Reparations Reinvented

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THE BIG PICTURE

Most Americans probably agree that reparations for slavery were owed and that the injustice of slavery was compounded when reparations were never paid. At the same time, there seems to be a perception that reparations is nothing more than the act of taking money away from people who never enslaved anyone and giving it to people who were never enslaved.

In order for the reparations effort to succeed, two things must happen. First, the American people have to be shown that the reparations movement is not about retaliation for slavery but justice for its victims. Second, the people seeking this justice must not allow their efforts to become seen as a philosophical pipe dream with no practical application. In short, the effort should not be abandoned but fundamentally redirected.

This needed change in direction may have been revealed in the documentary, *Maafa 21: Black Genocide in 21st Century America*. This film documents that, in the 1800s, ultra-wealthy white elitists financed the eugenics movement as a way to rid the country of freed Blacks. It also documents that (a) this campaign has been in place every day since then, (b) it is still being carried out today, (c) it has inflicted demonstrable harm on the existing African-American community's personal, societal, familial, financial and political well-being, (d) the plans for this effort – including its intentional targeting of this racial group – were widely

publicized by those responsible, and (e) the perpetrators still exist, are easily identified and have enormous wealth in both cash and other assets.

The remainder of this report will be a look at how those realities could revolutionize the reparations issue.

A FRESH LEGISLATIVE INITIATIVE

The new direction proposed in this report is grounded in federal statute, 18 United States Code 1091, also known as the *Proxmire Act*. This legislation was signed into law in November of 1988 to address the issue of genocide; and its text is essentially identical to language that had already been implemented by the United Nations. In part, it reads as follows:

U.S. Code; Chapter 50A;
Section § 1091. Genocide

(a) Basic Offense. - Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such.

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group; or attempts to do so, shall be punished as provided in subsection (b).

(b) Punishment for Basic Offense. - The punishment for an offense under subsection (a) is -

(1) in the case of an offense under subsection (a)(1), where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both; and

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) Incitement Offense. - Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

(d) Required Circumstance for Offenses. - The circumstance referred to in subsections (a) and (c) is that -

(1) the offense is committed within the United States; or

(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

By any reasonable analysis, the post-slavery eugenics effort documented in *Maafa 21* meets the threshold for genocide as defined in the *Proxmire Act*. It was created, *"with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group"* and it included the imposition of, *"measures intended to prevent births within the [targeted] group."* It should also be noted that this law does not simply apply to those who actually engage in genocide, it allows prosecution of those who incite others to take such actions. Additionally, it has no statute of limitations.

At this point, it seems obvious that the future of the reparations movement lies in targeting the ultra-wealthy individuals, multi-national corporations, government funded agencies, foundations, institutions and other entities responsible for the genocide exposed in *Maafa 21*.

In order to appreciate this concept, consider another American reparations effort that has already succeeded. Three months after the bombing of Pearl Harbor, President Franklin Roosevelt signed an executive order mandating that people of Japanese ethnicity in the United States be rounded up and locked up in government *"relocation centers"* across the country. Despite the fact that no charges were brought, no trials were held and no convictions were rendered, approximately 120,000 of these people were incarcerated – two-thirds of whom were U.S. citizens. In 1944, Roosevelt rescinded the order and, by the end of 1945, the last of these internment camps had been closed. Then, in 1988, the U.S. Government issued an official apology for this campaign and paid $20,000 in reparations to each of the 60,000 victims who were still alive.

Proponents of reparations for slavery correctly point out that, even though the Japanese internment camps were both morally and legally indefensible, the reality is that slavery involved far more brutality, lasted almost 250 years

compared to less than four and victimized tens-of-millions of people rather than 120,000. Yet reparations have been paid for one and not the other.

This phenomenon is most likely the result of two factors. The first one is that African-Americans have always faced more discrimination than any other ethnic group. The other one is the perception that reparations means compensating people for a crime of which they were not the actual victims. This second explanation may be supported by the fact that reparations for the Japanese internment were not paid to the *descendants* of the internees but only to the surviving internees themselves.

Additional support for this viewpoint might also be found in our criminal justice system. DNA evidence is now routinely proving that there are people in our state and federal prisons who have served time – often decades – for crimes they did not commit. Whenever these cases are resolved, compensation is often paid to the person who was falsely imprisoned. The important thing to note is that compensation is not paid to their children, grandchildren, etc. This policy is applied with essentially no exceptions, despite the almost certainty that these descendants were harmed or disadvantaged by this situation.

From these and other examples, it is apparent that the public's position on social injustice is that, regardless of any *moral* responsibility society may have, its *legal* obligations die with the victims. That is why seeking compensation for the racial genocide exposed in *Maafa 21* has so much potential. By placing the focus on *actual* victims and perpetrators – both of whom are still alive – the reparations movement could no longer be off-handedly dismissed as some vengeful attempt to make *"white America"* pay for atrocities committed by their long-dead ancestors. Instead, it would be about holding a relatively small cartel of ultra-wealthy elitists financially liable for the harm they have intentionally

inflicted on African-American people in the past and continue to inflict upon them today.

Since compensation paid under this legislation would not come from the public treasury, politicians who have traditionally opposed reparations may see this as an opportunity to *"do the right thing"* without having to face the wrath of the taxpayers. On a more cynical level, some may even support it as simply a way to *"finesse"* the issue and make it go away in as painless a way as possible.

