NEW YORK LAW SCHOOL

NYLS Journal of Human Rights

Volume 5
Issue 2 *VOLUME V Part Two Spring 1988*

Article 6

1988

Reparations Now! A Suggestion Toward the Framework of a Reparations Demand and a Set of Legal Underpinnings

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REPARATIONS NOW! A SUGGESTION TOWARD THE FRAMEWORK OF A REPARATIONS DEMAND AND A SET OF LEGAL UNDERPINNINGS

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I. General Outline of the Case for Reparations

THIS paper is a suggestion toward the elaboration of a viable framework for the campaign for reparations, which are to be paid to the descendants of persons held as slaves in North America, by the United States government. It offers a set of legal/political underpinnings which may prove useful as a point of departure in making a compelling, logical case.

Annexed to this paper is a lean, proposed draft of legislation, which could be used as an initial framework for a bill in Congress. Like the preferred legal/political case which follows, the draft reparations legislation is a beginning, not the conclusion.

Where one distinguished author on the case for reparations, Professor Boris I. Bittker,[1] would have us forsake claims for reparations based on slavery and focus on claims arising since *Plessy v. Ferguson*,[2] this paper argues that reparations are due us from both slavery and post-slavery activities of the United States government. The focus of this paper, however, is on claims arising from our enslavement.

This is not to say that post-slavery claims are unimportant. They are quite important and a necessary part of our total package. In fact, during the past two decades a form of reparations has been won by a scattering of legal claimants and union activists attacking post-slavery discrimination in the United States'

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1. B. Bittker, The Case for Black Reparations 8-29 (1973).

2. 163 U.S.537(1896) (holding that separate-but-equal accommodations for black and white railroad passengers did not violate the Equal Protection Clause of the Fourteenth Amendment).

economic structure, although neither claimants nor repairers have used the term *reparation.* Recall that the *Weber*[3] case arose in the context of an affirmative action plan between the United Steelworkers of America and the Kaiser Aluminum Company & Chemical Corp., which sought to have the number of New Afrikans (i.e., "Black people") in the skilled trades at each plant reach a number equivalent to the number of New Afrikans in the local workforce. To achieve this, 50% of the places in in-plant craft training classes were reserved for New Afrikans. In the words of Justice Brennan, who wrote the opinion upholding the plan, the purpose was "to eliminate conspicuous racial imbalances in Kaiser's then almost exclusively white craftwork forces."[4]

In the first week of September, 1987, the state of Ohio deferred settlement of one-half of a NAACP law suit which asked back-pay and other provisions for New Afrikans who had been discriminated against in employment opportunities with that state's prisons.[5] Ohio did, however, settle the half of the suit which applied to women generally, agreeing to a payment of $3.75 million for women who had been denied jobs, or assignments at certain prisons. The settlement figure is largely for back-pay and (for women not hired) missed pay.[6] This settlement gives promise of a later settlement based purely upon racial discrimination.

On May 12, 1987, Judge Barrington Parker of the United States District Court for the District of Washington, D.C., approved a back-pay settlement in a ten-year-old racial discrimination, class action suit, which totaled $2.4 million dollars.[7] It covered 350 present and former New Afrikan employees of the United States Government Printing Office. Essentially the back-pay award was to compensate for salaries which would have been earned had there been no racial discrimination in promotions and in assignment to journeyman positions. Earlier, in 1981, the judge had imposed goals and timetables for promo-

3. United Steelworkers v. Weber, 443 U.S. 193 (1979).

4. *Id.* at 198.

5. Sharkey, *Women Win Suit, Back Pay As Guards,* Clev. Plain Dealer, Sept. 3, 1987, at A1.

6. *Id.*

7. Lewis, *Blacks at GPO Awarded $2.4 Million,* Wash. Post, May 13, 1987, at A5.

tions. These were met.[8]

A similar settlement was won by attorney Raymond Willis and other lawyers more than a decade ago against Bell Telephone of Michigan. There have been others since then.

Such settlements by private companies, as opposed to the United States or state governments, bear a resemblance to the private company settlements which have appeared in the scheme of West German reparations for victims of the Nazi regime. A year ago, for instance, Feldmuehle Nobel announced it would pay the equivalent of $2 million to Jews who worked as slave laborers in the industrial concern under the Nazi regime.[9]

I wish only to emphasize that post-slavery reparation claims, even if arguably stopped with events occurring in 1968, when the American state structure no longer contained racially discriminatory *laws*, are an important area for our proper attention.[10]

I turn here to the question of slavery-based reparations claims because of the enormity—duration and inhumanity—of the acts committed against us during the era of slavery and the failure of the United States governments, which gave the sanction and protection of the law to those acts and their perpetrators, to make any sincere and comprehensive attempt at rehabilitation and compensation, in consultation with us.

We who make the claim of reparations due for slavery are mindful of the disdain heaped upon our charges by people like Professor Bittker. Bittker writes:

> The preoccupation with slavery has stultified the discussion of black reparations by implying that the only issue is the correction of an ancient injustice, thus inviting the reply that the wrongs were committed by persons long since dead, whose profits may well have been dissipated

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8. *Id.*

9. *West German Company to Pay Jews It Used As Slave Labor*, Wash. Post, Jan. 9, 1986, at A28.

10. See the "present value" work of Professor Richard F. America and other economists, who calculate reparations owed for the effects of slavery, poor health, lack of education and other factors depriving New Afrikans of earnings. *See generally* Richard F. America, *Unjust Enrichment And Restitution: Defining And Measuring Current Benefits From Past Wrongs, Estimation And Policy Implications*, 5 N.Y.L.S. J. HUM. RTS. 413 (1988).

> during their own lifetimes or their descendants' and whose moral responsibility should not be visited upon succeeding generations, let alone upon wholly unrelated persons.[11]

Bittker goes on to quote Robert Penn Warren asking whether "an Athenian helot of the fifth century B.C. . . . [would] have a claim today on the Greek government."[12] Warren adds: "how many explosion-prone trade guns, ankers of rum and iron bars the Nigerian government owes what percentage of the twenty million American Negroes" for their role in capturing and then selling us?[13] "The whole thing is a grisly farce. Come to think of it, it smacks not of fantasy but of Bedlam."[14]

Such poorly disguised hostility toward righting a monstrous wrong against our people well suggests why in the past none of our serious efforts for reparations, even when aided by well intentioned Whites, has so far succeeded. This is so whether We hark back to the question of forty acres and a mule inserted by our friends in Congress into a Freedman's Bureau bill[15] and vetoed by Andrew Johnson (and not overridden by the Congress) or to our many efforts since then. This opposition by "liberal" Whites remains a practical obstacle of large magnitude.

While insisting that We should seek no redress for events which occurred only 120 years ago, none of these gentlemen, including Mr. Bittker, has seen fit to suggest that the inheritance laws in the United States be changed so that everyone else who is benefitting from a legacy accumulated 120 years ago foregoes it. I found no indication in Mr. Bittker's book that he or his associates, any of whom were benefitting from 120-year-old legacies, had volunteered to give them up. I see no need to argue the fact that labor was stolen from our people,[16] but I will make further comments sustaining the suggestion that reparations are due not just for stolen labor but for unjust war and cultural ag-

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11. B. BITTKER, *supra* note 1, at 9.
12. *Id.*
13. *Id.* at 10.
14. *Id.*
15. *See* W.E.B. DUBOIS, BLACK RECONSTRUCTION 273-77 (1975); *see generally* G. CABLE, THE FREEDMAN'S CASE IN EQUITY (1885).
16. But there are scholars who argue the *amount* of labor stolen and relate that to conditions of poor White workers.

gression. Whatever the amount owed, that amount constitutes a legacy, never paid, and due to the heirs.

To help put the 120 years into better perspective, it is useful to note that Justice Thurgood Marshall is described as the great-grandson of a person held as a slave.[17] While Justice Marshall is a few years older than I, I nevertheless remember my grandfather well, and he was born just as slavery ended, assuring that some of his relatives, perhaps even older siblings, had also been held as slaves. It is relevant, moreover, that the heritage which Mr. Bittker and other Whites enjoy in this country, even the immigrants, is what has been called *white skin privilege*: they benefit from a society, state, and economic structure which are governed by White supremacy—except for the state structure which ceased to be so governed only a decade ago—and while all of us may debate ingenious methods of operationalizing this data for measurement, there is no question that Whites in this country enjoy the fruits of 300 years of White supremacy. As a nation, the Whites have been unjustly enriched by our stolen labor and succored by our degradation. White individuals have partaken of all this.

The central proposition of this paper and the draft bill for reparations, annexed, is that our enslavement in the Thirteen Colonies and, later, in the United States, was a matter of *war*—war conducted against Afrika under authority, initially, of the British government and the legislatures of the Thirteen Colonies and ultimately under authority of the United States Constitution.[18] It was war conducted against Afrikan people—who grew into a nation, an oppressed nation, between 1660 and 1860—*within* the United States under British and Colonial authority and, ultimately, of the authority of the United States Constitution.[19]

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17. THE BURGER COURT 247 (V. Blasi ed. 1983).

18. U.S. CONST. art. I, § 9, cl. 1 states:

> [t]he Migration or Importation of Such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

19. U.S. CONST. art. IV, § 2, cl. 3 states:

> [n]o Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim

The conditions of our degradation, a subordinated and exploited people denied liberty by force, are too well-known to be re-documented or chronicled here. Justice Harlan, writing his dissent in the *Civil Rights Cases*,[20] said that the provisions of the 1850 Fugitive Slave Act "placed at the disposal of the master seeking to recover his fugitive slave, substantially the whole power of the nation."[21] The United States Army under Andrew Jackson destroyed the New Afrikan states in Florida.[22] Militia and White civilians carried war to all our communities in the woods. The United States military and White civilians put down the attempts of, first, Gabriel Prosser and then Denmark Vesey and John Brown and Osborne Anderson to seize land and build new Afrikan states.[23] For these state-builders the United States courts authorized bloody executions, corporal punishment, and transportation beyond United States shores. Moreover, the courts and executive functionaries coldly carried out the inhumane re-enslavement of inoffensive persons who had simply slipped away quietly from enslavement, doing harm to no one, seeking only a degree more freedom in the North.

