

CRITICAL PRAXIS, SPIRIT HEALING, AND COMMUNITY ACTIVISM: PRESERVING A SUBVERSIVE DIALOGUE ON REPARATIONS

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INTRODUCTION: TRANSFORMATIVE REPARATIONS THROUGH DISCOURSE

Remembering the past has always been a difficult and painful endeavor for the Black community.¹ The effects of over two hundred forty-five years of slavery, three hundred fifty years of government-sponsored racial discrimination, and three hundred eighty years of pervasive racism and economic oppression will do that to a people.² The Black community has forgotten its “ancient self,”³ forced by slavery to “dis-remember”⁴ its ancestors and impelled by society to adopt a false memory of its historical past. The process of reclaiming historical memory (hereinafter, “rememory”),⁵ of placing the Black community in a “long-term linear intergenerational

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1. This Article does not intend to essentialize race by reference to the “Black community.” The choice of the phrase “Black community,” is motivated primarily by hope that one day there will be a true “Black community” where culture is nourished, political organization is possible, and unity is achieved. However, it is important to note that this Article, like many treatments of Black reparations, runs the risk of exceptionalizing race and promoting a dualistic, “black-white” perspective. It is the author’s hope that this Article provides a framework that transcends the black-white paradigm that controls our thinking about “race.”

2. *See generally* JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., FROM SLAVERY TO FREEDOM 53 (1988) (noting that the American slavery system lasted from the years 1619 to 1865); RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS 9 (2000) (noting that United States government-sponsored racial discrimination did not formally end until the passage of the Civil Rights Act in 1964).

3. ROBINSON, *supra* note 2, at 13.

4. TONI MORRISON, BELOVED (1987). The verb “dis-remember” reflects the conscious effort that some Black people make to forget the past.

5. The term “rememory” is used to refer to the process of remembering one’s cultural past. As opposed to dis-remembering, rememory represents an attempt to reclaim historical memory. *See id.*

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context,"⁶ is therefore necessary to heal the psychic injuries caused by hundreds of years of cultural and spiritual murder.⁷

Unfortunately, rememory has been inhibited by the inculcation of supposedly neutral principles underlying the system of racial privilege in America. Embraced by the American majority⁸ and internalized by the Black community,⁹ the principles of individualism, equal opportunity, and meritocracy suppress rememory to the extent that future, current and past inequality are cast as the natural and inevitable result of poor personal choices.¹⁰

This deficit story of inequality claims the equal opportunity paradigm is an objective, neutral, and fair method for society to allocate educational, employment, and political resources, without regard to race, class, gender, or ethnicity.¹¹ Assuming the possibility of an objective measure of individual merit,¹² equal opportunity presupposes the inherent sameness of all people and factors out systemic discrimination as a fallacy. Accordingly, any social and economic inequality that results is legitimized as reflecting the natural results of deficient personal choices.¹³ Rememory has thus been unable to displace the pre-existing belief in a "personal choice" story of cultural ineptitude and deficiency. Only the deconstruction of the myth of equal opportunity will enable rememory to occur in the Black community.

6. ROBINSON, *supra* note 2, at 56.

7. *See infra* Part I (discussing the psychic injuries of the Black community and the concept of "spirit-murder").

8. *See, e.g.*, STEPHANIE WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* (1996).

9. The ideal of equal opportunity is an integral component of the "American Dream," which provides that individuals, regardless of race, class, or gender, have an equal opportunity to succeed in society. *See* JENNIFER L. HOCHSCHILD, *FACING UP TO THE AMERICAN DREAM* 184-99 (1995) (arguing that Blacks believe in the "American Dream," but are often disappointed by their actual experience).

10. *See* Christian Sundquist, *Equal Opportunity, Individual Liberty, and Meritocracy in Education: Reinforcing Structures of Privilege and Inequality*, 9 *GEO. J. ON POVERTY L. & POL'Y* 227, 229 (2002).

11. *See* Kenneth W. Simons, *The Logic of Egalitarian Norms*, 80 *B.U. L. REV.* 693, 697 (2000).

12. *See* Terry Eastland, *The Case Against Affirmative Action*, 34 *WM. & MARY L. REV.* 33, 44 (1992) (advocating race-neutral equal opportunity and criticizing affirmative action for departing from "objective" merit).

13. *See* CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS* 18 (1992).

African-American reparations have been proposed as a method to enable rememory,¹⁴ compensate for the wrongs of slavery¹⁵ and subsequent government-sponsored racial discrimination,¹⁶ heal spirit murder,¹⁷ and overcome racial conflict.¹⁸ However, the Black reparations movement also has the potential to eliminate racial inequality by invalidating the core values of privilege.

A subversive dialogue on the necessity of African-American reparations¹⁹ will inevitably critique equal opportunity, individualism, and white innocence and privilege. Black reparations is a subversive concept to the extent that it has the potential to cause the destruction of established legal and political principles that support the current system of government. More importantly, the discussion of African-American reparations will necessitate an outsider understanding of historical events which has the potential to nurture the spirit injuries of the Black community. As such, the benefits of a struggle for African-American reparations lie primarily in the dialogue itself rather than any negotiated economic compromise. The recognition of this fact affects the manner in which the argument for reparations is interpreted and supported.

The Black reparations movement has the potential to deconstruct racial privilege, heal the psychic injuries of the Black community, and promote racial reconciliation. However, the promise of African-American reparations to create lasting social change is being threatened by misguided, though well-intentioned, legal efforts to obtain specific monetary reparations. Specifically, current mod-

14. See ROBINSON, *supra* note 2, at 16 (noting that "America's contemporary racial problems cannot be solved . . . until Americans . . . are repaired in their views of Africa's role in history").

15. See *id.*

16. See BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973).

17. See ROBINSON, *supra* note 2, at 56. "Spirit murder" is defined at footnote 38–42 and accompanying text.

18. *Id.* at 204.

19. Generally speaking, the Black reparations movement seeks redress—whether financial, social, or psychological—for the physical, spiritual, economic and social injuries caused by slavery, Jim Crow segregation and de facto slavery, and continuing racial inequality. Note that this is a broad definition of Reparations, and different models address different injuries resulting from the Black experience in America. For an overview of the Black reparations movement, please review Richard F. America, *Reparations and Public Policy*, in *LEADING ISSUES IN BLACK POLITICAL ECONOMY* 305 (Thomas D. Boston ed., 2002) and Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African-Americans*, 67 *TUL. L. REV.* 597 (1993).

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els of reparations present a narrow understanding of the “debt”²⁰ owed, limit the potential of spirit-healing within the Black community, do not seek to undermine privilege, and promote white backlash and intra-community divisiveness.²¹ In doing so, current models have given up on the promise of Black reparations in exchange for the slim possibility of short-term progress.

It is unlikely that the African-American reparations movement will ever succeed in securing substantive restitution from the American structure of privilege.²² However, the value of internal reparations in the form of community cohesiveness and spiritual health far outweigh the trillions of dollars in unpaid labor and damages that America morally, if not legally, owes the Black community.²³

This Article strives to incorporate a transformative narrative into the dialogue on African-American reparations: one that seeks to undermine privilege, heal the spirit, and unite the community. In doing so, each section of the Article will form its discussion around the concepts of privilege, spirit, and community. Specifically, this Article argues that deconstructing privilege is the only way to avoid the perpetuation of social inequality in the Black community. “[S]imply distributing benefits based upon institutional practices,” whether received through reparations or not, only “reproduces domination at deeper and more subtle levels.”²⁴ Furthermore, spirit-healing without confronting privilege is necessarily impossible as future patterns of inequality, legitimized under the guise of equal opportunity, will only serve to reinforce an internal and external cultural deficit story. Finally, community cohesiveness

20. Randall Robinson coined the phrase “the debt” to signify America’s responsibility for the moral, social and psychological injuries of African-Americans. In essence, America owes the Black community a debt for past and present injuries. ROBINSON, *supra* note 2.

21. See, e.g., BITTKER, *supra* note 16; Complaint at 6, Farmer-Paellmann v. FleetBoston Fin. Corp., No. CV-02-1862 (E.D.N.Y. Mar. 26, 2002), <http://www.nyed.uscourts.gov/02cv1862cmp.pdf> (last visited Jan. 17, 2003); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 494 (1998).

22. See DERRICK BELL, AND WE ARE NOT SAVED 136-37 (1987) (arguing that reparations will never be paid because doing so would undermine the interests of the privileging social structure).

23. See RICHARD F. AMERICA, PAYING THE SOCIAL DEBT: WHAT WHITE AMERICA OWES BLACK AMERICA 14 (1993).

24. John A. Powell, *Whites Will Be Whites: The Failure to Interrogate Racial Privilege*, 34 U.S.F. L. REV. 419, 438 (2000).

cannot be achieved until the Black community heals their spirit-injuries, and privilege is revealed.²⁵

Part I of the Article redefines the scope of the debt owed to the Black community. The breadth of the definition of the debt affects any African-American reparation proposal's ability to heal the psychic injuries of the Black community, as well as deconstruct privilege and foster community. Part II examines the transformative potential of reparations to deconstruct privilege, repair the spirit, and create community. Specifically, this Part argues that addressing privilege, the spirit and the community simultaneously is the only way to achieve substantive, long-term change. Part II also examines how common problems facing recent reparations movements, such as white backlash,²⁶ intra-community divisiveness and white innocence, can be overcome through a critical approach. Part III critiques existing models of reparations and looks at the difficulties of maintaining a legal or legislative action for reparations. Part IV concludes by proposing that we preserve a subversive dialogue on reparations by promoting community activism and spirit healing, while advocating the deconstruction of privilege.

I.

SLAVERY, SEGREGATION, RACISM, AND OPPRESSION: REDEFINING THE DEBT

The "debt"²⁷ which America owes the Black community is often left unexplained, its substance regarded as either apparent and inherently understandable, or as undeserving of intricate definition and the basis of an unmerited request for special treatment. Most reparations advocates—scholars and laypeople alike—agree that a debt was incurred for the experiences of slavery.²⁸ Many scholars have argued that the debt must include not only institutionally sanctioned chattel slavery proper, but also the continuing, current effects of slavery and racism.²⁹ Primarily for strategic legal

25. These interdependent concepts must be advocated and pursued simultaneously within a broad framework of political activism. As an aside, it is important to note that this framework is consistent with a unitary view of human relations. Unlike western dualism, which reifies the individual and implicitly supports social categorization, the unitary view, or monism, recognizes that people are interdependent and implicitly supports a group rights agenda. *See generally* Curtis A. Bradley, *Breard, Our Dualist Constitution, and the Internationalist Conception*, 51 STAN. L. REV. 529 (1999).

