

REPARATIONS FOR BLACK HEALTH

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I. INTRODUCTION

“There has not been a single year since the founding of the United States when Black people in this country have not been sicker and died younger than White people.”¹ An individual’s life expectancy and overall health continues to be tied to whether an individual is born Black or White and it will continue to characterize American health for decades to come if proper actions are not taken.² Thus, reparations are a stepping stone in the right direction to combat the persistent Black–White health disparities in the United States.³ Unequal access to health care is a form of systemic racism⁴ which the Black community has endured since the founding of the United States.⁵

Reparations are the act or process of making amends for a wrong.⁶ Usually, reparations are utilized to mend the consequences of violations a country, state, or group has either directly committed or

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¹ Mary T. Bassett, M.D., M.P.H. and Sandro Galea, M.D., Dr. P.H., *Reparations as a Public Health Priority – A strategy for Ending Black – White Health Disparities*, NEW ENG. J. MED. 383, 2101-2103 (2020).

² *Id.* at 2102.

³ Kevin Outterson, *The End of Reparations Talk: Reparations in an Obama World*, 57 U. KAN. L. REV. 935, 941 (2009).

⁴ The Cambridge Dictionary defines systemic racism as policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race.

⁵ *Id.*

⁶ *Reparations*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/reparation> (last visited Oct. 15, 2021).

failed to prevent which targets a specific population.⁷ Compensations in the form of reparation is not a foreign concept to the United States.⁸

Native Americans have received land and billions of dollars for various benefits and programs for being forcibly exiled from their native lands. For Japanese Americans, \$1.5 billion was paid to those who were interned during World War II. Additionally, the United States, via the Marshall Plan, helped to ensure that Jews received reparations for the Holocaust, including making various investments over time. In 1952, West Germany agreed to pay 3.45 billion Deutsche Marks to Holocaust survivors.⁹

Black Americans are the only group that have not received reparations for state-sanctioned racial discrimination, and this is part of the reason why health disparities continue to plague Black individuals' generation after generation.¹⁰ Reparations by the federal government would offer restitution to the descendants of slaves for the centuries of unpaid forced labor and unethical medical treatment Black people have and continue to endure.¹¹

This Note examines the substantial health disparity and scrutiny Black individuals face in accessing health care in America through a historical and contemporary perspective. Furthermore, it discusses and expands the correlation between racism and the egregious effect it has on Black health. Finally, this note will discuss how reparations can be a substantial start towards reducing the difference in the health care one receives, which directly affects one's life expectancy, despite the color of their skin.

⁷ Hannah Shewan Stevens, *What are Reparations and What Forms Can They Take*, EACH OTHER (Jul. 29, 2021), <https://eachother.org.uk/what-are-reparations-and-what-forms-can-they-take/>.

⁸ Rashawn Ray & Andre Perry, *Why We Need Reparations for Black Americans*, BROOKINGS (Apr. 2020), <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Tom Huddleston Jr., *The Debate Over Slavery Reparations: Where Things Stand to How Much It Could Cost*, CNC (Jun. 19, 2021), <https://www.cnc.com/2021/06/19/slavery-reparations-from-where-things-stand-to-how-much-it-might-cost.html>.

II. DISPARITIES IN BLACK HEALTH IN THE AMERICAN CONTEXT

Black health disparities cannot be viewed in isolation from the United States' history of slavery, racism, and legal segregation.¹² Evidence has shown that for decades Black people have been treated far worse than their White counterparts by the United States government and the United States health care system, with both essentially treating Black people like second class citizens.¹³ The systemic discrimination that has impacted Black health dates back to the first ships that carried enslaved Africans across the Atlantic.¹⁴

In the mid 1800s, the physical bodies of enslaved Black individuals, who were used as free labor and production, were valued at over \$3 billion dollars.¹⁵ The cotton that was produced by the enslaved Black people was valued at \$250 million dollars and "this was more money than what was invested in factories and railroads combined."¹⁶ It is evident that slavery enriched the lives of white slave owners, their descendants, and fueled the country's economy while at the same time suppressed wealth building and health prosperity for enslaved Black individuals.¹⁷

Then in 1932, the notorious Tuskegee experiment began.¹⁸ The "Tuskegee Study of Untreated Syphilis in the Negro Male" was a government sponsored, taxpayer funded study.¹⁹ The researchers conducting the experiment recruited 399 Black men from Alabama who already had Syphilis.²⁰ The researchers expressed to the Black men that "they had come to Tuskegee to cure 'bad blood,' but never told them they had syphilis, and the government doctors never

¹² Outterson, *supra* note 3 at 938.

