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World Conference Against Racism: New Avenues for Slavery Reparations?

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NOTES

World Conference Against Racism: New Avenues for Slavery Reparations?

ABSTRACT

The reparations movement has had a long and tumultuous history, as past attempts to obtain equitable relief have failed through common law, international law, legislation, and constitutional law. However, recent developments in these areas have pushed the reparations movement to the forefront. For example, Farmer-Paellmann v. Fleetboston Financial Corp. *and similar suits have renewed the common law claim for reparations by identifying corporations that have kept record of their involvement in slavery and naming the corporations as concrete defendants. By naming corporate defendants, as compared to governmental or individual defendants, the suits have eliminated an enormous weakness in past efforts, namely the lack of an identifiable and culpable defendant. The World Conference Against Racism and passage of the International Criminal Court have propelled reparations debate among many countries and have demonstrated the growing intolerance for ongoing slavery, adding force to the reparations movement on the international law front. Legislatively, Representative John Conyers continues to endorse H.R. 40, and both the state of California and the city of Chicago, Illinois have passed legislation forcing firms to report their past involvement in slavery, undoubtedly aiding the common-law class-action claims. These developments evidence that the reparations movement is becoming more widespread. Although past claims may have failed for lack of coordination, the current litigation, pending legislation, and international developments show that the world is increasingly united in its demand for a reparations resolution.*

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I. INTRODUCTION

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR or Conference) took place in Durban, South Africa from August 30, 2001 to September 7, 2001 pursuant to U.N. General Assembly resolution 52/111.[1] Prior to the actual discussion, the WCAR boasted five "themes," or issues, to serve as the basis for the Conference.[2] First, the WCAR wished to address the sources, causes, forms, and contemporary manifestations

1. *See generally* World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *at* http://www.un.org/WCAR [hereinafter WCAR Website]; Basic Information, WCAR Website, *at* http://www.un.org/WCAR/e-kit/backgrounder1.htm [hereinafter WCAR Basic Information].

2. *Id.*

of racism, racial discrimination, and related intolerance.[3] Second, the WCAR aimed to discuss the treatment of victims of racism, racial discrimination, and related intolerance.[4] Third, the Conference wished to consider and implement measures of prevention, education, and protection, thereby eradicating racism, racial discrimination, and related intolerance at the national, regional, and international levels.[5] Fourth, in response to the discussion and acknowledgment of the sources, victims, and prevention of racial discrimination, the Conference aimed to create a provision for effective remedies, recourses, redress, and other measures at the national, regional, and international levels.[6] Finally, the WCAR wished to explore strategies to achieve full and effective equality, including international cooperation and enhancement of the United Nations and other international mechanisms in combating racism, racial discrimination, and xenophobia.[7]

The WCAR, which included representatives from 166 nations,[8] adopted a non-binding "Declaration and Programme of Action that commits Member States to undertake a wide range of measures to combat racism and discrimination at the international, regional and national levels."[9] Slavery was one of the key issues addressed through the Conference.[10] The WCAR acknowledged that slavery and the slave trade constituted a crime against humanity, and urged "concerned States" to participate in compensation for its victims.[11] Of the 166 nations in attendance, only 163 adopted the Declaration.[12] The United States and Israel were among the dissenting nations.[13]

The debate regarding reparations for slavery started, however, long before the opening of the Conference in Durban.[14] Prior to the WCAR, U.S. Secretary of State Colin Powell intended to represent the United States at the Conference as the first black U.S. Secretary of State.[15] However, two pivotal issues emerged prior to the Conference: a proposal that the United States and other nations that

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3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Dignity Amid Divisiveness; Race Meeting Opens Amid Finger-Pointing*, NEWSDAY, Sept. 1, 2001, at A8.
9. Daily Highlights, WCAR Website, *at* http://www.un.org/WCAR/dh/index.html.
10. *Id.*
11. *Id.*
12. Rachel L. Swarns, *After the Race Conference: Relief, and Doubt Over Whether It Will Matter*, N.Y. TIMES, Sept. 10, 2001, at A10.
13. *Id.*
14. *Id.*
15. Jane Perlez, *How Powell Decided to Shun Conference*, N.Y. TIMES, Sept. 5, 2001, at A8.

participated in the slave trade pay reparations for slavery, and language singling-out Israel for "practices of racial discrimination against the Palestinians."[16] Before the Conference commenced, the United States sent diplomats to a final preparatory session in Geneva in an effort to eliminate references to demands for reparations and references offensive to Israel.[17] In lieu of an apology for slavery or reparations for the descendants of slaves, the United States proposed an expression of regret combined with a pledge to aid African countries.[18] Furthermore, the U.S. administration announced that unless the agenda was adjusted to its liking by the opening of the conference, the United States would be unable to attend.[19]

By the conclusion of the Geneva session, the United States felt that a compromise had been reached on the issue of slavery reparations, but continued to reject the contentious language regarding Israel.[20] As a result of the brewing controversy, Secretary Powell stayed in Washington and sent a mid-level delegation to the WCAR.[21]

With four days remaining in the Conference, U.S. representatives had not successfully negotiated the removal of "hateful language" regarding Israel contained in a draft document, and Secretary Powell decided to remove the U.S. delegation from the Conference.[22] Israel followed suit, removing its delegation and calling the Durban conference a "farce."[23] Although the United States cited the controversy surrounding the anti-Israel language as its motivating factor for walking out of the Conference, other nations accused the United States of pulling out because of its own refusal to "accept responsibility for slavery and for injustices to Native Americans."[24] Following the walk-out, U.S. National Security Advisor Condoleezza Rice stated that, rather than focus on reparations, other nations in the Conference should "look forward and not point fingers backward."[25] Two days later, the European Union was also close to abandoning the Conference, fearing a decreased possibility of a meaningful outcome, because of its objections to the

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16. John Donnelly, *US and Israel Quit Racism Conference, Powell Blasts "Hateful" Tone of Anti-Zionist Draft Document*, BOSTON GLOBE, Sept. 4, 2001, at A1.

17. Perlez, *supra* note 15.

18. *One Cheer for the Racism Conference*, AMERICA, Oct. 15, 2001, at 3, *available at* 2001 WL 8952978.

19. Perlez, *supra* note 15.

20. *Id.*

21. Donnelly, *supra* note 16.

22. *Id.*

23. *Id.*

24. *Id.*

25. Swarns, *supra* note 12.

Arab nations' continued negative focus on Israel.[26] A published quotation from one non-governmental observer stated, "without the EU and the U.S. there won't be any major rich countries left for the rest of the world to shout at."[27]

While the Conference's final Declaration declared slavery a "crime against humanity," conflicting demands existed regarding reparations for the descendants of slaves.[28] Zimbabwe led some African countries and African Americans in asking for an apology, as well as cash compensation to be paid to individuals by the Western countries that practiced the slave trade.[29] South Africa and other African countries, however, supported reparations in the form of development funding from the former slave-trading countries.[30]

After a week of debate the delegates reached a resolution, labeling the slave trade a "crime against humanity," and determining that states that benefited from the slave trade should help rebuild countries "and the diaspora" caused by slavery.[31] However, the WCAR final documents were not released until January 3, 2002 because of the controversy surrounding the African countries' demand that several paragraphs referring to slavery be placed in the main part of the text, as opposed to the declaration.[32] Western countries were fearful that the placement of wording in the text that "slavery and the slave trade are a crime against humanity and should always have been so" would change the context of the document.[33] Ultimately, the final document stopped short of calling for reparations and an explicit apology from nations that benefited from the slave trade and colonialism.[34] Instead, it simply encouraged nations benefiting from the slave trade to provide aid.[35]

This Note discusses the legal implications surrounding the final documents produced at the WCAR, and the possibility of their use as a springboard for jurisdiction in both domestic and international

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26. Ed O'Loughlin, *EU Close to Quitting Racism Forum*, SYDNEY MORNING HERALD, Sept. 7, 2001, at 13.

27. *Id.*

28. Nadine Gordimer, *Purge this Evil: The Greatest Challenge Facing the World is to Rid Itself of Racism*, OBSERVER, Sept. 23, 2001, at 11.

29. *Id.*; *see also One Cheer for the Racism Conference*, *supra* note 18.

30. Gordimer, *supra* note 28.

31. Martin C. Evans, *Passion Over Race Talks*, NEWSDAY, Sept. 11, 2001, at A4.

32. Kate Millar, *Dispute Over Slavery Text from UN Racism Conference Settled*, AGENCE FRANCE PRESSE, Jan. 3, 2002, LEXIS, News Library, AFP File. The main part of the text from the WCAR is called an "action programme" and is binding on the WCAR ratifying countries for implementation, similar to a U.N. Declaration. However, the text was placed into the "declaration," which is essentially a statement of principle and is not a binding provision. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

judicial fora. In particular, this Note explores the recent moves toward forming a legally-grounded claim for slavery reparations, as opposed to the recent focus on public policy and moralistic compensation for past injustices.