26. See footnotes 154-55 and accompanying text.

27. ROBINSON, *supra* note 2.

28. *See, e.g.*, ROBINSON, *supra* note 2.

29. *See, e.g., id.*; Yamamoto, *supra* note 21, at 519.

considerations, others argue that the debt must omit slavery and only focus on present-day societal discrimination perpetrated by identifiable actors.³⁰ It is necessary, therefore, to understand the actual essence of the debt before we contemplate limiting its scope in order to fit within a particular reparations proposal. Defining the scope of the debt is itself a process of creating a model of reparations, and is itself a worthwhile endeavor that will ultimately inform proposed models of African-American reparations.

The broadest conception of the debt must account for all injuries—spiritual, financial, physical, and social—that have been endured by the Black community as the result of discriminatory racial practices. This conception attempts to acknowledge the pain, suffering, economic deprivation, slavery, rape, degradation, murder, assault, theft, racism, social oppression and cultural loss that has characterized the Black experience in America. The oppressive periods that will be addressed thus temporally range from the moment the first African was captured and placed on a slave boat headed to America³¹ to current racism and inequality that an African-American faces today.

In order to appreciate the scope of the debt, it is necessary to briefly elucidate the concepts of privilege, spirit-murder and community.³² “Privilege” evokes a sense that entitlement to benefits and advantages results not from individual merit, but rather from affiliation with some group. Through membership in privileged groups, people are enabled to acquire—passively, consciously or unconsciously—unearned status from both the prior and continuing subordination of others.³³ Even those members of privileged groups that actively fight against the resulting advantages will nonetheless continue to receive social benefits due to their group membership.³⁴ Richard McAdams has construed these social benefits to

30. See BITTKER, *supra* note 16.

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31. In addition, Africans were transported to the Caribbean or other slave stations, and then later sent to America. Indeed, slave-trading in the West Indies began on a large scale almost one-hundred years prior to the arrival of the first African slave in America. See generally FRANKLIN & MOSS, *supra* note 2.

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32. It is likely, indeed probable, that each source of the debt discussed—for example, slavery—will implicate all three concepts. Additionally, please review Part II for an in-depth discussion on the meaning of privilege, spirit murder, and community.

33. Stephanie M. Wildman, *Privilege in the Workplace: The Missing Element in Antidiscrimination Law*, in STEPHANIE M. WILDMAN ET AL., *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 25, 29 (1996).

34. See *id.* at 29-30. See also Sundquist, *supra* note 10, at 232.

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encompass primarily status production and increased self-esteem.³⁵ In particular, status production is achieved through subordinating others, enabling the privileged to claim a superior social rank.³⁶ For the purposes of this paper, social experiences that have promoted racial privilege will be examined.³⁷

Spirit-murder is a concept that is used to interpret the psychic injuries that people suffer as a result of “an obliteration of the self through domination by an all powerful other.”³⁸ According to Patricia Williams, spirit-murder can manifest itself through racism, genocide and “cultural obliteration.”³⁹ These acts are “so deeply painful and assaultive” to the psyche so as to constitute spirit-murder.⁴⁰ The concept of spirit-murder is based on the observation that “part of ourselves is beyond the control of pure physical will and resides in the sanctuary of those around us.”⁴¹ This paper will utilize the concept of spirit-murder to refer to psychic injuries sustained by Black people as the result of racism and cultural genocide.⁴²

The concept of community, as used in this Article, refers to a collective social identity characterized by race, class, and shared ex-

35. See Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1003 (1995).

36. See *id.* at 1030.

37. The structures of privilege in society are recognized to encompass differences in race, sexual orientation, disability status, and gender. In particular, one may be privileged through membership in the groups of whites, heterosexuals, able-bodied persons, and men. See generally Jane S. Schacter, *Skepticism, Culture and the Gay Civil Rights Debate in a Post-Civil-Rights Era*, 110 HARV. L. REV. 684 (1997) (reviewing ANDREW SULLIVAN, *VIRTUALLY NORMAL: AN ARGUMENT ABOUT HOMOSEXUALITY* (1995) and URVASHI VAID, *VIRTUAL EQUALITY: THE MAINSTREAMING OF GAY AND LESBIAN LIBERATION* (1995)) (exploring the relationship between identity categories and equality); John A. Powell, *Whites Will Be Whites: The Failure to Interrogate Racial Privilege*, 34 U.S.F. L. REV. 419, 421 (2000) (explaining how group membership implicates privilege). Although this paper will focus on racial privilege, at least one reparations proposal has directly focused, albeit implicitly, on the intersection of gender and racial privilege. See, e.g., Christine Kenny, *Incalculable Damages?: Making the Case of Reparations for America's Sexual Enslavement of African-American Women* (2002) (unpublished manuscript, on file with author).

38. See Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 141 (1987); see also Adrien Katherine Wing & Sylke Merchán, *Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 COLUM. HUM. RTS. L. REV. 1 (1993). See FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Charles L. Markmann trans., 1967), for a comprehensive psychological portrait of racial subordination.

39. Williams, *supra* note 38, at 151.

40. *Id.* at 129.

41. *Id.* at 151.

42. See ROBINSON, *supra* note 2, at 29.

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periences. This broad definition of community also encompasses the many “internal” communities that form within the larger social identity. These internal communities may consist of families, neighborhoods, and even groups organized around some shared characteristic.⁴³ The concept of “community-cohesiveness,” in the context of this Article, therefore refers to the ability of the community to remain politically, socially and spiritually unified in response to opposition.

Accordingly, the historical contexts of African enslavement, slavery, Reconstruction, Jim Crow segregation and the Civil Rights Movement, and current racism and inequality will be examined according to the extent to which they promote privilege, injure the spirit, and destroy community cohesiveness.

A. *African Enslavement and the Middle Passage*

Once the Allmuseri saw the great ship and the squalid pit that would house them sardined belly-to-buttocks in the orlop, with its dead air and razor-teethed bilge rats, each slave forced to lie spoon fashion on his left side to relieve the pressure against his heart—after seeing this, the Africans panicked. . . . A woman pitched her baby overboard into the waters below us. At least two men tried to follow, straining against their chains. . . . [The slave trader] beat them until blood came.⁴⁴

Understanding the extent of racial privilege in America within the context of the Black experience requires an appreciation of how Black people got to America in the first place. Although many contemporary reparations models ignore the initial African enslavement⁴⁵ and Middle Passage⁴⁶ as either irrelevant or diversionary,⁴⁷ it remains an important source of racial privilege in America. African enslavement, and the subsequent voyage to colonial America, involved extreme human degradation, cultural debasement, physical torture, and obscene cruelty.⁴⁸ The myth of Black inferiority,

43. For example, within the Black community there may exist a distinct West-Indian community or “bourgeoisie.”

44. CHARLES JOHNSON, *THE MIDDLE PASSAGE* 65-66 (1990).

45. African enslavement, as used in this Article, refers to the enslavement of Africans by American actors.

46. The “Middle Passage” refers to the one-way passage of Africans to the Americas. See, e.g., FRANKLIN & MOSS, *supra* note 2, at 36.

47. Many Black reparations proposals have overlooked the importance of African enslavement and the Middle Passage as sources of the debt. See, e.g., BITTNER, *supra* note 16; Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429 (1998); Verdun, *supra* note 19.

48. See, e.g., ROBINSON, *supra* note 2, at 208.

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which took hold in this period, had not existed in any broad or consistent manner prior to the European and American enslavement of Africans.⁴⁹ Rather, it was not until the widespread enslavement of Africans by the Europeans⁵⁰ that the myth of Black inferiority was created, and justified by Christianity,⁵¹ in order to protect the economic spoils of slavery against moral attacks. This myth was further promulgated as American slave trading intensified during the nineteenth century.⁵² Indeed, it was during the first few decades of post-colonial American government that the African slave trade flourished, despite waning demand in European countries.⁵³

The inculcation of the myth of Black inferiority during African slave trading served to create the first cornerstone of racial privilege in America. The belief that Blacks were inferior to the white race enabled America to rationalize and justify the use of free, slave labor to enhance their wealth and social position.⁵⁴ Simultaneously, the enslavement and kidnapping of Africans to America inevitably caused severe psychic injuries to the victims. Ten to twenty-five million Africans died in slave ships during the Middle Passage, in what Randall Robinson calls an "American Holocaust."⁵⁵ Those Africans that did not die due to overcrowding, suicide, disease or murder, faced an uncertain future of bondage and degradation.⁵⁶ This cultural genocide and associated psychological traumas created spirit-injuries so deep that current generations of Blacks still carry scars. As enslaved Africans were stolen from their cultural and spiritual

49. *See id.*

50. Europeans is a broad term used to refer to those European countries that primarily engaged in the African slave trade. These countries include England, France, Portugal, Spain, and Holland. *See FRANKLIN & MOSS, supra* note 2.

51. Christianity played a major role in providing a rationale for the enslavement of Africans. Specifically, Christian churches supported the African slave trade by claiming that African "heathens" would gain the benefit of Christianity through slavery. *See id.* at 29.

52. *See* WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812* (1968).

53. *See* FRANKLIN & MOSS, *supra* note 2, at 85.

54. Even the Supreme Court of the United States seized upon the myth of Black inferiority in order to preserve the economic interests and privilege of white Americans. As the Supreme Court noted in its summary of the status of Blacks after slavery's inception in North America, Blacks were viewed as "beings of an *inferior order*, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that *they had no rights which the white man was bound to respect . . .*" *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 407 (1856) (emphasis added).

55. *See* ROBINSON, *supra* note 2, at 33.

56. *Id.*

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homes, while enduring the physical break-up or murder of their immediate family, the ability of bonded Africans to remain a community was severely compromised.

B. *Slavery*

Upon arrival in America, those Africans that endured the Middle Passage were faced with the cruel and unrelenting life of a slave. Rationalized by the myth of Black inferiority, white America exploited Black labor to transform America from a fledgling colonial state to a world superpower. The economic gain enjoyed by America from slavery has been estimated at nearly \$10 trillion dollars.⁵⁷ As this figure only reflects the value of lost labor, and does not consider lost opportunities for Blacks or the increased ability of white America to invest and reinvest its wealth in other profit-making ventures, payment of the true financial estimate of the contribution of Black slavery to America would likely be destabilizing to American society. The economic gain provided by Black slavery undoubtedly reinforced racial privilege by providing an insurmountable economic advantage for white Americans.

