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## Dismantling the Master's House: Reparations on the American Plantation

**ABSTRACT.** In southeastern Louisiana, many plantations still stand along River Road, a stretch of the route lining the Mississippi River that connects the former slave ports and present-day cities of New Orleans and Baton Rouge. Black communities along River Road have long experienced these plantations as sites of racialized harm. This Note constructs a normative framework for local reparations that centers these descendant communities and explores the use of eminent domain to break up the landholdings of current plantation owners to make those lands available to descendants. Beyond the descendants in Louisiana's river parishes, this Note is aimed at inspiring a discussion about reparations in other local contexts—across institutions, cities, and states—that are also sites of historical and continued subjugation.

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“I’M HERE ON THIS LAND FOR A REASON. I GREW UP WITH MY FAMILY, CONNECTED TO MY HERITAGE, ALWAYS PROUD OF IT. TO ME, REPARATIONS IS SPIRITUAL. IT COMES BACK TO WHAT OUR ANCESTORS STARTED: THEY DID THE ROOTING FOR US, AND NOW WE NEED TO GROW — WE NEED TO PLANT THE SEED AND WE NEED TO GROW.”

- DR. JOY BANNER<sup>1</sup>

## INTRODUCTION

Reparations are acts and processes of repair. They are grounded in the will to heal, to restore a people wounded, but not destroyed, by intergenerational brutality and injustice. Reparationists seek accountability for historic injustice, and call for the cessation of contemporary practices that perpetuate wrongdoings and persecute suppressed communities. Reparative acts are meant to give assurance to survivors that the injustices they have endured “will not be repeated in the future.”<sup>2</sup> They ultimately require the redistribution of power, as “efforts to leverage power, influence, and resources . . . ensure cessation and non-repetition.”<sup>3</sup>

The movement for reparations in the United States began with the demands of the enslaved. Long before the Civil War or the popular abolitionist movement, enslaved people petitioned for individualized compensation for their years spent in bondage. Quock Walker<sup>4</sup> and Belinda Sutton<sup>5</sup> are among

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1. Telephone Interview with Dr. Joy Banner (July 15, 2020) (records on file with the author). Dr. Joy Banner is a Black descendant of individuals enslaved at multiple plantations toured by thousands of visitors today.
  2. MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT 22 (2019) [hereinafter M4BL], <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf> [<https://perma.cc/4KNK-ZCFM>].
  3. *Id.* at 28.
  4. ALFRED L. BROPHY, REPARATIONS: PRO & CON 20 (2006) (describing Walker’s 1781 civil suit against a man claiming to be his owner as a form of reparations); see also William O’Brien, *Did the Jennison Case Outlaw Slavery in Massachusetts?*, 17 WM. & MARY Q. 219, 224 (1960); David Menschel, Note, *Abolition Without Deliverance: The Law of Connecticut Slavery 1784-1848*, 111 YALE L.J. 183, 184 n.3 (2001).
  5. *Belinda Sutton and Her Petitions*, ROYALL HOUSE & SLAVE QUARTERS, <https://royallhouse.org/slavery/belinda-sutton-and-her-petitions> [<https://perma.cc/7L6X-HY66>] (describing how Sutton’s 1783 lawsuit seeking a pension from the estate of her purported owner can be seen as a form of reparations).

the earliest reparations advocates, powerful models of how the “resilient human spirit could not be crushed by slavery.”<sup>6</sup>

This courage inspired the demands of the newly freed following the Civil War. Whether seeking compensation for labor that was never paid,<sup>7</sup> or demanding redress for “wrongful enslavement,”<sup>8</sup> the formerly enslaved fought for reparations with a conviction that “[s]urely there will be a day of reckoning for those who defraud the laborer of his hire.”<sup>9</sup>

Their descendants fought on for nearly two-hundred years, seeking reparations for the enslavement of millions of African and African American people.<sup>10</sup> They sought compensation from a variety of institutions, including federal and state governments that relied upon and sustained the institution of slavery, banks and insurance companies that profited from the trade, and educational institutions built and maintained by slave labor.<sup>11</sup> They sought reparations for the harms perpetuated long after emancipation, including systems of convict leasing, Jim Crow segregation, mass criminalization, mass incarceration, “red-lining, and other policies of structural discrimination and exclusion.”<sup>12</sup>

These descendants are still fighting for reparations. They still demand control over their ancestors’ bodies, be it their graves<sup>13</sup> or their images.<sup>14</sup> They are