II. SOURCES AND JUSTIFICATIONS FOR SLAVERY REPARATIONS

To understand the implications of the WCAR declaration of slavery as a crime against humanity, two important background issues emerge: reparations that have been paid in the past for injustices and hardships, and the arguments for the payment of reparations for the injustices associated with slavery. Claims in which individuals have received reparations have involved identifiable victims and perpetrators, the damages were apparent and clear, direct causation existed, and the award signaled finality to the claim or issue.[36] From the apparent "formula for success" established by past cases, the current arguments for slavery reparations can be evaluated in light of the recent WCAR developments.

A. *Setting the Stage: Reparations Paid*

While the struggle for individuals to gain reparations redress has been difficult at times, demands for reparations are certainly not a novel issue.[37] David Swinton, a Harvard-trained economist and president of historically-black Benedict College in Columbia, South Carolina, remarked, "I don't think (black) people really understand reparations. . . . They think it's somehow radical and un-American."[38] However, the claims by victims of foreign atrocities, by Japanese Americans, and by the victims of the Rosewood Massacre represent major claims that have resulted in successful awards.

1. Foreign Reparations

The purpose of reparations is to repair a people for significant harm done to them, particularly by a government.[39] The payment of reparations is standard practice in international law, and can be

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36. Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 490 (1998).

37. Lori S. Robinson, *Righting a Wrong; Among Black Americans, The Debate is Escalating over Whether an Apology for Slavery is Enough*, SEATTLE POST-INTELLIGENCER, June 29, 1997, at E1.

38. *Id.*

39. *Id.* (quoting Adjoa Aiyetoro, Director of the National Conference of Black Lawyers).

negotiated by the United Nations, ordered by the International Court of Justice, or independently granted by nations.[40]

In 1952, the West German government began paying reparations to Jewish survivors of the Holocaust.[41] The reparations were based on the acts of the Nazis forcing Jews to surrender their jewelry and other valuables, freezing their bank accounts, disinheriting their survivors, and subjecting them to collective levies and fines.[42] Additionally, tens of thousands of Jews abandoned their homes, businesses, and properties by fleeing Nazi persecution, and the Jews that stayed were concentrated in ghettos and other segregated areas.[43] Plans for German compensation to individuals, as well as the Jewish people as a whole, were formulated prior to the end of World War II.[44] The Luxembourg Agreements became the basis of an unprecedented[45] piece of legislation known as *Wiedergutmachung*, whereby money was claimed by the State of Israel and claims organizations on behalf of victims who had immigrated to other countries.[46]

Australia gave its indigenous Aboriginies more than ninety-six thousand square miles of land in 1976 after having appropriated it during European settlements in the 18th and 19th centuries.[47] Four years later, Canada compensated Japanese Canadians for World War II internment, and granted land to indigenous Canadian peoples after thirteen years of negotiations.[48] Within the United States, the 1971 Alaska Native Claims Settlement Act granted indigenous Alaskans monetary relief and land compensation.[49] Finally, five Native

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40. *Id.*

41. *Id.*

42. Robert Westley, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429, 453-54 (1998).

43. *Id.* at 454. "At the point that the Germans began deporting Jews to concentration camps, they often had very little left." *Id.*

44. *Id.*

45. *Wiedergutmachung* was unprecedented in several respects. First, international law did not require Germany to make reparations payments to victims of the Holocaust. *Id.* Additionally, Allied Powers did not exert pressure on Germany to accede to the Luxembourg Agreements. *Id.*

46. *Id.*

> For the first time in the history of a people that has been persecuted, oppressed, plundered and despoiled for hundreds of years in the countries of Europe a persecutor and despoiler has been obliged to return part of his spoils and has even undertaken to make collective reparation as partial compensation for the material losses.

Id. at 456 (quoting David Ben Gurion after the signing of the Luxembourg Agreements).

47. Robinson, *supra* note 37.

48. *Id.*

49. *Id.*

Americans have successfully recovered monetary relief for stolen land and broken treaties.[50]

2. Japanese Americans

Reparations paid for the World War II internment of Japanese Americans is one of the most cited examples of monetary compensation paid to individual citizens for past injustices and unreasonable hardship.[51] In 1988, U.S. President Ronald Reagan signed the Civil Liberties Act[52] into law, formally acknowledging the injustices associated with the U.S. internment of Japanese Americans during World War II.[53] Subsequently in 1991, the U.S. Office of Redress Administration presented a reparations check for twenty thousand dollars to the oldest Hawai'ian survivor of Japanese American internment camps.[54] The Office of Redress Administration was later closed in February 1999.[55]

Federal courts have both rejected and accepted claims for Japanese American reparations from World War II internment. In 1944, the Supreme Court approved of the internment in *Korematsu v. United States*, citing that the military possessed constitutional authority.[56] However, the issue reopened in the 1980s when a class action case, *Hohri v. United States*, sought monetary compensation for internment losses.[57] The Japanese American internment claims did not succeed until several cases, including *Korematsu*, reopened after government documents were declassified.[58] Finding that the government lied and suppressed facts regarding the necessity of

50. *Id.*

51. *See* Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1988) (codified at 50 U.S.C. app. § 1989 (2001)).

52. *Id.*

53. *Id.* The Civil Liberties Act of 1988 includes the following provisions: an apology for the evacuation, relocation, and internment of such citizens and permanent resident aliens; a provision for a public education fund to educate citizens about the internment; a call for restitution to interned Japanese Americans; a call for restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island for injustices suffered while those Aleut residents were under U.S. control during World War II; discouragement of the occurrence of similar injustices and violations of civil liberties in the future; and a call to make any declarations of concern by the United States regarding violations of human rights in other nations more credible. *Id.*

54. Yamamoto, *supra* note 36, at 477.

55. *Id.* at 481.

56. Korematsu v. United States, 323 U.S. 214, 218 (1944).

57. Yamamoto, *supra* note 36, at 489 (stating that *Hohri* "also ran aground on the shoals of legal procedure—the statute of limitations."); *see also* Hohri v. United States, 586 F. Supp. 769 (D.D.C. 1984), *aff'd in part*, 782 F.2d 227 (D.C. Cir. 1986), *vacated*, 482 U.S. 64 (1987), *on remand*, 847 F.2d 779 (D.C. Cir.1988).

58. Yamamoto, *supra* note 36, at 489-90.

internment, the federal court found that relief could be granted to Japanese American individuals.[59]

The Japanese American reparations ultimately succeeded because of the narrow and specific legal claims advanced by individual plaintiffs.[60] According to Eric K. Yamamoto,[61] the internees' claims succeeded because of a combination of factors.[62] The claims addressed specific executive and military orders, and the challenges were based on constitutional norms that existed at the time of the internment, such as due process and equal protection.[63] Additionally, evidence of the violations was identified by a congressional commission and the courts, the internees claiming relief were still living, and the government agents were identifiable.[64] Importantly, the claims demonstrated sufficient causation and damages: causation of the injuries was readily identifiable, the damages were limited to survivors and also limited to a fixed time period, and the payment signified an end to the claims.[65] While Yamamoto states that the redress for Japanese Americans is mentioned as a legal precedent, moral compass, or political guide in almost every discussion of reparations for other groups, he cites the individual and specific nature of the Japanese American claims as the reason for their success.[66] Likewise, he argues that the courts and mainstream America have been unwilling to accept an argument for reparations centered on a "group victim/group perpetrator" strategy.[67]

3. Rosewood Massacre Victims

In 1995, the State of Florida paid each of the 9 survivors of the 1923 Rosewood Massacre $150,000, and paid each of the 145 descendants of residents between $375 and $22,535.[68] The reparations, believed to be the only reparations paid to African

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59. Korematsu v. United States, 584 F. Supp. 1406, 1419 (N.D. Cal. 1984) ("Where relevant evidence has been withheld, it is ample justification for the government's concurrence that the conviction should be set aside. It is sufficient to satisfy the court's independent inquiry and justify the relief sought by petitioner.")

60. *See* Yamamoto, *supra* note 36.

61. Professor of Law, William S. Richardson School of Law, University of Hawai'i at Manoa.

62. Yamamoto, *supra* note 36, at 490.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 489 (stating that one of the deficiencies in the African American legal claim for reparations is that it typically requires a difficult burden of proof that "all African Americans were injured by slavery and that all white Americans caused the injury or benefited from the spoils of slave labor").

68. Robinson, *supra* note 37; *see also* Yamamoto, *supra* note 36, at 490.

Americans by a state legislature, were paid as redress to a black community that was burned to the ground by whites in 1923.[69] Among other allegations, the Rosewood plaintiffs claimed property damage. Furthermore, their claim paralleled the narrow, specific nature of the Japanese American claim in that the "government perpetrators and victims were identifiable, direct causation was established, damages were certain and limited, and payment meant finality."[70]

B. *Pending Claims*

Despite the Japanese American and Rosewood Massacre resolutions, many other reparations claims are still pending. For example, claims by African Americans for slavery-based reparations, by native Hawai'ians for land and money reparations from both the United States and the State of Hawai'i, by Native Americans for reparations for treaty violations, and by Japanese "comfort women" have not been resolved.[71]

1. African Americans

Reparations activism has a history of over 130 years in the United States since the defeat of slavery in 1865.[72] Five waves of reparations activism since the emancipation of the slaves have been identified: (1) the Civil War Reconstruction era, (2) the turn of the century, (3) the Garvey Movement, (4) the civil rights movement of the late 1960s and early 1970s, and (5) the post Civil Liberties Act era beginning in 1989.[73] The redress sought has included claims for back pay of slave wages; land acquisition and educational benefits; monetary compensation for abuse, indignities suffered, forced indoctrination into a foreign culture, and destruction of the family unit; relocation to Africa or designated lands; relief from income tax obligations; and the once-promised forty acres and a mule, or equivalent value.[74]

Early reparations measures took the form of legislative remedies promoted by Congress to aid the transition of the slaves to freedom, and to gain leverage during the Civil War through confiscation of

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69. *Id.*

70. Yamamoto, *supra* note 36, at 490.

71. *Id.* at 484.