It is the proposition of this paper, embracing propositions enunciated by the Provisional Government of the Republic of New Afrika[24] sixteen years ago, that the United States conducted war against the New Afrikan nation on this land throughout the era of slavery, that the war was authorized by the United States Constitution and carried out in aggressive military actions against the efforts of our people to seek freedom individually and to build New Afrikan states collectively, by the

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of the Party to whom such Service or Labour may be due.

20. 109 U.S. 3 (1883).

21. *Id.* at 30.

22. *See generally* LITTLEFIELD, AFRICANS AND SEMINOLES: FROM REMOVAL TO EMANCIPATION (1977).

23. For information on Gabriel Prosser, *see* 1 FONER, HISTORY OF BLACK AMERICANS: FROM AFRICA TO THE EMERGENCE OF THE COTTON KINGDOM 453-56 (1975); for information on Denmark Vesey, *see* Introduction by J.O. Killens, The Trial Record of Denmark Vesey (1970) for information on John Brown and Osborne Anderson, *see* W.E.B. DUBOIS, JOHN BROWN (1962) and O. ANDERSON, A VOICE FROM HARPERS FERRY (Boston 1861).

24. *See* the PG-RNA's brochure, THE PROVISIONAL GOVERNMENT REPUBLIC OF NEW AFRIKA, A PEOPLE'S STRUGGLE (1986) (obtainable at Box 90604, Washington, D.C. 30090-0604). Throughout this paper, the Provisional Government of the Republic of New Afrika is referred to in any of the following abbreviated forms: Provisional Government; RNA; RNA Provisional Government; PG-RNA; PG.

United States government itself, by the various state governments and by civilians mobilized against the New Afrikan people and nation.

It is the propostion of this paper that reparations must be part of a general settlement of the war which the United States had waged against us. In keeping with settlements consummated, at the end of World War I and World War II, and with the precedents of international law created by these settlements, the settlement for New Afrikan people must include not simply reparations but exercise of the free and informed right to self-determination by our people and the release of our militants, soldiers, prisoners of war now in jails who were taken in defense of our nation against the United States.

In summary, the money damages due are, of course, for labor stolen from our forebears, and for cultural assault, and for unjust war, with accumulated interest. But the money portion of our reparations must be a significant contribution toward *rehabilitation*: repatriation for those who wish and can achieve citizenship in an Afrikan state, rehabilitation of the New Afrikan states and incipient states, and their successors, destroyed on this soil during the war which was slavery, and afterwards. There must be payments for rehabilitation of us as a people in recognition of the design followed in the United States to make us into a race of ignorant subservients, unable to revolt, and forgetful that We had a duty to do so. Lerone Bennett, writing in his *Confrontation: Black and White*[25] gives one compelling summary of some aspects of the cultural aggression for which reparations are due. He writes:

> Anticipating the devious tactics of the modern police state, masters laid hands on the minds of their chattel. By the old method of the carrot and the stick, by terror and by smiles, by whips, chains, words, symbols, prayers, and curses, the Negro was taught to "stand in fear" of white power.
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> In some such manner, Africans were given a new conception of themselves, a conception that carried as core-elements guilt, anxiety, and inferiority. The laying of hands on the mind of a whole people, the pulling out

25. L. BENNETT, CONFRONTATION: BLACK AND WHITE (1965).

> by the roots of old customs and habits, continued for hundreds of years. Hundreds of thousands died in the process, and hundreds of thousands went insane. But millions survived, maimed to be sure, shrunken, shriven, *diminue* but, withall, alive and breathing . . . .[26]

There are certainly reparations due to certain Afrikan states for the war which the United Stated authorized (and protected) against them; to us, as well, for our states that were weakened or destroyed in Afrika during the course of America's war there, which resulted in our enslavement. (A state, with its army, protects the people. People cannot be harmed by outsiders unless the army is destroyed, rendered ineffective, or co-opted.) And it is also true that discussions must be held with Nigeria and other states on reparations for us. These could involve not simply trade arrangements but substantial political and diplomatic assistance for those of us who want independent statehood.

Those discussions are separate, however, from the claims against the United States—and the subject of this paper.

The precedents for the claims described above are to be found in

(1) the agreements which concluded World War I and World War II;[27]

(2) the United States Supreme Court case, *United States v. Libellants and Claimants of the Schooner Amistad*;[28]

(3) the New International Law Regime, which took its rise with the *Declaration On The Granting of Independence to Colonial Countries and Peoples*;[29] and,

(4) the principles involved in the work of the *Indian Claims Commission*.[30]

With respect to the lapse of time beween the United States' initial cease-fire against us (the Thirteenth Amendment of December 1865)[31] and Queen Mother Moore's proffer of the Ethio-

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26. *Id.* at 32.
27. *See infra* Section III.
28. 40 U.S. (15 Pet.) 332 (1841).
29. G.A. Res. 1514, 1 U.N. GAOR Supp. (No.16) at 188, U.N. Doc. A/4684 (1961).
30. 25 U.S.C.A. § 70 - 70n-2 (omitted Sept. 30, 1978); § 70n-3 (repealed Jan. 2, 1975, 88 stat. 1970, Pub. L. 93-608 § 1(16)); § 70n-4 - 70v-3 (omitted Sept. 30, 1978); § 70w (repealed May 24, 1949, c. 139, § 142, 62 stat. 109) (1946).
31. U.S. CONST. amend. XIII.

pian Women's complaint against the United States and petition for reparations to the United Nations in 1958,[32] three comments are particularly appropriate. First, Queen Mother Moore's efforts were not a beginning; at no substantial period during the era since slavery have our people neglected wholly the campaign for reparations. Second, it has been the power of the United States and its refusal to consider reparations for New Afrikans which has frustrated our efforts heretofore, not any failure on our part to pursue these demands.

This is relevant to the legal doctrine of *laches*. Based upon the maxim that equity aids the vigilant and not those who slumber on their rights, the doctrine of laches operates against one who neglects to assert a claim when such neglect, considered with the passage of time, harms the adverse party. Laches could, of course, become applicable where it is the *heir* of the party against whom the claim is asserted, rather than the actual offending party. Justice Paul Stevens of the U.S. Supreme Court, writing the dissent in *County of Oneida, New York v. Oneida Nations*,[33] arguing that a claim of the 1795 transaction should have been barred by laches, put it this way: "The Court recognized that the long passage of time, the change in the character of the property, the transfer of some of the property to third parties, the absence of any obvious inadequacy in the consideration received in the original transaction, and Patrick's lack of direct participation in the original transfer all supported a charge of laches against the plaintiffs."[34] (Of course, hardly anyone would argue that there was any *adequacy* in the consideration - i.e., pay and room and board - provided persons held in America as slaves.)

In this case the Supreme Court majority was unconvinced that laches could be applied and pointedly emphasized that Congress should act in such matters. The Court added: "One would have thought that claims dating back more than a century and a half would have been barred long ago. As our opinion indi-

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32. *See A Witness to History*, N.Y. Daily News, Feb. 3, 1985, at 3, col. 1. For more information regarding Queen Mother Moore, see WORLD FEDERATION OF AFRICAN PEOPLE, INC. INTERNATIONAL HEADQUARTERS, BIOGRAPHICAL RELEASE (undated) (available at Mt. Addis Ababa, Box 244, Parksville, New York 12768).

33. 47 U.S. 226 (1985).

34. *Id.* at 264.

cates, however, neither petitioners nor we have found any applicable statute of limitations or other relevant legal basis for holding that the Oneidas' claims are barred or otherwise have been satisfied."[35]

Finally, it should be noted that under the Franco-German peace treaty of May 10, 1871, the French lost an area known as Alsace-Lorraine, and many French citizens, resident in Alsace-Lorraine, lost French citizenship.[36] *Fifty years later*, under the Versailles Treaty which ended World War I and went into force on January 10, 1920, France not only received Alsace-Lorraine once more but reinstated French citizenship.[37] Only the Germans batted an eye.

II. Was It War And Do We Have Self-Determination Rights?

Two essential questions should be addressed. First, was it war? Second, do New Afrikans have self-determination rights? Also implicated is the question as to whether New Afrikans in the United States constitute a "nation." We turn now to the first question.

In general, "war" has been held to be traditionally of two types, conflicts between states, which are governed by international law and practice, and civil wars, in which a part of a state contends for sovereignty over territory claimed by the parent-state. Lately, conflicts of liberation movements, including conflicts like that in South Afrika at the present time, where the liberation forces are unable to place armies openly in the field or to hold and govern territory openly, have gained status under the international law. The 1977 Protocol to the Geneva Conventions of 1949, states in Article One:

> 4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination, as enshrined in the Charter of the United

35. *Id.* at 253.

36. Treaty of Peace Between France and Germany, May 10, 1871, 143 Parry's T.S. 163.

37. Treaty of Versailles, June 28, 1919, 225 Parry's T.S. 189, 232-33.

> Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[38]

The record is replete with instances of armed conflict and armed suppression of suspected militants by the United States, during and after slavery.[39] Moreover, the general conditions of slavery make clear also that We were subject during the slavery era to "colonial domination and alien occupation." When one considers the persistent action of the United States and its political subdivisions against our communities in the woods and against the Apalachicola and Seminole states in Florida,[40] against Tunis Campbell's state, set up on Sapelo and St. Catherine's Islands, off Georgia, after the Civil War,[41] the words of Justice Johnson, concurring in the decision against the Cherokee in *Cherokee Nation v. Georgia*,[42] come readily to mind:

> That in pursuance of those laws, the functionaries of Georgia have entered their territory, with an armed force, and put down all powers legislative, executive, and judicial, exercised under the government of the Indians.
>
> What does this series of allegations exhibit but a state of war, and the fact of invasion? They allege themselves to be a sovereign, independent state, and set out that another sovereign State has, by its laws, its functionaries, and its armed force, invaded their state and put

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38. *See* M. POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE 53 (1982) (citing the 1977 Protocol to the Geneva Convention of 1949, Article One).