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6. BROPHY, *supra* note 4, at 24.
  7. Letter from Jourdon Anderson to Colonel P.H. Anderson (Aug. 7, 1865), <https://lettersofnote.com/2012/01/30/to-my-old-master> [<https://perma.cc/YH3Z-P569>].
  8. W. CALEB MCDANIEL, *SWEET TASTE OF LIBERTY: A TRUE STORY OF SLAVERY AND RESTITUTION IN AMERICA 197-99* (2019); Robert Westley, *Restitution Claims for Wrongful Enslavement and the Doctrine of the Master's Good Faith*, 3 BRIT. J. AM. LEGAL STUD. 287, 306-09 (2014).
  9. *See supra* note 7.
  10. Of these descendants, Black women have historically led collective efforts for reparations. *See* Ana Lucia Araujo, *The History of Black Women Championing Demands for Reparations*, TRUTHOUT (June 1, 2019), <https://truthout.org/articles/the-history-of-black-women-championing-demands-for-reparations> [<https://perma.cc/PL7Z-P8Q7>].
  11. *See* CHARLES P. HENRY, *LONG OVERDUE: THE POLITICS OF RACIAL REPARATIONS 9-28* (2007); *see also* BROPHY, *supra* note 4, at 19-52 (describing the general history of the reparations movement); *id.* at 62-74 (providing a general overview of legal academic contributions to the reparations movement).
  12. M4BL, *supra* note 2, at 35; *see* HENRY, *supra* note 11.
  13. Julie Dermansky, *After a Legal Battle, Juneteenth Ceremony Honors Enslaved Ancestors at Gravesite on Formosa Plastics Land*, DESMOGBLOG (June 19, 2020, 7:31 PM), <https://www.desmogblog.com/2020/06/19/juneteenth-st-james-louisiana-enslaved-graves-formosa-plastics> [<https://perma.cc/5ZBT-9BP9>].
  14. Anemona Hartocollis, *Who Should Own Photos of Slaves? The Descendants, Not Harvard, a Lawsuit Says*, N.Y. TIMES (Mar. 20, 2019), <https://www.nytimes.com/2019/03/20/us/slave-photographs-harvard.html> [<https://perma.cc/LM4E-86HD>].

asking for more than acceptance into the institutions that profited off of the enslavement of their foremothers and forefathers.<sup>15</sup> Rather, they seek compensation from American institutions still thriving “on the backs of [their] people.”<sup>16</sup>

Descendants are central to a vision of local reparations. As opposed to national reparations, local reparations allow institutions to identify “the exact axes of white supremacy” they perpetuate and develop a tailored “policy [of] repair” to address historical injustice.<sup>17</sup> Local reparations facilitate the deeper work of identifying the harms caused by the evolution of the institution of slavery, pinpointing how every individual has been harmed by that system (even those of us who continue to profit from it), and imagining what we must do to eradicate such harms.

This Note makes the case for local reparations that center descendants living in communities where their ancestors toiled in bondage. In southeastern Louisiana, many plantations remain in operation as plantation museums, reaping profits from tours while perpetuating many of the injustices of slavery and its legacies. These museums operate on the site of both the earliest forms of American enslavement and the continued exploitation of African Americans following emancipation.<sup>18</sup> Therefore, they are a powerful focal point for engagement with local reparations processes. More importantly, reparations on plantations can be grounded in the aspirations of descendants who still live in the communities where their ancestors were enslaved and persecuted. Reimag-

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15. See, e.g., Karran Harper Royal, *Georgetown University Sold My Family's Ancestors. Now It Needs to Do More to Atone*, WASH. POST (Sept. 6, 2016, 6:00 AM EDT), <https://www.washingtonpost.com/posteverything/wp/2016/09/06/georgetown-university-sold-my-family-s-ancestors-now-it-needs-to-do-more-to-atone> [https://perma.cc/F6XF-ZPFC].
  16. See, e.g., Adeel Hassan, *Antigua Demands Harvard Pay Reparations for Benefiting from Slavery*, N.Y. TIMES (Nov. 7, 2019), <https://www.nytimes.com/2019/11/06/us/harvard-antigua-slavery-reparations.html> [https://perma.cc/NQ97-SRNM] (recording statement made by Prime Minister Gaston Browne of Antigua and Barbuda about “the slave labor that built the wealth of the Antiguan sugar plantation owner” Isaac Royall Jr., a major benefactor of Harvard Law School).
  17. *Ta-Nehisi Coates Revisits the Case for Reparations*, NEW YORKER (June 10, 2019), <https://www.newyorker.com/news/the-new-yorker-interview/ta-nehisi-coates-revisits-the-case-for-reparations> [https://perma.cc/S857-DEJG].
  18. Plantation museums are also tied to the history of settler colonialism in the United States and some of the earliest sites of environmental degradation. See ROGER G. KENNEDY, MR. JEFFERSON'S LOST CAUSE: LAND, FARMERS, SLAVERY, AND THE LOUISIANA PURCHASE 21-25 (2003) (describing the environmental impact of plantation agriculture); Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RES. 387, 391 (2006) (describing the Trail of Tears as “one of many . . . removals whereby Indians from the South East were displaced west of the Mississippi to make way for the development of the slave-plantation economy in the Deep South”).