¹³ *Id.*

¹⁴ Meghana Keshavan, *The Direct Result of Racism: Covid-19 Lays Bare How Discrimination Drives Health Disparities Among Black People*, STATNEWS (Jun 9, 2020), <https://www.statnews.com/?s=Meghana+Keshavan>.

¹⁵ Ray & Perry, *supra* note 8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ April Dembosky, *Stop Blaming Tuskegee, Critics Say. It's Not an 'Excuse' for Current Medical Racism*, NPR (Mar. 23, 2021), <https://www.npr.org/sections/health-shots/2021/03/23/974059870/stop-blaming-tuskegee-critics-say-its-not-an-excuse-for-current-medical-racism>.

¹⁹ *Id.*

²⁰ *Id.*

intended to cure the men.”²¹ Even when an effective treatment for syphilis – penicillin – became widely available in the 1940s, the researchers unethically withheld it from the infected men and continued to study them for decades, determined to track the disease to its end point.²² By the time the study was shut down in 1972, 128 of the men involved had died from syphilis or syphilis related complications, and forty of their wives and nineteen children had also become infected.²³ Even though the experiments ended in 1972, the effects are still being felt within in the Black community today.²⁴ Research has long suggested that the ill effects of the Tuskegee study have resulted in the Black community expressing less trust in their physicians and the medical system.²⁵ Additionally, the work of Marcella Alsan at the Stanford Medical School and Marianne Wanamaker at the University of Tennessee provides strong evidence that the Tuskegee study had reduced life expectancy among black men over 45 by more than a year.²⁶ Their research which stretches back decades provides causal evidence that the Tuskegee study was responsible for over a third of the life-expectancy gap between older Black and White men in the 1980s.²⁷ What they found is that health outcomes, trust, and life expectancy diminished with an increase in proximity to Macon County.²⁸ The study goes on to state that migrants from Alabama in the wake of the Tuskegee study were very likely to carry with them these diminished outcomes.²⁹ Moreover, the study states that the disclosure of the Tuskegee study in the mid-20th century accelerated the life expectancy gap between Black and White men.³⁰ The disclosure of this horrendous experiment is clear justification as

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Vann R. Newkirk, *A Generation of Bad Blood*, THE ATLANTIC (Jun. 17, 2016), <https://www.theatlantic.com/politics/archive/2016/06/tuskegee-study-medical-distrust-research/487439/>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ The Tuskegee study took place in Macon County, Alabama. The county seat of Tuskegee was referred to as the “Black Belt” because of its rich soil and vast number of black sharecroppers who were the economic backbone of the region. The research itself took place on the campus of Tuskegee Institute; Newkirk, *supra* note 25.

²⁹ *Id.*

³⁰ *Id.*

to why Black men have strong reasons to distrust doctors and reduces their desire to seek out and utilize health care services.³¹ Their study provides stronger evidence that there is a noticeable connection between having limited access and trust in your health care provider and having a lower life expectancy.³² It is unfortunate but the Tuskegee study was not a singular event that was reported and processed immediately, but instead a generational scarring that defined a decade of black history.

III. THE CORRELATION BETWEEN RACISM AND THE NEGATIVE EFFECTS ON BLACK INDIVIDUALS

Systemic Racism has undoubtedly had an adverse effect on Black individuals' overall physical and mental health.³³

Black people are more likely than white people to die from cancer. They are more likely to suffer from chronic pain, diabetes, and depression. Black children report higher levels of stress. Black mothers are more likely to die in childbirth. Those findings are part of a mountain of research cataloguing the complex and widespread effects that racism has on the health — and the medical care — of Black people in the U.S.³⁴

Studies have shown that long-term discrimination can lead to a disruption in the stress hormone (cortisol) levels, leaving people with less energy and more fatigue.³⁵ If that type of chronic stress is sustained for a long period of time, it directly contributes to health conditions like diabetes, obesity, and depression.³⁶ Roberto Montenegro, a psychiatrist at Seattle Children's Hospital once said, "the fact that the Black body experiences so much more harm, in so many ways, compared to other bodies — it really explains how racism continues to hurt people."³⁷ It is important to remember that people, including many physicians, think of race as a biological factor in health outcomes, when it is not.³⁸ Dr. Jacqueline Dougé states that "[w]e

³¹ *Id.*

³² *Id.*

³³ Keshavan, *supra* note 14.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

were taught that to be Black was a risk factor for these diseases, without any context — because they think the Black body is flawed [as referenced in ‘bad blood’ by the Tuskegee Study].”³⁹ This is an enormous reason why there has to be a systemic change and why reparations are necessary in the Black health community, because racism — not race — has a profound impact on our health outcomes.⁴⁰

