

Boston University School of Law

Scholarly Commons at Boston University School of Law

Faculty Scholarship

10-21-2015

Reparations for Slavery and Jim Crow, Its Assumptions and Implications

David B. Lyons

Boston University School of Law

Follow this and additional works at: https://scholarship.law.bu.edu/faculty_scholarship



Part of the [Law and Economics Commons](#), and the [Law and Race Commons](#)

Recommended Citation

David B. Lyons, *Reparations for Slavery and Jim Crow, Its Assumptions and Implications*, in No. 15-43 Boston University School of Law, Public Law Research Paper (2015).

Available at: https://scholarship.law.bu.edu/faculty_scholarship/162

This Article is brought to you for free and open access by Scholarly Commons at Boston University School of Law. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarly Commons at Boston University School of Law. For more information, please contact lawlessa@bu.edu.



**REPARATIONS FOR SLAVERY AND JIM
CROW, ITS ASSUMPTIONS AND
IMPLICATIONS**

Boston University School of Law
Public Law and Legal Theory Working Paper No. 15-43

Forthcoming in *Oxford Handbook of Philosophy and Race*, 2016-2017

October 21, 2015

David Lyons
Boston University School of Law
Boston University Department of Philosophy

This paper can be downloaded without charge at:

<http://www.bu.edu/law/faculty/scholarship/workingpapers/2015.html>

Reparations for Slavery and Jim Crow, Its Assumptions and Implications

David Lyons

[Forthcoming in *Oxford Handbook of Philosophy and Race*,
Naomi Zack, ed., New York, NY: Oxford University Press, 2016-17]

I develop the case for reparations to African Americans today, based on wrongdoing that began with slavery. Critics of such claims remind us that slavery was abolished a century and a half ago, no one who was either a slave or a slave holder is alive today; and moral culpability cannot be inherited, from which they infer that the time for reparations is long past. Defenders of reparations reply that racial subordination did not end with the abolition of slavery but was maintained under Jim Crow; that the wrongs of those systems have caused deeply entrenched, lasting harms; and that state and federal governments, as well as some of today's corporations, universities, and individuals are morally accountable because they helped establish or support slavery or Jim Crow or have profited from them.

References to the harms that were caused by slavery and that were sustained or caused by Jim Crow may suggest that reparations could consist of cash payments to compensate for any persisting harms. Cash payments would seem an important component of reparations, but I will suggest that they would not suffice. On the one hand, moral wrongs are not reducible to material harms and cannot be fully repaired by material compensation. On the other hand, slavery and Jim Crow were not just a collection of wrongs, such as unpaid labor and poor housing. They were all-encompassing systems that prevented African Americans from developing their interests, their intellects, and indeed their lives as they were morally entitled to do. This subordination of African Americans was justified by a profoundly insulting ideology of white

supremacy that has greatly affected American culture and has contaminated the attitudes of whites and blacks. A morally adequate program of reparations would enable the survivors of those systems to rebuild their lives, free of oppressive racism, as far as that is possible.

The argument proceeds as follows: Part I reviews the historical background. Part II discusses the moral considerations that underlie reparations claims. Part III suggests what reparations were due when slavery was abolished. Part IV extends that reasoning by suggesting what reparations were called for when Jim Crow was officially abolished, and what is called for today. Part V notes some wider implications of the moral considerations that are assumed by the reparations argument.

I. The History

English colonists on mainland North America adopted slavery by the 1630s (Lyons, 2013, Takaki, 2008). Virginia and its neighboring colonies focused on the profitable business of raising tobacco and other cash crops for export. Indentured servants initially provided the labor, but the colonial elite soon decided to rely primarily on slaves, most of whom came, directly or indirectly, from Africa.

In the late 18th century or shortly thereafter many of the newly-independent states abolished slavery. At the same time, they ratified a Constitution that supported slavery (agreeing, for example, to return escaped slaves). Slave labor became the foundation of Southern economic growth and prosperity, which in the antebellum period exceeded that of the North. Slave-grown cotton became America's leading export, its total value greater than all other exports taken together (Kolchin, 1995, pp. 95, 194).