On the other hand, it must also be accepted that a significant number of the politicians who have supported reparations in the past will reject this new direction. This opposition will be primarily driven by the fact that many of these people have known financial and/or political ties to the powerful corporations and individuals that *Maafa 21* has linked to Black genocide. In some cases, these politicians may have been honestly unaware of these connections, while others knew about them but chose to look the other way for political reasons. In either case, when this new legislative approach is initiated, it will become a test to determine whether their personal integrity outweighs their political ambitions. Regrettably, this will be a test not all of them will pass.

A SECOND FRONT

Since the people who actually carried out the enslavement of African-Americans are no longer alive, they obviously could not be prosecuted in a criminal court or sued in a civil court. This left the reparations movement totally dependent on a legislative remedy. However, a strategy based on the *Proxmire Act* has no such limitation since the perpetrators and the victims are still alive and the offense is ongoing. This means a judicial approach can be pursued simultaneously with the legislative approach.

Since violations of the *Proxmire Act* are a criminal offense, it is natural to conclude that a judicial strategy for reparations should be focused on the criminal court system rather than the civil court system. The fallacy in that approach is that criminal cases are prosecuted – *or not prosecuted* – at the discretion of law enforcement. This leaves such prosecutions vulnerable to the personal agendas and outside political influences that always surround controversial issues.

On the other hand, civil actions growing out of criminal violations of the law can be pursued at the will of the victims whether a criminal action is brought or not. While the appropriate law enforcement agencies should be continually and aggressively pressured to bring criminal charges whenever possible, ultimately, it will be the civil courts that provide the greater potential.

As this approach is being considered, it is important to understand that reparations is not a cause of action in a civil court proceeding. That's because, contrary to a popular misconception, the mission of the American civil litigation system is not to *"right the wrongs"* of society. Although the result of such a proceeding might be that an injustice is addressed, the court's only legitimate role is to determine whether a particular defendant (or defendants) harmed a particular plaintiff (or plaintiffs) and, if so, what financial compensation is appropriate. What this means is that, while the philosophical nature of the civil court strategy being proposed here might be characterized as reparations, in the strictest legal sense it would be a relatively conventional tort action.

Like all such litigation, a comprehensive analysis cannot be given until a particular case exists and all of the variables (case-specific facts, jurisdiction, plaintiff characteristics, etc.) are identified. But a general overview is possible.

In each of these civil court actions, the objective will be to secure financial compensation for damages African-Americans have suffered – not from slavery itself – but as a result of having been targeted for population reduction and/or extermination once slavery had ended. The claim will be that this eugenics-driven campaign, including the openly admitted practice of substituting population control for economic development within the Black community, has caused Blacks to be culturally, financially and politically disadvantaged compared to those groups who were not targeted. An additional claim will be that this effort has devastated the most basic and long-established familial traditions within the African-American community.

Another harm could relate to the issue of voter suppression, since the targeting of the African-American community for population reduction has dramatically reduced its political power. In fact, a legitimate argument could be made that minority population reduction has been – and continues to be – the most powerful and widely used instrument of voter suppression in American history.

As stated in the legislative offensive outlined earlier, the defendants in this civil court strategy would be the individuals and organizations that either directly or indirectly participated in the genocidal behavior documented in *Maafa 21*. Among the causes of action could be: violation of civil rights, assault, intentional infliction of emotional distress, interference with familial relationships, breach of contract, negligence and deceptive trade practices.

Early on, a strategic decision would have to be made as to whether such litigation should be initially launched as a class-action suit or simply brought on behalf of an individual African-American for whom it is possible to determine a compensable claim. Even if the latter approach is taken, it is probable that the litigation would eventually be expanded into a class-action suit that might potentially include every black man, woman and child in America who may have

been harmed in a manner similar to the original complainant. In addition, it may be possible that claims could be brought as a Qui Tam action under the Federal Civil False Claims Act.

It can be anticipated that the primary defenses for this civil court strategy will feature summary judgment motions revolving around statutes of limitations, unrecognized causes of action and the establishment of monetary damages. While these barriers may be formidable, they are by no means insurmountable. Instead, they are a reflection of the fact that all groundbreaking litigation involves hurdles.

As an example, consider the litigation that was brought against the tobacco industry. In those cases, the plaintiff's attorneys had to overcome many of the same obstacles that would be encountered by the litigation suggested here. In addition, they had to contend with the fact that their clients were seeking compensation for damages caused by a legal product they had voluntarily chosen to use – despite decades of widespread publicity that it was addictive, dangerous and possibly fatal. In fact, since 1965, every cigarette the plaintiffs in these cases smoked had come to them in a package that prominently featured a warning from the Surgeon General of the United States regarding the product's known dangers. Even though they made a conscious decision to ignore all of this information, in the end they won the largest financial compensation awards in the history of the American civil court system.

It should also be noted that the compensatory value of cases brought as a result of Black genocide could be ratcheted up enormously if it could be established that the defendant's actions constituted a Hate Crime. Under existing federal law, a Hate Crime is defined as a *"criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, ethnic origin or sexual orientation."* In this case, it seems self-evident

that the violations of the *Proxmire Act* as outlined in this document meet the legal threshold for a Hate Crime on both a *"race"* and *"ethnic origin"* basis.

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