

Fall 2021

A Look at Race & Reparations in America

Annie Keller

Follow this and additional works at: <https://lawecommons.luc.edu/pilr>



Part of the [Civil Rights and Discrimination Commons](#), [Criminal Procedure Commons](#), [Environmental Law Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

Annie Keller, *A Look at Race & Reparations in America*, 27 Pub. Interest L. Rptr. 8 (2021).

Available at: <https://lawecommons.luc.edu/pilr/vol27/iss1/3>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

A Look at Race & Reparations in America

Annie Keller

In the wake of George Floyd's murder and the protests that followed, a video titled "How Can We Win" went viral. The video captured an impassioned speech made by activist Kimberly Jones detailing the reality of the America that whiteness has built. In the video, Ms. Jones addresses the colossal wealth gap between Black and white families in America, tracing this phenomenon back to its roots. "Economics," she says, "was the reason that Black people were brought to this country. We came to do the agricultural work in the South and the textile work in the North."¹ She goes on to use a game of Monopoly as a metaphor to explore the reality of white people accumulating and building wealth in America, across generations, while Black people are excluded and prevented from doing so. Black people were not allowed to have anything on the Monopoly board, she says, and moreover, all their profits were handed over to their enslavers.² Later, any sign of independent, Black wealth and economic success was destroyed by white violence. She points to the white terrorism inflicted on Tulsa and Rosewood as examples.³ If Black people were only recently allowed to play the game, but all the property and equity is already hoarded, she asks, "how can we win?"⁴ The logical answer is that if one group has built wealth to the detriment and harm of another group, then the wealth must be re-distributed to reflect the same. The logical answer is, at least in part, reparations.

Paying out reparations to Black Americans, especially in recognition of the trauma and harm caused by enslavement, is not a novel idea. The first attempt at reparations dates back to the Civil War, when General William Sherman ordered seizure of \$400,000.00 to be awarded to formerly enslaved people.⁵ Unfortunately, Andrew Johnson rescinded this order.⁶

¹ Carjam TV, *#BLM How can we win? Kimberly Jones Powerful Speech Video Full Length Black Lives Matter #BLM* 2020, YOUTUBE, (June 9, 2020), <https://www.youtube.com/watch?v=llci8MVh8J4>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Nicholas Fandos, *House Panel Advances Bill to Study Reparations in Historic Vote*, N.Y. TIMES (Apr. 14, 2020), <https://www.nytimes.com/2021/04/14/us/politics/reparations-slavery-house.html>.

⁶ *Id.*

Congressman John Conyers, Jr. first introduced a bill, HR 40, in 1989, through which Congress would conduct a study on the effects of enslavement.⁷ Congressman Conyers re-introduced this bill year after year without much traction.⁸ In 2020, however, HR 40 finally gained significant support and had a total of 175 co-sponsors.⁹ Not one of these co-sponsors was Republican.¹⁰ On April 14, 2020, the House Judiciary Committee voted to advance HR 40 to the full House for the first time in its 31-year history.¹¹ It is worth emphasizing that the bill does not explicitly call for reparations; rather, it merely asks that a Congressional Committee explore and detail the lasting effects of the enslavement of Black people in our modern society, and provide recommendations on how to remedy these effects, which may include a recommendation of reparations.

Reparations in the form of direct-cash payments to descendants of enslaved Black people is not a popular idea among all Americans. A nationwide poll conducted by the University of Massachusetts-Amherst showed that sixty-two percent of Americans oppose the idea of reparations, with forty-six percent of Americans going as far as to say that the federal government “definitely should not” give direct cash payments to descendants of enslaved people.¹² Opinions on reparations follow predictable racial and political breakdowns: eighty-six percent of African Americans are in favor of reparations, while only twenty-eight percent of white people support the measure; sixty-four percent of Democrats favor reparations as compared to only ten percent of Republicans; forty-six percent of those Republicans who oppose reparations do so because they believe African Americans do not deserve such payments; and finally, six percent of opposed Republicans cite the financial difficulties the program would involve, while thirteen percent oppose the measure because they believe it would be too difficult logistically to administer.¹³

⁷ *US: Congress Advances Slavery Reparations Bill*, HUM. RTS. WATCH (Apr. 9, 2021) <https://www.hrw.org/news/2021/04/09/us-congress-advances-slavery-reparations-bill#>.