39. *See, e.g.*, HERBERT APTHEKER, AMERICAN NEGRO SLAVE REVOLTS (5th ed. 1983); Imari Obadele, *The First New Afrikan States*, 16 THE BLACK COLLEGIAN 86 (Jan./Feb. 1986); United States v. Price, 383 U.S. 787 (1966) (eighteen white men, including three law enforcement officials, were convicted in Mississippi for murdering three New Afrikans); Moore v. Dempsey, 261 U.S. 86 (1923) (the conviction of five New Afrikans for the murder of a white man following a series of violent incidents directed against New Afrikans was unconstitutional under the due process clause); United States v. James, 528 F.2d 999 (5th Cir. 1976) (the convictions of five citizens of the Republic of New Afrika resulting from a raid by FBI Agents and Jackson City police on the RNA capitol were affirmed).

40. *See* LITTLEFIELD, *supra* note 22.

41. *See* sources cited *infra* note 46.

42. 9 U.S. (5 Pet.) 178 (1831) (The Court denied injunctive relief for lack of jurisdiction. The Cherokee Nation is not a foreign nation with respect to certain Constitutional provisions.).

> down their authority. This is war in fact, though, not being declared with the usual solemnities, it may, perhaps, be called war in disguise.[43]

Professor von Glahn notes that "a British report in 1870 showed that between 1700 and 1870, a total of 107 conflicts had been initiated without the formality of a declaration of war."[44] He goes on: "The United States, too, has conducted wars without a declaration: an undeclared war with France from 1798 to 1801, the invasion of Florida in 1811 under Generals Jackson and Matthews, the brief Mexican invasion in 1916, the undeclared war with the Soviet Union in 1918-1919, and, of course, the Vietnamese conflict from 1947 onward (for the United States, from March 7, 1965, to March 29, 1973). (Footnote omitted)"[45]

The effort of some New Afrikans to form an independent state has been an almost continuous effort from the time of our first flight and revolts in this land to the present. The state-building of Tunis Campbell had hardly been put down when Henry Adams and his associates in Louisiana and Mississippi began their appeals to Congress for "land anywhere."[46] Edward

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43. *Id.* at 191.

44. G. VON GLAHN, LAW AMONG NATIONS 627 (5th ed. 1986).

45. *Id.*

46. U.S. Senate Hearings, Vol. 8, No. 693, 1880. Tunis Campbell's state is mentioned in DUBOIS, *supra* note 15. *See also*, EDWARD MAGDOL, A RIGHT TO THE LAND, ESSAYS ON THE FREEDMAN'S COMMUNITY 104-106 (1977). Magdol also describes other self-governing New Afrikan communities. The following paragraphs on Governor Campbell's state come from the dissertation of Imari Obadele, OBADELE, NEW AFRIKAN STATE-BUILDING IN NORTH AMERICA 345-57 (University of Michigan Microfilm 1985):

> In 1864 General Saxton had appointed the Reverend Tunis G. Campbell, a New Jersey born Methodist Episcopal minister who had arrived in Beaufort, South Carolina, two years earlier, as organizer for St. Catherine, Sapelo, Ossabaw and other islands. Campbell testified that Saxton had appointed him governor. (Footnote omitted) In any event, Campbell, building his central community on Sapelo and St. Catherine Islands, claimed jurisdiction over mainland territory to a depth of thirty miles. With thirteen United States troops assigned to provide the defense that Sherman's order specified, Governor Campbell organized his government's own force of 275 men. The government included a House of Representatives and a Senate, and among its laws was one, tracking Sherman's order, which excluded all white people. (Footnote omitted)

DuBois, speaking of Johnson's pardons to ex-Confederates and the restoration of their "titles" to land held by New Afrikans, particularly the sea islands, stated: "The landlords hurried to get their pardons and to take back their lands. The Negroes resisted sometimes with physical force." DUBOIS, *supra* note 15, at 386.

McCabe's efforts to make Oklahoma a black state[47] (initially, at least, within the United States federal union), preceded the work of Marcus Garvey by more than a generation, but there is linkage between Marcus Garvey and Elijah Muhammed and Al Hajj Al Malik Shabazz, *Malcolm X*.[48] Malcolm's work gave birth to the Provisional Government, Republic of New Afrika, which today and since 1968 has led the effort for the establishment of an independent New Afrikan state in Mississippi and four other Deep South states.[49]

If the level of United States military attacks against New Afrikans and the New Afrikan nation receded in the period following the Civil War, our colony was nevertheless subject to a racially conscious policy by sheriffs and local police. The army would appear to suppress us during uprisings such as those in 1919, the 1940s, and the 1960s. The reason for the reduction in naked military attacks lay mainly in our resort to parliamentary means of struggle, after the Civil War. But there was no abandonment of the drive for independent New Afrikan statehood—nor for the other two objectives toward which *some* of our people had striven traditionally: (1) the changing of the United States from a racist polity and full citizenship in the United States; and (2) return to Afrika.

It is relevant to the charge of war against the United States that We were still an occupied and oppressed nation in this period between the Civil War and 1968. We were a colony living on territory claimed by the United States, subject until 1968 to a body of legislation and court decisions which defined our subordination to the White nation and facilitated the White nation's economic and cultural exploitation of us, and our social degradation.[50]

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47. *See* J. FRANKLIN, JOURNEY TOWARD HOPE: A HISTORY OF BLACKS IN OKLAHOMA 13-15 (1982).

48. For information on Marcus Garvey, see E. CRONON, BLACK MOSES: THE STORY OF MARCUS GARVEY AND THE NEGRO IMPROVEMENT ASSOCIATION (1955), and for information on Elijah Muhammed and Malcolm X, see L. LOMAX, WHEN THE WORD IS GIVEN: A REPORT ON ELIJAH MUHAMMED, MALCOM X, AND THE BLACK MUSLIM WORLD (1963), and MALCOLM X with A. HALEY, THE AUTOBIOGRAPHY OF MALCOLM X (1965).

49. The "five states" are Louisiana, Mississippi, Alabama, Georgia, and South Carolina. *See* THE PROVISIONAL GOVERNMENT REPUBLIC OF NEW AFRIKA, A PEOPLE'S STRUGGLE, *supra* note 24.

50. *See* THE AGE OF SEGREGATION: RACE RELATIONS IN THE SOUTH, 1890-1945 (R. Haws ed. 1978); Derrick Bell, *The Racial Imperative in American Law*, in THE AGE OF

Even the Malcolmites, who after March 1968 led the struggle for independent statehood and who were resolute practitioners of armed self-defense, eventually supported by the Black Liberation Army, pursued a strategy of attempting to organize, peacefully, an independence plebiscite.[51] This parliamentary strategy was in accordance with the precepts of the New International Law Regime, ushered in by the United Nations' *Declaration On the Granting of Independence to Colonial Countries and Peoples*,[52] in 1960. When the organizing of the armed, self-defending cadres of the Provisional Government accelerated in Mississippi in 1971, however, the United States turned to its military option. At dawn on Wednesday, August 18, 1971, a force of FBI Agents and Jackson City police, accompanied by an armored truck, attacked the official Provisional Government Residence.[53] After twenty minutes of heavy gunfire exchange, the seven occupants of the house, along with the four who had spent the night at the office several blocks away, were charged with conspiracy, the murder of the police lieutenant who died in that attack, and the assault of the FBI Agent and the policeman who were wounded.[54] In the fall of 1981 the United States brought massive military force to bear in McComb County, Mississippi, to arrest Sister Fulani Sunni Ali, a longtime RNA officer, who was quietly conducting a summer camp for children in the country.[55] The pretext was the New York Brinks incident, during which Black Liberation Army members, and some of their White supporters were implicated, some arrested and jailed, and one murdered in cold blood by police as he lay helpless on the ground.[56]

SEGREGATION: RACE RELATIONS IN THE SOUTH, 1890-1945 (R. Haws ed. 1978); JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM (5th ed. 1980); LERONE BENNETT, JR., BEFORE THE MAYFLOWER (5th ed. 1982); and VINCENT HARDING, THERE IS A RIVER, THE BLACK STRUGGLE FOR FREEDOM IN AMERICA (1981).

51. The Black Liberation Army, an underground formation, grew out of the East Coast Black Panthers in the early 1970s. The Army has been implicated in bank hold-ups and Brinks armored truck robberies, and shooting battles with police.

52. G.A. Res. 1514, 1 U.N. GAOR Supp. (No. 16) at 188, U.N. Doc. A/4684 (1961).

53. United States v. James, 528 F.2d 999, 1007-8 (5th Cir. 1976). *See also*, IMARI OBADELE, FREE THE LAND! (1984). Nine of the RNA-11 spent four to ten years in prison.

54. *James*, 528 F.2d at 1008-9.

55. *See* Maitland, *Two New Brink's Suspects Held in Mississippi and Manhattan*, N.Y. Times, Oct. 28, 1981, at A1, col. 1 and B6.

56. *See* McFadden, *Man Killed in Queens Car Chase; Plate Tied to Armored-Car*

If it is possible to argue that the *form* of the war against us changed after the Civil War, from military activity to occupation duties, the United States kept the military sanction always ready—and, from time to time, used it.

The question was *land.* The United States government, unable to export us *en masse* after the Civil War, was not especially concerned that United States policies had fueled our growth as a separate people—giving us our own perspective and history and common gene pool, raising up, between 1660 and 1860, a vastly numbered New Afrikan nation on this soil. Our status as a nation, despite our numbers, posed little more problem for the United States than the many Indian nations—so long as We did not focus overly on our separateness and nationhood, and so long as We did not seriously act for statehood, for sovereignty over land. The international law was shaped by Europeans and their conquests, with respect to sovereignty over land, national *title* to land, and the law was clear. For instance, the principle of *prescription* still means that a state may acquire title over land, originally belonging to another state, by occupation over a long period of time.[57] How long is a "long" time? There seems to be no generally accepted international standard. One United States court decision, dealing with awards to Indian states, determined that title to land could be recognized for a group which had occupied it without interruption for 50 years.[58] The United States' objective with respect to the RNA Provisional Government (PG-RNA) was to prevent undisturbed occupation for *any* period of time.