Slavery also created new spirit-injuries for the Black community to bear, while exacerbating the spirit-injuries endured during African enslavement. The spirit-injuries of the recent African enslavement and Middle Passage were systematically inflamed through slavery's endemic racism, cultural eradication, and family dissolution.⁵⁸ Additionally, Black slaves faced new psychic-injuries resulting from the human debasement unique to chattel slavery.⁵⁹ In particular, slavery developed a consciousness of oppression and degradation that pervaded each ensuing generation. Memory of one's cultural past—more easily achieved during the Middle Passage—became more difficult as families were torn apart and cultural mores and language were forbidden.

C. *The Reconstruction Era*

The emancipation of Black people, and the following Reconstruction period,⁶⁰ did not prove to free the Black community from

57. See AMERICA, *supra* note 23, at 4.

58. See generally FRANKLIN & MOSS, *supra* note 2 (discussing the implications of slavery and its enhancement of the harms already perpetrated on black slaves in America).

59. In particular, the institution of slavery was debasing through its characterization of Black people as chattel and promotion of a mindset of powerlessness and lack of agency. See *id.*

60. See *id.*

continued slave labor and economic oppression. Despite the newly-freed legal status of the Black community,⁶¹ many Black people remained virtually enslaved by their former masters.⁶² Even those Black people no longer formally enslaved nonetheless faced extreme economic oppression that reduced their livelihoods into forms of de facto slavery.⁶³ In addition, the myth of Black inferiority was vigorously promoted during Reconstruction, and continued to justify forced labor and continuation of white supremacy.⁶⁴ This, in turn, continued the pattern of spirit-murder.

The Reconstruction period signaled the first moment that the Black community began to develop a community consciousness. Many families were able to re-unite, and autonomous Black communities began to form faster than ever before.⁶⁵ Although the institution of Black Codes and continued disenfranchisement of Black people inhibited political and social cohesiveness,⁶⁶ this period facilitated conditions necessary for future insurgency.⁶⁷

D. Jim Crow Discrimination and the Civil Rights Movement

I was a member of one of the Black platoons doing basic training in Michigan, getting ready to go over to Europe during World War II. They separated us from the white people for the most part, and we would usually get a bad detail or job being one of the Black units. We had to walk past one of the white units to get to the Army store or get to town. Every time we passed by there they would call us “nigger” and every name you could think of. If one of us walked by there by ourselves, they would beat us up and take our money. We couldn’t get them in trouble with the officers. Well, one day we sent someone to

61. Of course, free Blacks existed prior to emancipation. *See generally id.* Indeed, my great-great grandfather was a free Black living in Louisiana some forty years prior to emancipation.

62. *See, e.g.,* BITTKER, *supra* note 16; Verdun, *supra* note 19; FRANKLIN & MOSS, *supra* note 2.

63. *See* FRANKLIN & MOSS, *supra* note 2, at 206.

64. *See id.*

65. *See id.*

66. *See* DOUG MCADAM, POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970 69 (1982) (arguing that disenfranchisement destroyed the Black community’s ability to bargain for political and economic gains, and increased the likelihood of white violence by eliminating the possibility of political reprisal).

67. *See id.* at 112–16 (noting the development of growth in Black institutions) and FRANKLIN & MOSS, *supra* note 2, at 259–64 (noting that the Reconstruction period involved substantial social and cultural growth within the Black community).

the store to get some things for everyone in the unit. The whites beat him up and stole his money. We were sick of it. We didn't care what happened to us anymore, we just wanted revenge. The next day we waited until those white boys were going to the store. We waited until they were all inside the store and then sent in the biggest men after them. Me and some of the others, since we were smaller, blocked the door of the store and kept anyone from coming in or out. Boy, those white boys were beaten down! They were bleeding and trying to get out, but I wouldn't let 'em. Some got in trouble for that and were sent to the jail, but me and some others were O.K. But I tell you what, no white people ever bothered our unit again!⁶⁸

Racial segregation, or "Jim Crow" discrimination, was firmly entrenched during the period immediately following Reconstruction. Legalized by the United States Supreme Court,⁶⁹ justified by the necessity of individual liberty, and rationalized by the myth of Black inferiority, Jim Crow discrimination served to preserve white supremacy and privilege.⁷⁰ In spite of these obstacles, the Black community was able to develop and maintain a critical movement of political and social insurgency to counteract racial privilege.⁷¹ During this period of widespread insurgency and remarkable political and social gains, the Black community was able to take advantage of political opportunities through community organization, the strength of Black institutions, and cognitive activism.⁷² This period of Black power enabled great social advancement, although "white backlash" (and the concomitant reduction in political opportunities) and decreased community unity soon ended the prospect of continuing advancement.⁷³

However, the Black community endured further spirit-injuries as the result of legalized racial segregation.⁷⁴ Deemed unworthy of

68. Comments from my Grandfather, recounting his experiences in World War II.

69. The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. See *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

70. See HOWARD SITKOFF, *A NEW DEAL FOR BLACKS* 10 (1978).

71. See McADAM, *supra* note 66, at 112-16.

72. See *id.* at 146-80.

73. See *id.* at 182-229.

74. See LEON F. LITWAK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW* (1998); RANDALL KENNEDY, *RACE, CRIME AND THE LAW* (1997).

sharing the social space of whites, Black people were confronted by external images of Black inferiority. For many, “segregation and discrimination now seemed so permanent, so immutable, so much an inevitable condition of life. Fatalism spawned hopelessness, and the majority of. . . Southern Blacks succumbed to the new racial order.”⁷⁵ The Civil Rights movement sought to counteract this fatalism with the cultivation of a positive Black identity. Through Martin L. King Jr.’s conception of “Black Beauty,” and Malcolm X’s advocacy of “Black Power,” the Black community was able to begin the process of spiritual healing and forming a positive group identity.⁷⁶

Although the Black community was faced with severe legal and social discrimination during Jim Crow that limited its ability to organize, it was able to overcome these obstacles to create a strong political community.⁷⁷ Unfortunately, community unity was eradicated by intra-community divisiveness, and by inter-community “backlash.”⁷⁸

E. Current Racism and Inequality

Racial privilege and racism still exists in America.⁷⁹ The perpetuation of Black subordination is so great that “statistics [alone] cannot relate the human face of economic misery” endured by the Black community.⁸⁰ Despite the progress of the Civil Rights movement in securing legal rights for Black Americans, social inequality bred by over three-hundred eighty years of discrimination still exists.⁸¹

The Black community is unaware of its cultural past, allowing historical misconceptions and unrelenting stereotypes to define its vision of history.⁸² After being bombarded with messages of cul-

75. *Id.*

76. See JAMES H. CONE, MARTIN & MALCOLM & AMERICA: A DREAM OR A NIGHTMARE? 290-93 (1991).

77. See *id.* at 293-94.

78. WILLIAM BRINK & LOUIS HARRIS, THE NEGRO REVOLUTION IN AMERICA 62 (1963).

79. See, e.g., DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992).

80. MANNING MARABLE, HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA 62 (1983). For a discussion and compilation of statistics outlining current Black inequality and its causal relation to White supremacy, racism, discrimination and slavery, please see Westley, *supra* note 47.

81. Wealth also plays a large role in perpetuating racial privilege. See Westley, *supra* note 47, at 438.

82. See ROBINSON, *supra* note 2.

tural and racial inferiority for hundreds of years, it seems inevitable that some internalization took place. Indeed, self-hate, low expectations, hopelessness, and poor self-esteem pervade the Black community.

Social inequality, political apathy and self-hate have combined to create community disunity. Families are still broken up, although the process has changed from the sale of family members to incarceration and drug abuse fueled by poverty and hopelessness.⁸³

II.

TRANSFORMATIONAL REPARATIONS: EXPOSING FABLES, REPAIRING THE SPIRIT

The movement for Black reparations has the potential to transform the political and legal structure of society, while eliminating social and economic inequality. Indeed, Black reparations can directly transform Constitutional equality doctrine.⁸⁴ In order to achieve these substantive changes, a Black reparations model must deconstruct privilege, heal the spirit, and develop community-cohesiveness. Pursued simultaneously, these objectives can form the core principles for a period of Black insurgency. Accordingly, the generation of Black insurgency is dependent on a restructuring of political opportunities, cognitive liberation, and the development of indigenous organizational strength.⁸⁵

A. *Myths, Fables and Lies: The Guiding Principles of Equality*

I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids— and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me. . . . When they approach me they see only my surroundings, themselves, of figments or their imagination—indeed, everything and anything except me.⁸⁶

83. See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* 22-27 (1987); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS* (1996); DAVID COLE, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* (1999).

84. Constitutional equality doctrine, as summarized by John Hart Ely in his book *DEMOCRACY AND DISTRUST* (1980), will be transformed to the extent that the judicial system incorporates an understanding of privilege into its analysis of Constitutional issues. See JOHN HART ELY, *DEMOCRACY AND DISTRUST* (1980).

85. See generally MCADAM, *supra* note 66.

86. RALPH ELLISON, *INVISIBLE MAN* 3 (1947).

When one is invisible he finds such problems as good and evil, honesty and dishonesty, of such shifting shapes that he confuses one with the other, depending upon who happens to be looking through him at the time. Well, now I've been trying to look through myself, and there's a risk in it. I was never more hated than when I tried to be honest. . . . On the other hand, I've never been more loved and appreciated than when I tried to "justify" and affirm someone's mistaken beliefs But here was the rub: Too often, in order to justify them, I had to take myself by the throat and choke myself until my eyes bulged and my tongue hung out and wagged like the door of an empty house in a high wind. Oh, yes, it made them happy and it made me sick.⁸⁷

An understanding of racial privilege requires acknowledgment that white people enjoy benefits and advantages due to their affiliation with the white cultural group.⁸⁸ In essence, privilege serves to create a property right in whiteness that is regarded as neutral and normal.⁸⁹ The privileged group defines the societal norms, which in turn benefits primarily those in the privileged group.⁹⁰ As the societal norms are depicted as neutral, privileged members are able to ignore social oppression. In this way, "privilege serves to normalize power structures."⁹¹ Unable to access privileging structures, Black people are thus deemed to be *under-privileged*, or "falling below an assumed normal level of social existence,"⁹² and therefore culturally deficient and aberrant. Importantly, the components of

87. *Id.* at 432.

88. I will not conduct an in-depth analysis of whether, in fact, white privilege exists. The existence of white privilege has been quite thoroughly established. *See, e.g.,* GRACE ELIZABETH HALE, *MAKING WHITENESS: THE CULTURE OF SEGREGATION IN THE SOUTH, 1890-1940* (1998); John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair,"* 143 U. PA. L. REV. 1233 (1995); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1995); Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16 (1995); DAVID ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS* (1994).

89. *See generally* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (arguing how whiteness has evolved into a type of property right, historically protected and legitimized by law, that excludes others not "owning" that particular racial characteristic).