⁸ *Id.*

⁹ Kevin Freking, *House Panel Votes to Advance Bill on Slavery Reparations*, ASSOCIATED PRESS (Apr. 14, 2021) <https://apnews.com/article/race-and-ethnicity-discrimination-legislation-slavery-john-conyers-4929d09132b8a72e655d8a42cc068a9d>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Jared Sharpe, *Umass Amherst/WCVB Poll Finds Nearly Half of Americans Say Federal Government Definitely Should Not Pay Reparations to the Descendants of Slaves*, UNIV. OF MASS. AMHERST (Apr. 29, 2021) <https://www.umass.edu/news/article/umass-amherstwcvb-poll-finds-nearly-half>.

¹³ *Id.*

There also exists a common objection to federally funded and administered reparations that sounds something like “but it wasn’t me.” White people in particular tend to object to the concept of reparations by suggesting that their ancestors did not engage in the institution of slavery, nor did their family directly benefit from enslavement, and therefore their taxpayer dollars should not be spent on such a program. In an article for the Report from the Institute for Philosophy and Public Policy, Robert K. Fullinwider offers a helpful paradigm shift when thinking about guilt or liability in relation to reparations; he writes, “In the case of reparations, we should release the assumption that liability is a personal matter. Instead, we should adopt a lens akin to corporate liability, where the United States is an individual responsible for the harms done to Black people. The Government owes Black Americans damages in acknowledgment of the harms committed, and citizens underwrite the debts of the government. Citizens owe, not because they might be white or because they are part of, or descended from, the perpetrator group, but simply because they are citizens of the United States.”¹⁴

The United States federal government has indeed adopted this approach and has previously paid out reparations. Two prominent examples of federally funded reparations took place after World War II. In 1998, Congress passed the Holocaust Victims Redress Act, which authorizes lump sum settlement where the United States redistributes the equivalent value of assets seized by the United States government during World War II which originally belonged to Jewish victims of the Holocaust.¹⁵ Assets included actual money, gold, and works of art.¹⁶ The purpose of the Act, in part, was to “provide a measure of justice to survivors of the Holocaust all around the world while they are still alive.”¹⁷ Important is the use of the word “justice.” By passing this Act, the United States government acknowledged that it wrongfully became a financial beneficiary of World War II when it seized assets rightfully owned by Jewish people in Europe. To right this wrong, the United States sought to redistribute and return those assets.

Perhaps even more significantly, the United States has also issued reparations to a group of its own citizens for harms inflicted upon them by the government. In 1942, President Roosevelt signed Executive Order 9066, which

¹⁴ Robert K. Fullinwider, *The Case for Reparations*, 20 REP. FROM THE INST. FOR PHIL. AND PUB. POL’Y 1, 3 (2000).

¹⁵ 22 U.S.C. §1621.

¹⁶ *Id.*

¹⁷ *Id.*

authorized the removal and internment of Japanese Americans on the West Coast, justifying said removal by citing concerns of espionage and military sabotage.¹⁸ Americans with Japanese ancestry were moved inland into what were euphemistically referred to as “assembly centers,” but are more accurately described as prisons.¹⁹ In most cases, this involuntary internment lasted for the duration of the war.²⁰ The incarceration of Japanese Americans was also upheld by the Supreme Court with the issuance of the *Korematsu v. United States* opinion. The Supreme Court accepted as true that the concerns regarding Japanese Americans engaging in espionage were valid, and, though this law distinguished based on race, the law passed strict scrutiny because of a perceived military emergency.²¹

The federal government acknowledged and attempted to remedy the harm done to Japanese Americans with the passage and enactment of the Civil Liberties Act in 1988. The Act includes an apology to Japanese Americans, affirming that the purpose of the Act is to “acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II.”²² In addition, the Act recommends pardons for criminal convictions of Japanese Americans for violating those Executive Orders and statutes that authorized their internment.²³ The Civil Liberties Act also authorized restitution in the form of direct cash payments of \$20,000.00 for individuals who suffered internment, or to their surviving spouse or children.²⁴

Recently, there has been increased advocacy for reparations for Black Americans on a more local level. For example, on September 13, 2021, Cambridge, Massachusetts unanimously passed two policy orders to provide reparations to Cambridge residents.²⁵ The first policy sought to acknowledge and repair harms committed against Black and Brown residents in the name of the “War on Drugs.” The second program will provide reparations for anti-Black discrimination and enslavement. Both programs will be funded, at least in

¹⁸ Margaret Chon, et al., *Race, Rights, and Reparations: Law and the Japanese Internment*, WOLTER KLUWER LAW & BUS. (2nd ed. 2014).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² The Civil Liberties Act of 1988, 50 U.S.C. App. § 1989(1).