By 1865, when slavery was abolished, America was the inhospitable home to four million slaves. Following emancipation, legal reforms enabled African Americans to vote, hold public office, and serve on juries, despite violent resistance by supporters of racial subordination. Federal troops routed terrorist organizations that sought to overthrow Reconstruction. But the government soon abandoned those efforts. In 1877, federal troops ceased enforcing Reconstruction laws. Federal courts subsequently weakened the new constitutional amendments and laws that sought to secure African Americans' legal rights (Foner, 1989).

As the former slaves received no reparations for their enslavement (not even the "40 acres and a mule" that some were loaned during the Civil War; Foner, 1989, pp. 70-71), they lacked the wherewithal to realize the promises of emancipation. Most became sharecroppers for plantation owners whose fraudulent accounting kept them perpetually in debt. With force, fraud, and strength of numbers, white supremacists regained control of Southern governments, which then revised their laws in order to exclude African Americans from the ballot box, public office, and jury service. Federal courts accepted the enactments so long as they were superficially race-neutral. The Supreme Court approved state-sponsored racial segregation, on the condition that separate facilities be equal, which was openly flouted.

Throughout the nation, inequality and oppression were imposed. African Americans could be killed or assaulted with impunity, as there was no owner to compensate for the loss and no chance of officials intervening. The ever-present threat of lynching was a crucial means of racial re-subordination, especially in the 1890s when thousands were lynched (Zangrando, 1980). Pogroms destroyed black communities that appeared to prosper (Browne-Marshall, 2013, pp. 66-72). The result was an exceedingly cruel and degrading system that subjected African Americans to indignities, assaults, and oppressive social practices that openly expressed

profoundly insulting white supremacist ideology. Many Southern blacks who were able to escape the South migrated North or West, greatly enlarging black communities in cities across the U.S. (Wilkerson, 2010) There they confronted systematic discrimination in housing, education, and employment, which led to the creation of black urban “ghettos” and deeply entrenched racial stratification.

The development of industrial unions and New Deal programs during the 1930s brought some benefits to black workers and their families. During World War II many Americans saw that Jim Crow resembled the racism of America’s wartime foes, such as Nazi Germany, and civil rights campaigns received wider support. Those efforts were intensified as black veterans of the segregated armed forces returned home unwilling to accept second class citizenship (Dittmer, 1994, chap.1). President Truman created a Committee on Civil Rights, which catalogued Jim Crow’s inequities: African Americans had substantially less access to medical care than European Americans, much higher infant mortality, and lower life expectancy; inferior housing and schools; restricted access to jobs, skilled trades, and professions; much lower wages for comparable work, much higher unemployment rates, much longer periods of unemployment, and much lower family income. They were subjected to police brutality and to widespread bias in the legal system (President’s Committee, 1947).

During the post-war period, America competed with the Soviet Union around the world. Each sought military alliances with the newly independent, post-colonial nations of Asia and Africa as well as their resources and markets. America’s reputation among peoples of color and its global aspirations were threatened when images were broadcast abroad of peacefully demonstrating African Americans who sought to exercise their legal rights were met with official violence on U.S. soil. In that context, the federal government denounced white supremacy. The

Supreme Court ruled against state-sponsored racial segregation and Congress enacted significant civil rights legislation, which federal courts upheld and the executive branch enforced. African Americans were elected and appointed to public office in greater numbers and opportunities increased in education and the workplace (Franklin & Moss, 1994, p. 528).