90. *See* Verdun, *supra* note 19, at 620 (1993) (discussing the law of torts as an example of how the "law evolves to reflect the values of the dominant group").

91. *See* Powell, *supra* note 37, at 423.

92. RAYMOND WILLIAMS, *KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY* 324 (rev. ed. 1983).

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identity that serve to represent structures of privilege—race, class, sexual orientation, gender—are themselves socially constructed.⁹³ Accordingly, privilege functions in “a manner that is neither natural nor mutually exclusive.”⁹⁴

Racial privilege⁹⁵ is a pervasive and deeply embedded social construct, reliant on white supremacy and Black devaluation.⁹⁶ The equality paradigm and the norm of individualism perpetuate and reinforce structures of white privilege by developing false stories of white innocence, sameness and equal opportunity.⁹⁷ Conventional notions of merit and the necessity of government neutrality preserve racial subordination by shifting responsibility for the effects of racism and current conditions onto the oppressed.⁹⁸ White privilege can only be extricated from the American consciousness if we deconstruct the equality principles underlying privilege through a process of restructuring political and legal opportunities.

1. White Innocence and the Perception of Fairness

Perhaps the largest obstacle to any Black reparations movement is the claim of “white innocence.” White people, generally speaking, vehemently deny any responsibility for current social conditions or past discrimination. Despite occupying privileged social

93. Cf. Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 357, 375 (Kimberlé Crenshaw et al. eds., 1995) (arguing that subordinated groups can embrace socially constructed categories, rather than reject them, in order to create positive self-identification).

94. Cf. Anthony V. Alfieri, *Book Review: Critical Race Theory: The Key Writings that Formed the Movement*, 10 *LA RAZA L.J.* 561, 587 (1998) (reviewing *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1995)).

95. The concept of privilege refers to individual and group benefits and advantages received merely on the basis of membership with some group, rather than individual merit. See Sundquist, *supra* note 10, at 230.

96. See *id.*; see also WILDMAN, *supra* note 8.

97. See Sundquist, *supra* note 10, at 232; see also JORDAN, *supra* note 52 (arguing that the rhetoric of equality helped justify slavery and solidify the ideology of racism).

98. Compare MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* (1962) with Cass R. Sunstein, *Legal Interference with Private Preferences*, 53 *U. CHI. L. REV.* 1129 (1986), and Duncan Kennedy, *Cost-Benefit Analysis of Entitlement Problems: A Critique*, 33 *STAN. L. REV.* 387 (1981). Sunstein correctly notes that, despite calls by scholars such as Friedman for freedom from government regulation, law interferes with the free market all the time, and thus a nominally neutral government which fails to intervene to prevent racism can shift responsibility for the effects of racism onto the oppressed.

positions, white people tend to claim innocence so long as they do not actively discriminate against Blacks or other groups. Indeed, many white people have great difficulty even recognizing the existence of privilege. Privilege is transparent to the privileged because it is enveloped within what they view to be the normal state of affairs.⁹⁹ In addition, belief in the American value of individualism inhibits seeing privilege, as people tend to view themselves as individuals rather than beneficiaries of collective advantage accrued by skin color.¹⁰⁰

The transparency of privilege does not absolve white people of their responsibility. Rather, white people are “nonetheless implicated in this arrangement by their willingness to see the deficit of others and to wear the benefit conferred on them. . . .”¹⁰¹ Because privilege is a function of group relations, individuals can do little to eliminate privilege on their own.

The unconscious participation in privilege is replicated in the Affirmative Action context. The paradigm of equality ensures only equal treatment of individuals under the law and does not justify affirmative measures to be allocated along group lines.¹⁰² Permitting race-regarding, affirmative measures would violate the color-blind principle underlying the equality paradigm. Accordingly, white people’s failure to recognize privilege facilitates beliefs of contemporary neutrality and normalcy. Inevitably, whites are conceived of as “innocent victims,” whereas the recipients of any benefits are construed as “takers” of something rightfully belonging to whites.¹⁰³ Through these methods, “[w]hites assert their innocence and demonize the Other.”¹⁰⁴

White people’s belief in innocence is further strengthened by an unwillingness to confront privilege. Confronting privilege creates cognitive dissonance by acknowledging that benefits and advantages received were not necessarily the result of merit and hard

99. See generally BARBARA J. FLAGG, *WAS BLIND BUT NOW I SEE: WHITE RACE CONSCIOUSNESS AND THE LAW* 1-2 (1998). Flagg fully explicates this analysis; it is beyond the scope of this paper to present her complete findings here.

100. Sundquist, *supra* note 10, at 231.

101. Powell, *supra* note 37, at 424.

102. See Harris, *supra* note 89, at 1762.

103. The concept of white innocence has been addressed by a number of scholars. See, e.g., Thomas Ross, *Innocence and Affirmative Action*, 43 VAND. L. REV. 297 (1990); Kathleen M. Sullivan, Comment, *The Supreme Court, 1985 Term, Sins of Discrimination: Last Term’s Affirmative Action Cases*, 100 HARV. L. REV. 78 (1986).

104. See Powell, *supra* note 37, at 424.

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work,¹⁰⁵ while exposing the deeply-held values that have supported privilege.¹⁰⁶ “The potential psychic damage to privilege holders forces most to ignore and suppress alternative explanations for their status that depart from the assumption of naturalness and neutrality.”¹⁰⁷

The United States Supreme Court has served as the willing advocate of individualism and innocence. Serving as the “official organ of the normalcy of [w]hite male privilege,”¹⁰⁸ the Court’s jurisprudence is replete with instances where white innocence and private choices are reified. Utilizing the story of the “innocent white victim,” the Court continually denounces redistributive measures that seek to ensure equality of outcome.¹⁰⁹ Even when presented with clear evidence of systematic racial discrimination, the Court relies on the norm of individualism to ignore underlying systems of privilege.¹¹⁰

2. Sameness, Difference, and the Anti-Discrimination Principle

Black people are the same as white people, women are the same as men, poor people are the same as rich people. The rhetoric of sameness has incredible appeal, and seems intuitively correct. However, sameness is predicated on being the same as, or assimilating to, some assumed norm.¹¹¹ People who are able to simulate the norm must be treated the same, whereas those “people who are

105. See Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women’s Studies*, in POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER 22, 23 (Leslie Bender & Daan Braveman eds., 1995).

106. See *id.* at 23–24. McIntosh also confronts the myth of meritocracy. See *id.* at 33.

107. Sundquist, *supra* note 10, at 233; FLAGG, *supra* note 99, at 34 (regarding the transparency of privilege to privilege holders).

108. Powell, *supra* note 37, at 448.

109. See generally *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

110. See, e.g., *McCleskey v. Kemp*, 481 U.S. 279 (1987) (holding that despite clear statistical evidence of racial discrimination in criminal sentencing, individual discriminatory intent must be shown in order to prove racist treatment).

111. See IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 97 (1990); Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of “Don’t Ask, Don’t Tell,”* 108 YALE L.J. 485, 500 (1998) (explaining that three biases in Equal Protection jurisprudence are “converting, passing, and covering. Converting bias means that a group is asked to change a trait that defines it. . . . Passing means that a group is forced to hide its identity. . . . Covering means that a group is permitted both to retain and articulate its identity as long as it mutes the difference between itself and the mainstream.”).

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different should be treated differently.”¹¹² The sameness/difference paradigm is predicated upon the supremacy of privileged groups. Groups, such as Black people, that are unable to achieve sameness to the norm are different and inferior.¹¹³ Sameness therefore requires that Black people be treated differently from white people, as to do otherwise “would be to give them special treatment, thereby violating the requirement of equality that is fundamental to the logic.”¹¹⁴

The sameness/difference paradigm relies on the liberal principles of individualism and anti-discrimination to reinforce its veneer of fairness. Indeed, as John A. Powell notes, assimilation in furtherance of achieving sameness “takes the form of the assertion of ‘pure’ individualism, stripped of race and gender.”¹¹⁵ The anti-discrimination principle in turn reifies the individual as the focal point for assessing equality.

The idea that group equality cannot be achieved if individual liberty is threatened is ingrained in American history.¹¹⁶ However, individualism serves to privilege and normalize the dominant groups’ preferences.¹¹⁷ The law has a long history of protecting white people’s choices even though they may serve as barriers to the equal participation of blacks in society.¹¹⁸ Legal decisions that harm the equality interests of blacks are rationalized by the need to protect the neutral ideal of individual liberty.¹¹⁹

112. See Powell, *supra* note 37, at 429.

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113. Some Black people are able to phenotypically achieve sameness with the white cultural norm. The phenomenon of “passing,” inadvertent or not, allows some members of the Black community to “steal” some of the benefits that are conferred through whiteness. Light, bright and almost white Black people, such as myself, are thus able to access privilege at least on a temporary, and sometimes restricted, basis. The very phenomenon of passing, of course, only strengthens the argument that whiteness is a form of property. See Harris, *supra* note 89, at 1710–14.

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114. See Powell, *supra* note 37, at 430.

115. See *id.* at 431.

116. See Dorothy E. Roberts, *The Priority Paradigm: Private Choices and the Limits of Equality*, 57 U. PITT. L. REV. 363 (1996) (presenting evidence that America has a long and continuing history of protecting private choices at the expense of racial equality).

117. See *id.*

118. See *id.* at 375–80 (examining how the law privileges white choices at the expense of black equality in the employment and housing contexts); see, e.g., *Martin v. Wilks*, 490 U.S. 755 (1989) (permitting a class of white employees to collaterally attack a civil rights settlement benefiting black employees).

119. See Roberts, *supra* note 116.

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The transparency of whiteness encourages privilege as white people's choices are conveyed as neutral and normal,¹²⁰ unlike black preferences that seem race-regarding.¹²¹ Even white preferences that are explicitly race-regarding are deemed acceptable "personal or cultural preferences."¹²² Because whites externalize race and do not view themselves as racially distinctive,¹²³ "racial issues" only exist in relation to people of color. Therefore, the preferences of the community of color seem to be race-regarding and thus fail to conform to the norm of color-blind equality. In this way, the community of color's preferences are devalued and deemed deficient.¹²⁴ Black social inequality is therefore explained as the result of deficient choices rather than institutional oppression.¹²⁵ White people "attribute black people's deprivation to cultural lifestyles that deviate from mainstream culture."¹²⁶ The courts have reinforced this perception by forcing blacks to "assimilate their choices to whites' cultural expectations" in the employment context.¹²⁷

3. Equal Opportunity and the Deficit Story That Is Told About Blacks

White innocence and the language of sameness influence belief in the fairness and viability of a system of equal opportunity. The concept of equal opportunity is detrimental to the Black reparations movement because of its legitimization of existing patterns of social and economic inequity. Achieving reparations through a model which does not implicate equal opportunity or, more broadly, white privilege, allows the perpetuation of current and future inequality. Additionally, the fight against future inequality will be severely compromised by "commodification" problems.¹²⁸ As Mari Matsuda notes,

120. "White choices are seen as color-blind and as simply replicating values associated with an unstated, unbiased norm." Sundquist, *supra* note 10, at 234.