²³ *Id.* at § 1989b-1(b).

²⁴ *Id.* at § 1989b-4(a)(1).

²⁵ Brandon L. Kingdollar, *Cambridge City Council to Explore Reparations for Slavery, Restitution for War on Drugs*, THE HARV. CRIMSON, (Sept. 14, 2021), <https://www.thecrimson.com/article/2021/9/14/city-council-sept-14/>.

part, by tax revenues generated from recreational marijuana sales in the city. The Cambridge program is set to launch in July 2022.²⁶

The Cambridge program was modeled in part after a reparations initiative created in Evanston, Illinois in 2019 by the Evanston City Council. The first phase of this reparations program provides housing grants, rather than direct cash payments, to residents who were harmed by anti-Black discriminatory housing policies in Evanston, or their descendants.²⁷ The grants will be funded by tax revenues from recreational marijuana sales. The grants may only be used for home repairs, mortgage assistance, or down payments on a new home. To be eligible for a grant, the applicant must show that they or their ancestors lived in Evanston between the years of 1919 and 1969, or that they endured housing discrimination due to city policies after 1969.²⁸ There are separate applications for the program depending on whether the applicant seeks to qualify as an ancestor, direct descendent, or an otherwise victim of housing discrimination in the City.²⁹ A total of \$400,000.00 is available for grants, but a maximum of only \$25,000.00 may be paid out to each eligible recipient, making it possible that only sixteen total residents benefit from this program.³⁰ The other phases of this reparations program, and their funding, have yet to be established.

The Evanston program has been celebrated by some as a groundbreaking measure to be passed at the local level. The program has also faced criticism for its limited scope. Cecily Fleming was the sole member of the Evanston City Council who voted against the measure. Though Ms. Fleming adamantly supports reparations, she does not see housing grants as falling within the definition of reparations.³¹ In an interview, Ms. Fleming described the program as not setting enough people up for success, because the beneficiaries have to be homeowners and must still live in Evanston.³² Moreover, she says, “the program is far too prescriptive in how people can use it” since grants can only be

²⁶ *Id.*

²⁷ Julie Bosman, *Chicago Suburb Shapes Reparations for Black Americans: 'It is the Start,'* N.Y. TIMES (Mar. 22, 2021), https://www.nytimes.com/2021/03/22/us/reparations-evanston-illinois-housing.html?.mc=aud_dev&ad-keywords=auddevgate&gclid=CJwKCAjwhuCKBhADEiwA1HegOXGy379qU2ldiUFPhNeqSNeCI3uPtHqRUqji2XGs70arv7szHxc-jRoCWWAQA_vD_BwE&gclsrc=aw.ds).

²⁸ *Id.*

²⁹ *Evanston Local Reparations*, CITY OF EVANSTON, <https://www.cityofevanston.org/government/city-council/reparations>.

³⁰ *Id.*

³¹ Bosman, *supra* note 27.

³² Telephone Interview with Cecily Fleming, 9th Ward Alderwoman (Nov. 3, 2021).

put towards a few specific uses.³³ In her opinion, reparations should be cash payments to Black residents, to be used as they wish. In Evanston's model, Ms. Fleming pointed out that many of the same banks that were complicit in housing discrimination could stand to reap the benefits of this program: "The banks also played a role in housing discrimination, so why they should then benefit again from the people who were harmed makes no sense to me."³⁴ For Ms. Fleming, the limitation in its scope disqualifies the Restorative Housing Program from constituting true reparations.

Ms. Fleming also raised concerns regarding the effect that local initiatives might have on more long-term, substantial reparations payouts from the federal government: "[I]f we do these pop-up programs locally, if the federal government ever decided to do something, would they then point to this program and say 'well you don't get money because you live in Evanston and there's already housing reparations.'"³⁵ She fears that a patchwork of local reparations programs will provide the federal government with a way to abdicate its responsibility to provide reparations.

