and African countries), the Holocaust restitution battles fought in US courts in the 1990s, and, importantly, the evolving United Nations instruments regarding remedy and reparation for crimes against humanity and the crime of genocide. Although this paper examines the legal dimension of Black reparations, it does recognize that reparations for slavery and post-slavery discrimination are a political movement. Its strong grassroots presence and commitment to transformative change have been crucial to rallying public support for redress where the traditional legal process has fallen short.

The US has a tradition of legal exceptionalism, a belief in "the distinctive rights culture" (Ignatieff 2005: 14) and exemptionalism regarding human rights law. In the post-World War II period, this manifested itself in (1) delays with the ratification of the United Nations conventions, such as the 1948 Genocide Convention (ratified by US in 1988), the 1966 International Covenant on Civil and Political Rights (not ratified by US until 1992), the 1984 Convention against Torture (not ratified by US until 1994), the 1965 International Convention on the Elimination of Racial Discrimination (not ratified by US until 1994); (2) the nonratification of United Nations conventions (e.g. the 1989 UN Convention on the Rights of the Child); and (3) "Swiss cheese ratification," which limits the international treaties' enforceability with numerous reservations, understandings, and declarations (RUDs). This overall approach to international law holds the US domestic law supreme and self-sufficient, and thus exempt from compliance with international human rights standards, even the ones the US was instrumental in drafting in the UN forum. Also, when international commitments are seen as posing a threat to national sovereignty, the US complies with human rights but without treaty ratification (Koh 2005: 113–115).

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[2] For a comprehensive discussion of the history of the Black reparations movement see Ana Lucia Araujo, *Reparations for slavery and the slave trade* (2017); Mary Frances Berry, *May face is Black is true: Callie House and the struggle for ex-slave reparations* (2006); Roy L. Brooks, *Atonement and forgiveness* (2004); and Robin G.D. Kelley, *Freedom dreams* (2002).

Taking those insights into account, I will analyze two pieces of legislation: the historic federal reparations study bill known as H.R. 40[3] and the California Assembly Bill 3121 (2020), along with related documents (witness testimony, public hearings transcripts, and a final report) as case studies exemplifying what Harold Hongju Koh calls the transnational legal process. It involves an incremental incorporation of international standards into domestic law and grows out of interactions between nation-states, international corporations, and non-governmental organizations, all of which offer particular interpretations of legal norms and standards, eventually leading to the internalization of those interpretations into the system of domestic law (Koh 2005: 131). While the transnational legal processes cannot yet be credited with yielding concrete reparative outcomes for the Black reparations advocacy and activism, my discussion foregrounds precedents set by the international and domestic redress movement and strategic application of the international human rights law discourse. Re/framing the domestic (state-level and national) reparative initiatives as human rights issues gives Black reparations a sense of urgency and moral importance and, crucially, reenergizes the domestic civil rights and racial justice struggles.

Reparations embrace a range of measures which redress the past harm. These include restitution or compensation—both individual direct cash transfers and group trust funds for economic empowerment and scholarships—as well as symbolic forms of repair, such as truth telling, apologies, and commemorative events. Different approaches to reparations stress a particular constellation of measures, depending on whether the harm is seen through the lens of corrective justice (restitution and compensation) or restorative justice, where the focus is on making good the harm and restoring the social relationship (truth commission, public apology). The atonement model and the model based on the UN Principles on Reparation discussed in this paper combine elements from these two approaches to justice.

1. Grassroots Black reparations activism and first attempts at internationalizing the racial justice struggle

The post-World War II development of international human rights law energized the Black reparations movement whose origins date back to the failed Civil War-era promise of land as reparations, embraced in the slogan "forty acres and a mule," which serves as a reminder of the outstanding debt owed the descendants of the enslaved. Although General Sherman's Special Field Order No. 15 (Jan.

[3] In 1989, the original bill was assigned number HR 3754 and in 2013 it was renamed H.R. 40 (House Resolution 40) to invoke the short-lived allocation of 40 acres of land to each freedman family as wartime reparations for slavery.

1865) allocated 40 acres of land to each freedmen family as federal compensation for unpaid slave labor, President Andrew Johnson revoked the decision in the fall of the same year and the land was taken away from the freedmen who had bought or leased it. This unfulfilled promise constitutes a historical basis for reparative justice demands.

The first Black reparations initiative originates in the post-Reconstruction era, when, in 1896, Rev. Isaiah H. Dickerson and Callie House, a washerwoman and seamstress, founded the National Ex-Slave Mutual Relief, Bounty and Pension Association. This grassroots organization operated as a mutual aid society, assisting the formerly enslaved with medical and burial expenses. Being Black in the Jim Crow South made the freedmen vulnerable to economic exploitation, enforced segregation, anti-Black violence, and the denial of equal rights. Appealing to the most impoverished segments of the African American community, the Ex-Slave Association had a remarkable following of 600,000 due-paying members across the former slave-holding South (Berry 2006: Ch.1, ft. 2). Apart from offering help to the sick and needy, the Ex-Slave Association was committed to rallying support for federal legislation that would guarantee monthly pensions to the ex-slaves, modelled on the pension system for Civil War veterans.[4] When these attempts availed nothing, in 1915 the Ex-Slave Association employed Cornelius J. Jones, an African American attorney, to prepare a class-action reparations lawsuit against the Treasury Department. *Johnson v. McAdoo* (1916) was the first reparations for slavery litigation in US federal courts. The plaintiffs claimed that between 1862 and 1868 the government had collected a Civil War revenue tax on raw cotton, originally a wartime measure, and that the revenue, confirmed as deposited in a separate account, belonged to their ancestors. When the cotton tax was collected, the plaintiffs argued, the ancestors labored in the fields and produced cotton in conditions of "involuntary servitude" and "under duress coercion." The government's revenue in the amount of $68 million, Jones maintained, gave rise to an equitable lien in favor of the plaintiffs and all the formerly enslaved who had never received pay for the "fruits of their labor" (*Johnson v. McAdoo* 1916: 8).[5] In 1916, the case

[4] While the Civil-War veterans' monthly pensions were based on rank and degree of war-related disability, the Ex-Slave Association's plan stipulated that the formerly enslaved would receive a lifetime pension corresponding to the length of time they had labored under slavery. The scheme divided the formerly enslaved individuals into several age groups, each of which would receive a monthly payment and a fixed bounty. For individuals aged 70 and older, the proposed monthly pension was $15 and a one-time bounty of $500. Those between 60 to 69 would receive a monthly pension of $12 and a bounty of $300; those aged 50 and 59, $8 per month and a bounty of $100; and those in their 40s, $4 per month, with no bounty. See Berry (2006: Ch. 2).

[5] The full wording of the argument is as follows: the "fruit of labor performed by plaintiffs without compensation having been paid therefor, and the labor by which said cotton

was rejected by the Court of Appeals of the District of Columbia on the grounds of sovereign immunity[6] and the Supreme Court dismissed the complaint the following year (Berry 2006: Chap. 7).

When House, Dickerson, and later Jones drew the attention of the federal agencies, they were charged with fraud, allegedly for making false promises and misleading the Association's members about the future success of the slave pension legislation. Out of the three, only House was convicted and sent to a federal prison, where she spent nine months. Historian Mary Frances Berry insists that the allegations were not grounded in facts. House was not dishonest or greedy, nor did fraudulent intentions guide her actions. Rather, government officials acted out the concern that the movement's numerous members could turn into a powerful rebellious force if they found out that no pensions or compensation were being offered.[7]

This unsuccessful early slavery reparations litigation and the persecution of the movement leaders did not, however, undermine the grassroots determination to pursue reparations. As the Ex-Slave Association lost its impetus with House's imprisonment, Jamaican immigrant Marcus Garvey's newly founded Universal Negro Improvement Association (UNIA) drew many former members of the Ex-Slave Association. The Garvey Movement was a mass Black nationalist organization that flourished in the 1920s, promoting Pan-African consciousness, repatriation of all descendants of African people— "her scattered and abused children" —to "a homeland of their own in Africa" (Garvey 1924: 165–166), where they would build an independent racial nation state. The movement promoted economic self-sufficiency, Black capitalism, and pride in the African cultural heritage. The Garveyites were visible in the public sphere, with thousands of uniformed supporters parading through the streets of Harlem, N.Y., while Garvey acted as a provisional President of Africa, dressed in military uniform with a plumed hat. The impact of UNIA's actions was broader than that of the Ex-Slave Association. It had several million due-paying members (some accounts say three million, others between four and seven million), with hundreds of chapters and masses of devoted followers in the West Indies, Central America, Canada, and British West Africa.[8]

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producing this revenue was the source of this money."

6 Sovereign immunity is a legal doctrine rooted in common law, which protects the government from being sued for violations of Constitutional rights and federal laws without the government's consent. See "Sovereign immunity."

7 For a more detailed account of the Ex-Slave Association origins and history, see Berry (2006) and Araujo (2017: 99–108).