72. Irma Jacqueline Ozer, *Reparations for African Americans*, 41 HOW. L.J. 479, 482 (1998).

73. Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 600 (1993).

74. Tuneen E. Chisolm, Note, *Sweep Around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677, 684 (1999).

land from rebels.[75] For example, the Confiscation Act of 1862 authorized the taking of all rebel property, amounting to thousands of acres.[76] However, the Lincoln administration did little to enforce the law, and the Act was eventually repealed in favor of a measure authorizing permanent seizure.[77] As a result, freedmen were permitted to settle on thousands of acres of abandoned land in South Carolina and Georgia.[78]

The Bureau of Freedmen's Affairs, established by the Freedmen's Bureau Act of 1865, authorized the lease and sale of confiscated land in an effort to provide special assistance to refugees and persons of African descent.[79] The Freedmen's Bureau Act was modified in 1866 and went into effect in 1868, authorizing the Bureau to assist freed African Americans as necessary to ensure that their freedom was "available to them and beneficial to the Republic."[80] The Act, however, limited the authorized assistance to white refugees to "that assistance necessary to make them self-supporting."[81] In addition, the modified bill limited educational programs to freed African Americans, provided protections to freed African Americans already occupying abandoned land, and only prohibited discrimination on the basis of race, color, or previous condition of slavery.[82] The bill did not protect refugees from discriminatory administration of civil and criminal law.[83] For two years, the Freedmen's Bureau enacted legislation for the education of freed African Americans, but the Bureau's activity ceased in 1870.[84] Since the Freedmen's Bureau Acts, no consistent measure of reparations for African Americans has existed.[85]

Although the movement had not historically been united or formally organized,[86] African Americans renewed their call for reparations following the successful claims by Japanese Americans.[87] Scholars believe that the African American reparation movement is now as strong as it was at any time since Reconstruction.[88] Although African Americans have not yet succeeded in their claims for

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75. *Id.* at 685.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 686.
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 686-87.
86. *See* Robinson, *supra* note 37.
87. Yamamoto, *supra* note 36, at 480.
88. *Id.*

reparations for slavery, apologies have been issued by other nations for past wrongs committed against their citizens.[89]

2. Hawai'ian Americans

Current Hawai'ian claims for reparations are divided into both judicial and legislative claims against both federal and state governments.[90] Judicially, claims against state government request back payment of ceded land trust revenues, and also include a claim to enjoin negotiations, settlement, and execution of the release by trustees because of the U.S. overthrow of the Hawai'ian government in 1893.[91] The Aboriginal Lands of Hawai'ian Ancestry, Inc. is an example of a legislative group that prompted the introduction of a series of reparations bills into Congress, bringing attention to federal and state Hawai'ian claims and to the Native Hawai'ian Autonomy Act.[92]

3. Native Americans

The U.S. government attempted to redress its past transgressions against Native Americans through reparations.[93] Specifically, the United States paid monetary reparations to the Klamaths of Oregon, the Sioux of South Dakota, the Seminoles of Florida, the Chippewas of Wisconsin, and the Ottowas of Michigan.[94] However, many tribes still have pending claims, including the Hopi's claim against museums for housing Native American artifacts without reporting them to the specific tribes, and the Lenape's claim for land and reparations from the city of Wildwood, New Jersey.[95]

4. Japanese "Comfort Women"

Japan has acknowledged that, during World War II, it established and organized "comfort stations" in which Asian women

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89. *Id.* Internationally, the Canadian government apologized and promised reparations to its indigenous peoples, Great Britain offered reparations to New Zealand's Maori for British-initiated 19th century race wars, France recognized its role in the deportation of seventy-six thousand Jews to death camps, and the Catholic Church apologized for its assimilationist policy in Australia. *Id.* at 483. Nationally, the United States apologized to indigenous Hawai'ians for the "illegal U.S.-aided overthrow of the sovereign nation and the near decimation of Hawai'ian life that followed," and the federal government offered reparations to the African American victims of the Tuskegee syphilis experiment. *Id.*

90. *Id.* at 481 n.16.

91. *Id.*

92. *Id.*

93. *Id.* at 484 n.22.

94. *Id.*

95. *Id.*

were either forced or deceitfully induced into leaving their homes and used as sex slaves for the soldiers and officers of the Japanese Imperial Army.[96] Although Japan has acknowledged its involvement, and has apologized publicly to the surviving military sex slaves, the government denies legal liability.[97] Numerous attempts by the victims to obtain reparations through Japanese courts have failed.[98] In 1992, a group of South Korean women claimed that the "comfort stations" violated fundamental human rights under Japanese statutory and constitutional law, only to have the Hiroshima High Court hold that Japan was not legally required to apologize or compensate the women.[99] The following year, former sex slaves from the Philippines claimed that Japan violated the Hague Convention of 1907, and further argued that Japan committed "crimes against humanity" as codified in the International Military Tribunal Charter and the Convention on the Prevention and Punishment of the Crime of Genocide.[100] While the Tokyo District Court decision in the Filipino case is currently on appeal to the Tokyo High Court, it is noteworthy that the District Court held that "crimes against humanity" are not an established norm of international law.[101]

Parallel to the arguments by opponents that reparations should not be paid, the Japanese government has denied legal liability for the use of military sex slaves based primarily on non-retroactivity grounds, stating that recent developments in international criminal law may not be applied retroactively.[102] Based on this non-retroactivity argument, the Japanese government argues that rape was not prohibited during wartime—neither legally nor by customary norms of international law—at the time of the "comfort stations."[103] The government further argues that even if recently-enacted international laws applied retroactively, the "comfort station" system did not constitute slavery and the women who were involved in the "comfort stations" were not "adversaries" to Japan, thereby rendering the laws of war inapplicable.[104] Interestingly, no statute of limitations exists on violations of customary international law, and

96. Susan Jenkins Vanderweert, Note, *Seeking Justice for "Comfort" Women: Without an International Criminal Court, Suits Brought by World War II Sex Slaves of the Japanese Army May Find Their Best Hope of Success in U.S. Federal Courts*, 27 N.C. J. INT'L L. & COM. REG. 141, 145-47 (2001).

97. *Id.* at 147-48.

98. *Id.* at 160-68.

99. *Id.* at 161-62.

100. *Id.* at 162.

101. *Id.* at 162-63.

102. *Id.* at 164 (citing Gay J. McDougall, *Report of the Special Reporteur on Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict*, U.N. ESCOR Comm. On Human Rights, 50th Sess., Prov. Agenda Item 6 app., at para. 4, U.N. Doc. E/CN.4/Sub.2/1998/13 (1998)).

103. *Id.*

104. *Id.* at 164.

slavery has been deemed an international crime regardless of whether it is committed by states or by private individuals.[105]

Like many other reparations claims, the victims of the Japanese "comfort stations" have not found relief through international law. While the recent ratification of the International Criminal Court (ICC) could conceivably be of assistance in prosecuting the Japanese government, this avenue is useless because the ICC's jurisdiction is limited to prospective claims.[106] Discussion has turned to potential claims in the U.S. judicial system, requiring the recognition of slavery as a *jus cogens* norm and arguing that Japan waived its sovereign immunity[107] upon violation of the *jus cogens* norm.[108] A *jus cogens* norm, also known as a "peremptory norm" of international law, is "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and from which can be modified only by a subsequent norm of general character."[109] Although *jus cogens* norms enjoy "the greatest clout, preempting both conflicting treaties and customary international law,"[110] barriers to the effective litigation of these claims in U.S. courts still exist. For example, the U.S. District Court for the District of Columbia dismissed a suit brought by fifteen Asian "comfort women" in October 2001, stating that the claims were barred by sovereign immunity and presented a nonjusticiable political question.[111] While the decision has been appealed, the district court decision demonstrates the concern that the litigation of these claims might "increase diplomatic tensions, heighten international resentments, and cause other political backlash."[112]

5. Other Potential International Claims

While the WCAR seemed to focus its attention on the United States and Western European countries as participants in the African slave trade, the language naming slavery as a crime against