On the other end of the spectrum is Robin Rue Simmons. Ms. Rue Simmons was an Evanston Alderwoman between 2017 and 2021; she spearheaded the Restorative Housing Project. Ms. Rue Simmons regards the Evanston program as significant. In her view, the Restorative Housing Program is an important remedy that is narrowly tailored to the harm suffered by Black residents at the hands of the local government. The discriminatory housing policies carried out by the Evanston government created racial wealth and household income gaps which persist in the community today.³⁶ Ms. Rue Simmons also sees this program as part of the grassroots movement that places pressure on the federal government to pass HR 40 and recommend reparations to Black Americans: "There is a swelling of communities, thought leaders, to advance what they can within their purview at the local level. That becomes the momentum needed for our Congresspeople to take the legislative action needed. Local reparations support HR 40."³⁷ Ms. Rue Simmons sees local reparations as supporting the passage of HR 40, not causing any detriment to its potential success. Passage of HR 40 and seating its Committee is an essential part of what she calls the

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Telephone Interview with Robin Rue Simmons, President, First Repair (Nov. 12, 2021).

³⁷ *Id.*

“reparations process” because every city knows they cannot solve the racial wealth gap alone.³⁸

The Evanston reparations model, which lacks direct payments, has caught on elsewhere in the United States. The City Council of Asheville, North Carolina passed a reparations initiative that seeks to improve homeownership and business opportunities for its Black residents without authorizing direct cash payments.³⁹ Similarly, Detroit, Michigan is approaching the issue of reparations through the lens of very targeted programs; Detroit added a question to its November ballot asking residents if the City should “establish a reparations committee to make recommendations for housing and economic development programs to address historical discrimination against the Black community in Detroit.”⁴⁰

First Repair, a nonprofit organization started by Robin Rue Simmons, was born in order to support and consults on reparations initiatives. First Repair advises community leaders how to approach the creation of a reparative program. In an interview, she emphasized the importance of priming the community for the enactment of reparations: “Every city is not ready,” she said, “Evanston was uniquely positioned because we’ve done extensive equity, diversity, and inclusion work.”⁴¹ Before crafting a reparations program, Ms. Rue Simmons would encourage communities to conduct deep research about the policies and legislation that authorized and enabled anti-Black discrimination. For Ms. Rue Simmons, the reparative remedy put forward by the community should be linked to the harm: “A direct correlation between the acknowledgment of the harm, an understanding of how that harm injured the Black community, and how those injuries still play out today in our racial divide is the path for every city to take. And every city’s reparation initiative is going to be different because every city’s harm is different.” For those that critique the limited scope of Evanston’s Restorative Housing Program, Ms. Rue Simmons encouraged them to “join the process.”⁴²

³⁸ *Id.*

³⁹ Neil Vigdor, *North Carolina City Approves Reparations for Black Residents*, N.Y. TIMES (July 16, 2020), <https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html>.

⁴⁰ Sarah Rahal, *Detroit City Council Votes to Add Reparations Committee Question to November Ballot*, DETROIT NEWS (July 20, 2021), <https://www.detroitnews.com/story/news/local/detroit-city/2021/07/20/detroit-council-votes-add-reparations-committee-question-november-ballot/8025722002/>.

⁴¹ Interview with Robin Rue Simmons Interview, *supra* note 35.

⁴² *Id.*

The effect of these local initiatives is not yet clear, and it is not obvious how much pressure they will place on higher levels of government to adopt reparative measures, if any at all. But if we acknowledge the harm inflicted on Black people in America by all levels of government, reparations should come from every level of government. Reparations should be paid not just for the original sin of this country, the brutal enslavement of Black people for the economic gain of white Americans, but for the many subsequent horrors that were inflicted on Black people during the Jim Crow era as well. Federally funded reparations for Black people are especially unpopular in this country, and it is no wonder why. An apology and an offer of repayment would implicitly acknowledge the holes in our national narrative. Reparations would recognize that America was not, in fact, founded as a free country with equality and equity at its heart, but rather, it was founded by white men in search of wealth and who believed, at their core, in White Supremacy. Preservation of a rosy narrative, however, cannot not be prioritized over justice. Reparations are an important step towards racial justice in America.