8 For a detailed account of the Garvey movement see Araujo (2017: 121–124) and Don Rojas (2017).

Restitution of territories by the colonial powers was part and parcel of Garvey's nation-building philosophy. Therefore, when he repeatedly demanded of England, France, Italy, Belgium, Portugal, and Spain "that you hand back to us our own civilization—hand back to us that which you have robbed and exploited us of in the name of God and Christianity for the last 500 years," he was making a plea for reparations, broadly understood, for both slavery and colonization (Garvey 1923: 156; Araujo 2017: 124).

Ironically, Garvey's enormous popularity among millions of diasporic Africans eventually led to his demise. Like House, he was charged with mail fraud, imprisoned, and eventually deported to Jamaica. When in the post-Garvey era the movement lost momentum, reparations demands found resonance in the platforms of the Black nationalist Nation of Islam, the Republic of New Africa, and the Black Panther Party, as well as the Communist Party (CPUSA). Apart from the Black Panther Party, which sought control over and empowerment of Black urban communities, the remaining organizations promoted the idea of a separate Black nation within the US territory as restitution for slavery.[9]

Working from within their respective platforms, the reparations activists found parallels between the colonized peoples of Africa and their own situation in the United States. Yet they were well aware that, unlike the new sovereign nations, African Americans in the American South continued living in apartheid-like conditions, in fear of violence and terror at the hands of white supremacists.[10] This led them to reframe their collective experience in terms of emerging human rights standards, hoping that the internationalization of their grievances would advance their cause in the UN forum and put pressure on the US from without.

Soon after his break from the Nation of Islam, Malcolm X delivered a memorable speech, "The ballot or the bullet" (April 12, 1964), which expressed the hope that the US international commitments would shield African Americans from human rights violations at home and, if anything, hold the US accountable on the international stage:

> When you expand the civil-rights struggle to the level of human rights, you can then take the case of the black man in this country before the nations in the UN. You can take it before the General Assembly. You can take Uncle Sam before a world court. … Human rights are the rights that are recognized by all nations

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9 See for example Malcolm X's speech "The Race problem" (Jan. 1963), where he presents the Nation of Islam's position on land as reparations for unpaid slave labor.

10 According to Michael Ignatieff, until the 1960s conservatives in Southern states opposed the adoption of international rights standards. On the one hand, they resisted constraints imposed by federal civil rights legislation; on the other, they were concerned that international laws would curtail national sovereignty. But above all, they were interested in protecting their racial privileges and preventing desegregation (Ignatieff 2005: 19).

> of this earth. And any time any one violates your human rights, you can take them to the world court.

The Convention on the Prevention and Punishment of the Crime of Genocide (known as the Genocide Convention), ratified by the United Nations in 1948, was the first international human rights treaty. It acted as an incentive for civil rights and Black reparations activists who wanted to draw international attention to the racial violence and terror in the Jim Crow South and the ongoing racial injustices that constituted "the badge of slavery." As the number of UN member states expanded significantly in the era of decolonization,[11] the formerly colonized peoples made sure that their shared experience of European colonialism, imperialism, and racism would fall within the purview of international human rights law. Through the engagement of these new member states, the 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples, and the 1966 International Covenant on Civil and Political Rights protecting minority groups' rights (Art. 27) were adopted and provided legal pathways for pursuing redress for past and continuing racial discrimination.

The American Civil Rights Congress, affiliated with the American Communist Party, was the first to use the United Nations as a forum to publicize the racial crimes of the Jim Crow South and to appeal to the member states to take action. In the post-Holocaust reality, William Patterson, Paul Robeson, and other members of the Civil Rights Congress (altogether 94 signatories, Black and white) drafted the historic *We charge genocide: The crime of government against the Negro people* petition, which they submitted in 1951 to the UN General Assembly. The petition drew on the genocide convention as a legal instrument to expose racial violence, terror, and lynching of African Americans in the 1950s American South and to charge the US government, which was one of the founding members of the United Nations, with the violation of international human rights treaties (the Universal Declaration of Human Rights, the Convention on Genocide) alongside the US Constitution. Accompanied by ample evidence of hundreds of racial crimes in the Jim Crow South (134 killings and 340 violent crimes between 1945 and 1951),[12] the petition held the US government accountable for the genocide of its "black nationals" and asked the UN General Assembly to condemn the US for not complying with the Genocide Convention (UN asked to act 1951). The petition was discredited as

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11 The UN membership grew from 58 in 1948 to 127 in 1970. Currently the UN has 193 member states.

12 The petition was published in book format in 1951 and republished in 1970. The most recent public mention of the *We charge genocide* petition can be found in the California Reparations Task Force Report (2023: 520) and in Susan A. Glenn's article titled "We charge genocide—The 1951 Black Lives Matter campaign".

"Communist propaganda" and left unaddressed. Polish jurist Raphael Lemkin, who had coined the term "genocide," discredited the petition as mistaking instances of individual crimes (killings, lynchings, and race riots) with attempts "intended to destroy a race," and aiming to "divert UN attention from true genocidal crimes being committed against Soviet-dominated people" (UN asked to act 1951). Had these crimes been condemned in the UN forum, they would have required the US federal government to take action to stop the violence and offer redress in the form of apology and/or compensation to victims' families.

Another early example of the use of the genocide framework are two petitions to the United Nations presented by Queen Mother Audley Moore, who is known as the "mother of the modern-day reparations movement" ("Reparations Now" Toolkit 2019: 54). Moore spoke against the genocide of Black people in the US and in support of their self-determination efforts. A committed reparations activist, she demanded land and financial reparations for slavery (Who is Queen Mother? 2013). Moore was a life member of the Garvey Movement and the Civil Rights Congress which had produced the 1951 *We charge genocide* petition. Her immersion in the Black nationalist discourse and awareness of international human rights law became important for her reparations activism. While Moore sought redress for historical and continuing injustice in the international forum, she also gave the domestic audiences a new legal frame to rearticulate their experiences and racial justice claims.

The *Why Reparations?* pamphlet (1963) serves as an example of Moore's engagement with international human rights standards and shows her to be a careful observer of the reparative justice precedents in the post-World War II period. While the domestic readers of her pamphlet must have been well aware that their constitutional rights were not protected by the federal government, they did not necessarily have to realize they had fundamental human rights guaranteed by the 1948 Universal Declaration of Human Rights. Moore conveyed to her readers that their human rights were being violated, and this violation constituted the crime of genocide.[13] She also drew attention to West Germany's reparations payments to the state of Israel and the Jewish Claims Conference representing Holocaust survivors as an important reparations precedent.[14] Moreover, she took note of the domestic restitution payments to Native Americans and Japanese Americans (Moore 1963: 9).[15]

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13 Since the US did not ratify the Genocide Convention until 1988, the treaty was not legally binding at the time Moore's *Why Reparations?* pamphlet was published.

14 The California Reparations Report points to the post-WWII German reparations program as a model that fulfills the standards set by the UN law of repair, even though it was devised five decades earlier (2023: 525).

15 Moore must have been referring to the Japanese American Evacuation Claims Act of 1948 that I briefly introduce in ft. 22.

Self-determination has always been key to the Black nationalist imaginary. It can stand for economic and political control of Black communities, the development of race-based economies, the creation of a separate nation carved out of US territory, or a back-to-Africa movement. It can also manifest as racial pride, affirmation of the African heritage, and control over the Black image. In her petitions to the UN, Moore, as a Garveyite, advocated for land, self-determination, and voluntary repatriation to an African country for descendants of American slavery (Taifa 2022b: 87). In the late 1960s, along with Imari Obadele and Chokwe Lumumba, Moore cofounded the Republic of New Afrika, a sovereign Black nation spanning five Southern states with the highest concentrations of Black people (Louisiana, Mississippi, Alabama, Georgia, South Carolina). New Afrikans saw themselves as a colonized people and argued that the UN Declaration on the Granting of Independence to Colonial Countries and Peoples legitimated their struggles for land as a basis of sovereignty. They rejected American citizenship as imposed, and called for a UN-supervised plebiscite to determine their own destiny and secure the land by US cession (Obadele 1970).[16] They looked to the German reparations program paid to the newly formed state of Israel as a working model (Berger 2009: 51) and demanded monetary reparations from the US government in the amount of $300 billion as of 1972 (worth $2.2 trillion in 2024) to create the Republic's financial foundation.[17]

Moore is known to have mentored the younger generation of Black nationalists in reparations activism, including members of the Black Panther Party (Farmer 2015), which was brought to life around the time the Republic of New Afrika was founded. In Point 3 of the "What We Want, What We Believe" (1966) —the party's Ten Point Program—the Panthers demanded the payment of an "overdue debt" for the mass deaths of African captives and for slave labor, and made an analogy to the Holocaust reparations program to validate their claims:

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16 From the perspective of the federal and local governments, the political project of the Republic of New Afrika (RNA) was controversial. The RNA established a provisional government, elected a President, and wrote a declaration of independence. Their headquarters in Jackson, Miss., were raided by the police and the FBI. After the confrontation with law enforcement, 11 RNA members were convicted and imprisoned for assault and murder. The organization's leader, Imari Obadele, served five years for conspiring to assault an FBI officer. When he left prison in 1980, he did his PhD in political science and actively fought for reparations. He was one of the founders of the National Coalition of Blacks for Reparations (N'Cobra), a key advocacy group that, since the late 1980s, has set the tone for reparations debates in the US (Obadele 1970; Martin 2010).