But federal interest in reform was once again limited, in both scope and duration. As to scope: the reforms failed to address entrenched inequalities, such as the consequences of Jim Crow housing policies. For decades, government agencies, banks, and insurers had intensified the impact of segregation by making private homes more expensive and often unaffordable for African Americans. Black families' resulting lack of financial resources blocked upward mobility and left them without funds when they faced illness, unemployment, and other emergencies. De facto segregation was further intensified as government at all levels supported programs of "urban renewal," which reduced the stock of affordable housing, and constructed highways that facilitated "white flight" from urban centers to racially restrictive suburbs. Housing reforms were promised, but when the Fair Housing Act was enacted in 1968, it lacked enforcement provisions; and when they were added, in 1988, they were not funded. After federal courts ruled against racial segregation in public housing, funding for housing projects disappeared (Massey and Denton, 1993; Oliver and Shapiro, 2006).

By the 1980s, despite continuing widespread poverty, Congress began reducing anti-poverty programs. Affordable housing programs were neglected. Government policies intensified unequal rates of arrest, conviction, and incarceration, which disrupt Black families, reduce their housing options, and extinguish employment opportunities. The effects have led some scholars to speak of a "new Jim Crow" (Alexander, 2010). As if to confirm this interpretation of events, a number of states have adopted voting restrictions that seem clearly

aimed at excluding people with limited resources from the polls, including many African Americans. And, despite those developments, the Supreme Court has weakened the Voting Rights Act (*Shelby County v. Holder*, 570 U.S. ____ (2013)).

II. Moral Considerations

The history recounted in Part I supports a moral argument for reparations (understood as compensation for wrongful injury, as distinct from compensation more generally, which repairs loss that is suffered for any reason, and from restitution, which relinquishes gains that were derived from wrongdoing, not necessarily that of the beneficiary). As both slavery and Jim Crow involved such practices as morally unwarranted imprisonment, coercion, and homicide, rape, torture, and mutilation, they clearly violated the moral requirement that we treat others with consideration and respect, including those with whom we have no established relationships and to whom we have made no binding commitments. The moral wrongs of slavery and Jim Crow involved economic, physical, and psychological harms, many of which have had profound, lasting effects on African Americans today, such as the wealth gap between black and white families, which stems from income differences combined with discriminatory housing policies.

Morality calls for the repair of such wrongs, within moral as well as practical limits. Individuals may be morally required to repair, or to help repair, the wrongs, for at least three different reasons: first, because they helped initiate or supported slavery or Jim Crow; second, because they failed to combat such practices when it was incumbent on them to do so; and third, because they profited from them. Regarding those in the first category, although no one who supported chattel slavery in America is alive today, some individuals are alive who supported Jim Crow or who have worked to maintain racial subordination. Perhaps more important, for

present purposes, institutions, such as governments, universities, and for-profit corporations, which can last for generations, acquire moral responsibility for their acts and policies and their predictable consequences. Thus, President Clinton properly apologized on behalf of the U.S. government in 1997 for the Tuskegee syphilis study of 1932-1972 (which misinformed poor Blacks of their illness and denied them effective treatment when it became available; Washington, 2006, chap. 7), and Congress did right in 1993 by apologizing to the people of Hawaii for the U.S. government's part in the overthrow of the Hawaiian government a century earlier (U.S. Public Law 103-150). Second, we are morally required not only to act justly and avoid supporting injustice but also to help combat systematic injustice, as the moral stakes require and circumstances allow. This suggests that many Americans were culpable for failing to help end or ameliorate slavery or Jim Crow when the stakes were sufficient to justify the risks involved. It would not have been unduly dangerous for many more Americans to have supported the antislavery movement than actually did so, and the same could be said even more emphatically of the civil rights movement that challenged Jim Crow. To this we may add, ignorance that is caused by the failure to pay adequate attention to systematic injustices of which one is vaguely aware and to which attention can be paid without much difficulty does not nullify one's culpability for failing to address such egregious social wrongs. Third, we can be morally required to relinquish wrongful gains – benefits that stem from wrongdoing that is not necessarily our own (restitution) For example, the otherwise blameless child of a slave-owner whose inheritance stemmed partly from slave labor would have been morally required to relinquish the relevant portion of that legacy. And those who have benefitted from discrimination against African Americans may now be required to share the resulting advantages with those who have suffered the discrimination or its consequences.