121. See Roberts, *supra* note 116, at 381-88.

122. See *id.* at 381.

123. See FLAGG, *supra* note 99, at 1.

124. See Roberts, *supra* note 116, at 385.

125. See *id.* at 385.

126. *Id.* (citing OFFICE OF PLANNING AND POLICY RESEARCH, U.S. DEP'T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 5-14 (1965) (the Daniel Moynihan study)); see DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 5 (1993).

127. Roberts, *supra* note 116, at 387 (discussing *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229 (1981) (holding that a ban on the braided hair of an African-American employee was not discriminatory because the ban applied to everyone equally, despite evidence that the ban disparately affects African-Americans)).

128. The "commodification problem," initially described by Mari Matsuda, refers to the danger of reparations to foreclose on the possibility of pursuing future

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[r]esistance to commodification is important. If reparations are viewed as an equivalent exchange for past wrongs, continuing claims are terminated. Any obligation to victim-groups would end since their injury is transformed into a commodity and the price paid. . . . One generation could sell away their claim at bargain-basement prices, to the detriment of future generations, in an effort to cash in at the earliest opportunity.¹²⁹

Therefore, an understanding of how equal opportunity legitimates existing distributions of resources is vital to the deconstruction of privilege, and substantive Black reparations.

The equal opportunity paradigm obscures the baseline of rights, by relying on the principles of individualism, sameness and white innocence, in order to preserve the power of the dominant group. The deficit story that is told about Blacks maintains that

[e]qual opportunity is a truly objective, neutral, and fair method to allocate educational, employment, and political resources to members of society, without regard to race, class, gender, or ethnicity. The ideal of equality assumes the possibility of an objective measure of merit under which individuals' free choices and preferences may be evaluated. Accordingly, through the creation of a baseline that presupposes the inherent sameness of all people and disregards systemic discrimination as a fallacy, any social and economic inequality that exists is legitimized as reflecting the natural results of deficient personal choices. As such, any inequities that exist along race, class, or gender lines are due to individual failures.¹³⁰

The promotion of equality of opportunity as fair, neutral, and merit-based inevitably harms groups located outside structures of privilege.¹³¹ Black people are *intended* to fail once given an opportunity to compete because they are systematically denied benefits and advantages on the sole basis of their oppositional identity. The equality paradigm *relies* on the vast disparity of resources, in addition to the active and passive discrimination by its privileged members, to ensure that Black people will experience failure in their

arguments against inequality. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.- C.L. L. REV. 323, 395 (1987).

129. *Id.* at 395–96.

130. Sundquist, *supra* note 10, 235–36.

131. See Richard Delgado, *Recasting the American Race Problem*, 79 CAL. L. REV. 1389, 1393–95 (1991) (reviewing ROY L. BROOKS, *RETHINKING THE AMERICAN RACE PROBLEM* (1990)).

endeavors to take advantage of “equal opportunities.”¹³² The failures of Black people to overcome inequality legitimize the existing distribution of resources as fair and natural. In this way, “[t]he paradigm of equal opportunity perpetuates itself . . . defusing the possibility of rebellion by the Other and creating a shield of innocence for its privileged members.”¹³³

4. Visibility and Interrogation of White Privilege: Redistribution Through Political Process

It is necessary to develop a method to subvert privilege and deconstruct whiteness within the context of the Black reparations movement. The first step towards undermining white privilege is to make it visible.¹³⁴ Confrontation of white privilege through visibility will enable both white and Black people to engage in a dialogue regarding the ways white privilege is manifested. Making white privilege visible displaces whiteness as the dominant norm, and thereby serves to decrease the salience of whiteness as property.

The process of making privilege visible must be coupled with an interrogation of privilege and whiteness.¹³⁵ Interrogation of white privilege requires, at the minimum, engaging the dominant discourse and challenging its claims. Although this interrogation necessarily entails rejecting whiteness and cultural assimilation (that is, rejecting sameness and cultural “passing”), it does not follow that valorization of difference must occur. Embracing difference through separatism¹³⁶ still represents “a strategy firmly embedded in and derivative of the dominant discourse.”¹³⁷ Instead of assimilation or separatism, a multicultural approach that valo-

132. See Alan Freeman, *Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 HARV. C.R.-C.L. L. REV. 295, 378–79 (1988).

133. Sundquist, *supra* note 10, at 236.

134. See Stephanie M. Wildman & Adrienne D. Davis, *Making Systems of Privilege Visible*, in STEPHANIE M. WILDMAN ET AL., *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 7, 24 (1996); Ruth Frankenberg, *Local Whitenesses, Localizing Whiteness*, in *DISPLACING WHITENESS: ESSAYS IN SOCIAL AND CULTURAL CRITICISM* 15–16 (Ruth Frankenberg ed., 1997); Rebecca Aanerud, *Fictions of Whiteness: Speaking the Names of Whiteness in U.S. Literature*, in *DISPLACING WHITENESS: ESSAYS IN SOCIAL AND CULTURAL CRITICISM* 42–43 (Ruth Frankenberg ed., 1997); see also Powell, *supra* note 37, at 426.

135. See, e.g., Powell, *supra* note 37, at 433; Wildman & Davis, *supra* note 134, at 24.

136. Separatism implies the belief that the separation of the Black and white cultural groups are necessary to ensure Black success. Separatism can take many forms: total, physical separation, as well as mere cultural and social separatism.

137. Powell, *supra* note 37, at 433.

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rizes difference and respects sameness may be necessary to place the dialogue outside of the dominant perspective.

The deconstruction of privilege seriously undermines the stability of the American political process. In doing so, it expands the political opportunities available to the Black community.¹³⁸ A conducive political environment will thus be created to address Black reparations and the possibility of substantive change. In order to take advantage of increased political opportunities, however, the Black community must also repair the spirit and develop community strength.

B. Community Cohesiveness

1. Intra-Community Unity

The Black community must be unified in order for a transformative reparations movement to be successful. Therefore, the potential for intra-community divisiveness must be mitigated by a holistic understanding of the Black community. The potential for intra-community divisiveness has thus far not been considered a major impediment to Black reparations. However, one of the general criticisms of Black reparations implicitly refers to the potential for divisiveness: How will the beneficiaries of a Black reparations model be determined?

Solutions to the dilemma of beneficiary determination have focused on an individual rights approach of defining the class as the identifiable descendants of slaves. Even broader proposals to the beneficiary problem require that the beneficiaries be descendants of slavery.¹³⁹ There are two potential difficulties with this approach: the problem of Black immigrants and their descendants and the problem of mixed-race and light-skinned Black people.

Any beneficiary definition that is limited to the general language “descendants of slaves” begs the potential for intra-community divisiveness based on skin color. The Black community has a

138. McADAM, *supra* note 66, at 42 (arguing that “[g]eneralized political instability destroys any semblance of a political status quo, thus encouraging collective action by *all* groups sufficiently organized to contest the structuring of a new political order”).

139. See, e.g., Donald Aquinas Lancaster, Jr., Comment, *The Alchemy and Legacy of the United States of America's Sanction of Slavery and Segregation: A Property Law and Equitable Remedy Analysis of African American Reparations*, 43 How. L.J. 171, 176 (2000) (arguing that this approach “differentiates those who falsely would attempt to benefit from a holocaust”).

long and troubled history relating to the issue of skin color.¹⁴⁰ Dark-skinned Black people are criticized by other Black people for being too dark; light-skinned Black people are criticized for not being dark enough.¹⁴¹ In the context of reparations, however, the categorization of light-skinned Blacks and mixed-race people is the issue most relevant. Already, darker complected persons have criticized the right of light-skinned and mixed-race “Black” people to benefit from reparations.¹⁴² The most many will concede is that light skinned Black people may have a “qualified” right to some reparations: that is, light skinned people can obtain reparations to the extent they look “Black” or can prove direct ancestry to slaves.¹⁴³

The reliance on a beneficiary definition that requires a quantifiable, individual-specific racial analysis is completely without merit—socially or biologically. Race is undeniably a social, not biological, construct.¹⁴⁴ To the extent that race is a social phenomenon, social and cultural norms define what “to be Black” really entails. External norms of “Blackness,” promulgated to preserve white supremacy, defined anyone having “one-drop” of African blood as Black.¹⁴⁵ Although historically the “one-drop” rule sought to support white privilege, the Black community has appropriated this norm to promote community strength and pride.¹⁴⁶ Due to the fact that well over 70% of the Black community has white ancestry, it is illogical and potentially divisive to rely on a beneficiary definition that emphasizes skin color and biological “Blackness.”¹⁴⁷

The problem of Black immigrants and their descendants is a much larger issue confronting the Black reparations movement. Foreign-born Blacks accounted for over 4.8% of the Black popula-

140. *See generally* KATHY RUSSELL, MIDGE WILSON & RONALD HALL, *THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR AMONG AFRICAN-AMERICANS* (1992).

141. *See id.* at 66.

142. After listening to my colleagues make the case for a beneficiary status tied to slavery, I posited the question of how much reparations benefit would I be entitled to. They laughed, and answered quite seriously that I would be entitled to very little, if anything.

143. Of course, this remains the comments of only a few of the Black people with whom I have discussed reparations.

144. *See generally* MICHAEL BANTON, *RACIAL THEORIES* (1987); STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* (1981).

145. *See* F. JAMES DAVIS, *WHO IS BLACK? ONE NATION’S DEFINITION* 5 (1991).

146. *See id.* at 78.