17 The current dollar value of this and all other historical dollar figures in the paper were calculated using US Inflation Calculator, https://www.usinflationcalculator.com/.

> We believe that this racist government has robbed us, and now we are demanding the overdue debt of forty acres and two mules. Forty acres and two mules were promised 100 years ago as restitution for slave labor and mass murder of Black people. (The Black Panther Party 1966: Point 3)

The Panthers went on to show that they were aware of the West German state's commitment to repair stemming from a moral responsibility rather than a legal obligation, and drew on that precedent to make demands on the US government to do the same with respect to its Black citizens:

> The Germans are now aiding the Jews in Israel for the genocide of the Jewish people. The Germans murdered six million Jews. The American racist has taken part in the slaughter of over fifty million Black people; therefore, we feel that this is a modest demand that we make. (The Black Panther Party 1966: Point 3)[18]

Using the West German reparations program as a benchmark, the Panthers argued the US government should assume moral responsibility for the historical harm of slavery and ongoing discrimination of African Americans.

Three years after the Black Panthers' Ten-Point Program, the *Black Manifesto* (1969) was issued. In the words of Robin D.G. Kelley, it was "the first systematic, fully elaborated plan for reparations to emerge from the black freedom movement" (Kelley 2022: Ch 4). Authored by James Foreman, a leader of the Student Non-Violent Coordinating Committee (SNCC), the manifesto was presented at the National Black Economic Development Conference in Detroit and then read again during a Sunday service at New York's Riverside Church. Foreman called on white American churches and Jewish synagogues to pay reparations in the amount of $500 million as compensation for their role in slavery and the capitalist exploitation of Blacks. Foreman's was a well-designed, thought-out, and detailed program that prioritized institution building and Black empowerment through the creation of a Southern Land bank to distribute land to Black farmers, control over communication media, printing and publishing industries, investment in skills-training centers, and a Black-funded university. Interestingly, the manifesto reveals a Pan-Africanist, Garvey-like sense of unity and solidarity with the newly emerging African countries, recognizes Africa as "motherland," takes pride in African heritage, and commits to masterminding anti-capitalist and anti-imperialist revolutions in the US and Africa "by any means necessary" (Foreman 1969: 70–73). In response to the manifesto, the churches across the nation contributed $1 million dollars. But Foreman's plan

[18] As for the German reparations program, the Luxemburg Agreement (1952) was reached without a single mention of the Jewish genocide. The West German state agreed to pay compensation to Holocaust survivors for their material losses and to the state of Israel for the costs of resettling and integrating the Jewish refugees (Goschler 2022).

was a "stunning success" in the sense that it launched a wave of national interest in reparations. It was then that economists took to the task of calculating the costs of slavery and segregation (Kelley 2002: Ch. 4).

The next wave of reparations activism came in the late 1980s, when members of several Black nationalist groups—the Republic of New Afrika (Imari Obadele, Chokwe Lumumba, and Queen Mother Moore), New Afrikan Peoples Organization, and the National Conference of Black Lawyers (Adjoa Aiyetoro, Nkechi Taifa) —established the National Coalition of Blacks for Reparations (N'Cobra), which is a driving force of reparations advocacy in the US today. Initially little known, N'Cobra has become an influential, agenda-setting advocacy group that has successfully moved the issue of Black reparations to the political mainstream.[19] As Pan-Africanists, they identify with all people of African ancestry, on the African continent and in the Black diaspora, based on their shared cultural heritage. This transnational perspective, reminiscent of the Garvey movement's and Foreman's *Black Manifesto*'s diasporic vision and commitments, makes N'Cobra part of the global reparations movement. But importantly, it is their incremental yet consistent incorporation of international human rights law standards and principles into the domestic reparations legislation, discussed in the final part of the paper, that best exemplifies and constitutes the transnational legal process.

2. Post-World War II reparations precedents: Domestic and international

Both domestic and international developments in reparative justice have influenced the Black reparations activism in the 20th and early 21st century. One of them was the post-World War II reparations agreement (the Luxembourg Agreement, 10 Sept. 1952) pursuant to which West Germany paid $714 million (worth $8.4 billion in 2024) to the state of Israel for the costs of resettling half a million Holocaust refugees. An additional $107 million (the value of $1.2 billion in 2024) was paid to the Jewish Claims Conference representing the global community of Jewish Holocaust survivors for the loss of livelihood and property, as well as for heirless Jewish property confiscated by the Nazis. Apart from these early measures, in 1999 the German state agreed to pay a $5.2 billion (the equivalent of $9.8 billion in 2024) settlement as restitution for unjust enrichment to US representatives of slave workers and forced laborers in Nazi Germany. The same year, Swiss banks agreed to pay out $1.25 billion (worth $2.3 billion in 2024) pursuant to a class-action lawsuit filed in US courts regarding the return of assets in dormant accounts deposited by Holocaust victims before and during

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[19] See for example "Committed to reparations" (21 Oct. 2023) on the webpage hosted by the National Conference for Black Lawyers.

World War II (Bazyler 2003: 25, 100). Both settlement agreements foregrounded the moral responsibility of states and corporate actors in redressing historical injustices.[20]

On the domestic front, inspiration for reparative justice claims that ran parallel to the German reparations program in the post WWII period came from the United States Indian Claims Commission, an independent federal agency established in 1946 to settle Native American tribal claims regarding the past breach of treaties, the appropriation of tribal lands or their purchase at an "unconscionably low price," as well as the displacement and killing of the Indigenous population due to the Westward expansion. The commission functioned as a court with three judges, yet its power was limited to offering monetary compensation for the lands the tribes lost to the United States. It did not have the power to restore the lands or make land grants. By 1978 when the commission ceased its proceedings, it had adjudicated several hundred claims from 18 tribes and nations and through its judgements paid out $800 million (worth $3.8 billion in 2024) (Wishart; Record Group 279).[21]

Yet, it is the legal battles fought by the Japanese Redress Movement, culminating in the passage of the Civil Liberties Act of 1988, which created a legislative precedent for Black reparations advocacy and activism. Apart from the Congressional apology, the federal government agreed to pay out $1.6 billion ($4.2 billion in 2024) in reparations to the World War II Japanese concentration camp survivors or their heirs ($20,000 per person).[22] Hailed as a victory,

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20 Michael J. Bazyler's *Holocaust justice: The battle for restitution in America's courts* (2003) is a comprehensive study of the legal campaign launched in the 1990s in the US courts on behalf of Holocaust survivors and other victims of the Nazi regime for the restitution of property and compensation for slave labor during World War II. Also Stuart Eizenstat's *Imperfect justice: Looted assets, slave labor, and the unfinished business of World War II* (2003) offers a detailed personal account of the arduous negotiation process between Germany, Switzerland, France and Austria, on the one hand, and various organizations representing Jewish claims on the other. Eisenstat was then a representative of the US President and the Secretary of State on Holocaust-era issues and acted as a chief negotiator in the Holocaust restitution battles in the late 1990s.

21 The Lakota were awarded $100 million for the loss of the Black Hills, which are their sacred lands. They never accepted the award, which amounts to more than $1 billion dollars in today's money. See Gass & Robinson (2023) and California Reparations Taskforce Final Report (2023: 28–29).

22 An earlier piece of legislation, the Japanese American Evacuation Claims Act of 1948, offered compensation only to people of Japanese descent for property lost during World War II, when the group was forcibly relocated from the West Coast to concentration camps. While the government allocated $100 million, only around $37 million were paid out. For more see Robinson (2020). The Civil Liberties Act of 1988 offered redress to the Aleuts in Alaska (a restitution of $12,000 per eligible person) for forcible relocation from their homelands during the war. However, a careful reading of the text shows that, while the Congress admits that the Aleuts suffered injustices, no apology follows. The phrase "Congress apologizes on behalf of the nation" appears once and only in reference to the victims of Japanese internment.

the legislation acknowledged the federal government's responsibility for the past wrongdoing through an approach to redress that legal scholar Roy L. Brooks calls "the atonement model" (2004). It comprises both apology and "meaningful reparations [that] render the apology believable and produce a redemptive effect" (2004: 168).[23] The success of the Japanese Redress Movement offered inspiration and encouragement for the drafting in 1989 of a historic slavery reparations study bill, known as H.R. 40, seeking redress for chattel slavery and post-slavery discrimination on behalf of African American descendants of the enslaved.[24] It incorporates the atonement model, which reflects the federal government's prior practice of righting historical injustices. For Brooks, the introduction of H.R. 40 in Congress by Rep. John Conyers (D-Mich.) on Nov. 20, 1989, and the ensuing scholarly and popular interest mark the beginning of the modern Black redress movement (2004: 1).