There is little doubt that the United States realized that a form of the prescription principle is embedded in the New Afrikan Creed, which today is part of the Republic's constitution, the *Code of Umoja,* and which is recited by gathered Provisional Government cadre at meetings and all important occasions. "I believe," runs the paragraph from the *Creed,* "that all

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Gang, N.Y. Times, Oct. 24, 1981, at A1, col. 3 and A8, col. 1; Maitland, *Police Find a History of Arrests,* N.Y. Times, Oct. 24, 1981, at A8, col. 1.

57. VON GLAHN, *supra* note 44, at 317.

58. United States v. Seminole Indians of Fla., 180 Ct. Cl. 375 (1967). Another of the cases arising under the Indian Claims Commission indicates that the length of time of occupancy should permit that people to transform land to domestic territory. Confederated Tribes of Warm Springs Reservation v. United States, 177 Ct. Cl. 184, 194 (1966).

the land in America, upon which We have lived for a long time, which We have worked and built upon, and which We have fought to stay on, is land that belongs to us as a people." (That claim is constitutionally subject to the just claims of the Indians.) There is little doubt that the United States understood that the PG was acting upon this principle in Mississippi.

The particular problem for the United States was that the Provisional Government had been created at a founding convention and then regularly elected, by *popular vote* since 1975. Although the voting has always taken place in several cities, the totals, so far, have always been small—the largest being the 5,000 cast in 1975. But the *fact* of the vote and the *potential* for it becoming a widespread institution among New Afrikan people, despite the perpetual press "white-out" of New Afrikan activities, posed and pose a serious problem for United States policy-makers. To begin with, the United States is a party to the 1933 *Convention on Rights and Duties of States*,[59] done at Montevideo. This convention's definition of the "state" is in fact the definition which has entered into the principles of United States law, repeated in numerous contexts. [60] Article One of the convention states:

> The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) the capacity to enter into relations with the other states.[61]

The Provisional Government was (and is) a democratically elected government; it was voted for in Mississippi, which testified to representation of a permanent population, and it had carried on various nascent forms of relations with China and Cuba (and, in the days since the Mississippi effort of the 1970s, is continuing to broaden these relations with other states). What was lacking, then, to convert this state-building entity, the Provisional Government, into a state was uninterrupted possession of *land.*

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59. Rights and Duties of States (Inter-American), Dec. 26, 1933, 49 Stat. 3097, 3 Bevans 145.

60. *See*, 1 WHITEMAN, DIGEST OF INTERNATIONAL LAW, DEP'T OF ST., PUB. No. 7403, 221 (1963).

61. Rights and Duties of States, *supra* note 59, 3 Bevans at 147.

The United States' attack on the Provisional Government in Mississippi and the subsequent major de-stabilization of the Provisional Government by the jailing of some of its leaders and a continuation of the FBI's disinformation campaign were simply consistent with the attacks in former days on Gabriel Prosser, Denmark Vesey, John Brown and Osborne Perry Anderson, the New Afrikan states in Florida, and the state of Tunis Campbell. The rationale was simple and obvious: the United States, which into this century was completing the process of driving the Indians from seats of sovereignty from sea to shining sea, from the Canadian border to Mexico and the Gulf, was not prepared to abide the creation of an independent New Afrikan state in North America. Thus, the attacks, the recurrent hot war.

But there was a difference in the international law regime under which the military actions against the New Afrikan states and state-builders before 1960 were carried out and the international law regime under which United States military attacks against the Provisional Government were carried out *after* 1960. The *Decolonization Declaration*[62] said, simply that "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[63] This language has been carried over into the human rights conventions. It was a victory of the Afro-Asian bloc in the General Assembly, achieving numerical prominence for the first time in 1960, and it marked a revolution in the international law. The Declaration states: "4. All armed action or repressive measures of all kinds directed against independent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence . . . ."[64] The Declaration makes liberation struggles lawful and, possibly, peaceful.

Theretofore, the international law that counted had been written and accepted by the United States and European powers. It served the ratification of their conquests of the rest of the world and codified practices which *they* had found to be mutually convenient. The Versailles Treaty of 1920,[65] ending World

62. G.A. Res. 1514, 1 U.N. GAOR Supp. (No. 16) at 188, U.N. Doc. A/4684 (1961).
63. *Id.* at 189.
64. *Id.*
65. Treaty of Versailles, June 28, 1919, 225 Parry's T.S. 189.

War I, joins the Berlin Treaty of 1885,[66] as a leading statement of the international law as the White and powerful states of the world saw it and enforced it. This document provided for our degradation: it left the Afrikan and Asian *colonies* of the World War I victors in place, and, instead of freeing those held by the defeated Germany, *gave* our hapless countries and peoples to the mandated "care" of Britain, France, and Belgium—at the same time that this treaty was concretizing *self-determination* as a right for Czechs and Poles and several other peoples in Europe.[67]

The Afro-Asians in 1960, with the assistance of Canada and a few other states, rewrote the international law: from that point, not only Europeans but *all* peoples had the right to self-determination. A subsequent, relatively rapid development of the law, followed. The principle of self-determination was incorporated in the *Declaration on the Principles of International Law in October, 1970.*[68]

The United States abstained from voting on the 1960 Declaration, objecting to the word "independence" in the title, arguing that independence was not the only possible result of an act of self-determination by a people. But the United States Representative, James J. Wadsworth, speaking to a plenary session of the United Nations General Assembly on December 6, 1960, made these extraordinary remarks, which, of course, under United States constitutional principles are deemed to be the words of the United States President and an authoritative statement of international law as the United States views it:

> First let me say what we mean by colonialism . . . . It is the imposition of alien power over a people, usually by force and without the free and formal consent of the governed. It is the perpetuation of that power. It is the denial of the right of self-determination—whether by suppressing free expression or by withholding necessary educational, economic, and social development. Obviously not all colonial regimes have been the same . . . .

66. General Act of the African Conference, Feb. 26, 1885, 76 British and Foreign State Papers 4.

67. Treaty of Versailles, *supra* note 65.

68. G.A. Res. 2625, GAOR Supp. (No. 28) at 337, U.N. Doc. A/8028 (1971).

> But, however important these differences, the fact remains that colonialism in any form is undesirable. Neither the most benevolent paternalism by a ruling power nor the most grateful acceptance of these benefits by indigenous leaders can meet the test of the charter or satisfy the spirit of this age.[69]

The *Declaration on the Principles of International Law* in its "principle of equal rights and the self-determination of peoples," states, *inter alia*:

> Every State has a duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination . . . bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter of the United Nations.
>
> The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.[70]

Now, the United States' ratification of the concepts contained in the two cited Declarations does not rest, alone, upon Ambassador Wadsworth's extraordinary 1960 remarks. Mr. Reagan's administration, in arguing in favor of the commonwealth and free association arrangements which the United States was implementing with the Marshall and Mariana Islands—part of the "Strategic Trust" of the Pacific mandated to the United States after World War II—explicitly embraced the self-determination formulation cited, above, in the *Declaration on the Principles of International Law*.[71]

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69. DEP'T OF ST. BULL., U.S. DEP'T OF ST., PUB. NO. 1123, UNITED STATES PRESENTS VIEWS ON COLONIALISM 21,22 (1961).

70. G.A. Res. 2625, *supra* note 68 at 339-40.

71. Specifying the paragraph, above, on "modes of implementing the right of self-determination," Ambassador Harvey J. Feldman, on 21 May 1985, told the Trusteeship Council: "To paraphrase a famous quotation, *this* criterion is the law, and all else is commentary." (Emphasis in original) U.S. Mission to the United Nations, USNN 49-85,

There is, of course, the important question here as to whether or not New Afrikans constitute a "people" and a *nation* within the contemplation of the self-determination provisions of the international law and/or standards of domestic law binding, arguably, upon the United States.

Our right to international law rights, I argue, was in fact established by the United States Supreme Court nearly 150 years before Ambassador Feldman embraced the self-determination principle in the *Declaration on the Principle of International Law.* This was done by the court's ruling in the *Amistad* case.[72]

In 1825, 36 years after the present United States Constitution had gone into effect and 18 years after that Constitution had banned the slave trade, Chief Justice John Marshall, while expressing abhorrence for the trade, refused to acknowledge, for Afrikans brought before him after being taken in the trade, any right to self-determination.[73] Justice Marshall reasoned that while Great Britain and the United States had abandoned the horrid trade and were inveighing upon other states to do so, all other countries had *not* yet done so. Thus, he wrote: "the legality of the capture of a vessel engaged in the slave trade, depends on the law of the country to which the vessel belongs. If that law gives its sanction to the trade, restitution will be decreed; if that law prohibits it, the vessel and cargo will be condemned as good prize."[74]

But 16 years later the United States Supreme Court, faced again with a group of Afrikans who had reached these shores after having been taken in the illegal slave trade, was able to

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Press Release, "Statement by Ambassador Harvey J. Feldman . . . ." 21 May 1985. New York: 199 United Nations Plaza, New York, N.Y. 20017.

72. United States v. Libellants and Claimants of the Schooner Amistad, 40 U.S. (15 Pet.) 332 (1841).

73. The Antelope, Vice-Consuls of Spain and Portugal, 23 U S. (10 Wheat.) 268 (1825) A Privateer ship under Venezuelan commission with an American crew, captured three ships off the coast of Afrika. The ships were from the United States, Spain, and Portugal and carried some Africans. The privateers, and their prisoners, were found off the coast of Georgia and brought into port for adjudication by a revenue cutter. The issues of the case were which Afrikans were from which ship, and who belonged where. (Sixteen were determined to be from the American ship.) Spain and Portugal demanded the Afrikans as slaves who had, in the regular course of business, been acquired as property, while United States law said they were men. *Id.*

74. *Id.* at 281.

find in them their individual right to self-determination. In *The Amistad*, the Afrikans had successfully revolted on shipboard and were in command of the vessel when they and it were seized by a small United States naval force off Long Island, New York.[75] United States Navy Lieutenant Gedney sued for salvage. Spain and the private owners asked return of the ship and the Afrikans, as slaves. The United States asked that the Afrikans be turned over to the President for return to the coast of Afrika in accordance with the act of March 3, 1819, mandating such treatment for persons freed by the United States in the illegal slave trade.[76]

Justice Story, delivering the opinion of the Court, wrote:

> It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under the circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law.[77]

Justice Story further emphasized the right of these Afrikans to the impartial application of the international law in United States courts and to their right to self-determination, as he, in concluding the opinion, noted that the United States no longer insisted upon the Afrikans being delivered to the United States President. He wrote:

> [T]here is no ground to assert that the case comes within the purview of the act of 1819, or of any other of our prohibitory slave trade acts. These negroes were never taken from Africa, or brought to the United States in contravention of those acts. When the Amistad arrived she was in possession of the negroes, asserting their freedom; and in no sense could they possibly intend to im-

75. *The Amistad*, 40 U.S. at 335-338.
76. *Id.* at 338-339.
77. *Id.* at 384.