Reparations are due those who suffer directly or indirectly from slavery or Jim Crow or the harms they have caused. But moral wrongs are not reducible to material harms. On the one hand, people can suffer harms when no one is at fault, when caused by accidents or natural events; on the other hand, repairing material harms, such as economic losses, cannot fully repair moral wrongs, such as rape, torture, the forcible division of families, unwarranted contempt, and the denial of dignity. At the very least, those who are culpable must also acknowledge and apologize for their wrongdoing. Furthermore, reparations for slavery and Jim Crow should maximize the autonomy of its beneficiaries, e.g., by enabling them to decide how to use cash payments; for those systems of racial subordination greatly reduced the autonomy of those who were principally wronged.

Two final points. First, given the egregious wrongs of slavery and Jim Crow and their legacy of deeply entrenched harms, it might seem that compensation and restitution under a morally adequate reparations program could impoverish many Americans. It should therefore be noted that what may properly be demanded of individuals is limited by considerations of humanity as well as justice. All persons must be treated with dignity and due consideration, so that no one, including wrongdoers, should be impoverished by the reparations programs. Second, someone who was or still is entitled to reparations, such as a former slave or an African American who has lived under Jim Crow or who has suffered its persisting harms, may be said to have (or to have had) a valid moral claim to compensation. As we have noted, however, the former slaves received no reparations following emancipation. Some defenders of reparations today may reason that, as the reparations that were morally required were not forthcoming, moral claims to reparations have been passed down, like property, from one generation to the next, until they are honored (Boxill, 2010, sec. 8). On this view, such an inherited moral claim could

soundly be asserted today, quite independently of any continuing harms. No such reasoning is assumed in the argument that follows. The idea that such moral credits can be passed from one generation to another seems no more plausible than the idea that moral culpability can be inherited by a descendant of a wrongdoer. In what follows, neither principle is assumed.

III. 1865

What should a reparations program have been like when slavery was abolished? One approach would have been to provide the former slaves with funds equivalent to the cash value of the wrongs that were imposed by slavery. That would have enabled those who should have benefitted most directly to decide how best to do so.

The initial problem when contemplating this approach would be to determine the rates at which compensation should be paid. Consider a relatively simple example: compensation for unpaid labor under slavery. We might imagine that the amount owed to a former slave was the product of the duration of unpaid labor and the prevailing rate for the same sort of work among free workers at the time (plus interest, in view of the delay of the payment). But it is unclear what prevailing rate should be used, or even whether compensation at a prevailing rate would be fair. On the one hand, free black workers were paid less than whites for the same work; on the other hand, it is possible that the prevailing rates for white workers when slavery dominated the economic system were depressed by the prevalence of slave labor. These considerations suggest that compensation to the former slaves for their unpaid labor should be more generous than might initially seem appropriate.

A more serious problem is that such compensation should not be regarded as settling the moral account for unpaid labor under slavery. For an essential aspect of slave labor is that it is

coerced without moral justification, and the wrong of unjustifiably coercing someone is independent of wrongfully withholding compensation from that person (because compensation can be wrongfully withheld for labor that is not coerced – a problem that is faced today by many workers). Furthermore, coercion has no standard cash equivalent.

The problem here is quite general: moral wrongs are not reducible to the material harms they involve, so the wrongs of slavery could not be repaired simply by compensating the former slaves for the material harms done. Furthermore, morality does not determine appropriate cash payments for any moral wrongs, including the wrongs of slavery, which range from wrongfully separating parents from their children to rape.

I do not mean to dismiss cash payments. In our society and many others, they are conventionally made to acknowledge wrongdoing. This suggests that a morally acceptable reparations program would have included substantial cash payments for all ex-slaves and I shall assume that hereafter. But how might these be determined? By a fair process of negotiations in which the former slaves or their chosen representatives were among the principal participants.