The Civil Liberties Act of 1988 had an additional political dimension: it articulated the US government's commitment to reparative justice on a global scale, by championing its role as a guardian of other countries' international obligations: "to make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations" (Sec.1.7).[25]

What happens, then, when calls for reparations to descendants of American slavery are deliberately framed within the international human rights discourse? What happens when chattel slavery and post-slavery discrimination gain a new meaning as gross human rights violations that put states under an obligation to remedy?[26] Brooks, an observant follower of the post-World War II reparative

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23 Brooks's important book *Atonement and forgiveness: A new model for Black reparations* (2004) offers the first comprehensive and thorough study of the international and domestic post-Holocaust redress initiatives that reflect a paradigm shift in which governments, rather than individual perpetrators, are held morally responsible for grievous injustices such as genocide, apartheid, slavery, racial terror, ongoing discrimination, etc. Multifaceted and perceptive, *Atonement* foregrounds the international context of reparative solutions and related historical precedents, legal strategies, court decisions, and government policies.

24 In line with the recent tendency among historians concerning a more conscious and respectful language use around slavery, I will be using the term "enslaved person," "enslaved people" to recognize the agency and individuality of African descended people, held in bondage as chattel (personal property) of their slaver owners, whom I prefer to call "enslavers."

25 Indeed, diverse domestic reparations efforts at the federal, state, and municipal level have resulted in tangible outcomes. These include, among others, compensation for forced state-sponsored eugenic sterilization (North Carolina, Virginia, California), a financial settlement with victims of the Tuskegee Syphilis study (1974) followed by a presidential apology in 1997, restitution payments for the victims of the 1923 racial massacre in Rosewood, Fl., and municipal reparations for post-WWII race-based housing discrimination in Evanston, Illinois (The California Reparations Taskforce Report 2023: 545–577).

26 From the outset, the original 1989 reparations study bill (H.R. 40) fit into the atonement model, since it considered both governmental apology and compensation as remedies for slavery and post-slavery discrimination. See Sec. 3b (7) A,C, D.

justice struggles, offers a valuable perspective on the internationalization of Black reparations:

> Although … claims for slave redress predate the Holocaust, they have taken on a new significance in the human rights environment that grew out of World War II. … When slave redress is understood through the atonement model, the black redress movement becomes part of the larger, post-Holocaust international redress movement. Black Americans, thus, ride in partnership, not only with the victims of the Holocaust, but also with the victims of South African apartheid, of the Japanese Imperial Army's infamous World War II system of sexual enslavement (the so-called Comfort Women), and of similarly large atrocities. (2004: XVI–XVII)

The reparative justice struggle for Comfort Women (mostly Korean, Chinese and Filipina women forced into sexual slavery by the Japanese army before and during World War II) shows the importance of apology for effective redress of past wrongdoing. Although in 2015 Japan offered Comfort Women a settlement compensation ($8.3 million at the time), some living survivors and the South Korean society in general found the apology insincere, particularly given the Japanese government's unwillingness to assume responsibility (Panda 2017; Hosaka 2021). An apology entails telling the truth about the past, however painful or shameful. Truth-telling is widely recognized as a reparative measure particularly useful in transitional justice contexts where financial reparations may not be viable. The South African Truth and Reconciliation Commission (1996–2000) did offer some payments to victims of the Apartheid regime, but national reconciliation was achieved, if only partially, with restorative truth telling. The public hearings of both victims and perpetrators of the regime had as their primary concern the restoration of the victims' dignity and respect, a renewal of social relationships, as well as healing through the cathartic effect of public truth sharing (Borer 2006: 32; Llewellyn 2006: 102).[27]

In the US context, Congress apologized for slavery twice: on July 29, 2008, and June 18, 2009, the House of Representatives and the Senate, respectively passed resolutions apologizing to African Americans for enslavement and racial discrimination. But the two acts of apology were not designed as part and parcel of a more comprehensive process that would reflect the Black reparations movement's prioritization of the "atonement model." In fact, the Senate apology came with a disclaimer stating that the resolution cannot be used to further any restitution claims from the federal government (2009: S. Con. Res. 26).

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https://www.congress.gov/bill/101st-congress/house-bill/3745/text

27 I write about the reparative aspect of truth telling in my paper titled "The reparation generation: Truth telling in pursuit of racial justice in the US". *Roczniki Humanistyczne* vol. LXXII, no. 11., 2024.

Contrary to the will of the national policy makers more than a decade ago, restitution remains an ever timely subject of discussion and economic calculation, which rejuvenates reparations activism and advocacy. William A. Darity Jr. and A Kirsten Mullen's *From here to equality: Reparations for Black Americans in the twenty-first century* (2020) incorporates restitution, characteristic of the "tort model," into their reparations program made up of three elements: acknowledgement, redress, and closure (popularized under the acronym ARC). Acknowledgement constitutes a condition of redress, which means that, once national apology on behalf of all Americans recognizes the harm done to African Americans, tangible government action should follow. Darity and Mullen identify restitution as an effective form of federal redress and present a range of approaches for calculating the monetary value of collective injuries resulting from enslavement, Jim Crow segregation, and ongoing racial discrimination.[28] These include several strategies, which use either the harm of slavery or post-slavery discrimination as the basis of the calculation. The damages for the harm of slavery can be assessed using the present-day value of enslaved labor, estimated as the wages of a paid laborer minus maintenance costs (Neal) or an average market wage multiplied by 24-hours for each day of an individual's enslavement during the period from 1776 to 1865 (Craemer), the value of exploitation counted as profits derived from chattel slavery (Ransom & Sutch), the income diverted from the enslaved (Marketti), the wealth held in human property, as well as today's value of the unfulfilled promise of land to freedmen (Mittal & Powell).

The idea behind restitution is to enable the descendants of the enslaved to attain the social status they and their ancestors would have enjoyed had the injustice not taken place. Estimates of the present-day value of the outstanding debt vary, depending on the method and the rate of interest applied (4, 5 or 6 percent). When compounded to 2019 at 6 percent interest, the proposed restitution payments would range from $3.1 trillion (Mittal and Powell) to $11.4 trillion (Neal), $17.1 trillion (Marketti), and up to $17.7 trillion (Craemer) (Darity Jr. & Mullen 2020: 259–264).

Apart from the past harm, Darity and Mullen address the impact of multigenerational costs of racism, exploitation, and lost opportunities on the current race-based disparities in per capita income levels (Bittker), amounting to $13,973 per individual aged 15 and older, as well as the racial wealth gap. They promote the latter as "the most robust indicator of the cumulative economic effects of white supremacy in the United States." If restitution was allocated based on the racial wealth gap, Darity and Mullen estimate, each African

[28] The California Reparations Taskforce Final Report (June 29, 2023) also offers a comprehensive overview of the various ways in which past harm can be calculated. See Part IV of the report, titled "Methodologies of calculating compensation and restitution".

American would receive $240,000 (Darity Jr. & Mullen 2020: 263). This would enhance the political and social equality of African Americans, opening up a path to closure. Forward looking, the "ARC model" follows the restorative justice process, yet it diverts the focus from forgiveness and racial reconciliation key to the "atonement model" towards "a mutual conciliation" between the victims and the beneficiaries, characterized by a unity of vision, transformative outcomes for all of the American society, and extinguishing the past reparative claims directed at the government (Darity Jr. & Mullen 2020: 2–4).

While Darity and Mullen invest a great deal of attention in discussing diverse methods of calculating concrete and quantifiable kinds of harm, their reparations program is not confined to the "tort model." Despite centering restitution and underscoring the symbolic importance of direct payouts to the eligible individuals, Darity and Mullen's "ARC model" aligns with Brooks's "atonement model" in its recognition of the need for public apology and monetary reparations, whether in the form of federal trust funds, scholarships, or other asset-building grants (homeownership, business start-up activities, purchase of assets). Both see the necessity of educational, awareness-raising initiatives such as museum-making projects and commemorative activities, which would further new interpretations of the nation's past and underscore the history of racial injustice (Brooks 2004: 155–163; Darity & Mullen 2020: 265–270). Darity and Mullen's overview of the several approaches to calculating restitution opens up new avenues of articulating historical harm and shaping the content and focus of future public apologies. Ultimately, restitution serves as an anchor for the process of repair, as it—to borrow Brooks's lucid words— "makes the rhetoric of apology into a meaningful, material reality" (Brooks 2004: 142) and helps create conditions for re/conciliation.