105. *Id.* at 166.
106. *See* International Law Analysis, *infra* Part II.C.1.a.
107. *See* 28 U.S.C. § 1605(a)(1) (2001).
108. *See* Vanderweert, *supra* note 96, at 177-80.
109. Jeremy Levitt, *Black African Reparations Making a Claim for Enslavement and Systematic De Jure Segregation and Racial Discrimination Under American and International Law*, 25 S.U. L. Rev. 1, 27 (1997) (citing Princz v. Federal Republic of Germany, 26 F.3d 1166, 1179 (D.C. Cir. 1994)). *See also* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987) (stating that ". . . [c]ustomary international law results from a general and consistent practice of states followed by them from a sense of legal obligation").
110. Levitt, *supra* note 109, at 27-28 (quoting *Princz*, 26 F.3d at 1179).
111. Vanderweert, *supra* note 96, at 180; *see also id.* at 173 n.180.
112. Vanderweert, *supra* note 96, at 181.

humanity potentially affects many other nations.[113] For example, while at the WCAR, India was lobbied by the EU to oppose the language naming slavery as a crime against humanity in exchange for EU opposition to language condemning India's caste oppression against the Dalit population.[114] Additionally, Arab nations opposed the language because of Kurd oppression and massacre by Iraq, although they supported the language to condemn Israel for its treatment of Palestinians.[115] Therefore, controversy remains over the Arab slave trade, and especially the continuing slavery in the African countries of Sudan and Mauritania.[116] In particular, the enslavement of black Christians in Sudan has produced approximately one million deaths in the last twenty years.[117] Furthermore, although slavery has technically been abolished in Mauritania three times, most recently in 1981, blacks continue to be enslaved by lighter-skinned Arabs.[118] Consequently, the issue of Mauritanian slavery did not even reach the floor for discussion at the WCAR, despite its mention in the Non-Governmental Organization (NGO) Forum's final document for the Conference.[119]

Additionally, the attempt to impose Islamic law on all subjects in northern Nigeria, the oppression of the Berbers in Algeria, the "recurrent persecution of the Copts in Egypt, the theocratic excesses and treatment of women by the mullahs in Iran, the persecution of gays throughout the Arab world—and, of course, the fanatic intolerance of the Taliban in Afghanistan" may be added to the list of potential claims for reparations.[120] These instances of past and contemporary injustices demonstrate that while the WCAR documents were directed at the Western world, the language has

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113. *See* Arch Puddington, *The Wages of Durban: The United Nations World Conference against Racism, 2001*, COMMENTARY, Nov. 2001, at 29.

> Nor was much said about contemporary slavery; to do so would have embarrassed predominantly Islamic countries like Mauritania and Sudan and possibly reminded the world that Arab states were the world's main slaveholders throughout the Middle Ages and until the practice was abolished by the Western colonial powers (only to be reinstated in many places when they departed). No, at Durban the countries called to account for their past sins were Western, predominantly white, free-market, and democratic.

Id.

114. Salim Muwakkil, Editorial, *Who's Driving the WCAR?*, IN THESE TIMES, Oct. 1, 2001, at 1.

115. *Id.*

116. *Id.*

117. Jack Schwartz, *An Old Story: Anti-Semitism, Past and Present*, NAT'L REV. ONLINE, Dec. 4, 2001, *at* http://www.nationalreview.com/comment/comment-schwartzprint1 20401.html.

118. Sasha Polakow-Suransky, *A Politics of Denial*, AM. PROSPECT, Jan. 1, 2002, at A38, *available at* 2002 WL 7761250.

119. *Id.*

120. Schwartz, *supra* note 117.

implications for all countries who were parties to the Conference and ratified the agreement.

C. *Routes to Reparations*

The payment of reparations, opponents argue, is expensive—in fact unduly expensive—when the precise grievance, precise individuals involved, and direct causation cannot be affirmatively proven.[121] One possible barrier to paying slavery reparations lies in the sufficiency of existing laws, and the argument that civil rights laws already afford individuals equal opportunity.[122] Under this argument, reparations are not needed to rectify social inequalities because existing legislation is sufficient.[123] Additionally, narrow legal concerns serve as a second concrete and common objection. Those who oppose reparations argue that claimants lack standing to bring a claim because of the difficulty identifying specific victims and perpetrators.[124] In general, a lack of malicious intent has been cited as a criminal law defense, and opponents further argue that lack of legal causation and impossibility of accurately calculating damages stand as barriers to recovery.[125]

Specifically, opponents commonly state five objections to granting present-day African Americans reparations for slavery.[126] The first objection is based on the statute of limitations, given that the acts of slavery occurred over a century ago.[127] Second, opponents argue that, unlike the claim for reparations by Japanese Americans, "all ex-slaves have been dead for at least a generation" and therefore an absence of directly harmed individuals exists.[128] Third, opponents claim that the absence of individual perpetrators stands as a barrier, arguing that "white Americans living today have not injured African Americans and should not be required to pay for the sins of their slave master forebearers."[129] The fourth argument cites the lack of direct causation in that "slavery did not cause the present ills of African American communities."[130] Finally, opponents claim that "it is impossible to determine who should get what and how much," leading to a problem in the indeterminacy of compensation amounts.[131]

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121. Yamamoto, *supra* note 36, at 487-88.
122. *Id.*
123. *Id.* at 488.
124. *Id.*
125. *Id.*
126. *Id.* at 491 (citing Verdun, *supra* note 73, at 607).
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.*

Such opposition has prompted some scholars to offer theories for recovery that do not expressly involve slavery, but instead focus on present-day social discrimination.[132] Under this approach, the individuals harmed, as well as the perpetrators, are identified,[133] and causation is established by linking the present harm to the acts with roots in the legalized Jim Crow segregation era.[134] However, the framing is still not narrow enough under this theory, and the theory reflected a "tactical loss by excluding the slavery period."[135]

Though not grounded in legal theory, some opponents argue that the investigation into paying reparations should be foregone "in order to promote the healing and nation-building process."[136] These opponents further argue that protracted trials will "exacerbate the wounds that have divided the country, and that the transition to democracy can be promoted by encouraging the members of the previous regime to participate in the new government."[137]

1. Traditional Sources of Reparations

The debate surrounding if, and how, reparations are to be paid includes a number of opinions regarding the source of reparations claims. Among the sources cited are international law, the U.S. Constitution, U.S. congressional legislation, and common law.[138] With the recent WCAR decree that slavery is a crime against humanity, the focus has shifted toward international law as a catalyst for domestic legislation. Current pending class-action litigation seem to create a fifth, and potentially more successful, claim for reparations.

a. International Law Analysis

The U.N. General Assembly adopted the Universal Declaration of Human Rights in 1948, providing that "no one shall be held in slavery or servitude."[139] The United Nations acted again in 1963 when it adopted the Declaration on the Elimination of All Forms of

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132. *Id.* (citing BORIS BITTKER, THE CASE FOR BLACK REPARATIONS (1973)).

133. *See id.* (identifying U.S. perpetrators in government and private institutions that supported discrimination in housing, education, and jobs).

134. *Id.* at 491.

135. *Id.* at 491-92 (quoting Derrik A. Bell, Jr., *Dissection of a Dream*, 9 HARV. C.R.-C.L. L. REV. 156, 159-60 (1974)).

136. Jon M. Van Dyke, *The Fundamental Human Right to Prosecution and Compensation*, 29 DENV. J. INT'L L. & POL'Y 77, 99 (2001) (suggesting that it will always be more appropriate to conduct full investigations, but not asserting that the investigation should be foregone).

137. *Id.*

138. Ozer, *supra* note 72, at 482-91.

139. G.A. Res. 217A, U.N. GAOR, 3d Sess., Supp. No. 3, U.N. Doc. A/810 (1948).

Racial Discrimination.[140] The 1963 Declaration states that "no state, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin."[141] The United Nations also held the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), the First (1973) and Second (1983) World Conferences to Combat Racism and Racial Discrimination.[142] In 1997, the U.N. Commission on Human Rights in Geneva set the stage for the 2001 WCAR by adopting African texts recommending to the General Assembly that the Conference be held.[143] The proposed conference was the subject of substantial debate, as many countries including EU states and the United States argued that a special session of the General Assembly would be just as effective in combating racism, and would be less expensive.[144]

International human rights law is "significant because of its articulation of global norms of governmental behavior," and is "problematic because of the difficulty, if not impossibility, of enforcement of those norms in state and federal courts in the United States."[145] For example, while U.N. Member States vote and adopt Declarations, those provisions are not legally binding on the states and subsequent enforcement must be pursued to apply the agreement to a situation within a Member State.

The United Nations officially reported in 1995 that the primary cause of present-day African American suffering is the former enslavement and systematic de jure segregation and racial discrimination of African Americans.[146] Furthermore, the report "implicate[d] and criticize[d] the United States government for engaging in, enforcing, and condoning enslavement."[147] Due to this report, many scholars believed the international community would be more receptive than the United States to the reparations movement.[148] These scholars argue that reparations advocates may need to bring their claims before the United Nations under

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140. *See United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, G.A. Res. 1904, U.N. GAOR, 18th Sess., U.N. Doc. AIRES/1904 (1963).

141. *Id.* art. 2(1).

142. *See* WCAR Basic Information, *supra* note 1.

143. Michael J. Dennis, *The Fifty-Third Session of the UN Commission on Human Rights*, 92 AM. J. INT'L L. 112, 123 (1998).

144. *Id.*

145. Yamamoto, *supra* note 36, at 509.

146. *See* Levitt, *supra* note 109.