> port themselves here, as slaves, or for sale as slaves. In this view of the matter, that part of the decree of the District Court is unmaintainable, and must be reversed. . . .
>
> Upon the whole, our opinion is, that the decree of the Circuit Court, affirming that of the District Court ought to be affirmed, except so far as it directs the negroes to be delivered to the President, to be transported to Africa, in pursuance of the act of the 3rd of March, 1819; and, as to this, it ought to be reversed; and that the said negroes be declared to be free, and be dismissed from the custody of the Court, and go without day.[78]

This development in the law did not, of course, extend the right of self-determination to the two-and-a-half million New Afrikans held as slaves; they were still deemed property.

What it did do was to establish the precedent that when kidnapped and enslaved Afrikans are no longer held as slaves, they stand before the courts of the United States entitled to the free exercise of choice—self-determined choice—as to their future. It follows that when the thirteenth amendment ended slavery—*without* offering the formerly enslaved New Afrikan United States citizenship—the New Afrikan, and all of them, were in the same position as the *Amistad* Afrikans: not slaves "but kidnapped and free" New Afrikans. They were entitled then—and We are entitled now, as their heirs to a right never used—to exercise political self-determnation.

If it were otherwise—if, in short, the United States could *impose* United States citizenship upon the freed people—then their freedom did not exist. For the touchstone of slavery was that the slavemaster could make the most fundamental decisions, including political ones, *for* the person held as a slave and *without* that person's free and self-determined consent.

It is certain, almost, that the 1883 Supreme Court which proved so hostile to the rights of the freed New Afrikan intended no blanket endorsement of self-determination for New Afrikans. (That Court might not have objected to our right to return to Afrika.) However, it correctly interpreted the sweep of the thirteenth amendment, writing that by "its own unaided

78. *Id.*

force and effect it abolished slavery, and established universal freedom" and that the thirteenth amendment "has a reflex character also, establishing and decreeing universal civil and political freedom throughout the United States." [79]

I am not aware that the United States Supreme Court or any federal circuit court of appeals has adopted this argument as the law. It is a case for us yet to make. Afrikans, descendants of persons held in the United States as slaves, have no valid United States citizenship because few of us have exercised the right to self-determination on the basis of full information and without duress of any kind: the free exercise of self-determination requires that the individual know, first, that he or she possesses the right to self-determination and is entitled to say "no" as well as "yes" to the fourteenth amendment's offer of United States citizenship. Strategically, this situation offers our people a new vantage point from which to seek and negotiate for whatever are our political (and economic) objectives. This includes our reparation rights.

To sum up, I have argued here that the United States has waged war against us, as individuals and as a nation. (I have deferred the question of whether We are a nation under international law.) My central and underlying point is that our reparations, based upon slavery claims, are best presented in the context of the United States having waged war against us and in the context of the United States having denied us the exercise of our right to self-determination.

This is because the most fruitful precedents for our reparation claims are those which have arisen out of the reparations payments and the self-determination arrangments made in settlement of World War I and World War II. It is also because the fact is that the United States *did* wage a most heinous war against us.

Permit me to offer this final comment on self-determination and the vitality of the right. A seminar on legal aspects of the struggle against apartheid was held, under the auspices of the United Nations Special Committee Against Apartheid and of the Government of Nigeria, from August 13 to 16, 1984, at Lagos.[80]

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79. The Civil Rights Cases, 109 U.S. 3, 20 (1883).

80. *See* UNITED NATIONS SPECIAL COMMITTEE AGAINST APARTHEID, REPORT OF THE

It drew "together jurists and social scientists from a number of countries in Africa, Europe, North America and Asia, representing the principal legal systems of the world." Included was the secretary-general of the International Commission of Jurists. In its concluding, formal Declaration,[81] the Seminar stated:

> The right to self-determination has emerged as part of *jus cogens*, overriding principles or imperative norms of international law which cannot be set aside by treaty or acquiescence, but only by the formulation of a subsequent norm of the same States to the contrary.[82]

III. NEW AFRIKANS AS A NATION AND THE REPARATIONS PRECEDENTS

It may be possible to devise a strategy designed to win reparations, for slavery-rooted claims, based on damage to the individual, without reference to any group. The Versailles Treaty's assessment of reparations against Germany, at the end of World War I, provides for "[d]amage[s] to injured persons and to surviving dependents by personal injury to or death of civilians caused by acts of war" and damages for several other types of injuries to civilians.[83] But these damages for reparation were paid to *governments* through the "Reparation Commission" set up by the governments.[84]

The series of World War II treatise and agreements, dealing with reparations, provide for payments "for the rehabilitation and resettlement of non-repatriable victims of German action,"[85]

SEMINAR ON THE LEGAL STATUS OF THE APARTHEID REGIME IN SOUTH AFRICA AND OTHER LEGAL ASPECTS OF THE STRUGGLE AGAINST APARTHEID (Sept. 27, 1984).

81. *Id.* at 11.

82. *Id.* at 13.

83. Treaty of Versailles, *supra* note 65, Part VIII, §I, art. 244, Annex I, paras. 1-3,7,8. The Treaty of Versailles was never ratified by the United States. *See* S. Doc. No. 49, 66th Cong., 1st Session (1919), S. Doc. No. 51, 66th Cong., 1st Session (1920).

84. Treaty of Versailles, *supra* note 65, Part VIII, §I, art. 244, Annex II, para. 12. The Treaty of Versailles established the Reparation Commission to determine the amount of damages to be paid by Germany for its participation in World War I. The Commission was to calculate the actual amount of damages and then organize a schedule of payments. *Id.* It was given broad powers including the authority to receive and distribute monies, as well as "wide latitude as to its control and handling of the whole reparation problem." *Id.*

85. Reparation from Germany, Establishment of Inter-Allied Reparation Agency, and

but these also flowed through a governmental agency, the Inter-Governmental Committee on Refugees, and by terms of the 1946 agreement by the five powers "should be used not for the compensation of individual victims but for the rehabilitation and resettlement of persons in eligible classes."[86] The strongest precedent for individual reparations is the program carried out by the Federal Republic of Germany after World War II. Boris Bittker, in his *The Case for Black Reparations*, [87] analyzes the result of the German reparations laws. Payments did go directly to individuals (as well as payments made by West Germany to the new state of Israel) for loss of life, impairment of health, deprivation of liberty—including "wearing the Star of David everywhere"[88]—and property and profession. Writing in 1972, Professor Bittker calculates that "a total of 1,949,470 claims were adjudicated on their merits; 584,703 by German and 1,364,767 by foreign residents."[89] (Presumably most of the foreign residents were Jews who re-settled in Israel.)

Reparations by the United States for the indigenous people here under the *Indian Claims Commission Act*,[90] were not provided to individuals but to

> any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska . . . [for] claims in law or equity . . . [or] sounding in tort . . . [revision of] treaties [and] contracts . . . on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake . . . [and] claims arising from the taking . . . of lands . . . without . . . [agreed] payment . . . and [for] claims based

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Restitution of Monetary Gold, Jan. 14, 1946, Part I. Art. 8, 61 Stat. 3157, T.I.A.S. 1655, 555 U.N.T.S. 69.

86. Reparation to Nonrepatriable Victims of German Action, June 14, 1946, 61 Stat. 2649, T.I.A.S. No. 1594. For the purpose of this plan, "eligible classes" means "true victims of Nazi persecution and . . . their immediate families and dependents." *Id.* The five powers to sign the agreement were the United States, France, Great Britain, Czechoslovakia, Yugoslavia. *Id.*

87. B. BITTKER, *supra* note 1.

88. *Id.* at 180.

89. *Id.* at 182.

90. 25 U.S.C.A. § 70 - 70n-2 (omitted Sept. 30, 1978); § 70n-3 (repealed Jan. 2, 1975, 88 stat. 1970, Pub. L. 93-608 § 1(16)); § 70n-4 - 70v-3 (omitted Sept. 30, 1978); § 70w (repealed May 24, 1949, c. 139, § 142, 62 stat. 109) (1946).

> upon fair and honorable dealings that are not recognized by any existing rule of law or equity.[91]

However, a United States political subdivision, the City of Los Angeles, *has* paid direct reparations. This was in 1984 to 36 Japanese former city employees who, at the beginning of World War II, had been fired from their jobs and interned, despite being "loyal Americans." The City Council apologized in a resolution and gave each $5,000 as a token reparation.[92] Similarly, the City of San Francisco in January 1983 paid $1,250 per year of internment, to former Japanese employees of the city.[93]

Finally, Professor Y.N. Kly in his thoughtful book, *International Law and the Black Minority in the United States*,[94] suggests the New Afrikans should view self-determination as a last resort and identify ourself as a "national minority," within the contemplation of the international law, and seek from the United States the "special measures" which the international law requires. Dr. Kly suggests that these "special measures" would "make available the circumstances, finances, technology, etc. required to enable the minority to reach equality with the majority, maintain its cultural and ethnic identity, if desired, while sharing a political, economic and social equal-status relationship with the majority."[95] Presumably some of the "finances" of a *special measures* program could go directly to individuals, although when Dr. Kly chronicles special measures programs in a number of states (e.g., the Swedish program for the Lapps), the finances, where this is a part of the program, go

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91. 25 U.S.C.A. §70a (omitted 1978); Act, August 13, 1946, c. 959, §2, 60 Stat. 1049, 1050.