So far we have looked at reparations for slavery as if it could consist in the piecemeal repair of a diverse collection of wrongs. But repairing the wrongs done by slavery in America could not be like returning an item that was stolen, repairing a piece of property that one has carelessly damaged, and so on, down the line of injuries. African Americans under slavery were denied the opportunity to develop their lives under the freedom and with the resources to which they were morally entitled as human beings. They accordingly had a valid moral claim to be enabled to rebuild their lives as far as that was possible. The claim would have held against American governments at all levels and many individuals who had supported slavery; many individuals, universities, and businesses who had profited from it; and all those who failed to

help end slavery or ameliorate its wrongs when it was morally incumbent on them to take such action. The institutions and individuals who were thus morally liable were morally obligated to contribute to a reparations program that would have enabled the former slaves to rebuild their lives, as far as that was possible.

A morally adequate reparations program in 1865 would have included, first of all, the provision of services to address the former slaves' most urgent needs, such as aid to trauma victims, general medical care, adequate housing, provisions, and clothing. The reunion of families that were divided under slavery would have been facilitated, as well as the relocation of those who wished to rebuild their lives elsewhere. The former slaves would have been offered the literacy training they had been denied.

Extensive organization would have been needed to provide such services. Experience indicates that it would have been best if the former slaves (or, if necessary, their chosen representatives) implemented specific reparations programs, as they had already established their organizational and technical competence. During the Civil War, for example, escaped slaves had been allocated large plantations that had been abandoned by their owners. Without supervision by others, they made excellent use of the resources and created self-governing communities. What they had achieved was undone when President Johnson ordered that such lands be auctioned off or returned to their original owners (Foner, 1989, pp. 158-163).

In addition to addressing the ex-slaves' most urgent needs (which was required by ordinary considerations of justice), a morally adequate reparations program would have provided them with sufficient resources to rebuild their lives. One way of beginning to think about this is suggested by the 1865 proposal made by the Radical Republican congressional leader Thaddeus Stevens, that the federal government confiscate four hundred million acres that were owned by

the wealthiest ten percent of Southern landowners, to be used as follows: forty acres were to be allotted to each adult ex-slave, and the remaining land was to be sold in lots of up to five hundred acres, the proceeds to provide pensions for Civil War veterans, compensation to loyal unionists for property losses in the Civil War, and retirement of the national debt (Foner, 1989, pp. 235-37, 3-7-16).

Stevens's plan could have provided the core of a morally acceptable reparations program, though much more would have been required. Necessary additions would have included providing the former slaves who received land allotments with the materials and equipment that they would have needed to establish well-functioning farms, and insuring their access to credit, supplies, and markets, while those who wished to pursue other lines of work would have been provided with the necessary training and equipment. The importance of Stevens' plan is suggested by the fact that members of the African American community were pressing at the time for just such a distribution of land to the ex-slaves. It appears that most ex-slaves wished to secure their freedom and gain economic independence as free farmers in their homeland, which was the rural South. If Stevens' plan had been implemented with the necessary supplements, the ex-slaves' objective would have been realizable, for they had already established their capacity to work productively, with skill and foresight. Such a plan would have helped the ex-slaves realize another aspect of social freedom: land reform would have helped undermine the large landowners' autocratic control of the South. It would also have helped promote genuine democracy.

The actual history of Reconstruction tells us that a morally adequate reparations program would also have included whatever measures were needed to secure the former slaves against re-subordination. This would have required that the federal government vigorously enforce their

civil rights through an effective, systematic campaign, as extensive and as long-lasting as needed, against white supremacist ideology.

How could such a reparations program have been funded? First, individuals and institutions that engaged in or supported slavery were morally obligated to help repair the wrongs to which they had contributed. Second, some of the revenue from sale of the confiscated land might have been diverted to support the program. Third, general taxation might also have been needed. A fourth source of funding would have been restitution: the relinquishing of wrongful gains that had been received even by non-culpable parties. This would have been an important source, as slave labor had contributed very substantially to income and wealth that went to others throughout the nation. Thus non-culpable persons could have been called upon to help pay for reparations through both restitution and general taxation.