147. *Id.*

148. *Id.*

international law because it may be more effective than bringing claims in the United States under U.S. domestic law.[149]

The International Court of Justice (ICJ) was established to serve a dual capacity: an adjudicatory role over inter-state disputes as an alternative to arbitration, and an advisory role over the United Nations.[150] Under the Articles of the ICJ, the court's jurisdiction is limited to states, with its jurisdictional statement specifically stating that neither individual organizations, collective groups, nor individuals may appear before the court.[151] The jurisdiction is also limited to those consenting parties based on the stated principle that states are sovereign and free to choose the means of resolving their disputes.[152] With the requirement that both parties consent to the proceeding, any matter decided before the court is essentially an agreement between the parties rather than an adjudication.[153] States may consent by a special agreement between two or more states about a dispute on a specific issue, by a clause in a treaty explicitly conferring consent, or by a state's unilateral decision.[154] States may revoke jurisdiction at any time, may refuse to appear before the ICC, and may refuse to obey the court's orders.[155] Additionally, unlike the U.S. court system, the ICJ has been granted jurisdiction to issue advisory opinions.[156] The organs and agencies of the United Nations and the U.N. General Assembly and Security Council may request that the ICJ issue an advisory opinion on any legal question.[157]

The consent-based jurisdiction of the ICJ, combined with the reality that states may revoke jurisdiction at any time, has caused the ICJ to be viewed as a negative force, incapable of creating and enforcing international rules of law.[158] Some scholars have called for a revision of the ICJ to expand its compulsory jurisdiction and delete the "optional clause" that allows states to refuse to recognize the jurisdiction of the court.[159] However, the permanent establishment of

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149. *Id.*

150. P. Mweti Munya, *The International Court of Justice and Peaceful Settlement of African Disputes: Problems, Challenges and Prospects*, 7 D.C. J. INT'L L. & PRAC. 159, 160 (1998).

151. *See* STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 34, *available at* http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm [hereinafter ICJ STATUTE].

152. *Id.*

153. *See* Munya, *supra* note 150, at 161.

154. *See* ICJ STATUTE, *supra* note 151.

155. *Id.*

156. *Id.*

157. *Id.*

158. Munya, *supra* note 150, at 162.

159. *Id.* at 224.

the ICC was proposed as a potential venue for the "promise of universal justice."[160]

In 1998, the U.N. General Assembly held the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court to finalize the draft statute to establish an international criminal court after years of work in negotiating and drafting the text.[161] According to the U.N. overview of the Rome Statute of the International Criminal Court (Rome Statute), such a court would fill the "missing link in the international legal system."[162] As discussed, the ICJ only handles cases between states and does not deal with individual responsibility for acts of genocide and "egregious violations of human rights."[163] Subsequently, the United Nations stated that one of the purposes of the ICC is to "take over when national criminal justice institutions are unwilling or unable to act."[164]

The Rome Statute was adopted on July 17, 1998 and was subsequently signed by the conference participants.[165] The Rome Statute entered into force on July 1, 2002 after gaining seventy-four ratifications, and allows for the trial of serious crimes of interest to humanity in The Hague.[166] Although the ICC gained support from many nations, the United States refused to ratify the Rome Statute, citing a threat to its peacekeeping forces.[167] The ICC possesses

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160. *See* United Nations, *Overview of the Rome Statute for the ICC, at* http://www.un.org/law/icc/general/overview.htm (quoting U.N. Secretary-General Kofi Annan).

161. *Id.* The push to establish an international criminal court began in 1948 when the General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. *Id.* A draft statute was created in 1953, but the General Assembly decided to postpone the call for adoption because the term "aggression" needed to be defined. *Id.* In 1989, Trinidad and Tobago requested that the General Assembly reconsider the establishment of an international criminal court in response to drug trafficking. *Id.* However, the current statute was not born until the 1993 conflict in Yugoslavia raised concerns of "ethnic cleansing," prompting the U.N. Security Council to establish an ad hoc International Criminal Tribunal to hold Former Yugoslavia individuals accountable for war crimes, crimes against humanity and genocide. *Id.* The draft statute for the International Criminal Court was first submitted to the General Assembly in 1994, and was revised several times before its adoption at the 1998 Conference. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *See* United Nations, *Rome Statute of the International Criminal Court—Ratifications, available at* www.un.org/law/icc/statute/status.htm.

166. *Kenya; Country Should Be Party to World Criminal Court*, AFRICA NEWS, Aug. 2, 2002, *available at* LEXIS, News Library, Afrnws File. The Rome Statute was ratified by seventy-four nations; it required only sixty nations for ratification. *Id.*

167. Anthony Deutsch, *New U.N. War Crimes Court Opens*, ASSOCIATED PRESS, July 2, 2002, *at* 2002 WL 23164648. The United States lobbied for an exemption for its troops from any proceeding at the new ICC and vetoed the renewal of its peacekeeping operations in Bosnia after the exemption was denied. *Id.*

jurisdiction over individuals, not states, and is limited to crimes of genocide, crimes against humanity, war crimes, and the crime of aggression.[168] While the WCAR declared slavery to be a crime against humanity, the Rome Statute specifically names enslavement, deportation, imprisonment, severe deprivation of physical liberty, rape, torture, sexual slavery, enforced prostitution or sterilization, forced pregnancy, or any other form of sexual violence as crimes against humanity covered under the jurisdiction of the ICC.[169]

Although the Rome Statute entered into force on July 1, 2002, the court rules and procedures were not defined until September 2002 when the seventy-four states that ratified the treaty met in New York.[170] The state parties will meet again in January 2003 to elect the court's chief-prosecutor and eighteen judges, and the court's inaugural meeting will occur in February 2003.[171] The ICC is expected to be functional by the end of 2003, but has been equipped to accept complaints since July 1, 2002.[172] The Rome Statute is only authorized to adjudicate crimes committed after its creation, and therefore does not serve as a viable alternative to those claims based on past instances of slavery.[173] However, the passage of the ICC could potentially benefit those individuals with claims for current and ongoing enslavement previously discussed in this Note. Some warn, however, that "there may be a danger in placing too much hope on the ICC. Being a U.N. body, it has only limited jurisdiction."[174] Yet, the same commentator hails the ICC, stating that "[i]f the International Criminal Court succeeds, the world will indeed be a happier and safer place."[175]

b. Constitutional Analysis

Some scholars argue that claims for reparations can be based on provisions of the U.S. Constitution. One view is that can be based on provisions of the Thirteenth Amendment is "race and class conscious [because] it focuses on the rights of a people and provides some hope that future generations of African Americans will be liberated from the badges of slavery."[176] Another view claims that "if the Thirteenth

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168. ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT art. 5, U.N. Doc. A/CONF.183/9 (1998), *available at* www.un.org/law/icc/statute/romefra.htm.

169. *See* Vanderweert, *supra* note 96, at 171.

170. *ICC will need time to function properly*, AGENCE FRANCE PRESSE, July 1, 2002, *available at* LEXIS, News Library, AFP File.

171. *Id.*

172. *Id.*

173. Vanderweert, *supra* note 96, at 172.

174. *Kenya; Country Should Be Party to World Criminal Court*, *supra* note 166.

175. *Id.*

176. Douglas L. Colbert, *Liberating the Thirteenth Amendment*, 30 HARV. C.R.-C.L. L. REV. 1, 38 (1995).

Amendment gave Congress carte blanche to limit any and all governmental benefits to [African Americans] only, that amendment would authorize governmental actions prohibited" by the Fourteenth Amendment and by the Fifth Amendment's Due Process Clause.[177] Under this framework, the argument posits that the unequal position of the average black citizen, as compared with the average white citizen, is an incident of slavery because the freedmen generally started out with no property and experienced invidious discrimination in their attempts to obtain it.[178]

Additionally, some argue that the Fourteenth Amendment was crafted by its framers to afford protection to the newly emancipated slaves.[179] In 1881, Justice Harlan stated that the contemporary understanding of the purpose of the Fourteenth Amendment was to "secure to the colored race, thereby invested with the rights, privileges and responsibilities of citizenship, the enjoyment of all the civil rights that, under the law, are enjoyed by white persons. . . ."[180] Others argue that the Fourteenth Amendment imposed citizenship on African Americans, and that "'making' free people citizens without their informed consent is in fact a limitation of their freedom."[181] The view that few African Americans voluntarily and without duress became citizens of the United States creates an argument that reparations claims based upon slavery would be best presented in the context of the denial by the United States of the right of self-determination to African Americans.[182] As a result, many have interpreted the very protections that were enacted to alleviate systemic racial discrimination against disadvantaged minority groups—namely, the Fourteenth Amendment and Title VII—in a way that threatens to eradicate progress.

c. Common-Law Analysis

Scholars who support a common-law analysis for use in determining whether reparations are payable look to four basic theories: contract law, trust law, restitution law, and tort law.[183] The contract law claim rests on an economic theory that reparations paid

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177. Gary Elden, *"Forty Acres and a Mule," With Interest: The Constitutionality of Black Capitalism, Benign School Quotas, and Other Statutory Racial Classifications*, 47 J. URB. L. 591, 652 (1969).