92. Henricus, *Japanese-American Bitter But Accepts L.A.'s Apology*, Philadelphia Inquirer, Sept. 13, 1984, at B3.

93. *Around The Nation: Some WW II Internees Getting $$ in 'Frisco*, Wash. Post, Jan. 25, 1983, at A6. Subsequent to the delivery of this paper at the NCBL Conference, the United States House of Representatives on 17 September 1987, approved a reparations bill for the estimated 60,000 still-living Japanese who were interned in the United States during World War II. The bill exceeds 2.5 billion dollars, and includes direct payments of $20,000 to each eligible person and a trust fund for education and related purposes. Kenworthy, *House Votes Apology, Reparations for Japanese Americans Held During War*, Wash. Post, Sept. 18, 1987, at A3.

94. Y.N. KLY, INTERNATIONAL LAW AND THE BLACK MINORITY IN THE UNITED STATES (1985).

95. *Id.* at xxi.

to groups.[96]

Article 27 of the *International Covenant on Civil and Political Rights*,[97] identifies three kinds of "minorities"— ethnic, religious, and linguistic. Dr. Kly believes that since an "ethnic minority" is based not simply on race but on group tradition, or *culture*, New Afrikans, Puerto Ricans, and Indians could fold themselves within this definition.[98]

Whatever the value of this strategy, advocates of achieving reparations as individuals, without reference to group relationship, are apt to find no special encouragement.

It is clear, moreover, that the Indian states "in the United States" have been treated (and view themselves) as states and nations, not national minorities. In fact, the designation placed upon Indian political units by Justice John Marshall in 1831—"domestic dependent nations"—remains a part of the law today.[99] Puerto Ricans who have voluntarily come to the United States (it is voluntary only if the effects of colonization are discounted) could be viewed, by those who regard the United States's imposition of citizenship upon the Puerto Ricans as invalid, as a national minority since they are living in another country but have a country of their own. The basic point is that they *do* have a country of their own. From the standpoint of Puerto Rican nationalists, their country—their state—is *colonized* by the United States, and Puerto Ricans are in a national liberation struggle.

In appraising the situation of New Afrikans in the United States it is important to keep in mind that We have, almost from the beginning, followed simultaneously *three*—not *one*—strategies of struggle. This is to say that simultaneously *some* of us have followed each of the strategies. Those strategies

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96. *Id.* at 23-31.

97. UNITED NATIONS SPECIAL COMMITTEE AGAINST APARTHEID, *supra* note 77, at 15.

98. KLY, *supra* note 94, at 27-28.

99. Cherokee Nation v. Georgia, 9 U.S. (5 Pet.) 178, 181 (1831); United States v. Wheeler, 435 U.S. 313 (1978) (After defendant was convicted by a Navajo court, he was subsequently indicted by a Federal Grand Jury for a crime arising out of the same incident. The Court rejected defendant's claim of double jeopardy since the Navajo have the power to punish offenders of certain of their laws by Navajo citizens by virtue of the Navajo own residual sovereignty.); Williams v. Lee, 358 U.S. 217 (1959) (The Court found that the state court lacked jurisdiction since Indian courts have authority over Reservation affairs and state interference with such power would undermine the rights of the Indians to govern themselves as expressed in the 1868 treaty with the Navajos.).

have been, first, to return to Africa (Paul Cuffee through Garvey to the Hebrew Israelites);[100] second, to change the United States and join it as full citizens (Richard Allen through Frederick Douglass to Martin Luther King);[101] and, third, to build an independent state on land claimed in North America by the United States (Gabriel Prosser through Tunis Campbell to Malcolm X and the Provisional Government-RNA).[102] Throughout our three hundred years of struggle on this soil, We have, from at least 1660, been evolving into and have become a Black Nation, a New Afrikan nation, even with the simultaneous pursuit of three strategies.

The prolific Floyd J. Miller in his important book, *The Search for a Black Nationality*,[103] found and stated: "A further indication of the depth of this alienation is the fact that at one time or another, almost all black leaders regardless of the nature of their reaction to emigration were compelled to acknowledge what both Delaney and Douglass independently announced in the 1850s—that blacks in the United States were a 'a nation within a nation.' "[104]

For clarity on the difference between "nation" and "state," it is perhaps helpful to call on Professor Robin Alison Remington in her discussion of Yugoslavia. She writes:

> A country is the piece of real estate occupied by the state. Neither a country nor a state is a 'nation.' Rather, a 'nation' is a group of individuals united by common

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100. For information on Paul Cuffe, see S. HARRIS, PAUL CUFFE: BLACK AMERICA AND THE AFRICA RETURN (1972); for information on Marcus Garvey, see E. CRONON, *supra* note 45.

101. For information on Richard Allen, see C. GEORGE, SEGREGATED SABBATHS: RICHARD ALLEN AND THE EMERGENCE OF INDEPENDENT BLACK CHURCHES, 1760-1840 (1973); for information on Fredrick Douglass, see A. BONTEMPS, FREE AT LAST: THE LIFE OF FREDRICK DOUGLASS (1971); for information on Martin Luther King, see OATES, LET THE TRUMPET SOUND: THE LIFE OF MARTIN LUTHER KING, JR. (1982).

102. For information on Gabriel Prosser, see P. FONER, *supra* note 23, at 453-56; for information on Tunis Campbell, see R. DUNCAN, FREEDOM'S SHORE: TUNIS CAMPBELL AND THE GEORGIA FREEDMAN (1986); for information on Malcolm X, see L. LOMAX, *supra* note 45.

103. F. MILLER, THE SEARCH FOR A BLACK NATIONALITY (1975).

104. *Id.* at 270 (citing M. DELANEY, THE CONDITION, ELEVATION, EMIGRATION, AND DESTINY OF THE COLORED PEOPLE OF THE UNITED STATES, POLITICALLY CONSIDERED 209 (1852), and Douglass, THIRTEENTH ANNUAL REPORT OF THE AMERICAN AND FOREIGN SLAVERY SOCIETY 184 (New York, 1853)).

> bonds of historical development, language, religion, and their self-perceived collective identity. *** According to the 1971 census, the Yugoslav population is 20.5 million, including five official 'nations' and a variety of nationalities. The nations are the Serbs, 8.4 million; Croats, 4.8 million; Slovenes, 1.7 million; Macedonians, 1.2 million; and Montenegrins, 608 thousand.[105]

Elsewhere, I have made a contribution toward (I hope) clarity.

> People live in states. The United States is a state: all the fifty states make one United States, and in international law the entire United States (with its 50 constituent states) is known as a state. A state has people, land and government. The government, acting for the state, protects the people and the land from outside attack by means of diplomacy and its army; government controls conflict among its own people by education and indoctrination and by means of law, courts and the police. The government, representing the state, has final control over the lives of people. Only the state, through its government, can lawfully jail people or kill people—either by executing them or sending people to war.But people come before states. This is to say that nations exist before states. States are created to protect nations. For, a nation is the people and their beliefs and their perspective (their way of looking at themselves and the world) and their way of life—their social structure and their economic structure. These have arisen out of a people's own special history, over time. States can be created suddenly, by declaration, by new constitutions, by military coups and successful revolution and by treaty. But nations can only be created by time: nations are people brought together by common history and common mission and common struggle, cemented by common values and a common way of life, on a given land mass, over time. Nations must evolve. They come into being by

105. Remington, *Yugoslavia*, in COMMUNISM IN EASTERN EUROPE 214 (T. Rakowska-Harmstone and A. Gyorgy, eds. 1981).

> growing over decades. The United States began as a white nation, a new English nation, which grew up between 1607 and 1776 in a land away from England. In England the people were having a different experience and history than the English in America. In America the Whites, led by the English, fought Indians and Afrikans for that in which they, the Whites, believed: they believed in the superiority of Whites over Indians and Afrikans and the right of Whites to take all the land and oppress and exploit Afrikans and Indians.
>
> These Americans, the Whites, built a state, a Republic, to protect the American nation. They did not build this state to protect Indians or Afrikans; in fact, it was built to help Whites better oppress and exploit Indians and Afrikans. It was built to protect the white nation. Meanwhile, We, the Afrikans, were forming into a new nation also, a new Afrikan nation. This happened between 1660, when the English in America decided definitely to hold us in slavery, and 1865, when our work and sacrifice in the Civil War brought an end to slavery. In those two hundred years We who had come from different nations in Afrika, where our states had been weakened or defeated altogether, fused into a new people, a new Afrikan people. Struggle against the oppression of the White state in North America, the United States, fused us. Over the course of 20 decades.[106]

I have already mentioned some of the state-building efforts undertaken by New Afrikans in North America. What is not commonly acknowledged is that the work of Richard Allen-Frederick Douglass-Martin King group has also been a form of state-building. For, these men and women were bent on taking the American state-structure, rife with anti-Black laws, and changing it. In other words, they sought to create a state different from that which its White nationalist founders, and the majority of its citizens, really envisioned. With respect to the state structure, it might be added, this strategy has seen some marked success. (Discriminatory laws are now gone, but racism remains in

106. IMARI A. OBADELE, A BEGINNER'S OUTLINE OF THE HISTORY OF AFRIKAN PEOPLE, 19-20 (1st ed. 1987).

the economic and social structures. Racism also sometimes is operative in the *use* to which government officials put the state machinery.)

Finally the *Declaration* issued by the international law conference at Lagos in 1984 provided "elements of a definition" of the term "peoples" used in the *Decolonization Declaration*, the *Declaration on the Principles of International Law*, and the *International Covenants on Human Rights*, in the common phrase, "All peoples have the right of self-determination." According to the 1984 Lagos Declaration:[107]

> (a) The term "people" denotes a social entity possessing a clear identity and its own characteristics;
>
> (b) It implies a relationship with a territory, even if the people in question has been wrongly expelled from it and artificially replaced by another population.[108]

The Malcolm X Society, anticipating the founding of the Provisional Government, settled on the five states of Louisiana, Mississippi, Alabama, Georgia, and South Carolina as the national territory of New Afrika, not only because they were contiguous and fed on the south by the Gulf and on the east by the Atlantic Ocean, but especially because these states (plus Virginia) had been the heartland of the territory on which We had developed into a new nation, giving to the land our blood and our sweat, our love and our hopes, during the course of the 200 years between 1660 and 1865, and thereafter.