147. *See, e.g.,* Larry E. Davis, *The New Ingredient in the Identity of Black Biracial Children*, at <http://wupa.wustl.edu/nai/opeds/opeds96/davisDec96.html> (1996).

tion in 1990,¹⁴⁸ with the extent of their second and third generation descendants unknown. Adhering to an individual rights interpretation would eliminate Black immigrants, as well as their “American” offspring, from the class of potential beneficiaries. To do so would potentially create large divisions within the Black community that would hinder the possibility of substantive change through reparations. Application of such a restricted communal view ignores the reality that Black immigrants are regarded as Black in America and thus subject to white privilege and racial discrimination. Although Black immigrants generally do better than Black Americans initially, as time goes on their unique identities and hopeful attitudes “are undermined by the realities of life in the United States.”¹⁴⁹ It is dangerous to adhere to an over-generalized story of Black immigrant success since doing so inevitably supports the cultural deficit story of Blacks, thus placing the blame for social inequality within the Black community, as opposed to privileging structures.¹⁵⁰

The critique remains, however, that by including Black immigrants and their descendants within the beneficiary class we are shifting the focus from and devaluing the seminal experiences of slavery.¹⁵¹ Indeed, this is the critical dilemma facing beneficiary definitions that seek to eliminate the causal relationship to slavery.¹⁵²

However, the much larger problem of the current beneficiary definition is that it relies on an individual rights paradigm to sup-

148. See MARY C. WATERS, *BLACK IDENTITIES: WEST INDIAN IMMIGRANT DREAMS AND AMERICAN REALITIES* 2 (1999).

149. See *id.* at 8.

150. While many white conservatives blame the culture of African Americans for their failures in the economy, the experiences of the West Indians show that even “good culture” is no match for racial discrimination. Over the course of one generation the structural realities of American race relations and the American economy undermine the cultures of the West Indian immigrants and create responses among the immigrants, and especially their children, that resemble the cultural responses of African Americans to long histories of exclusion and discrimination.

Id.

151. Many Black immigrants, for instance Africans, did not necessarily have a slave experience. Even Black immigrants that were at one time enslaved, for instance West Indians, arguably had a different experience in slavery and racial domination (in that slavery ended earlier and their countries now are Black controlled) than their American counterparts.

152. See, e.g., Lolita K. Buckner Inniss, *Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness*, 49 DEPAUL L. REV. 85, 86 (1999) (exploring the paradox of “being a ‘native’ black American, and the slave experience as part of the immigrant experience”).

port remedies. In particular, financial models of reparations¹⁵³ and even models that advocate the creation of a college scholarship trust rely on the identification of individual potential beneficiaries. In order to transcend the individual rights paradigm it is necessary to pursue group-based remedies in addition to deconstructing privilege to advocate group-based injuries.

The spirit-injuries of the Black community must be healed before community-cohesiveness can occur. Accordingly, community unity is dependent on the simultaneous deconstruction of privilege and healing of spirit-injuries.

2. Inter-Community Unity

The movement for Black reparations also must mitigate the potential for white backlash and inter-minority group divisiveness. White backlash represents the reaction of many white people when confronted with the responsibility of racial discrimination and slavery. Claiming innocence, many white people lash out at the Black community, and the reparations movement, in an effort to preserve their worldview. Making privilege visible, as described in Part II.A of this Article, is the essential first step in combating white backlash. Derrick Bell, among others, argues that the only way to mitigate white backlash and improve the possible success of Black reparations is to provide some direct or indirect economic benefit to whites.¹⁵⁴ I disagree, to a point. I agree that white support for Black reparations will only occur when they feel such support is in their interest. However, I disagree that the benefit to white people must be economic in nature. Rather, by confronting and engaging a legacy of white privilege and benefits from a history of racial discrimination, it is in white people's interest to overcome the psychic injuries that result.¹⁵⁵ One method to mitigate the pain of confronting past and current wrongs is to support the Black reparations movement.

153. See Part III.B for a discussion of the financial model of Black reparations.

154. See BELL, *supra* note 22, at 136–37 (arguing that interest-convergence theory maintains that white people will only grant reparations to the extent it furthers white people's interests); Kevin Hopkins, *Forgive U.S. Our Debts? Righting the Wrongs of Slavery*, 89 GEO. L.J. 2531, 2539–41 (2001) (reviewing RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000)) (same).

155. White people have been recognized to have psychic injuries resulting from slavery and a history of discrimination. See Powell, *supra* note 37, at 435. In addition, the cognitive dissonance created by engaging privilege is a form of psychic injury that white people will seek to alleviate. In this way, perception of the status quo as illegitimate must occur before cognitive dissonance can be addressed.

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The potential for divisiveness between the Black community and other “minority” communities also exists. Other racial minorities may criticize Black reparations using similar criticisms utilized by the white community. In addition, minority communities may also claim that essentializing the Black experience ignores their own histories of racial subordination and oppression.

The project to deconstruct white privilege must also take place within other minority communities. Furthermore, the basic model for Black reparations can also be utilized to address racial discrimination in other marginalized communities. Indeed, if a transformative reparations model succeeds, the structures enabling continued racism directed to any group will be eradicated.

3. Creating Community Unity

Community strength and unity is a necessary predicate for sustaining Black reparations. Deconstructing privilege and repairing the spirit-injuries of the community only affords the Black community with the *opportunity* for successful insurgency. In order to take advantage of the expanding political opportunities and cognitive liberation, institutional resources must be strengthened and the community must be unified.¹⁵⁶

Creating community unity requires confronting white privilege and engaging in spirit-healing. It also requires facilitating social integration within the community and the development of strong indigenous organizations.

C. *Repairing the Spirit*

Everybody knew what she was called, but nobody anywhere knew her name. Disremembered and unaccounted for, she cannot be lost because no one is looking for her, and even if they were, how can they call her if they don't know her name? . . . They forgot her like a bad dream. . . . Remembering seemed unwise.¹⁵⁷

“The breakdown in the social fabric of the Black American population has taken place partially as a result of the untreated spirit injury resulting from” slavery and racism.¹⁵⁸ The spirit-injuries of the Black community have the potential to be healed

156. See McADAM, *supra* note 66, at 43–44.

157. See MORRISON, *supra* note 4, at 274.

158. Wing & Merchán, *supra* note 38, at 26.

through a transformative model of reparations.¹⁵⁹ Healing for spirit-injuries resulting from racism and cultural genocide can take place only by addressing the historical truth of Africa and Black America, tending to self-hate, and improving self-esteem. Cognitive awareness can develop upon resolving our spirit-injuries, enabling us to take advantage of the political opportunities afforded by the critical deconstruction of privilege.

1. Historical Mis-Information

The Black community must reclaim its “ancient self,” while developing an Africentric perspective of history.¹⁶⁰ As I have stated earlier, the process of remembering one’s cultural past, or rememory, is critical to overcoming the spirit-injuries caused by racism and cultural degradation.¹⁶¹ As rememory is possible only to the extent that a critical consciousness on privilege is formed, the healing of spirit-injuries must occur simultaneously with the deconstruction of privilege—at least within the Black community.

2. Self-Hate

Self-hate is a powerful psychological state. Although I consider myself to be well-educated and informed regarding the intricacies of social racism, I have admittedly struggled with internal feelings of self-hate regarding my appearance. At times in my youth, I was upset that I couldn’t just transform into a white person. My reasoning was that since I was already high yellow, redbone, and light, bright and nearly white, that “passing” was the ultimate solution to my problems of dealing with race and poverty. However, more often than wanting to “pass,” I usually struggled to reconcile the opposite feelings of wishing to be just a little bit darker, or having a phenotype a little more “Black.” Although I believe that I have come to terms with my past self-hate, I still become perturbed when either (1) someone mistakes me for white or (2) when someone recognizes me as Black (or Creole or Egyptian or Puerto-Rican or Other?) and treats me in a discriminatory manner. This is, of course, just one experience of being Black in America. Hopefully rememory, combined with the deconstruction of social norms, will

159. It is important to note that spirit-injuries constitute an injury not only to the individual and the Black community, but also to society as a whole.

160. See ROBINSON, *supra* note 2, at 11–59 for a discussion of the historical misconceptions surrounding the past of Blacks and Africa and how those misconceptions inevitably serve to reinforce white privilege.

161. See *supra* notes 1–26 and accompanying text.

enable Black people to overcome their implicit and explicit feelings of self-hate.

Rememory of the past enables Black people to address issues of self-hate and internalized racism that affect many Black people. When socially accepted images of all things positive—whether they regard beauty, hair texture, skin color, or culture—represent the antithesis of your natural appearance or cultural background, there are bound to be negative psychological effects.¹⁶² The development of self-hate is the result of internalization of the dominant culture's subordinating social norms.

3. Low Expectations, Powerlessness and Hopelessness, or Why I Almost Joined a Gang

Living in poverty, trading food stamps for candy, money and merchandise, confronted on a daily basis with the drug abuse, racism, and economic oppression that characterized my Black neighborhood, I often felt powerless to change my life or that of my family. I had low expectations of myself and my surroundings, and even less hope for future progress or happiness. The gang my friends invited me to join (the Three Dragons!) seemed like the perfect solution to my depression. I would become a member of a tightly-knit community of friends, and would be able to achieve some measure of control over my destiny. Luckily (although at the time I was quite upset), my school discovered my pending gang affiliation (I had worn the gang colors as criss-crossed shoelaces) and informed my mother who then promptly ended any further possibility of my being in a gang. I was fortunate to have had a caring and influential mother, and even more fortunate to have heeded her direction.¹⁶³

Anger quickened in him: an old feeling that Bessie had often described to him when she had come from long hours of hot toil in the white folks' kitchens, a feeling of being forever commanded by others so much that thinking and feeling for one's self was impossible. Not only had he lived where they told him to live, not only had he done what they told him to do, not only had he done these things until he had killed to be quit of them; but even after obeying, after killing, they still ruled him. He was their property, heart and soul, body and blood; what

162. See, e.g., RUSSELL ET AL., *supra* note 140, at 62–66; Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (1991).

163. Personal account.

they did claimed every atom of him, sleeping and waking; it colored life and dictated the terms of death.¹⁶⁴

Feelings of hopelessness and powerlessness are not isolated to experiences of poverty or violence. Self-destructive methods to deal with such feelings are not restricted to gang membership. Indeed, the psychic injury of lost hope and impotence affects many Black people having diverse experiences and coping mechanisms. The commonality in these experiences, however, is a reaction to racism and a history of subjugation. It is inevitable that after three-hundred eighty years of cultural domination and pervasive racism that *some* Black folk start to feel that there is no hope in overcoming racial obstacles. In essence, to combat hopelessness we must give the Black community something to be hopeful about. The concept of reparations is a powerful organizing tool that has the potential to create agency and optimism. However, the extent to which Black people sense possibility in overcoming privilege and racism depends on the expansion of political opportunities and the influence of Black community organizations and institutions.¹⁶⁵

4. Developing Cognitive Liberation

Making privilege visible is a necessary first condition for achieving cognitive liberation. Rememory and community unity are also necessary to achieve spiritual healing. Cognitive liberation, which encompasses spiritual healing and freedom from dominant socialization, requires utilizing visibility to facilitate social insurgency. Accordingly, visibility must be accompanied with increased organizational strength of Black institutions and expanding political opportunities created through the exposure of white privilege in order to achieve cognitive liberation.