178. Daisy G. Collins, *The United States Owes Reparations to Its Black Citizens*, 16 HOW. L.J. 82, 86-87 (1970).

179. Ozer, *supra* note 72, at 484.

180. *See* Neal v. Del., 103 U.S. 370, 386 (1881).

181. DOROTHY B. LEWIS, BLACK REPARATIONS NOW 6 (1990).

182. Imari A. Obadele, *Reparations Now! A Suggestion Toward the Framework of a Reparations Demand and a Set of Legal Underpinnings*, 5 N.Y.L. SCH. J. HUM. RTS. 369, 394 (1988).

183. Ozer, *supra* note 72, at 488-92.

to African Americans encompass restitution of unpaid labor plus a sum for underpayment of black people since 1863.[184] A claim rooted in trust law reasons that slaves were not paid for their work, and descendants of the slaves were deprived of their inheritance; therefore, a trust consisting of withheld wages should be created for the descendants.[185] A restitution claim resembles the contract claim, but adds the element of beneficiary unjust enrichment; namely that "the beneficiary of goods and services may not keep the benefits without paying restitution."[186] Finally, a possible remedy in tort law equates slavery with a "racial assault," and calls for private entities, such as corporations and churches, to pay African Americans reparations for the tort of "racial assault" committed in the past.[187] However, courts have been reluctant to grant jurisdiction to, or rule in favor of, claimants for reparations based on slavery largely because the claims advanced have not been narrow or precise.[188]

Like the issues surrounding the ICJ, common-law cases within the United States are hindered by jurisdictional restraints. When a claim is brought in the United States against a foreign state, jurisdiction is premised exclusively on the Foreign Sovereign Immunities Act (FSIA).[189] Under the FSIA, a foreign state is presumed to have sovereign immunity unless it is subject to an exception, but the FSIA is considered to have been in effect only since 1952 and is not typically applied retroactively to events occurring before 1952 unless the jurisdiction has held otherwise.[190] Further, and importantly in terms of the WCAR, the U.S. Supreme Court held that a waiver must be explicit, unambiguous, and intentional to be effective, and that a nation does not give up its sovereign immunity simply by signing an international agreement.[191] While the FSIA serves as a hurdle to domestic litigation against foreign states, the rules of civil procedure bar actions that lack direct causation, identifiable victims or perpetrators, and specificity of the relief sought in actions brought against the United States in U.S. Courts by U.S.

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184. Robert Browne, *The Economic Basis for Reparations to Black America*, 2 REV. BLACK POL. ECON. 67, 72-73 (1972).

185. Verdun, *supra* note 73, at 608 n.31.

186. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 380 n.31 (1987).

187. Ozer, *supra* note 72, at 489-90.

188. *See* Yamamoto, *supra* note 36 (discussing successful reparations cases that were unusually precise and specific).

189. *See* Hwang Geum Joo v. Japan, 172 F. Supp. 2d 52, 56 (D.D.C. 2001); *see also* Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 (2001).

190. *Hwang Geum Joo*, 172 F. Supp. 2d at 57.

191. Argentine Republic v. Amerada Hess Shipping Corp, 488 U.S. 428, 442-43 (1988).

citizens.[192] Therefore, jurisdiction under the U.S. common-law regime has historically been difficult to obtain.

Recently, a "Dream Team" of lawyers and law professors formed the "Reparations Assessment Group" (RAP) to investigate changes in strategy in raising the issue of African American slavery in U.S. courts.[193] For the RAP, the time is right to begin to re-pursue reparations claims through the judicial system for three reasons: the belief that many civil rights activists no longer have faith in "public" civil rights law, the strength in class action law, and the instances of other ethnic groups who have demanded and received reparations.[194] First, many civil rights activists have acknowledged that since the 1960s, the legal gains made by African Americans have been decreased due to a "conservative Supreme Court, a hostile Congress, and an ambivalent electorate."[195] Second, the RAP feels that class action law has produced a strong desire for defendants to settle, increasing the likelihood of success for plaintiffs.[196] Finally, in light of the success of reparations movements by Japanese Americans and Holocaust victims, U.S. courts may be more willing to consider human rights violations as both public and private wrongs.[197]

The new strategy pursued by the RAP aims to alter the traditional cause of action that has been pursued, and failed, in the past. In an article analyzing the modern movement by the RAP, Professor Anthony Sebok explains that the defendants targeted by future reparations suits may be those with deep pockets—most likely corporations.[198] This shift away from governmental defendants is likely the result of claim-barring protections for such governmental entities. The Federal Tort Claims Act (FTCA) and implied sovereign immunity have barred reparations claims in the past because they allow the United States to be sued only to the extent that it consents or waives its immunity.[199] Similarly, although governments of the former Confederate states are not typically mentioned as potential defendants, Professor Sebok speculates that sovereign immunity would extend to protect these states as well.[200] Some scholars argue that under international *jus cogens* norms, the United States waived its sovereign immunity ". . . when it transgressed from the well-established *jus cogens* norms condemning systematic racial

192. *See generally* FED. R. CIV. P.

193. Anthony J. Sebok, *A New Dream Team Intends to Seek Reparations for Slavery* (Nov. 20, 2000), *at* http://writ.corporate.findlaw.com/sebok/ 20001120.html.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Anthony J. Sebok, *Should Claims Based on African-American Slavery be Litigated in the Courts? And if so, How?* (Dec. 4, 2000), *at* http://www.findlaw.com.

199. *Id.*

200. *Id.*

discrimination—racially motivated de jure segregation."[201] Although some argue that the United States should therefore not be able to "hide behind the cloak of sovereign immunity or retroactivity with respect to reparations claims made against it by Africans in America," sovereign immunity has proven to be a formidable barrier to reparations litigation.[202] As a result, future defendants will likely shy away from naming governmental entities as defendants in an effort to avoid the immunity bar.

Claims against individuals who may be descendants of slave-owners are similarly unlikely due to the concerns of correctly identifying the individuals and due to difficulties in determining the profits derived from slavery.[203] Therefore, attention falls on corporations as potential defendants, making the movement attractive for class-action lawsuits.[204] In addition to the large cash reserves, also known as "deep pockets," of corporations, claims for reparations against corporate defendants seem promising because corporations may be more likely to settle due to probable subjection to public opinion and media criticism.[205] In support of this strategy of targeting corporate defendants, Professor Sebok cites the recent apology by Aetna Insurance for selling insurance to slave owners for the value of the slaves.[206] Although Aetna refused to compensate those who were injured by its characterization that people qualified as property and its support of the slave economy, Sebok views the apology as a catalyst for litigation because it involves "at a minimum, a concern over what the public will think, and that is the same type of concern that often inspires settlement."[207] In fact, such events have spawned a new response to slavery reparations in class-action litigation against corporate defendants, discussed in Part II.C.2.

Even with a new group of target defendants, many of the problems that have traditionally plagued the common-law pursuit of reparations still apply. Primarily, the RAP faces its most difficult hurdle in the statute of limitations, which mandates that victims bring suit within one to six years after the discovery of the wrongful act.[208] In the past, Congress has waived the statute of limitations defense, but such limited examples have occurred only in cases with

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201. Levitt, *supra* note 109, at 30. For a definition of *jus cogens*, see RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 331 (1987).

202. *Id.*

203. Sebok, *supra* note 198.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

substantial bipartisan support.[209] While Congress could extend the statute of limitations by finding that African Americans have not been allowed access to the courts, Professor Sebok believes that courts would likely find that since the 1970s African Americans have had reasonably fair access to the courts.[210] In fact, some scholars argue that if a legal claim for reparations is to be permitted, a "cutoff point" must be created so as not to allow suits arguing that the period of disability has not ended.[211] One author advocates holding the U.S. government and citizenry liable "only for wrongful acts committed between January 1, 1619 and December 31, 1965," thereby ceasing liability with the demise of the "Jim Crow" laws.[212]

In an attempt to circumvent the statute of limitations, several RAP attorneys advocate bringing claims for unjust enrichment against anyone who currently possesses property, or the fruits of property, that resulted from torts inflicted on African American slaves.[213] A claim for unjust enrichment is an equity claim, and therefore is not affected by the statute of limitations in the same manner as tort claims; however, unjust enrichment has not historically been viewed as a strong legal claim.[214] Additionally, some are concerned that focusing on unjust enrichment mischaracterizes the message behind claims for reparations because it may portray the "wrong" as the denial of payment or salaries to the slaves, rather than wrongs of abuse, kidnapping, deprivation of liberties, and assault and battery.[215]

d. Congressional Legislation Analysis

Under 42 U.S.C. § 1981, all persons within the "jurisdiction of the United States have the same right in every State and Territory to make and enforce contracts, to sue, be parties, and give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."[216] Additionally, Section 1982 provides all citizens with the right to

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209. *See* Paul Braverman, *Slavery Strategy: Inside the Reparations Suit*, AM. LAW., July 6, 2001 (referencing the black farmers' suit, where Bill Clinton and Newt Gingrich prevailed on Congress to waive the statute of limitations).