The Covid-19 pandemic has demonstrated even further that structural racism has been and continues to be a fundamental cause of persistent health disparities in the United States.⁴¹ During the pandemic, Black Americans who were infected with the Covid-19 virus were dying at about 2.4 times the rate of White Americans.⁴² In other words, if Black people were dying at the same rate as White people, “at least 13,000 mothers, fathers, daughters, sons and other loved ones would still be alive [today].”⁴³ The reason that Black Americans are more likely to be infected and die is because Black people are more likely than White people to live in food deserts, with limited access to fresh fruit or vegetables.⁴⁴ Black individuals are less likely to be able to access green spaces and are more likely to live in areas without clean water or air.⁴⁵ Additionally, Black children are more likely to grow up in high-poverty areas.⁴⁶ All of these factors have a significant impact on health and life expectancy which is directly impacted by structural racism.⁴⁷

The one positive outcome to result from the Covid-19 pandemic is that it made all of those disparities and the structural discrimination they are rooted in all the more apparent.⁴⁸ According to a peer-reviewed study conducted by Harvard researchers, if the United States had paid reparations to the descendants of enslaved Black Americans, the risk of severe illness and death from the virus would be far lower, in some cases even diminishing statewide

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

coronavirus transmission by up to 68%.⁴⁹ This study's findings reinforce the apparent evidence-based philosophy that reparations can significantly systemic racism in the United States.⁵⁰ Therefore, there must be a systemic change and the fact that Black Americans experience so much more harm, in so many ways, compared to other people really explains how racism continues to hurt people.⁵¹ Thus, if we could use reparations as a tool to get Black Americans better resources and access to higher quality health care, we could start equaling the playing field and provide Black Americans a well-deserved and a better chance of prosperity.⁵²

IV. THE ROLE OF REPARATIONS FOR BLACK AMERICANS

The Legislation, H.R. 40, formally known as the Commission to Study and Develop Reparation Proposals for African Americans Act, was first introduced by House Representative John Conyers in 1989.⁵³ The "40" refers to the failed government effort to provide 40 acres of land to newly freed slaves.⁵⁴ Field Order 15, which was authorized right after the Civil War, allocated 400,000 acres of confiscated Confederate land to Black families.⁵⁵ However, shortly after President Abraham Lincoln was assassinated, President Andrew Johnson reversed Field Order 15 and returned the land back to the former slave owners.⁵⁶ To add insult to injury, it was common practice in many southern states to pay reparations to slave owners for lost property—the formally enslaved.⁵⁷

⁴⁹ Sophia Scott, *A Debt Owed: The Case for Reparations in the Wake of Covid-19*, HARVARD POLITICAL REVIEW (Dec 22, 2021), <https://harvardpolitics.com/debt-owed/>.

⁵⁰ *Id.*

⁵¹ Keshavan, *supra* note 14.

⁵² *Id.*

⁵³ Kevin Freking, *House Panel Votes to Advance Bill on Slavery Reparations*, AP News (Apr. 14, 2021), <https://apnews.com/article/race-and-ethnicity-discrimination-legislation-slavery-john-conyers-4929d09132b8a72e655d8a42cc068a9d>.

⁵⁴ *Id.*

⁵⁵ Hannah Packman, *Juneteenth and the Broken Promise of "4 Acres and a Mule*, NATIONAL FARMERS UNION (Jun. 19, 2020), <https://nfu.org/2020/06/19/juneteenth-and-the-broken-promise-of-40-acres-and-a-mule/>.

⁵⁶ *Id.*

⁵⁷ *Id.*

On April 14, 2021, history was made when the House panel decided to advance on H.R. 40.⁵⁸ Fundamentally, H.R. 40 is a decades-long effort to pay reparations to the descendants of slaves.⁵⁹ If the Bill were to make it through Congress, the legislation would create a federal commission to examine the effects of slavery and racial discrimination in North America, starting from the formation of the United States to present day.⁶⁰ If the legislation were to be enacted one of the requirements of the bill would require the inquiry into the lingering effects of slavery on living African-Americans in the United States and society as a whole.⁶¹ Along with recommending ways to educate Americans about its findings and starting a discussion as to appropriate remedies, the government could offer a form of compensation for our nation's depraved treatment of Black Americans.⁶² Numerous individuals and politician believe that reparations could be a positive start in the right direction.⁶³

Unfortunately, but not surprisingly, the House legislation has very few, if not zero, Republicans on the committee who support H.R. 40.⁶⁴ Republican Jim Jordan of Ohio said that "the commission's makeup would lead to a foregone conclusion in support of reparations."⁶⁵ Essentially, Jordan was implying that it is unwarranted and underserved to "spend \$20 million for a commission that's already decided to take money from people who were never involved in the evil of slavery and give it to people who were never subject to the evil of slavery."⁶⁶ Republican Burgess Owens, an African American lawmaker from Utah, stated that "he grew up in the deep south where 'we believe in commanding respect, not digging or asking for it.'"⁶⁷ However, the Republican committee is missing the point. The legislation and reparations are not just about money or the notion of "I

⁵⁸ *Id.*

⁵⁹ Freking, *supra* note 53.