So the proposition of this paper and the annexed draft reparations legislation is that the United States waged long, cruel, and unjust war against us as a nation, and for that there is responsibility. The World War I and World War II reparations settlements were imposed upon Germany by victorious armies, and Konrad Adenaur, leader of West Germany, engineered the payment of reparations to the Jews[109] as part of the price re-

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107. *See* UNITED NATIONS SPECIAL COMMITTEE AGAINST APARTHEID, *supra* note 80.

108. *Id.* at 15.

109. *The Rich Legacy of "Der Alte"*, N.Y. Times, Apr. 23, 1967, §4, at 1, col. 5. Konrad Adenauer was the Chancellor of the Federal Republic of Germany, 1949-63. *Id.* Fondly rememberedas "Der Alte," the Old Man, Adenauer was responsible for transforming post-World War II Germany into a strong economic and political World power. *Id.* Adenauer, a staunch anti-Nazi, ordered financial restitution to be paid by his country to the Jewish victims of Hitler's persecution. *Id.* In September, 1952 Adenauer signed a

quired of him for loosening the new bonds which bound and humbled the German nation after the war.

Today the New Afrikan nation, still pursuing simultaneously its three strategies of struggle, has no victorious armies to compel compliance, only the international law—and the strength and ingenuity of the uses to which We and our allies may put the politics of the American state. Nevertheless, the debt to us and its grounds were clearly presaged by the language and import of the World War I and World War II agreements; only the names need changing:

> The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.[110]
>
> The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency.[111]
>
> Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following categories:
>
> (2) Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence, or maltreatment (including injuries to life or health . . .)
>
> (8) Damage caused to civilians by being forced by Germany or her allies to labour without just remuneration.[112]

- Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war. Repara-

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Reparations Agreement with Israel. A. HORNE, RETURN TO POWER , 637 (1956). Negotiation Guidelines for Claims on Israeli Secular Property, Sept. 10, 1952, West Germany-Israel, 162 U.N.T.S. 91.

110. Treaty of Versailles, *supra* note 65, Part VIII, § I, art. 231.

111. *Id.* at art. 232.

112. *Id.* at art. 244, Annex I.

> tions are to be received in the first instance by those countries which have borne the main burden of the war.[113]
> - In recognition of the fact that large numbers of persons have suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation.[114]
> - In the portion of Upper Silend organizational work in the New Afrikan communities across the land can put the issue of *reparations-now* on the r they wish to be attached to Germany or to Poland.[115]
> - The plebiscite area shall be immediately placed under the authority of an International Commission . . . Section 4. The right to vote shall be given to all persns without distinction of sex . . . The result of the vote will be determined by communes according to the majority of votes in each commune.[116]

In brief, the terms of the attached draft legislation reflect practices which are not unknown to the United States and other states which participated in or observed the arrangements which followed the two world wars. The plan would provide reparations to the state-building Provisional Government and to individuals and organized, serving, community groups as well.

IV. Some Policy Considerations

The classic "March on Washington,"[117] well organized and preceded and followed by serious informational and organizational work in the New Afrikan communities across the land can put the issue of *reparations-now* on the general public agenda

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113. Yalta Conference, Feb. 11, 1945, United States-Great Britain-USSR, Part V, para. 1.

114. Reparation from Germany, Establishment of Inter-Allied Reparation Agency, and Restitution of Monetary Gold, Jan. 14, 1946, Part I. Art. 8, 61 Stat. 3157, T.I.A.S. 1655, 555 U.N.T.S. 69.

115. Treaty of Versailles, *supra* note 65, Part III, §VIII, art. 88.

116. *Id.* at Annex, para. 2.

117. For information on the 1963 March on Washington, see National Afro-American Labor Council Records (Parrish ed., 1960-75)(available at the Schomberg Center for Black Research, 515 Lennox Ave., New York, N.Y.), and M. Mavable, Black American Politics (1985).

and create a mass Black bloc in favor of reparations. Further, adroit intervention in the United States' presidential election process, until July 1988, could yield some members of Congress—perhaps all of Congressman Fauntroy's[118] 120 New Afrikan-dependent Representatives—and a United States President generally and provisionally committed to the legislation.

But, neither of these necessary achievements is sufficient to win passage of a reparations bill. We need a majority of the 435 members of the United States House of Representatives and a majority of the 100 members of the United States Senate.[119]

Our problem is the power of lingering racism in the majority of White people in the United States and in their govermental representatives. We should acknowledge that today's America is a different America than 20 years ago: there is considerably less vindictiveness and hostility among young Blacks and Whites, given that Black youth harbor varying degrees of resentment at Whites and their systems of preference.

But traditionally there has been a certain meanness in the attitude of most Americans towards us. One wit has opined, "The Americans must really love us, because they've never felt it necessary to saprovisionally committed to the legislation.

But, neither of these necessary achievements is sufficient tost war and cultural assault have been—and are—the issue. It is instructive that when Abraham Lincoln, urged by New Afrikan leaders to end slavery at least in Washington, D.C., and the Border States, and motivated by his own complex of reasons to do so, including the humanitarian one, moved to end this slavery, he proposed not payment to the Afrikan, for life and labor stolen, but payment to the slaveholders![120] Payments were made. [121]

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118. Congressman Walter Edward Fauntroy, Democrat of the District of Columbia; elected to office in 1971, and reelected in each subsequent election.

119. A very remote possibility is reparations by treaty, requiring the signature of the United States President and consent of two-thirds of the United States Senate.

120. Lincoln, *First Annual Message*, in A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, 3337-3341 (J. Richardson ed. 1897).

121. The act to end slavery in District of Columbia provided payments to slaveholders. 54 Stat. 376-77 (1862). Professor Kenneth Goings, Chairman of the Department of History at the College of Wooster, states that payments were actually made to slaveholders and that under the colonization provisions of the Act (Section II) a number of New Afrikans did go to Liberia and settle.

To the great credit of the Americans, however, in the blush of the chastening circumstances of a terrible, four-year Civil War, the United States House of Representatives and the Senate *did* muster a majority in each house and passed a bill, on the Freedman's Bureau, which did provide for us the hallowed *forty acres.* (The houses could not, however, muster the two-thirds majorities in each house needed to override Andrew Johnson's veto, and so the bill did not pass and we did not get the 40 acres.)[122]

Yet despite this and certain other important instances of the triumph of principle, there has also been a persistent counter-trend in the historic relations of White and Black in America, as Derrick Bell has put it in his essay, "The Racial Imperative in American Law."[123] That trend has been the recurrent sacrifice of justice for New Afrikans to the expedient interests of Whites, even where cost-benefit analysis did not clearly favor those interests. In a related and specific manner, despite the presence of precedents in the Indian and world war reparations settlements, the attitude of the White Community, the Americans, seems to be that freeing us from slavery was enough: *We were lucky to be brought here and lucky to be freed!* These attitudes are obstacles.

I am convinced, however, that collective genius can devise the strategy to win the needed majority in Congress. As a teacher of young people, I am also convinced that a part of that strategy must be to alter the textbooks and our conventions in teaching the American experience—and to alter kindred conventions in movies and literature—so that Americans *and* New Afrikans, living now, may come to a deep appreciation of both (1) the nature of the war waged against us and Indians in America, and of the military occupation We have suffered here, and (2) the war in which *struggle* in America changed the White-supremacist United States state structure, in two great leaps (i.e., the Civil War and the Black Revolution of the 1960s), into a state structure free of anti-Black laws and enhanced, instead, by the comely filigree We call *affirmative action.*

I am convinced it can be achieved.

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122. W.E.B. DuBois, *supra* note 15, at 273-77.

123. Derrick Bell, *The Racial Imperative in American Law*, in THE AGE OF SEGREGATION: RACE RELATIONS IN THE SOUTH, 1890-1940 (R. Haws ed. 1978).

ANNEX

*A Proposed Act, Rather Than A Constitutional Amendment, For Reparations***

AN ACT TO STIMULATE ECONOMIC GROWTH IN THE UNITED STATES AND COMPENSATE, IN PART, FOR THE GRIEVOUS WRONGS OF SLAVERY AND THE UNJUST ENRICHMENT WHICH ACCRUED TO THE UNITED STATES THEREFROM

Preamble

WHEREAS the Congress of the United States has never accorded ultimate political justice to New Afikans in this country - New Afrikans being all the descendants of Afrikans held as slaves in this country - by authorizing a plebiscite and a process of registration whereby collectively and individually New Afrikans could exercise their right to self-determination by freely and with full information voting collectively on their political future, and registering individual political options, and

WHEREAS the Congress of the United States recognizes the Thirteenth Amendment as protecting this right of New Afrikan people to self-determination, and

WHEREAS the illegal transportation to, and the enslavement of Afrikan people in the United States was carried out under authority of the U.S. Constitution for seventy-seven years, and for 167 years under the antecedent authority of the Articles of Confederation, the Continental Congress's resolutions, and the Colonial law, and

WHEREAS the authority in the United States Constitution for enslavement of the New Afrikan people was contained in clause three, Section Two of the Fourth Article, commonly known as the fugitive slave provision, which placed the full force of the United States military, executives, and courts against even the most inoffensive person held as a slave who quietly slipped away to freedom, and against the entire New Afrikan people, and

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** Submitted by: Dr. Imari Abubakari Obadele, President, Republic of New Afrika, Assistant Professor, The College of Wooster and Attorney Chokwe Lumumba, Chairperson, The New Afrikan People's Organization.