Such a program would have resembled a forward-looking reconstruction of society. But it would have focused on what was owed to African Americans, including cash payments, partly for morally symbolic reasons. Its backward-looking character would be confirmed by the requirement that all culpable parties acknowledge and apologize to the former slaves for the wrongs of enslavement.

It is quite possible that a morally adequate reparations program for slavery would have required a radical reconstruction not only of the South but of American society as a whole. That would have been a virtue, not a fault, of such a program.

IV. 1965/2015

Instead of reparations for slavery, African Americans experienced re-subordination under Jim Crow. Slavery was abolished, but enslavement continued in various forms, such as debt

peonage and convict leasing (Blackmon, 2008). Lynching helped consolidate Jim Crow and pogroms helped maintain racial subordination. The last major, directly relevant legal advance of recent years was the Voting Rights Act of 1965. That year will count, for present purposes, as the official end of Jim Crow, for it then lost significant support from the federal government (though many state governments in the Old South officially and practically opposed federal policy on civil rights; Webb, 2005).

What reparations did morality require in 1965? Like slavery, Jim Crow was not a collection of diverse wrongful practices, but an all-encompassing system of subordination that embodied the doctrine of white supremacy. It is true that the black community had become large enough and separate enough in urban areas to enable some African Americans to create successful businesses, acquire an education, become professionals, and afford decent housing. But all functioned within the constraints and damaging insecurity of a system that was predicated upon black vulnerability and white impunity. A morally adequate reparations program for African Americans in 1965 would have dismantled the entire structure.

The 1947 report by the President's Committee catalogued many of Jim Crow's inequities, which had not substantially diminished by 1965. Those deficits resulted not from racial inferiority (as white supremacists maintained) but from the nation's failure to repair the wrongs of slavery and its re-subordination of African Americans under Jim Crow. But a morally adequate reparations program would have done more than attack such deficits. Morally adequate reparations would have included crash programs to reduce infant and maternal mortality among African Americans, provide adequate medical care more generally, reduce the various forms of environmental pollution that typically plague black neighborhoods, and promote life expectancy. It would also have reviewed arrests, prosecutions, and sentencing in order to identify, correct,

and compensate for inequities in the administration of the law, and would have provided job training and productive jobs, on as large a scale as needed. (Much work could have been provided by, for example, repairing and expanding the nation's infrastructure, including public transportation, and constructing affordable housing.) A morally adequate reparations program would have attacked the wealth gap between black and white families that results from Jim Crow housing policies, by enabling black families to acquire the homes they would otherwise have secured. It would have provided safe and affordable child care and good public schools. It would have increased wage and salary levels so that parents would not need to work multiple shifts and could devote adequate time with children.

A morally adequate program would also have persuasively explained the moral need for reparations and undertaken a vigorous, long-term program to combat White supremacist ideology. It would have insured that culpable parties acknowledge and apologize for the wrongs of racial subordination and contribute to the cost of enabling African Americans to rebuild their lives. And it would have taken whatever measures might be necessary to insure that re-subordination could not occur again.

How would the cost of such a program be covered? Partly by payments from parties found culpable, especially governments and private institutions; partly by restitution – the transfer of wrongful gains; and partly by general taxation. But some of the costs would be offset by increased family incomes, which would promote spending, sales, manufacturing, jobs in the private sector, and increased tax revenues.

It seems clear that a morally adequate reparations program in 1965, as in 1865, would have required substantial changes across American society. Very little of this was done (Morris

2014). As we have noted, the government never confronted the deeply entrenched legacy of slavery and Jim Crow, and its commitment to reform soon faded.