D. Pursuing a Contemporaneous Agenda

The pursuit of deconstructing white privilege, building community strength, and spirit-healing must occur simultaneously in order to achieve substantive change in the African-American

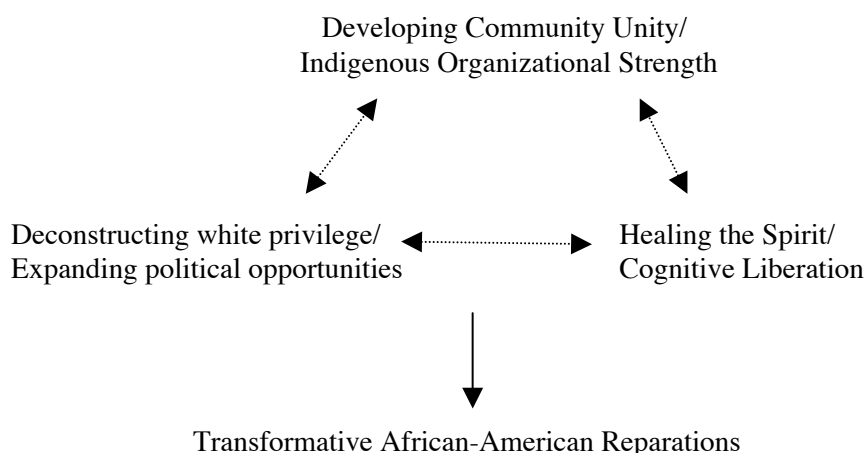
164. RICHARD WRIGHT, *NATIVE SON* 307 (1940).

165. I admit that I too am hopeless much of the time. After reflecting on the history of privilege and racism I grow angry, but mostly tired and weary. There have already been many failed movements for reparations. What changes this one? Will the political process model suddenly prevail over interest-convergence theory? I take solace in believing that perhaps the benefits of the struggle will come from the struggle itself. Perhaps by addressing these internal issues that continue to divide and spiritually corrupt the Black community, we can overcome internal barriers to collectively face external obstacles.

reparations context.¹⁶⁶ The deconstruction of privilege is the only way to avoid repeating the patterns of inequality. Additionally, the process of spirit-healing is not possible without first confronting privilege, as those future patterns of inequality will sustain the cultural deficit story. Finally, community cohesiveness will not occur until the Black community heals its spirit-wounds.¹⁶⁷

A tripartite agenda of subversive Black reparations is therefore necessary to the achievement of substantive change.

Table 1:
The Tripartite Agenda¹⁶⁸



III. CURRENT MODELS OF REPARATIONS: CRITIQUE AND ANALYSIS

A. *Past Reparations Movements Considered*

The idea of reparations for past racial and cultural injustice is not new. Reparations movements for the discrimination suffered

166. Please refer to Table 1.

167. See *supra* Part II.C. Spirit-healing is dependent on the influence of strong Black organizations and institutions. This is consistent with the argument that community cohesiveness is impossible without spirit-healing. The success of both spirit-healing and community cohesiveness influence and determine each other. Both concepts must be pursued simultaneously for each to fully succeed.

168. See McADAM, *supra* note 66 (discussing importance of community unity, expansion of political opportunities, and spirit-healing to development of Black power).

by Jewish,¹⁶⁹ Japanese,¹⁷⁰ Korean and South Asian comfort women,¹⁷¹ Hawaiian,¹⁷² Brazilian,¹⁷³ South African,¹⁷⁴ Argentinian,¹⁷⁵ Australian Aborigines,¹⁷⁶ Canadian Indian,¹⁷⁷ Mexican Indian,¹⁷⁸ and Native American¹⁷⁹ communities have already taken place and, in some instances, are continuing. Movements for the Jewish Holocaust and the Japanese internment, in particular, have resulted in successful reparations claims.¹⁸⁰

African-American reparations claims have not succeeded because a successful Black reparations claim has the potential to undermine white privilege and the existing structures of political power, as well as producing monetary liability that could literally bankrupt the nation.¹⁸¹ Proposed solutions to this challenge generally fall into one of three categories: the financial model, the relational model or the integrated model.

169. See generally Menachem Z. Rosensaft & Joana D. Rosensaft, *The Early History of German-Jewish Reparations*, 25 FORDHAM INT'L L. J. S-1 (2001); Michael J. Bazylar, *www.swissbankclaims.com: The Legality and Morality of the Holocaust-Era Settlement with the Swiss Banks*, 25 FORDHAM INT'L L.J. S-64 (2001). See also <http://www.swissbankclaims.com>.

170. See generally Yamamoto, *supra* note 21.

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171. See generally George Hicks, *The Comfort Women Redress Movement*, in WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE 113 (Roy L. Brooks ed., 1999).

172. See generally S. James Anaya, *The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs*, 28 GA. L. REV. 309 (1994).

173. See generally Sebastian Rotella, *Singer Finds Race Issue No Laughing Matter in Brazil*, L.A. TIMES, Sept. 5, 1996, at 1 (describing Brazilian President Fernando Henrique Cardoso's proposal to establish a government commission to draft a reparations plan to ameliorate Black Brazilian oppression); See Westley, *supra* note 47, at 433-34 n.17.

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174. See Westley, *supra* note 47, at 433-34 n.17.

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175. See *id.*

176. See *id.*

177. See *id.*

178. See *id.*

179. See generally Nell Jessup Newston, *Indian Claims for Reparations, Compensation, and Restitution in the United States Legal System*, in WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE 261 (Roy L. Brooks ed., 1999).

180. See U.S. Dep't of Justice Foreign Claims Settlement Comm'n, *German Compensation for National Socialist Crimes, United States Department of Justice Foreign Claims Settlement Comm'n*, in WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE 61 (Roy L. Brooks ed., 1999); Yamamoto, *supra* note 21.

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181. See Yamamoto, *supra* note 21, at 493 (noting that fear over securing money, power, and privilege motivate society to oppose Black reparations).

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B. The Financial Model

The financial model of Black reparations seeks monetary compensation in the form of individual restitution for the descendants of slaves to account for the economic injuries of slavery. The classical financial model has fallen into disfavor with most advocates of Black reparations, viewed as deficient in its potential to make substantive change. Additionally, the financial model fails because it facially fails to interrogate white privilege, address the spirit-injuries of the community, or promote community cohesiveness.

However, a much stronger critique of the financial model is that it succumbs to the problem of “commodification.”¹⁸² Commodification represents the “equivalent exchange for past wrongs.”¹⁸³ The financial model permits commodification since it transforms the group injury into a commodity able to be paid in finality. In this way, “one generation could sell away their claim at bargain-basement prices, to the detriment of future generations.”¹⁸⁴

Further, the financial model ignores the spirit-injuries of the Black community, while failing to foster community unity. The financial model, by utilizing the individual rights paradigm, does not interrogate white privilege. As such, the possibility of spirit-healing is eliminated, thereby undermining efforts to unify the community.

C. Relational Models

The relational model emphasizes the relationships within the Black community and between Black and other communities as the primary benefit of a Black reparations movement. Relational models overcome some of the problems inherent in the financial model. In particular, the relational model tends to avoid the problem of commodification and promotes spirit-healing and community unity. However, relational models fail to the extent they do not identify and critique white privilege, condemning their efforts of spirit-healing and community building to inevitable failure.

The relational model seeks to develop community unity both within the Black community and without. However, the relational model creates no specific plan for developing community unity except for awareness of the “debt.”¹⁸⁵ While awareness of past and current discrimination is important, community unity cannot be

182. See Matsuda, *supra* note 128, at 395.

183. *Id.*

184. *Id.* at 396.

185. See *id.*

achieved without the promotion of awareness and interrogation of white privilege.¹⁸⁶

D. *Integrated Models*

Integrated models, those with both financial and relational components, have more recently been advocated as the solution to Black reparations.¹⁸⁷ The integrated model is the most promising in that it attempts to address spiritual healing, while implicitly interrogating white privilege. It relies on the process of filing a legal claim, as a form of “cultural performance,”¹⁸⁸ to develop community dialogue and unity to support a broader political movement for Black reparations. However, the integrated model sacrifices too much in its quest to create a public forum for discussion. Specifically, the integrated model does not critique white privilege or adequately provide mechanisms for developing community-cohesiveness. While acknowledging its shortcomings,¹⁸⁹ the integrated model claims that both privilege and community can be addressed at a later time once sufficient public discourse has taken place. In so doing, the integrated model risks white backlash and undermines the potential for spirit-healing and ending future inequality.

186. An additional critique of the relational model, one that the financial model tends to avoid, is that models that do not seek to provide for individual restitution ignore the immediate needs of impoverished Blacks by adopting a bourgeois mentality. That is, it is easy for a bunch of well-to-do academics and lawyers to dismiss outright the possibility of individual monetary compensation in favor of some abstract, theoretical goal. Indeed, this tension has received very little attention by academics working on the reparations project. Are the Black intellectuals pursuing reparations truly the talented tenth? See W.E.B. DuBois, *The Talented Tenth*, in *THE NEGRO PROBLEM* (James Pott ed., 1903). Does the Black intelligentsia have the right to make decisions for lower-class Black people? Answers to these questions are difficult and troubling. I advocate a model of reparations that does not seek individual restitution, and yet I come from an impoverished background. Does this absolve me of the bourgeoisie critique? Does my “authenticity” allow me to speak on behalf of those currently at the bottom? Perhaps the solution to this problem is that there is no real solution. All we can do is strenuously advocate the principles and theory that we believe will eliminate Black inequality, while continuously listening to the views of those truly at the bottom. The challenge for any African-American reparations model, then, will be to continually reflect the interests of the most economically-oppressed members of the Black community.

187. See Yamamoto, *supra* note 21, at 492; Complaint at 6-7, *Farmer-Paellmann v. FleetBoston Fin. Corp.*, No. CV-02-1682 (E.D.N.Y. Mar. 26, 2002), <http://news.findlaw.com/cnn/docs/slavery/fpllmnflt032602cmp.pdf> (last visited Apr. 15, 2002).

188. See Yamamoto, *supra* note 21, at 492.

189. See *id.*

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The integrated model only implicitly attacks white privilege. Although in the *Farmer-Paellman* case private corporations were sued for profiting from slavery and using said profits to build wealth and power, the case hardly constitutes an intense interrogation of whiteness or privilege.¹⁹⁰ Indeed, white privilege is not even made visible through this approach, much less deconstructed. Some integrated models promise to critique white privilege after some discussion on reparations have been cultivated by the legal suit.¹⁹¹ This approach will ultimately fail as the development of community strength and spiritual healing must occur simultaneously with the deconstruction of the rights discourse, and not at a later time.¹⁹² Pursuing community and spirit-healing before implicating privilege is a backwards approach that will not promote the spirit-healing and community unity necessary for a subversive Black reparations movement.