3. Slavery reparations litigation and transnational legal inspirations

This section covers the reparations for slavery litigation, primarily the cases filed in the early 2000s, soon after the resolution of the Holocaust restitution claims. The plaintiffs in *In re Nazi Era Cases v. German Defendants Litigation*, 198 F.R.D. 429 (D.N.J. 2000) were the Jewish and non-Jewish survivors of the Nazi regime who demanded reparation payments for forced and slave labor in German factories and state institutions, as well as on farms. The legal dispute was not solved in US courts, but by way of a settlement, which held the plaintiffs would receive reparation payments from the German government on the precondition that they dismiss their cases with prejudice from US courts.[29]

[29] These World War II cases showed that seeking financial redress for past injustice could yield satisfactory outcomes when there was a political will. Politicians at the highest political

The claims were anchored in tort law and sought restitution for unpaid wages and unjust enrichment. As part of their legal strategy, the plaintiffs resorted to the "naming and shaming" of Volkswagen, Siemens, and Mercedes-Benz for profiteering from the slave labor of Europeans.[30] Echoes of this negative publicity campaign must have resonated with the American public precisely because, by inference, the Holocaust restitution campaigns validated the earlier harms of chattel slavery as deserving repair and lent credibility to demands regarding reparations for slavery and post-slavery racial discrimination, which had been associated with a longstanding tradition of Black grassroots activism and Black nationalist politics.

Decades after *Johnson v. McAdoo* (1916), opinions delivered in Black reparations lawsuits, such as *Cato v. United States* (1995),[31] made it clear that the legislature rather than US courts was the "appropriate forum for plaintiff's grievances" (*Cato v. United States*) not only because of the state's sovereign immunity, but also because of the separation of powers principle. While *Johnson v. McAdoo* and *Cato v. United States* targeted the federal government, the more recent reparations for slavery lawsuits (2002, 2004) targeted private corporations, demanding restitution for chattel slave labor and unjust enrichment. Litigator Deadria Farmer-Paellmann, dubbed "the Rosa Parks of the reparations litigation movement" (Nelson 2016: 121), coordinated nine lawsuits, all filed in US courts in 2002 against banks, as well as insurance, tobacco, and railroad companies

levels, German Chancellor Gerhard Schroeder and US President Bill Clinton, were personally involved in the Holocaust restitution process. After two and a half years of intense, challenging negotiations, which entailed "vigorous 'arm's length bargaining'" as part of a settlement, which was not a settlement in the legal sense, in 2000 the German state set up the foundation "Remembrance, Responsibility and the Future" to manage the reparations payment process. The United States' role in the process was to "facilitate an agreement" between the parties involved, the victims on the one hand and the German industry and the German government on the other (*In re Nazi Era Cases v. German Defendants Litigation*, 198 F.R.D. 429-437 (D.N.J. 2000). In Brooks's account, many Wall Street bankers had links to the Holocaust and forced labor survivors, and were personally invested in placing pressure on the German government and industry to offer restitution payments. Thus, the German government must have been more inclined to settle, particularly that German companies and their US subsidiaries relied on Wall Street for financial capital through the floating of corporate bonds (2004: 111). Sadly, neither the US government nor the financial sector have provided a similar level of support for African Americans' struggle for reparations for slavery and post-slavery discrimination.

30 For example, Jewish organizations were running ads to "shame" German companies which traded in products made with slave labor. One ad was targeted at the producer of Mercedes-Benz and the copy in the ad above the car's logo read: "Design. Performance. Slave Labor." See Bazyler (2003: 68).

31 *Cato v. United States* (1995) was a class action lawsuit filed by descendants of the enslaved, demanding damages for enslavement and the discrimination from the Civil War to the present. Moreover, the plaintiffs wanted the injustice of slavery recognized and expected an apology from the government for continuing discrimination. The case was dismissed on the grounds of sovereign immunity and lack of standing.

which, directly and indirectly, derived profits from chattel slavery and slave labor. One of the lawsuits, *Farmer-Paellmann v. FleetBoston Financial Corporation, Aetna Inc., CSX*, was filed in a New York federal court in 2002. These corporate entities, not unlike numerous others in the antebellum period, had gained wealth through investing and trading in enslaved people (FleetBoston Finance), the use of unpaid slave labor to build railroads (CSX Railroad), selling slave insurance policies that treated enslaved people as personal property – when owners suffered a financial loss due to an enslaved person's death, they would be reimbursed for their loss (Aetna Inc.), and receiving enslaved people as a collateral for mortgages and other loans (JPMorgan Chase & Co.).[32]

Farmer-Paellmann, who acted on behalf of herself and the plaintiff class, i.e. the descendants of the formerly enslaved, worked with reparations lawyer Ed Fagan who had secured the $1 billion settlement with the Swiss banks and the $5 billion slave labor settlement in the Holocaust restitution cases (Nelson 2016: 127). Fagan was quoted by numerous press outlets at the time as saying that "a series of Holocaust lawsuits settled for $8 billion had blazed the legal trail for the slavery action" (Reuters 2002). Indeed, the reparations for chattel slavery lawsuits were modelled on the 1990s Holocaust restitution litigation, although the Black reparations claims rooted in tort law can also be traced to Black nationalist thought.

In *Farmer-Paellmann v. FleetBoston Financial Corporation*, the plaintiff alleged that predecessor companies "profited from slave labor and have retained the benefits and use of those profits and products derived from that unpaid slave labor and unjust enrichment," and that the defendants "converted the value of that labor and its derivative profits into Defendants' own property." The argument in the New York case was rooted in the principle that one's labor was one's property and, when wrongfully taken, it should be returned to their rightful owners, the descendants of the enslaved. The plaintiffs demanded, among others, "full restitution in the value of all monies, profits, and/or benefits derived by Defendants' use of slave labor," as well as "equitable disgorgement of all said monies, profits, and/or benefits derived by Defendants' exploitation of slave labor" (2002: par. 65).

The nine lawsuits regarding reparations for slavery and post-slavery racial discrimination were consolidated into one class-action lawsuit, *In re African American Slave Descendants Litigation* (Jan. 26, 2004), filed in the US District Court for the Northern District of Illinois. The plaintiffs alleged that they had suffered injury, since they were "denied the economic wealth of their ancestors' labor," which constituted "derivative and inherited property right in their ancestors'

[32] See for example The Associated Press articles titled "Aetna apologizes for slave insurance" (*Los Angeles Times*, 11 March 2000) and "JPMorgan: Predecessors linked to slavery" (*NBC NEWS*, 21 Jan. 2005).

lost pay." Judge Norgle, who delivered the opinion, challenged the plaintiffs' standing,[33] because they could not show they had suffered a concrete and particularized injury that could be traced to the defendants and their actions. Rather, their injury was "derivative of the injury inflicted upon enslaved African-Americans over a century ago" and therefore the plaintiffs could not get judicial relief (*In re African-American Slave Descendants Litigation* 2004: par. 33).[34] The plaintiffs' assumption of inheriting the ancestors' wealth was, in the court's view, "conjectural," and not sufficient to show a factual injury (2004: par. 27). The court dismissed the consolidated complaint also due to the prudential limitations of the standing doctrine, which holds that "'the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated. …'" (2004: par. 34–35). The court further found that the plaintiffs' claim was nonjusticiable due to the political question doctrine, which prevents the judicial branch's interference in the decisions made formerly by the remaining branches in questions that are not merely legal but political in nature. The court argued that numerous wartime and post-Civil War legislation, civil rights acts, and constitutional amendments exemplify the legislative and executive branches' commitment to the issue: "Because the events surrounding the institution of slavery and the Civil War are so deeply rooted in our Nation's history, the issues that may appear to be capable of judicial resolution in an ordinary case move beyond the province of this court given the magnitude of the events that preceded them" (2004: par. 51). The Court pointed to the reparations study bill, H.R. 40, sponsored by Rep. John Conyers (D-MI), as one of the-then recent measures showing the representative branch's interest in reparations as falling under the political question doctrine. Finally, the statute of limitations on the plaintiffs' claims had long expired.[35]

In light of international human rights law, however, slavery and the Transatlantic Slave Trade are crimes against humanity. Like genocide and war crimes, they are not barred by the statutes of limitations. It seems reasonable that the slavery reparations complaints filed in US courts invoked those recognized international standards. And although claims of a gross violation of human rights

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33 For an explanation of the constitutional concept of standing see "Art III, Sec. 2 C1.6.1 Overview of standing."

34 In the Conclusion, Judge Norgle wrote: "Plaintiffs are correct that standing can be supported by a very slender reed of injury … Yet, this 'slender reed' must still have its roots in the soil of an injury personal to the Plaintiffs, not a 'derivative harm' uprooted from the soil of another's injury" (*In re African-American Slave Descendants Litigation* 2004: par. 33).

35 While slavery litigation against private companies was unsuccessful, the defendants did offer a small measure of redress but primarily in response to reparations activists' boycott and consumer protest, and public shaming. These were an incentive for the corporations (Aetna and JPMorgan) to publicly apologize for their role in slavery and to set up a scholarship fund of 5 million dollars (JPMorgan). Alondra Nelson's *The social life of DNA* offers a detailed discussion of the restitution demands (2016: 126–129).

or a crime against humanity may not be actionable in US courts, they do carry a moral force that could exert pressure on the defendants to negotiate a settlement agreement outside the courtroom, the way the German state and industry did by offering restitution for unjust enrichment to forced and slave laborers during WWII. More recently, the First Nations reached the largest ever settlement for racial discrimination with the Canadian government, but this was done upon the 2016 order of the Canadian Human Rights Tribunal, which deals with domestic complaints of human rights violations (Revised settlement 2023).