We should now consider the present. What morality requires today by way of reparations is not much different from what it required in 1965. As official measures now threaten the development of a “new Jim Crow,” government must first of all reverse its course. So, for example, justice requires a rapid end to the mindless, costly, wasteful, self-defeating policies that result in mass incarceration of non-violent offenders under mandatory sentencing laws. Called for are: the use of alternatives to imprisonment; adequate public financing for projects to expedite the release of prisoners who are demonstrably innocent of the crimes for which they were convicted; the provision of jobs with futures for those who have served their time; and the repeal of rules that exclude ex-felons from public housing and the ballot box. Also required are multiple measures to address the needs of those at the very bottom; and for the re-establishment of voting rights reforms that have been nullified by restrictive state laws and the Supreme Court’s decision in *Shelby County v. Holder* (Rutenberg, 2015). To these items must be added those listed under reparations for 1965 that are not covered above.

Once again, many of these measures could be justified on general considerations of justice, without recourse to reparations. But a reparations program would focus on what was owed to African Americans, would include cash payments, and its backward-looking character would be confirmed by the requirement that all culpable parties be required to acknowledge and apologize to African Americans for supporting Jim Crow or failing to help combat its wrongful legacy.

Epilogue

It is time to acknowledge even wider applications of the moral considerations that I have discussed. While slavery subordinated African Americans almost exclusively, its white supremacist rationale deeply affected other segments of American society that are conventionally categorized as non-white. Insofar as my moral assumptions are sound, reparations on a very large scale can reasonably be claimed by Native Americans, Asian Americans, Latino Americans, and many immigrants who were seriously abused. There is neither room here nor the need to discuss all of these cases or to trace differences among them. It will suffice for present purposes to illustrate the general point with two examples.

During World War II, when Japan was one of America's principal foes, one hundred and twenty thousand Japanese Americans were ordered from their West Coast homes and sent as prisoners to distant, isolated, barren "relocation centers." These facilities functioned as concentration camps. Symptomatic of that was the orientation of guards and their weapons, which were directed inside, at the residents, so that some residents who wandered close to the fences were shot and killed (Irons, 1989).

Elements of the internment program were challenged, separately and unsuccessfully, by Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu. *Korematsu v. U.S.* (323 U.S. 214 (1944)) was the last of the three to be decided by the Supreme Court. Writing for the Court, Justice Black accepted what he thought was the judgment of the military that internment was a necessary wartime security measure. In their dissents, Justices Murphy and Jackson each characterized the internment program as "racist."

In 1983, the Commission on Wartime Relocation and Internment of Civilians established that the internment policy had been implemented despite the fact that all American security agencies at the time had denied the need for any such measures and that their judgments and

corresponding objections to internment by civilian officials had been suppressed by the government when it defended the internments in federal court (*Korematsu v. U.S.*, 584 F.Supp. 1406 (1984)). These revelations led Congress and a somewhat reluctant president in 1988 to grant reparations of \$20,000 apiece to living survivors of the camps or their heirs (Civil Liberties Act of 1988, 102 Stat. 904). Three points may be made about the case. First, as Justices Jackson and Murphy made clear, even the evidence that was available to the Court in 1944 indicated that the internment policy reflected official bias and pressure from White Americans who wanted to be rid of their Japanese American neighbors. Second, the reparations program that was implemented accounted for only a small fraction of the economic costs of internment, as entire families were uprooted, lost their homes, careers, property, some internees lost their health, and some lost their lives. Third, the program acknowledged only a fraction of the injuries that had been inflicted on Japanese Americans by long-standing discrimination, beginning with the federal law that denied U.S. citizenship to Japanese (and many other) immigrants who officials classified as non-white. To that insult, states along the West Coast added the injury of alien land laws, which were upheld by federal courts, that prevented non-citizens from acquiring real property. A morally adequate reparations program for Japanese Americans would have repaired all of those injuries, as far as that was possible.