WHEREAS the United States further dehumanized the New Afrikan by holding her/him to have the status of three-fifths of a white person in clause three, Section Two of Article One of the United States Constitution, and

WHEREAS that most heinous war against Afrika, commonly known as the slave trade, was authorized for United States principals for 20 years more after the ratification of the United States' Constitution by clause one in Section Nine of the First Article of the United States Constitution, and

WHEREAS principles of international law and a reconciliation of the peoples require that the United States attempt a good faith, if partial, reparation for the unjust war waged against the New Afrikan people for 200 years, and for cultural destruction, and for labor stolen, and

WHEREAS the concept of reparations is recognized in United States law, and the United States has sponsored and paid reparations for other victims, and

WHEREAS the Congress finds that New Afrikan people, descendants of persons kidnapped from Afrika and held here against their will, currently residing in the United States, are entitled to exercise collective and individual rights to self-determination, and

WHEREAS the Congress is aware that the options regarding political future which are open to the New Afrikans include (a) return to Afrika, (b) departure for some country other than one in Afrika, (c) acceptance of U.S. citizenship, and (d) creation of an independent New Afrikan state in North America, and

WHEREAS the Congress is convinced that some New Afrikan people will choose each of these four options, and

WHEREAS, moreover, the Congress is further convinced that some New Afrikan people will never forsake the three-centuries-old desire to create an independent New Afrikan state in North America and have, in fact, duly elected a Provisional Government to protect the interests of the New Afrikan nation, as a nation, and to establish an independent New Afrikan state by means sanctioned by international law, and

WHEREAS the Congress finds that various international covenants and resolutions affirming that all peoples have the right to self-determination apply to Afrikan people born in North America, and

WHEREAS the Congress recognizes that the necessary foundation for effectuating the results of an act of self-determination by the New Afrikan people is the means and resources to achieve those results, and

WHEREAS the authority for providing such means and resources lies in Section Two of the Thirteenth Amendment, and

WHEREAS this legislation affects only those parties under domestic United States jurisdiction and is not to be construed as discharging the obligation owed to Afrikan people by other countries and governments,

THEREFORE the following provisions are enacted into law under the authority of the Thirteenth Amendment to the United States Constitution.

TITLE I. *Reparations*

1. The United States accepts the obligation of the United States to pay reparations to the descendants of Afrikans held as slaves in the United States and undertakes to make such payments to the New Afrikan nation as a political unit, to compensate in part for the destruction and/or damage to Afrikan political units in Afrika and for the abortion and destruction of New Afrikan political units in the United States during the era of slavery, and payments to New Afrikan organizations to compensate in part for the deliberate subversion of the New Afrikan social structure, and the obligation to pay directly to each New Afrikan, descendant of Afrikans held as slaves in the United States and born on or before the date of ratification of this Act, and still living on the date of each appropriation, the total sum of ___.

2. Congress is authorized to appropriate and pay annually sums of money and credit to discharge this obligation over a period of years, between thirteen billion and thirty-two billion dollars annually.

a. One-third of the annual sum shall go directly to each individual, except that the sum due a person not yet 17 years of age who is not head of an independent household shall be paid to the head-of-household who stands as such person's parent or guardian or jointly to such persons in the case of husband and wife. Social Security records, Internal Revenue records, and Aid-to-Dependent-Children records, or records of successor agencies,

shall be available to facilitate determination of heads-of-household, as consistently as possible with the provisions of the Privacy Act, its conflicting provisions hereby being waived. This program shall be administered by the Internal Revenue Service.

b. One-third of the annual sum shall go directly to the duly elected government of the Republic of New Afrika, and to any other state-building entity of New Afrikan people, provided that elections for the RNA Provisional Government or for the officers of such other New Afrikan state-holding entity are observed by the United Nations or other distinguished international body and deemed by said international body to be open, honest, and democratic, for purposes of the economic, social, cultural, and educational development of the New Afrikan nation-state or states. This payment shall be made by the United State Treasury.

c. One-third of the annual sum shall be paid directly to a National Congress of Organizations, consisting of all the New Afrikan churches and other New Afrikan organizations which for a period of two years prior to enactment of this legislation have engaged in community programs designed to end the scourge of drugs and crime in New Afrikan communities and advance the social, economic, educational, or cultural progress and enrichment of New Afrikan people. Programs serving New Afrikan communities shall be eligible to participate in local conventions of the National Congress of Organizations, provided that these programs are led by New Afrikans and have been so led for at least three years prior to enactment of this legislation. The United States Treasury shall administer this payment.

TITLE II. *Plebiscites & Self-Determination*

1. Pursuant to the Thirteenth Amendment, the United States President is authorized and directed to arrange with the President or appropriate body of the Provisional Government of the Republic of New Afrika and/or other state-building entities the holding, within five years after the enactment of this legislation, of independence plebiscites in all such counties, or major portions of such counties, in the states of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Tennessee, where ten percent of Afrikans, aged 16 or over, within such counties or major portions thereof signify their de-

sire for the holding of such plebiscites.

2. Such ten-percent petitions may be certified by special *Status Courts*, hereby created in the same districts as the now-established districts for United States courts, within the states enumerated in Paragraph One of this Title, and Regional Status Courts are hereby created in New York, Chicago, Atlanta, and Los Angeles. The judges of each of these Article One-Thirteenth Amendment Status Courts shall be three in number: one appointed by the President of the United States, one appointed by the Republic of New Afrika, and one which the General Assembly of the United Nations shall be invited to appoint.

3. The jurisdiction of said Status Courts shall be limited to (1) determination of the validity of petitions for plebiscites and their certification, (2) the certification of Election results, and (3) such other matters as are set out in this Act. Such Status Courts, established under Article One and the Thirteenth and Fourteenth Amendments of the United States Constitution, and the agreement of the Provisional Government of the Republic of New Afrika, insofar as the authority of the United States is concerned, shall have power to compel the appearance and testimony of witnesses, issue process for production of evidence, make findings of fact and conclusions of law, conduct trials, and issue judgments.

4. Such Status Courts shall have power through a conference, presided over by a Chief Judge elected by the Conference of all Status Court judges, to issue rules, consistent with the rules of the federal courts of the United States, the Judicial Statute or the Republic of New Afrika, and the Statute of the International Court of Justice. Such rules shall become effective if not returned for further consideration by the United States of the Republic of New Afrika sixty days after the date of promulgation by the Chief Judge of the Status Courts. In the event of such return, the Chief Judge may amend the Rules and promulgate them de novo, under the same conditions of veto. Judges of the Status Courts shall have power to conduct contempt proceedings and assess penalties upon findings of contempt, which penalties shall not exceed five years in prison and a $10,000 fine.

5. Compensation for Status Court judges shall be the same as that of District Judges of the United States. The United States shall promptly and regularly pay these salaries and pro-

vide for adequate staffing and support services for the Status Courts. Such compensation and expenses shall be included in the regular budgeting and appropriations for the United States Courts and shall not be treated as a charge against the appropriation for reparations.

6. *Change of Sovereignty.* Whenever a simple majority of voters in a county or a portion of a county pre-designated for plebiscite, shall during a plebiscite on status vote in favor of a government of the Republic of New Afrika, or in favor of a majority of Republic of New Afrikan candidates for the legislative or governing body of such county, or portion thereof, that area shall be deemed to be under the sovereignty of the Republic of New Afrika. The provisions of this Section, paragraphs 6, 7, and 8 apply not only to the RNA Provisional Government but to any New Afrikan state-building entity filing ten-percent petitions in accordance with paragraphs 1 through 5 of Title II of this Act.

7. The United States shall undertake to secure agreement from the Republic of New Afrika that all persons residing in an area where the Republic of New Afrika wins sovereignty shall be guaranteed all the rights set forth in the United Nations Covenant on Civil and Political Rights, to the same extent that the United States guarantees these rights to all persons residing in the United States.

8. Immediately after the first plebiscite which results in a confirmation of Republic of New Afrika sovereignty, the President of the United States shall invite the President of the Republic of New Afrika and the Secretary General of the United Nations to join in a request to the Status Courts that they open official *Status Registers.* These *Registers* shall permit individual New Afrikans who, living in the United States, do not wish to accept United States citizenship, and New Afrikans who, living in New Afrika, do not wish to retain New Afrikan citizenship, to register these personal options. A New Afrikan who does not register a personal option shall be deemed to have the citizenship of the sovereignty—New Afrikan or United States —under which he or she lives, but this fact for New Afrikans who remain in the United States does not obliterate New Afrikan citizenship in the context of *dual* citizenship. Such registration of personal choice must take place within three years of a status plebiscite in the area in which a person resides, where a change of sover-

eignty occurs. In all cases New Afrikans wishing to exercise a personal option for citizenship in the Republic of New Afrika but living in an area where no plebiscite has been held or where no Status Court is established, must do so within ten years after the date of the enactment of this legislation. For this purpose the United States Postal Service shall provide secure *Status Letters* which, after execution, shall be delivered to the appropriate Regional Status Court in New York, Chicago, Atlanta, or Los Angeles. Persons may file personally at these Regional Status Courts. The citizenship of a child, 15 years old or younger, shall be the same as that of his or her parents, parent, or guardian who stands as head-of-household, unless such person maintains an independent household.

TITLE III. *Freedom For Black Liberation Army Soldiers*

1. The Congress of the United States finds that the continued imprisonment of the following Black Libertion Army soldiers and certain other persons is contrary to the national interests of the United States and a substantial impediment to the successful fulfillment of the intent of this legislation under the Thirteenth Amendment, that intent being to stimulate economic growth in the United States, compensate in part victims and heirs for past wrongs, facilitate racial healing and reconciliation in the United States, and provide for the long delayed exercise of the right to self-determination by the New Afrikan people. The Congress finds that the continued imprisonment of these persons is contrary to fulfillment of the United States's obligations under the Thirteenth Amendment. The Congress therefore directs the immediate release of these persons from prison without condition:

Sundiata Acoli
Assata Shakur (who is in exile in Cuba)
Herman Bell
Albert Nuh Washington
Jalil Muntuaqin (a.k.a. Anthony Bottom)
(LIST TO BE COMPLETED)

2. The United States Congress, for its part, further provides to the Status Courts, hereinabove established, jurisdiction to accept applications from persons similarly situated and the power to make prompt and just decisions on their applications for

release.

TITLE IV. *Administrative Funds*

Funds for the administration of the provisions of this Act shall be appropriated from the general treasury of the United States and included in the budgets of the Status Courts and the executive agencies responsible for carrying out the provisions of this legislation, without any charges against the sums appropriated for the payment of reparations under Title I of this Act.