⁶⁰ Commission to Study and Develop Reparations Proposals for African Americans Act Congress, H.R. 40, 116th Cong. (2009).

⁶¹ *Id.*

⁶² Freking, *supra* note 53.

⁶³ P.R. Lockhart, *The 2020 Democratic Primary Debate Over Reparations, Explained*, Vox (Jun. 19, 2019), <https://www.vox.com/policy-and-politics/2019/3/11/18246741/reparations-democrats-2020-inequality-warren-harris-castro>.

⁶⁴ Freking, *supra* note 53.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

wasn't a slave owner" but about developing a structured response to historical and ongoing wrongs plagued upon Black Americans.⁶⁸ David Cicilline, Democrat representative of Rhode Island, stated that "this is about our country's responsibility, to remedy this wrong and to respond to it in a thoughtful way. And that this commission is our opportunity to do that."⁶⁹

Many have argued that HR 40 is a reset, but that is simply not true. It is a legal mechanism which would arguably move the United States forward by forcing it to confront its past, and let all deserving Americans enjoy a prosperous future.⁷⁰ Although there are numerous contentions opposing reparations, there are far more facts and postulations which support this long overdue form of restorative justice.⁷¹ There are various ways reparations could be utilized to reduce health disparities.⁷² First, reparations could be used towards expanding the exceedingly limited resources available to many Black Americans.⁷³ "The relationship between resources and health is inarguable, there is no way to close a health gap without also addressing a resource gap."⁷⁴ Thus, reparations would give a myriad of Black Americans the means to attain health-producing resources such as better neighborhoods, better education, and access to cleaner air.⁷⁵ Additionally, reparations would help diminish the various types of stressors experienced by many Black Americans, which is undeniably associated with poor health.⁷⁶ Psychological stress has clearly been linked to poor health, and reparation funds that are targeted at alleviating some of this strain will help improve the overall health of Black Americans.⁷⁷ Furthermore, the ultimate effect of Black

⁶⁸ *Id.*

⁶⁹ J. Scott Applewhite, *House Panel Votes to Advance Bill on Slavery Reparations*, CBS NEWS, (Apr. 15, 2021), <file:///Users/alteen/Desktop/House%20panel%20votes%20to%20advance%20bill%20on%20slavery%20reparations.html>.

⁷⁰ Patricia M. Muhammad, *The U.S. Reparations Debate: Where Do We Go from Here*, 44 HARBINGER 43, 45 (2020).

⁷¹ *Id.* at 43.

⁷² *Id.*

⁷³ Bassett, *supra* note 1.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

reparations is to be felt intergenerationally.⁷⁸ “Health is produced over the life course and across generations, and any effort in the present to level the wealth playing field could reset the potential wealth and assets — and consequent health — of future generations.”⁷⁹ Therefore, every reparation provided today would be an investment in the future.⁸⁰

At the core, “reparations would be an acknowledgment of the harms of slavery, a restitution of resources that have long been denied to people affected by slavery over generations and would bring some closure to profound injustices that the country has long shamefully neglected.”⁸¹

V. CONCLUSION

It is evident that Black reparations will not solve racism, but reparations will represent a monumental break from the past.⁸² When trying to fix the mistakes of the past, we should remember the words spoken by Martin Luther King, Jr., at the 1963 March on Washington.⁸³

Martin Luther King, Jr., proclaimed that ‘In a sense we’ve come to our nation’s capital to cash a check.’ He explained: ‘America has given the Negro people a bad check, a check which has come back marked ‘insufficient funds.’ From this, his famous ‘I Have a Dream’ speech, we remember King’s words about the content of our characters. But his remarks on the obligation to repair have often been overlooked.’⁸⁴

I submit that that the obligation to repair should be left to those who are in medicine, public health, and legislation. Considering the power, status, and knowledge each group holds they need to begin the movement that the time to act is now, because equity is not simply about repair in cash.⁸⁵ Acknowledging and addressing the Black–White health gap through reparations is about saving lives.⁸⁶ By

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

bringing attention to this gap, we as a society can help shift the national conversation about reparations, that is habitually mired in blame and accusation, to one that centers the critical importance of reparations in achieving optimal health.⁸⁷

⁸⁷ *Id.*