210. Sebok, *supra* note 198.

211. Levitt, *supra* note 109, at 25.

212. *Id.*

213. Sebok, *supra* note 198. *See also* RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS (2000).

214. Sebok, *supra* note 198.

215. *Id.* This view was personally expressed by Professor Sebok, stating that "to call the wrong of slavery a failure to pay for forced labor is to suggest that the wrong of slavery is that, after they were kidnapped, beaten, and abused, Africans and their descendants were not salaried." *Id.*

216. 42 U.S.C. § 1981 (2001).

inherit, purchase, lease, sell, hold, and convey real and personal property.[217] Prior to 1966, Sections 1981 and 1982 were thought to confine their reach to conduct taken "under color of law" pursuant to the Civil Rights Cases doctrine.[218] However, the Supreme Court held in *Jones v. Mayer* that Section 1982 bars all racial discrimination, private and public, in the sale or rental of property.[219]

An action for reparations by African Americans could potentially be litigated under Section 1983 as well.[220] The statute provides that "any citizen of the United States or other person thereof" has the right to sue in an action at law, in equity, or other proper proceeding for redress for deprivation of rights.[221]

While U.S. civil rights legislation arguably provides a cause of action for discrimination, there may be no statutory ground for pursuing reparations for African Americans through the courts.[222] However, U.S. Representative John Conyers of Michigan has made "the first official step towards compensating African Americans for the lingering effects of slavery" by introducing the Commission to Study Reparation Proposals for African-Americans Act.[223] First introduced in 1991, the Bill has been up for consideration every year thereafter, but has received little congressional or presidential support and has failed to pass in Congress.[224] The Bill was introduced after payments were granted to Japanese Americans enslaved in internment camps during World War II.[225] The language of the Bill calls for an acknowledgment and examination of slavery:

> To acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.[226]

In support of the Bill, Representative Owens stated "at the heart of the matter of the concept of reparations is that somehow this great crime that took place in America for more than 232 years ought to be

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217. 42 U.S.C. § 1982 (2001).
218. Collins, *supra* note 178, at 104.
219. Jones v. Mayer Co., 392 U.S. 409, 413 (1968).
220. *See* BITTKER, *supra* note 132, at 30-35 (arguing that the language of § 1983 could support specific reparation-like claims).
221. 42 U.S.C. § 1983 (2001).
222. Chisolm, *supra* note 74, at 708.
223. Ozer, *supra* note 72, at 487.
224. LEXIS, Congressional Bill Tracking Reports – 106th Cong.
225. Yamamoto, *supra* note 36, at 511.
226. Commission to Study Reparations Proposals for African-Americans Act, H.R. 40, 106th Cong. 1302(a) (1999).

rectified. There ought to be some compensation."[227] Owens stated further that some scholars completely leave out consideration of any developments of African Americans, slaves, or descendants of slaves in popular education.[228] In an attempt to bolster House support for the Bill, Owens stated that the idea of reparations is "accepted in Europe," and may soon be accepted in Japan.[229]

The Conyers Bill calling for a study and Congressional recommendations, as well as a 1997 resolution introduced by Representative Tony Hall of Ohio calling for "a simple United States apology to African Americans for slavery," have drawn three types of negative responses.[230] First, provisions calling for an U.S. apology were "steeped in hate and denial," and reopened old wounds.[231] Second, for some, the calls for an apology and reparations reinscribed victim status, and the calls for reparations painted blacks as "pandering and overreaching."[232] Finally, some argue that the Conyers Bill did not go far enough because it initially asked only for a study, not for reparations.[233] Proponents of this third criticism feel that reparations should come in a lump sum that could be funneled into "the educational system, social programs or loans for first time home buyers."[234]

Although the Conyers Bill has not passed the House of Representatives, Representative Conyers remains strong in his belief that such legislation is necessary. In a recent interview, he remarked,

> This is America's secret and, at the same time, most sensitive political problem of race that now comes together when we raise the question of reparations, that leads many people to move toward the door, to exit as quickly as they can . . . because of the United States' increasing power, the only superpower in the world because of our adherence to a Constitution that we promote all over the country, because of our own self-professed rhetoric for democratic ideals, this leaves us in a great position to advance this discussion both inside the United States at the highest levels, but also in the world.[235]

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227. 146 Cong. Rec. H. 431, 106th Cong. (1999), *available at* http://www.access.gpo.gov.

228. *Id.*

229. *Id.*

230. Yamamoto, *supra* note 36, at 511-12.

231. *Id.*

232. *Id.* "Why should average tax paying Asian Americans or Hispanic Americans or even European Americans . . . be asked to pay reparations to all black Americans, including the most wealthy?" *Id.*

233. *Id.* In the same vein, reparations activists who have criticized the Conyers Bill feel that the issue has been studied enough, and further argue that the injury is obvious and that the "time ha[s] come for compensation." Ozer, *supra* note 72, at 487.

234. *See* Caitlin Rother, *Should an Apology for Slavery be Made? African-Americans Have Mixed Opinions*, SAN DIEGO UNION-TRIB., Aug. 12, 1997.

235. Remarks of Rep. John Conyers, *Transatlantic Forum: The Case for Black Reparations*, Transcript from National Public Radio, *available at* http://www.npr.org.

Additionally, legislative action may be more beneficial than other proposed avenues, as a legislative body has much greater discretion than a court.[236] According to this theory, U.S. jurisprudence allows the courts only to address the parties before it and those "similarly situated," while Congress has plenary power to establish a program of black reparations by exercising its authority under legislative bills and the Fourteenth Amendment.[237]

The Ninth Circuit agreed in *Cato v. United States*, in which two plaintiffs filed "nearly identical complaints . . . against the United States for damages due to the enslavement of African Americans and subsequent discrimination against them, for an acknowledgment of discrimination . . . and for an apology."[238] In *Cato*, the Ninth Circuit found that "the legislature, rather than the judiciary, is the appropriate forum for plaintiff's grievances."[239] The court stated that it was unable to find any legally cognizable basis for recognizing the claim, and also referenced the sovereign immunity of the United States. Similarly, a federal court case involving the exploitation of Japanese "comfort women" was brought in the United States, arguing that Japan's military subjected Korean women to sexual slavery and torture during World War II.[240] As discussed in Part II.B.4., the court refused to grant jurisdiction because Japan had not explicitly and intentionally waived its sovereign immunity and because the claim presented a nonjusticiable political question.[241]

2. The New Source: Class-Action Corporate Litigation

In March 2002, Deadria Farmer-Paellmann filed a class-action lawsuit naming FleetBoston Financial Corporation, Aetna, and CSX as defendants.[242] "Plaintiffs and the plaintiff class are slave descendants whose ancestors were forced into slavery from which the defendants unjustly profited. Plaintiffs seek an accounting, constructive trust, restitution, disgorgement and compensatory and punitive damages arising out of Defendants' past and continued wrongful conduct."[243] The *Farmer-Paellmann* Complaint begins by detailing the history of slavery in the United States, beginning with the first slave ship arrival in Virginia in 1619 and ending with allegations that African Americans "lag behind whites according to

236. BITTKER, *supra* note 132, at 84-85.
237. *Id.*
238. Cato v. United States, 70 F.3d 1103, 1105 (9th Cir. 1995).
239. *Id.*
240. Hwang Geum Joo v. Japan, 172 F. Supp. 2d 52, 54 (D.D.C. 2001).
241. *Id.* at 56.
242. Complaint and Jury Trial Demand, Farmer-Paellmann v. Fleetboston Fin. Corp., ¶ 21 (E.D.N.Y. filed 2002) [hereinafter Complaint].
243. *Id.*

every social yardstick: literacy, life expectancy, income and education. They are more likely to be murdered and less likely to have a father at home."[244]

The dispute began when Farmer-Paellman discovered slave insurance policies in 1997, while researching a slave reparations paper for a law school class.[245] Such insurance policies allowed slaveowners to insure their slaves, paying the slaveowner money if the slave died.[246] Farmer-Paellman first contacted Aetna, the only insurance company to be named in her complaint so far, and requested copies of their slave insurance policies.[247] She received two policies.[248] In March 2000, Aetna apologized for its involvement in slavery, although it has records of only five such policies.[249]

Soon after Aetna issued its apology, the California State Legislature passed a bill requiring all insurance companies conducting business in California to submit records of any slaveholder insurance policies.[250] California's Slave Era Insurance Registry reported that ninety-two percent of insurers complied with the measure, but only eight out of thirteen hundred insurers provided comprehensive answers.[251] Although many other insurance companies undoubtedly provided slave insurance and have been named in other lawsuits,[252] Aetna was the only insurance agency named in the March 2002 *Farmer-Paellmann* Complaint.[253] The Complaint also names FleetBoston as a defendant based on its founder's ownership of ships involved in the slave trade and participation in the slave trade.[254] Finally, the Complaint names CSX as a defendant, citing that it is a successor-in-interest to "numerous predecessor railroad lines that were constructed or run, at least in part, by slave labor."[255]

Although the *Farmer-Paellmann* lawsuit seems to present a greater probability of success, even if by settlement and not through litigation in the courts, the Complaint does not set forth a "sure win" argument. The Complaint admits that the plaintiffs have not been