Now consider what reparations may reasonably be due Native Americans. The process of displacing, exterminating, and enslaving American Indians began before African Americans arrived in the New World. It continued throughout the next four centuries, and has not yet ended. Almost all of American territory, including Hawaii, has been taken from Native Americans – illegally, by America’s own legal standards. Indian land cessions were coercively or fraudulently imposed. Federal treaties that pledged permanent land rights and financial

support have almost always been broken by the U.S. government. Measures, such as poisoning wells and destroying food sources, have deliberately been taken to deprive Native Americans of subsistence. Royalty payments for resources extracted from tribal lands have rarely been paid. And the federal government continues to deface and dishonor sacred Native America sites. The wrongs inflicted upon American Indians have been so devastating, it is difficult to imagine what a morally adequate reparations program for them might be like (Dunbar-Ortiz, 2014).

In the present political climate it is difficult to imagine even one major component of any morally adequate reparations program being undertaken. European Americans harbor greatly exaggerated conceptions of past reforms and as a result are generally blind to the deeply entrenched legacy of slavery, Jim Crow, and other systematic wrongdoing, such as the two examples mentioned. Mainstream politicians reinforce persisting racial stereotypes, exploit economic anxieties, and mislead the public about long-term costs and benefits of reform.

Without minimizing the case for reparations to African Americans today, it seems clear that the full implications of reparations reasoning would call for much more than reparations -- an overhaul of American society to end racial stratification and create substantive conditions of equal opportunity for future generations. However daunting such an aim may seem, experience shows that, while the success of efforts to achieve reform is unpredictable and can depend on fortuitous circumstances, reform cannot be expected without persistent political struggle.

References

Alexander, Michelle (2010). *The New Jim Crow* (NY: New Press).

Blackmon, Douglas (2008). *Slavery By Another Name* (NY: Doubleday).

- Boxill, Bernard (2010). "Black Reparations," *Stanford Encyclopedia of Philosophy*.
- Brophy, Alfred (2006). *Reparations Pro and Con* (Oxford: Oxford University Press).
- Browne-Marshall, Gloria (2013). *Race, Law, and American Society* (NY: Routledge).
- Coates, Ta-Nehisi (2014). "The Case for Reparations," *Atlantic Monthly* (May 21, 2014): 1-62.
- Dunbar-Ortiz, Roxanne (2014). *An Indigenous People's History of the United States* (Boston: Beacon Press).
- Foner, Eric (1989). *Reconstruction 1863-1877* (NY: Harper & Row).
- Franklin, John Hope, and Alfred A. Moss, Jr. (1994). *From Slavery to Freedom* (NY: McGraw-Hill).
- Irons, Peter (1989). *Justice Delayed* (Middletown, CT: Wesleyan University Press).
- Kolchin, Peter (1995). *American Slavery 1619-1877* (NY: Hill and Wang).
- Lyons, David (2013). *Confronting Injustice* (Oxford: Oxford University Press), chaps. 1-5.
- Massey, Douglas, and Nancy Denton (1993). *American Apartheid* (Cambridge, MA: Harvard University Press).
- Morris, Monique W. (2014). *Black Stats* (NY: New Press).
- Nash, Gary (2006). *Red, White, and Black* (Upper Saddle River, NJ: Pearson/Prentice Hall).
- Oliver, Melvin, and Thomas Shapiro (2006). *Black Wealth/White Wealth* (NY: Routledge).
- President's Committee on Civil Rights (1947). *To Secure These Rights* (Washington, D.C.: U.S. Government Printing Office).
- Rutenberg, Jim (2015). "A Dream Undone," *New York Times* (August 2, 2015), MM30.
- Stannard, David (1992). *American Holocaust* (NY: Oxford University Press).
- Takaki, Ronald (2008). *A Different Mirror* (Boston: Little Brown).
- Webb, Clive (2005). *Massive Resistance* (NY: Oxford University Press).

Wilkerson, Isabel (2010). *The Warmth of Other Suns* (NY: Random House).

Zangrando, Robert L. (1980). *The NAACP Crusade Against Lynching, 1909-1950* (Philadelphia: Temple University Press).