The reparations cases filed in US courts in the early 2000s give us an idea of early, if short-lived attempts to incorporate international human rights law in domestic litigation. In the 2002 New York reparations case, the complaint included fourteen counts, only two of which invoked human rights violations. Count III raised the issue of crimes against humanity.[36] The plaintiffs alleged that the defendants "knowingly" profited from "slavery and forced labor" alongside "torture, rape, starvation, physical and mental abuse, summary execution." They demanded a compensation both for harms suffered by their ancestors and for the ongoing consequence of the original injury, "including but not limited to: race discrimination, unequal opportunity, poverty, substandard health care, substandard treatment, substandard housing, substandard education, unjust incarceration, racial profiling, and inequitable pay" (*Farmer-Paellmann v. FleetBoston* 2002: par. 57–59). Likewise, in the consolidated lawsuit complaint *In re African-American Slave Descendants Litigation* (2004) the plaintiffs resorted to international human rights law. In Count III— "Crime Against Humanity," the plaintiffs insisted that "[s]lavery is and has always been a crime against humanity," and in Count IV— "Piracy," the plaintiffs alleged that that the defendants "committed the crime against humanity by their actions either directly or indirectly in support for the continuation of the smuggling of Africans." On these grounds the plaintiffs demanded restitution and equitable disgorgement of profits from slave labor (2004: par. 18). In subsequent litigation, however, in the district and appellate courts, the complaint was revised and the international law component was removed.[37]

Count IX of the complaint, pled in the alternative, offers a bold application of international law to the interpretation of a federal statute. The plaintiffs sought relief

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36 All the crimes listed in Count III of the complaint are enumerated in Art. 7 of the Rome Statute (1998) as crimes against humanity. The Rome Statute is an international treaty which established the International Criminal Court (ICC) to prosecute individuals charged with genocide, war crimes, and crimes against humanity. Until today, the US has not ratified the Rome Statute and does not recognize the jurisdiction of the International Criminal Court. This is a clear example of US exemptionalism with regard to international human rights law.

37 See *In re African-American Slave Descendants Litig*, 375 F. Supp. 2d 721 (N.D. Ill. 2005) and *In re African-American*, 471 F.3d 754 (7th Cir. 2006).

as descendants of African aliens who, for most of their captivity in the US, even after the emancipation and abolition of slavery, were not legally recognized as American citizens (2004: par. 19).[38] Following that premise, they claimed that, under the Alien Tort Claims Act (ATCA, 1789) they could sue international outlaws in US courts for violations of international law.[39] The plaintiffs posited that corporate predecessors of Financial Corp., Aetna Inc., JPMorgan, Lloyd's, and many others, being defendants in the case, engaged in slavery and international slave trafficking, the two actions being violations of international law. This direct reference to ATCA was most likely inspired by the Holocaust restitution suit against Swiss banks which had wrongfully appropriated money deposited by Jewish clients before and during WWII. Under the *hostis humani generis* ("enemy of all mankind") principle, initially designed to prosecute cases of piracy and slave trading, Holocaust survivors and their heirs did not have to be US citizens to file a suit in American federal courts against a foreign company (Bazyler 2003: 55–56).[40]

Judge Norgle's response to Count IX was purely legalistic: the "claim was not actionable," because the US was not a party to any international treaty recognizing slavery as a crime against humanity. Nor was there any statute based on which the plaintiffs could take private party action to assert such a right. In other words, Judge Norgle made it clear that US courts were not the forum where cases of human rights violations could be heard or litigated. In a separate opinion on the question of standing, he pointed to the legislative or executive branches, rather than the courts of law, as having the powers to redress the harm of slavery (*In re African American Slave Descendants Litig* 2005: 736).

Attempts to transplant legal strategies used in Holocaust restitution as well as attempts to incorporate international human rights law into the realm of the Black

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38 My research shows that this approach was developed in the late 1980s by lawyers and reparations activists of a Black nationalist organization, Republic of New Afrika. They published *Reparations Yes!* —a booklet, which included several texts their members had delivered at the conference on Race and Constitution at the Harvard Law School in September 1987. In one text, titled "Reparations and self-determination," attorney and activist Nkechi Taifa argued that, after the ratification of the 13th Amendment (1865) and before being granted birthright citizenship by the 14th Amendment (1868), the freedmen were a sovereign "New African" nation with the right to self-determination under international law. She held that the 14th Amendment imposed on Africans US citizenship without giving them the option of either accepting or rejecting the offer ("Reparations Yes!" 129–132).

39 The Alien Tort Claims Act, better known as the Alien Tort Statute (28 U.S.C. § 1350), was hardly used until the 1980s when the period of long dormancy ended with the landmark decision in *Filártiga v. Peña-Irala* (1980). Since then it has been used by foreign nationals to seek redress in US courts for human rights abuses, such as executions, torture, rape, etc. For more see Stephen P. Mulligan's *The Alien tort statute: A primer* (2022: 6–7).

40 It seems that the Holocaust restitution cases in the late 1990s built on the rising prominence of the statute, which has been successfully applied to transnational human rights lawsuits. See In re Holocaust Victim Assets Litigation (2000).

reparations litigation have been a factor in the discursive framing of legal and political battles over the past injustice for slavery and post-slavery discrimination. These court decisions confirm that pursuing litigation as a path of seeking redress for the past injury encounters procedural and substantive obstacles.[41]

4. UN principles on reparations and domestic reparations study legislation

Instruments of international human rights law (treaties, conventions, principles and guidelines) equip reparations movements across the globe (in African countries and the Caribbean in particular) with tools to wage legal and political battles. They continue to provide a universal language to conceptualize historical injustices and the legacies of Maafa – a Swahili word for the death of millions of Africans during the Transatlantic Slave Trade, the violence of chattel slavery, and colonial atrocities, including mass killing and genocide, also referred to as the African Holocaust ("Maafa"). They establish norms, standards, principles and guidelines which make the pursuit of reparative justice a legitimate human rights concern. The most important of them are: The 1969 International Convention on the Elimination of All Forms of Racism, which set standards and norms regarding racism and racial discrimination; the 2002 Declaration and Program of Action pursuant to the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa), which recognized the slave trade and slavery as crimes against humanity; and importantly, the 2005 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 (UN Principles on reparation),[42] which articulates the international principles of reparative justice.

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41 In the last two decades, the Canadian government's settlement agreements with the First Nations demonstrate that class-actions lawsuits can be an effective vehicle of seeking redress for intergenerational harm. In the 2007 Indian Residential Schools Settlement Agreement, the government allocated the equivalent of almost US$2 billion to 80,000 Indigenous school residents for the abuse and suffering at the hands of the Catholic church. More recently, in 2023, Canada's federal government reached two settlement agreements in class-action lawsuits filed by the First Nations. The former settlement of US$2 billion constitutes compensation for the loss of culture and language by Indigenous children sent to mandatory residential schools (Austen 2023). The latter offers a compensation of US$17.35 billion for the federal welfare system's racially discriminatory underfunding of on-reserve child and family services, including foster care (Revised settlement 2023).

42 In line with the California Reparations Report, I will also refer to the 2005 document as UN Principles on Reparation. Examples of gross violations of humans rights are listed in the Vienna Declaration and Program of Action: "torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and

The UN document assumes that victims have a right to full reparations, which should be adequate, prompt, effective, and proportional to the harm suffered (2005: Art. IX, 15). Full reparations incorporate five principles: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Satisfaction is the most frequent form of reparation, since it does not entail the controversial question of restitution or compensation for the past harm. Public apology is frequently offered as a fitting and necessary form of satisfaction, since the apologizing party acknowledges and assumes responsibility for the past harm. But satisfaction can also take other forms, such as commemorative events and tributes to the victims, truth telling projects, the return of the remains and reburial of the killed and the disappeared, and preparation of educational materials. The principle of satisfaction is connected to the principle of non-repetition. Both assume the human rights violations will be put to an end, and the state will achieve this by reviewing existing laws, strengthening the judiciary, and promoting human rights observance by public officials and businesses. Where necessary, victims and their families should receive medical and psychological support, along with access to legal and social services. These measures fall under the principle of rehabilitation. Restitution and compensation are the most controversial principles of reparative justice as articulated in the UN document. Restitution may not always be possible, since it entails returning the victim to the *status quo ante*, for instance, through the restoration of the victim's human rights, liberty, employment, citizenship and family life, and the return of property. In cases of past and continuing harm, compensation may be a more viable form of redress than restitution. Harms covered by compensation are treated as damage that can be assessed in financial terms. Compensation is due for physical or mental harm, moral damage, lost opportunities in getting an education and a career and the related loss of future earnings, as well as any costs related to access to legal, medical, psychological, and social services (2005: Art. IX, 19–22).