IV. PERPETUAL REPARATIONS AND THE TRANSFORMATIVE MODEL

Black reparations have the potential to decisively create substantive, long-lasting social change for the Black community, and the nation as a whole. A transformative model of Black reparations can eliminate Black discrimination and socio-economic inequality, while healing spiritual injuries and forming a unified community.

The transformative model of reparations maintains that a simultaneous agenda of deconstructing white privilege, spiritual healing and community-building can create the conditions necessary for a successful, subversive political movement. What is truly inevitable is the accession to power of those on the bottom, not the continuance of the dominant structure.¹⁹³ Black reparations cannot be an isolated event. Rather, it must be perpetual in nature, continuing to deconstruct privileging structures until white privilege no longer exists and Black inequality and subordination is conquered.

190. See Complaint at 6-7, *Farmer-Paellmann*, No. CV-02-1682.

191. See Yamamoto, *supra* note 21, at 492-93.

192. See *supra* note 168 and accompanying text and table.

193. See MICHAEL SCHWARTZ, *RADICAL PROTEST AND SOCIAL STRUCTURE* 172-73 (1976).

A. Deconstructing Privilege

The first step of deconstructing white privilege is to make privilege visible.¹⁹⁴ The entire national community and its constituent communities—white, Black, Latino, Asian, Native American and Other—must confront the phenomenon of white privilege and challenge the dominant paradigm's viewpoints on white innocence, individualism, and equal opportunity.

The development of a subversive and critical dialogue on Black reparations and privilege is necessary to the project of deconstructing privilege. A subversive dialogue can be achieved through four concurrent strategies: legal action, legislative action, political protest, and broad, grass-roots education programs. Within each strategy an educational component critiquing privilege and inviting discussion must attach. Federal and state legal action, as Eric Yamamoto correctly notes, serve as "generators of 'cultural performances' and as vehicles for providing outsiders an institutional public forum."¹⁹⁵ However, the legal suits should not strive to achieve a modicum of success—however unlikely—by drafting narrow claims within the individual rights paradigm. Rather, the legal claims must be broadly drafted to encompass all of the concerns critical to the transformative model. Although these legal suits may be vulnerable to dismissal for failing to state a legally cognizable claim, current and past legal cases that sought to fit within the individual rights paradigm have met with similar fates.¹⁹⁶ Since the primary goal of the legal attack is to generate dialogue and awareness, critically drafted claims make the most sense.

Concurrently with the spate of legal attacks, legislative efforts to develop a Black reparations bill must be strengthened and modified to critique white privilege. Specifically, John Conyers's proposal must be modified to reflect a critique on white privilege.¹⁹⁷ This must be combined with political protest outside the halls of Con-

194. See FLAGG, *supra* note 99.

195. Yamamoto, *supra* note 21, at 492. It is also important to note that scholars such as Cornel West, Manning Marable, Charles Ogletree, James Comer, Richard America and Randall Robinson, to name a few, have advocated the use of legal suits to spark discussion on Black reparations. See Paul Braverman, *A-List of Lawyers, Academics Tackles Challenges in Identifying Plaintiffs, Defendants, Damages*, law.com, at <http://www.law.com/jsp/statearchive.jsp?type=Article&oldid=ZZZ920I5TOC> (last visited Jan. 7, 2003).

196. See, e.g., *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995); *Jackson v. United States*, No. C 94-01494 CW, 1994 U.S. Dist. LEXIS 7872 (N.D. Cal. June 7, 1994); *Lewis v. United States*, No. C 94-01380 CW, 1994 U.S. Dist. LEXIS 7868 (N.D. Cal. June 7, 1994).

197. See H.R. 40, 107th Cong. (2001), WL 2001 CONG US HR 40.

gress to make privilege visible. Indeed, “protest is a sign that the opportunity structure is flexible and vulnerable to the political assaults of excluded groups.”¹⁹⁸ Protest will not only expand political opportunities, but aid the construction of a subversive dialogue on reparations.

Finally, grass-roots activism is vital to making privilege visible. Utilizing our institutions and social organizations to educate people about white privilege is of utmost importance. Of course, the success of grass-roots activism, as well as the other methods of creating dialogue, are dependent on the concurrent development of strong community institutions and spiritual healing.

B. Creating Community

The development of a unified community of social activists is promoted by the expanded political opportunities provided by the on-going project of deconstructing white privilege. However, social institutions and organizations within the Black community must be strong in order to be capable of taking advantage of political opportunities to resist. Developing awareness of the necessity of reparations specifically, and the pervasiveness of white privilege generally, is critical to encouraging member participation. Mobilization for participation in a Black reparations movement, however, is dependent on the social integration of the community.¹⁹⁹ Accordingly, it is vital that the reparations movement seek to improve the conditions for *all* Black people in America, and not solely those Black Americans that are able to establish a historical connection to American slavery.

The potential for free-rider problems diminish to the extent that movement participation is defined “as synonymous with organizational membership.”²⁰⁰ In effect, to become a member of a Black reparations organization—such as N’COBRA²⁰¹—is to also participate in the movement for Black reparations. N’COBRA, however, provides a limited organizational framework through which to pursue Black reparations. The establishment and support of African-American reparations organizations must be coupled with the integration of African-American reparation initiatives in other Black in-

198. Peter K. Eisinger, *The Conditions of Protest Behavior in American Cities*, AM. POL. SCI. REV., Mar. 1973, at 11, 28, *cited in* McADAM, *supra* note 66, at 41.

199. *See* McADAM, *supra* note 66, at 44.

200. *Id.* at 46.

201. N’COBRA is an acronym for the National Coalition of Blacks for Reparations in America. See <http://www.ncobra.com> for further information.

stitutions such as the NAACP, Black churches, and social activist organizations.

C. Repairing the Spirit

Rememory, the process of remembering our cultural past, is necessary to begin to heal the spiritual wounds of the Black community. Additionally, making white privilege visible is an integral component of overcoming the spirit-injuries of slavery, discrimination and continuing racism. Furthermore, strong Black organizations and institutions are needed in order to support the rememory project, as well as to provide the critical outlet for social insurgency. As such, the plan to achieve spiritual healing is simply to include historical education within the broader educational strategy outlined in Part IV.A.

Finally, it is important for the Black reparations movement to maintain an international component. Ultimately, Black reparations must seek to undermine white privilege and Black subordination on a global scale utilizing, in part, a Pan-African consciousness.²⁰² It is simplistic to believe that the deleterious effects of slavery, racism and economic oppression are isolated to Black Americans. Furthermore, it is clear that the myth of Black inferiority is supported by the global oppression of Black people.²⁰³

D. Remedies

The benefit of a Black reparations movement will lie primarily in the dialogue itself, as represented by the deconstruction of white privilege, spirit-healing and community-building. However, I acknowledge that the concept of "dialogue" may be a poor vehicle for generating community participation and activism in the Black reparations movement. Furthermore, the broadly-drafted legal and legislative actions which comprise a part of the overall strategy of deconstructing privilege must have identifiable goals, rather than mere assertions. A better vehicle for community protest may thus be the identification of white privilege coupled with an economic and political divestiture of the gains afforded by such privilege.

The first step may be recognition of the estimated trillions of dollars that America owes Black Americans for unpaid labor and

202. See ROBINSON, *supra* note 2; see also STERLING JOHNSON, BLACK GLOBALISM: THE INTERNATIONAL POLITICS OF A NON-STATE NATION (1998).

203. See ROBINSON, *supra* note 2.

unjust enrichment during slavery.²⁰⁴ I believe identification of the benefit that America has accrued due to white privilege can be helpful. Remaining steps must identify and claim as unjust enrichment²⁰⁵ those economic and political benefits provided by white privilege. The actual financial debt, when one considers not only unpaid labor, but also wealth effects and all other political and economic benefit from racial discrimination, would likely be too immense for repayment, much less comprehensive calculation. However, existing financial models provide some insight into aspects of the debt owed.²⁰⁶

We must be wary of identifying specific injuries performed by specific actors lest we fall back into the individual rights dilemma. In addition, the risk of commodification seems greater when discussing economic injury than generalized social oppression. Nonetheless, I feel that financial information estimating the economic extent of white privilege can play an integral role in making privilege visible, healing the spirit and fostering community activism. Discussion of a monetary debt makes the goals of Black reparations seem tangible and concrete. Furthermore, identification of a monetary debt highlights the “need for Black economic independence from societal discrimination.”²⁰⁷

The primary way to avoid the commodification problem and transcend the individual rights paradigm, while utilizing economic data, is to emphasize the perpetual and group nature of the remedies. Pursuing remedies that are pseudo-perpetual in nature—that do not end until all vestiges of white privilege are eliminated—avoids the risk of transforming Black subordination into a discrete commodity. Furthermore, pursuing group restitution places the dialogue outside of the individual rights paradigm.

204. Estimates for the value of slave labor have ranged from billions to trillions of dollars. See Westley, *supra* note 47, at 465-66 n.150; AMERICA, *supra* note 23, at 4.

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205. Or whichever legal theory seems best suited for achieving the goals at hand. Reparations theorists have utilized unjust enrichment theory, property law, and equitable remedy analysis, among others, to further their claims. See, e.g., Complaint at 7, Farmer-Paellmann v. FleetBoston Fin. Corp., No. CV-02-1682 (E.D.N.Y. Mar. 26, 2002), <http://news.findlaw.com/cnn/docs/slavery/fppllmmflt032602cmp.pdf> (last visited Apr. 15, 2002); Donald Aquinas Lancaster, Jr., Comment, *The Alchemy and Legacy of the United States of America's Sanction of Slavery and Segregation: A Property Law and Equitable Remedy Analysis of African American Reparations*, 43 How. L.J. 171 (2000).

206. See Westley, *supra* note 47.

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207. *Id.* at 470.

CONCLUSION

The quest for Black reparations must address white privilege, internal spirit repair and community-building in order to achieve substantive change. Black reparations has the potential to eliminate racial subordination and future patterns of Black inequality. In order to achieve substantive change, however, it is necessary to preserve a subversive dialogue on the concept of Black reparations. The discussion on Black reparations must include an awareness of white privilege, community unity, as well as an outsider understanding of historical events having the potential to heal the spirit-injuries of the Black community. The transformative benefit of Black reparations thus lies in the simultaneous pursuit of cognitive liberation, community unity and making privilege visible. The Black reparations dialogue may well lead us to pursue a unitary conception of the legal system: one which recognizes group rights and reflects the interdependence of all human beings. Black reparations thus has the potential to not only eliminate white privilege and end Black subordination, but also to truly transform the legal structure of America.