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244. *Id.* ¶¶ 2, 19.
245. Virginia Groark, *Slave Policies*, N.Y. TIMES, May 5, 2002, § 14, at 1.
246. *Id.*
247. *Id.*
248. *Id.*
249. *Id.*
250. *Id.*
251. Debra J. Saunders, *Forty Acres and a Lexus; California Governor Gray Davis Weighs in on Behalf of Slave Reparations*, WEEKLY STANDARD, May 28, 2002, at 27.
252. *See id.* On May 1, 2002, Richard E. Barber, a grandson of slaves, filed suit against three companies, one of which was New York Life. New York Life admitted to issuing slave policies. *Id.*
253. Complaint, *supra* note 242, ¶ 31.
254. *Id.* ¶ 29.
255. *Id.* ¶ 30.

able to secure records regarding their ancestors due to the near impossibility of accurately tracing records.[256] One critic writes that "none of these lawsuits has a prayer of succeeding,"[257] while others have criticized singling out a few companies "when the slave economy was something that the whole society bears some responsibility for."[258] However, Farmer-Paellmann asserts that the suit is "the first step," explaining that companies "have played a role and they should be held responsible. . . ."[259] Since the filing of *Farmer-Paellman*, numerous similar suits have been filed in jurisdictions throughout the United States against corporate defendants. In particular, suits filed in California and New York have been brought by the direct descendants of black slaves, as several of the plaintiffs are the sons of former slaves. Like *Farmer-Paellman*, the suits all name corporate defendants—from Lloyd's of London and JP Morgan Chase & Company to railroads and tobacco companies.[260]

III. CONCLUSION

While deeming slavery to be a "crime against humanity" is essential to success of a reparations claim, such a designation has not historically resulted in increased success. Under the current jurisdictional regime, the issue of slavery reparations for African Americans may never be resolved. While the WCAR was influential in that it declared slavery to be a crime against humanity, the practical application of the ruling may carry more force in the prosecution of other incidents of slavery.

The issue of slavery reparations can be fairly stated in terms of two separate divisions for purposes of reparations claims: past injustices that do not continue, and current and ongoing enslavement. Of the two categories, past injustices have encountered the majority of barriers to success due to the lack of identifiable victims, persecutors, and lack of causation. Additionally, the defendants frequently "blamed" for slavery—namely the U.S. federal and state governments—are protected by sovereign immunity and the statute of limitations. At common law, success for claims made by African

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256. *Id.* ¶ 45.

257. Saunders, *supra* note 251, at 28.

258. Groark, *supra* note 245 (quoting Tom Baker, Director of the Insurance Law Center at the University of Connecticut School of Law).

259. *Id.* (quoting Deadria Farmer-Paellmann).

260. *See* Duncan Campbell, *Descendants of US Slaves Sue Firms for Unpaid Work*, GUARDIAN, Sept. 5, 2002, *available at* LEXIS, News Library, Guardn File; Tara Young, *Slavery Reparations Federal Suit Filed; 200 L.A. Residents Make Claim*, TIMES-PICAYUNE, Sept. 4, 2002, *available at* LEXIS, News Library, Notpic File; Eric Bailey, *Slave's Sons Seek to Heal Wounds with Reparations*, L.A. TIMES, Sept. 8, 2002, at B1, *available at* 2002 WL 2503653.

Americans conceivably lies in the formation of "alternative" strategies, such as those currently being pursued by RAP. Likewise, while the WCAR arguably makes its greatest impact on international law-bolstered claims, the prosecution of these claims in the current international judicial forum seems unlikely, and the cause is not furthered by the creation of the ICC because its jurisdiction is restricted to prospective claims.

Additionally, the controversy and debate surrounding the final WCAR documents demonstrate that, while the intent of the WCAR was to make substantial progress in the movement for reparations, the resulting compromise avoided such language. This fact alone demonstrates that claims for reparations for past slavery are not likely to succeed until the idea is accepted by legislative and judicial government, and the compromise stands as a symbol that legislation, either national or international, cannot easily force the issue. Therefore, for the African American reparations movement, arguably the longest-running and most prominent outstanding claim, the WCAR's proclamation of slavery as a crime against humanity seems to have provided no substantial weight to the existing claim. In effect, lobbying for legislative relief for African American slavery reparations remains the most viable way to obtain reparations notwithstanding a shift in public opinion.[261] Still, some scholars claim that valid reparations claims can be made under international law because it may be more receptive to such claims, and additionally may be less biased.[262]

Furthermore, some argue that the events of September 11, 2001 set the reparations movement back.[263] While the WCAR ended on September 7, 2001, further discussion of the U.S. and Israel's exit from the Conference, as well as discussion of the contemplated pull-out by the European Union, were largely overshadowed by intense news coverage of international terrorism. Additionally, the legal battle was pushed back by September 11, as the "society-wide discussion on lawsuits that were scheduled to be filed (fall 2001) seeking reparations for African-Americans still harmed by slavery and its long aftermath" was brushed aside by a total commitment to news coverage and commentary surrounding domestic and international terrorism issues.[264]

Despite the existing barriers to reparations claims, the recent *Farmer-Paellmann* lawsuit, as well as subsequent similar suits, demonstrate that the reparations movement is alive and well. These suits demonstrate that reparations proponents will continue to search

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261. Levitt, *supra* note 109, at 33.

262. *Id.* at 40-41.

263. *See* Evan P. Schultz, *The Case After Slavery: Reparations Suits Redress Real Suffering of Racial Bias*, LEGAL TIMES, Nov. 29, 2001, at 34.

264. *Id.*

for new avenues to pursue their claims, and will not be deterred by the inaccessibility to government funding and the inability of the current judicial, legislative, and policy-based mechanisms to handle such claims. Importantly, the suits name corporate defendants that have kept record of slavery involvement, eliminating the weakness of past suits: the lack of an identifiable and culpable defendant. Interestingly, the resurgence of judicially-based claims for reparations did not occur alone; instead, the lawsuits are accompanied by a renewed public interest in slavery reparations as well as a rejuvenated reparations movement. The WCAR spurred an international debate on reparations and also laid the foundation for the Millions for Reparations march, protest, and rally that occurred on August 17, 2002 in Washington D.C.[265] Legislatively, Representative Conyers continues to endorse H.R. 40, and California Governor Gray Davis signed legislation forcing California insurance companies to report on their involvement in slavery, which has undoubtedly aided the common-law class-action claims. More recently, the city of Chicago passed an ordinance requiring all companies conducting business within the city to disclose profits gained from slavery, modeled after the California law.[266] Finally, in June 2002, the New York City Council held hearings on reparations, and a number of websites have been created to foster the reparations debate.[267]

Although the focus of the renewed reparations debate has primarily dealt with African American enslavement, the recent developments may affect many reparations claims that have been squashed in the past. African American activist Jesse Jackson has argued that the payment of reparations should not end with African Americans.[268] Jackson explained that Chinese Americans have a claim for "coolie" labor in building the railroads, citing a Manhattan Life admission that it "insured shippers for their cargo of seven hundred Chinese coolies on a journey from China in 1854."[269] Additionally, Jackson foresees a claim by Mexican Americans who worked for substandard wages because they lacked citizenship.[270] Such speculation may never materialize in the form of concrete, successful legal claims, but it demonstrates the depth of the current renewed reparations movement throughout the world.

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265. Merle English, *Rallying 10,000 Queens Marchers; Slavery Reparations are the Aim of an Aug. 17 Demonstration in Washington, D.C.*, NEWSDAY, Aug. 4, 2002, at G3.

266. Jerry Crimmins, *Daley Says Chicago First City to Order Slavery-Era Disclosures*, ASSOCIATED PRESS, Oct. 2, 2000.

267. English, *supra* note 265.

268. Saunders, *supra* note 251, at 28 (citing Jesse Jackson's comments in the *San Francisco Chronicle*).

269. *Id.*

270. *Id.*

Additionally, in examining potential claims of current enslavement, the WCAR may have a profound effect on the avenues available for victims of modern crimes. While the characterization may lend support and standing to those wishing to bring domestic causes of action for slavery, as well as genocide, rape, and other crimes against humanity, the developments of the WCAR and of international law in general also promote fair and equitable treatment. As is evident when examining claims for reparations based on past events, some situations exist where a states' legislature or judiciary is not independent and cannot provide a fair forum for the accused and the victims.[271] The Rome Statute creating the ICC has been viewed as a "responsible and well-drafted effort to establish a permanent tribunal that will be available for such situations."[272] International remedies, such as would be provided by the ICC, are particularly relevant in cases where a national government sanctions or refuses to prosecute the enslavement of its citizens.

These developments evidence a synergy in the reparations movement. However, proponents continue to face opposition and difficulty in identifying "directly harmed individuals," and in persuading lawmakers, judges, corporations and the public that reparations claims are meritorious. Yet, such monumental movements developing in tandem demonstrates that the reparations debate is widespread and that some action will be demanded. Whereas past claims may have failed for lack of coordination, the current litigation, pending legislation, and international developments show that the world is becoming increasingly united in its demand for reparations resolution.

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271. *See* Van Dyke, *supra* note 136, at 99 (referencing such situations in countries "still in turmoil").

272. *Id.* at 100.

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