The federal H.R. 40 reparations study bill and the California Assembly Bill 3121 establishing the Reparations Task Force (2020) analyzed below, exemplify the transnational legal process in that they incorporate the international human rights law discourse into the domestic reparations study legislation. The documents discussed below include federal and state bill proposals, witness testimony in support of the federal H.R. 40, and the California Reparations Task Force policy recommendations. Given US legal exceptionalism and exemptionalism with regard to UN international law, this development merits attention precisely because it represents the most overt internalization into the domestic legal discourse of the 2005 UN Principles on Reparation.

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cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law" (UN 1993).

4.1. Example 1: Federal Reparations Study Bill – H.R. 40

N'Cobra has advocated for H.R. 40 since 1989. More recently, it was joined by the National African American Reparations Commission (NARRC), convened in 2015 at the Institute of the Black World 21st Century (IBW). Dedicated to the memory of Queen Mother Moore, the Commission brings together experts from across the country, representing diverse fields, committed to reparative justice education and advisory services. The original H.R. 40 bill, known today as the "Reparations Study Bill" has been introduced in every Congress since 1989. Its original sponsor was Rep. John Conyers (D-Mich) who in 2017 also introduced the revised bill. After his retirement, in 2018, Rep. Sheila Lee Jackson (D-TX) took over as the revised bill's sponsor.[43] Referred to as the "Reparations Remedy Bill," it focuses more on proposing remedies and reparations for the past and present harms, but it also takes the emphasis off the documentation and study of the institution of slavery and its lingering negative effects on African Americans today, mostly because over the past three decades substantial research aligned with the original bill's goals has been produced.[44]

In its original form, H.R. 40 set out to establish a "commission to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes" (emphasis mine). Such a commission would consider "whether the Government of the United States should offer a formal apology on behalf of the people of the United States for the perpetration of gross human rights violations on African slaves and their descendants" as well as "whether … any form of compensation to the descendants of African slaves is warranted," to whom and in what amount and form? [45]

In the revised version, the reparations commission's task would be to "study and consider a national apology and proposal for reparations for the institution of slavery … " (emphasis mine). The tentative question from the original version "whether" to offer an apology and compensation for gross human rights violations has given way in the revised form to the question "how the Government" will apologize and offer other forms of reparation, both for "gross human rights violations" and "crimes against humanity on African slaves and their descendants." Next to compensation and apology, the revised bill puts up

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43 After Sheila Lee Jackson's untimely death in July 2024, Rep. Ayanna Pressley (D-MA) took over the sponsorship of H.R. 40 and reintroduced the bill in the 119th Congress (2025–2026) on Jan. 3, 2025.

44 For more see the *HR 40 primer—Seize the time* (2018).

45 The full text of the 1989 reparations study bill (HR 3745) can be found here: https://www.congress.gov/bill/101st-congress/house-bill/3745/text

for consideration complementary forms of redress and it does so in a more assertive manner: "How the injuries … can be reversed; how any form of compensation … is calculated … what forms of satisfaction, in addition to apology, should be implemented. … how … any other form of rehabilitation and restitution to African descendants is warranted" (Sec 3(b)7(A-H)). Finally, the revised bill clearly expresses an expectation that the commission's recommendations will comply 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" (Sec 3(b)7(A)). The revised bill's wording shows a conscious alignment with the UN Principles on Reparation (2005).

In the original H.R. 40, the Commission's task was also to determine "whether" African Americans still suffer from "the negative lingering effect of slavery" (e.g. as a result of federal and state law discrimination and various forms of public and private sector discrimination). The revised bill makes the assumption that such harm exists and is well documented. Thus, if the national reparations commission were to be established any time soon, its task would be to determine "how Federal laws and policies that continue to disproportionately and negatively affect African-Americans as a group, and those that perpetuate the lingering effects, materially and psycho-social, can be eliminated."

Over the last two decades, three H.R. 40 hearings were held in the House Committee on Judiciary's Subcommittee on the Constitution, Civil Rights and Civil Liberties (in 2007, 2019 and 2021). The transcripts of the meetings, including witness testimony, reveal that between 2019 and 2021, when the Black Lives Matter Movement reached its apex after George Floyd's murder, pro-reparations witnesses, among them representatives of international human rights and civil rights organizations, advocacy groups, as well as lawyers and politicians, built connections to the global reparations movement in a more determined manner. During the 2019 *H.R. 40 and the path to restorative justice* hearing, Rep. Sheila Jackson Lee (D-Tex), the revised bill's sponsor and member of the subcommittee, recognized the Caribbean heads of states, scholars, activists, and politicians as a source of inspiration, "playing a leading role in the global reparation movement" (2020: 14). In a similar manner, actor and activist Danny Glover asserted that "we [Americans] as a Nation can benefit" from the Caribbean community's leadership (2020: 34). Sir Hilary Beckles, chair of CARICOM (The Caribbean Community) Reparations Commission and professor at the University of West Indies, Jamaica, was present at the hearings, which added legitimacy and seriousness to the reparations study bill and its advocates, as part and parcel of the global movement for racial justice.

The report of the 2021 H.R. 40 hearing, titled *H.R. 40: Exploring the path to reparative justice in America*, shows more resolve on the part of the bill's

supporters to reframe both slavery and multiple recent incidents of racial violence in terms of human rights violations that require appropriate redress. This is evident in the testimony of Kamm Howard's (N'Cobra), who sees slavery as the nation's original sin but also as a crime against humanity (*H.R. 40: Exploring the path* 2022: 105). In a similar vein, Dreisen Heath of Human Rights Watch, a key international human rights organization, sees chattel slavery and the post-Reconstruction era racist policies as gross violations of human rights that continue to impact Black Americans today (2022: 112). In her testimony, Rep. Cori Bush (D-Mo.) refers to lynching incidents as a violation of victims' human rights, for which their families received no justice (2022: 166).

Some witnesses made a link between H.R. 40 legislation and the global reparations movement by reminding the subcommittee and the general audience that the hearings fit in with the objectives of the United Nations International Decade for People of African Descendant (2015–2024), which are as follows:

> - Promote respect, protection and fulfillment of all human rights and fundamental freedoms of people of African descent as recognized by the Universal Declaration of Human Rights;
> - Promote a greater knowledge of and respect for the diverse heritage, culture and contribution of people of African descent to the development of societies;
> - Adopt and strengthen national, regional and international legal frameworks according to the Durban Declaration and Programme of Action[46] and the International Convention on the Elimination of All Forms of Racial Discrimination and to ensure their full and effective implementation. (Programme of Activities)

During the 2021 hearing, the most vocal supporter of the US complying with its international human rights law obligations was Tendayi Achiume, a UCLA law professor and UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance.[47] In her testimony, she made it clear that by passing H.R. 40 the American government would be delivering on binding international human rights commitments:

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[46] The Durban declaration states that slavery and the slave trade, particularly the Transatlantic Slave Trade, are a crime against humanity, as are genocide and apartheid (points 13 and 15) and it affirms the victims' rights to a remedy and reparation under the United Nations Universal Declaration of Human Rights and International Convention for the Elimination of All Forms of Racial Discrimination (ICERD). Unlike treaties, UN declarations are not binding. They are a statement of universal principles that should find expression in standards and norms of international law.

[47] A Special Rapporteur is an independent expert appointed by the Human Rights Council to "report and advise" on a particular area of human rights or in a particular country. The rapporteur is not paid for their job nor are they employed by the UN. Their mandate lasts six years. For more go to *Special Procedures of the Human Rights Council*.

> … measures like H.R. 40, I think, are an essential way of fulfilling some of the goals of the International Decade of People of African Descent. … So, when you show me the image of the people who were lynched, under the International Convention for the Elimination of Racial Discrimination [ICERD][48] victims of racial injustices such as those are entitled to reparations for the harms that those individuals experienced [Art. 6] (2021: 135)

Rather than a plea for an overhaul of the domestic legal system, Achiume's testimony serves as a reminder of existing US international treaty obligations:

> reparations are not just useful mechanisms for fulfilling moral or political obligations. Rather, reparations for slavery are an integral part of fulfilling the international legal mandate to eliminate racial discrimination. The United States is not exempt from these responsibilities, and H.R. 40 would represent important progress in fulfilling its obligations under international law. (Achiume 2021: 46)

Further, Achiume strategically kindled Americans' deep-seated belief in legal exceptionalism, to present reparations as an opportunity and thus temper their legal exemptionalism:

> The reparations commission proposed by H.R. 40 presents an opportunity for the United States to show international leadership on what can be achieved when sufficient political will exists to remedy historic and persisting racial injustice associated with the enslavement of people of African descent. (Achiume 2021: 47)

This strategy is echoed in Kamm Howard's testimony: "Full reparations is the international standard for reparations, and N'Cobra declares there is no rational reason why the highest standard of redress should not be applied to a people harmed by its own government in so many ways and for so many years" (Howard 2021: 105).

Achiume's and Howard's words resonate with Kibibi Tyehimba's witness testimony during the 2007 H.R. 40 hearing, which struck at the heart of US legal exemptionalism. Speaking on behalf of N'Cobra, Tyehimba called on "the United States to show that it is committed to peace and justice and the same human rights standards for which we [the US] attempt to hold other nations around the world accountable" (Tyehimba 2007: 22–23).

In the post-George Floyd era, when the American society seemed more open to a public reckoning with its own racial injustice, H.R. 40 gained around 200 sponsors in the 117th Congress (2021–2022), the largest support ever.[49]

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[48] The US signed ICERD in 1966 but ratified it as late as 1994, as a non-self-executing treaty. This means that ICERD is not directly enforceable in US courts without proper legislation implementing the treaty provisions.

[49] Yet, the bill seems to have lost its momentum. Since then H.R. 40 has been reintroduced twice. In the 118th Congress (2023–2024), only 130 representatives cosponsored the bill, and this number declined to 96 cosponsors in the 119th Congress (2025–2026).

The 2021 committee hearings were exceptional in that, for the first time, such a strong and direct appeal to international human right law was made in support of domestic reparations legislation. In her testimony, Dreisen Heath (Human Rights Watch) insisted that the US is party to the International Covenant on Civil and Political Rights (ICCPR) and International Convention on Elimination of All Forms of Racism (ICERD), both of which create an obligation to offer effective remedy for human rights violations. Apart from these treaties, she explained, there exist well-established international law standards, articulated in the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation (UN Principles on Reparation), which create an obligation on governments, including the US as a member state, to ensure the victims of gross violations of international human rights law, past and present, receive full, effective, and adequate reparations (Heath 2021: 117–118).

Both Achiume's and Heath's testimonies were most likely intended to put pressure on the lawmakers and shame the nation, which thinks of itself in exceptionalist terms. They used the hearings as a forum to expose the chasm between the professed ideals of equal citizenship and lived realities of Black Americans. A letter of support for H.R. 40 sent by the UN Working Group of Experts on People of African Descent (16 Feb. 2021), read alongside Achiume's and Heath's testimony, is yet another example of how the special procedures of the UN Human Rights Council (individual experts and groups of experts) and non-governmental organizations can respond to human rights violations and raise public awareness of the state's international treaty obligations:

> In its 2016 report to the United States, the Working Group of Experts on People of African Descent identified clear gaps in the supplication of international human rights law. The gross violations of human rights experienced by people of African descent violate international human rights law, including in contravention of the right to life, as set forth in Article 3 of the Universal Declaration of Human Rights ("UDHR") and Article 6 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the United States of America in 1992. In addition, the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination, has issued relevant guidance in this matter, to which the United States is bound as a State party. (Day 2021: 180)

Despite the determination of human rights advocates, H.R. 40 has not been taken up for consideration in the full House, and this may not happen soon. But the California legislation (AB 3121), which established a task force to study reparation proposals for African American descendants of slavery, drew on the UN Principles on Reparation in the most forthright manner. Rather than being another attempt at embedding international human rights standards in domestic

law, the state initiative yielded a thousand-page report as the fruit of its labor. The report's release in June 2023 marks a new stage in reparations advocacy.

4.2 Example 2: California Assembly Bill 3121—The California Reparations Task Force

The California Assembly Bill 3121 establishing a Task Force to Study and Develop Reparation Proposals for African Americans (Reparations Task Force) is, to a large degree, identical with the text of the revised H.R. 40.[50] For example, Art. 2, Sec. 8301.1b3(B) of the state bill gives the task force the mandate to "offer a formal apology on behalf of the people of California for the perpetration of human rights violations and crimes against humanity on African slaves and their descendants," which is almost identical with Sec. 3b7(B) of the revised H.R. 40, the only difference being that the federal reparations commission would apologize on behalf of the nation rather than the people of California. This distinction is applied accordingly: where the California bill would study the state policies and laws and their impact on the people of California, the H.R. 40 would address the federal laws, actions and policies and their impact on American society in general.

For the purpose of this discussion, it is important that the wording of both bills expresses a commitment to international human rights, particularly as regards the commission's task of recommending appropriate remedies for past and continuing harms. Both bills stipulate that the reparations commission and the Task Force would consider "how the recommendations 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." In both bills, the assumption is made that the remedies will include eliminating "the lingering material and psychosocial effects of slavery," "appropriate policies, programs, projects and recommendations" aimed to reverse the injuries, compensation, restitution, and/or rehabilitation to descendants of enslaved Americans, in accordance with the UN Principles on Reparation (2005), but interestingly, the California bill makes no reference to forms of satisfaction other than an apology (AB3121 Art 2.3 (A-G); H.R. 40, 2017, Sec. 3b7(A-H)).

Unlike H.R. 40, AB3121 was passed into law establishing the California Reparations Task Force (Sept. 2020). After a two-year study, on 29 June 2023, the Task Force released its final report. A voluminous text, it has a lengthy Part II on the International Principles of Reparation and Examples of Reparative

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[50] Sec. 2(a)5, Sec. 2(a)7 and Sec. 3(b)7(G) are not included in AB3121 and Sec. 2 (a) 6 of H.R. 40 is given a shorter version in AB312.

Efforts, domestic and international, altogether spanning 80 pages (Chapters 14 & 15). This section explains the idea behind the 2005 UN Principles on Reparation. The report makes detailed recommendations for a public apology, the methodologies of calculating compensation and restitution, as well as policy recommendations regarding reparations for past and continuing harms (e.g. racial terror, political disenfranchisement, separate and unequal education, an unjust legal system, and the racial wealth gap). The Task Force makes it explicit that their recommendations comport with the international human rights law and align with their mandate as defined in AB3121. The California legislature, they insist, should be mindful of these principles and standards in offering reparations solutions (2023: 17).

The report introduces, explains, considers, and exemplifies how multiple and wide-ranging reparative justice measures for African Americans in California could be designed and implemented. For example, the report explains that the primary function of a public apology is the recognition and assumption of responsibility for "the atrocities committed by California state actors who promoted, enforced, and facilitated the institution of chattel slavery and its ongoing legacy of systemic discrimination" (2023: 40). The state should publicly disapprove of these past harms to ensure that the principle of non-repetition is met. No specific text of the apology is proposed; rather, the report's recommendations stress the importance of the very process of arriving at the apology, its form and content decided not by state officials, but in collaboration with the survivors and their relatives. The collaborative aspect of apology stretches to other recommended forms of satisfaction: commemorative plaques, tributes, and markers as carries of the collective memory of the victims' racial struggles within the community (2023: 40). As regards restitution and compensation, the report offers estimates of the losses resulting from health disparities, disproportionate mass incarceration and over-policing, housing discrimination, redlining, labor discrimination, discrimination against African American businesses, and unjust property takings (2023: 41–46). For example, an average African American in California lost $161,508 in homeownership wealth due to discriminatory redlining by the state. To redress the harm caused by housing discrimination and unjust property takings, the report makes twelve policy proposals for the Legislature to consider. These include "increase [in] affordable housing for African American Californians," "restitution for racially motivated takings," and "direct financial assistance to increase home ownership among African Americans, especially descendants, through shared appreciation loans and subsidized down payments, mortgages, and homeowner's insurance" (2023: 50).

The California Reparations Report is the most comprehensive and unprecedented effort at redressing historical and continuing harm through the

application of the international principles of reparation. The report makes continuous references to human rights law with phrases like "comport with international standards for reparations," "under international law" or "conform to international standards for satisfaction." In essence, this repeated evocation of the UN reparations framework as the source of principles guiding the California legislation and the Task Force it established, as well as the standards supporting policy proposals, instantiates the transnational legal process writ large. Importantly, the report is self-conscious about being a blueprint for the federal government to establish a Reparations Commission for African Americans which would, in the manner laid out by the California Task Force, "commit to full and effective reparations under international law" (2023: 641).

5. Conclusions

While grounded in grassroots post-Civil War movements, the contemporary Black reparations movement in the United States has drawn inspirations from multiple sources: West Germany's post-World War II reparations to the state of Israel and the Jewish survivors, the domestic restitution payments to Native Americans, the Japanese American Redress movement, as well as the Holocaust restitution lawsuits filed in US courts. Parallel to these precedents, the international human rights law evolving in the United Nations forum gave the descendants of enslaved Americans a new set of norms and standards, as well as a new language with which to articulate their grievances, and seek recognition and redress for past and continuing harm. They appealed to both international and domestic audiences by building analogies between their own experience and that of the colonized peoples in African countries. Importantly, the Black reparations agenda, associated with the ideologies of Black nationalism throughout the 20th century, has in the last two decades shifted towards the mainstream of American politics. Since 1989, when H.R. 40 was first introduced in the House of Representatives, we have seen a gradual legitimization of Black reparations through the transnational legal process, which involves embedding international human rights norms and standards in the domestic legislation and litigation. This has equipped the racial justice advocates with an additional set of legal and political tools to invigorate the domestic civil rights struggles and make them part of a larger global reparations movement.

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