ining the use of eminent domain, I argue that descendants have a powerful case for reparations in the form of redistribution of plantation properties. In turn, local governments can and should break up plantation landholdings for redistribution to descendants.

This Note does not attempt to lay out a comprehensive or generalizable policy plan for reparations, as doing so would undermine the centrality of descendant control over reparations processes. Rather, it responds to the voices of descendants along River Road and sketches the beginnings of a local reparations program for their communities, which may have implications for other jurisdictions and the country as a whole. I begin in Part I by outlining the history of plantations and plantation museums on River Road and illustrate the injustices committed on these plantations from the era of slavery to the present day. In Part II, I highlight the strengths of localized efforts towards racial healing and develop a normative framework for evaluating local reparations programs, an outline which might be utilized in communities across the country where the legacies of slavery similarly continue to manifest. Part III considers eminent domain power from within this framework and describes how it can be used to effectuate the goals of local reparations in southeastern Louisiana. Part IV concludes by exploring the lessons of this analysis for local reparations in other localities and noting how local reparations programs can inform national efforts towards reparative justice.

## **I. HISTORICAL INJUSTICES PERPETUATED BY PLANTATION MUSEUMS**

Plantations play a central role in the history of slavery and settler colonialism in the United States. “To mark their dominance over both nature and other men,”<sup>19</sup> settlers acquired land, often by murdering and displacing Indigenous inhabitants and parceling out native ancestral homelands into residential and agricultural properties. These settlers purchased stolen African men, women, and children to be the primary labor force on plantations, harvesting crops such as cotton, sugarcane, and tobacco to be sold on the global market. After the United States abolished the practice of importing stolen Africans in 1808, the domestic slave trade continued, facilitating the systemic rape of enslaved Black women to produce enslaved children who would maintain and expand

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19. JOHN MICHAEL VLACH, *BACK OF THE BIG HOUSE: THE ARCHITECTURE OF PLANTATION SLAVERY* 1 (1993).

the slave population.<sup>20</sup> Though some resisted enslavement through fugitivity or violent revolt, generations of enslaved people lived, labored, and died on plantations across the South leading up to the Civil War.

During the Civil War, many enslaved people fled to states where slavery was abolished, or journeyed across the nation to reconnect with loved ones who were sold away. Others left the fields to join the Union Army and fight for their freedom. At the end of the war, many formerly enslaved soldiers returned to the plantations of their enslavement only to work for the same families that once held them in bondage.<sup>21</sup> Across the South, many of these labor arrangements were structured by contracts that forced the newly freed to continue living and working in the same circumstances—sleeping in the same slave cabins, completing the same grueling work in the fields, living under the constant threat of violence by their former owners—for a meager wage.<sup>22</sup> These wages were insufficient to cover even the most basic needs of Black families, leaving them shackled to the plantation in perpetual debt.<sup>23</sup> In many cases, these families and their descendants continued this work for more than a hundred years. For instance, at Whitney Plantation in Wallace, Louisiana, African Americans bore children in former slave cabins and harvested sugarcane until the early 1970s.<sup>24</sup>

Black labor on plantations rapidly decreased as agricultural mechanization in the twentieth century replaced the need for human labor.<sup>25</sup> Most plantations

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20. See JULIA FLOYD SMITH, *SLAVERY AND RICE CULTURE IN LOW COUNTRY GEORGIA, 1750-1860*, at 103-04 (1985); *Domestic Slave Trade*, EQUAL JUST. INITIATIVE (July 1, 2014), <https://eji.org/news/history-racial-injustice-domestic-slave-trade> [<https://perma.cc/U5EM-TLFG>].
  21. For example, Ned Edwards, an enslaved man who left the Evergreen Plantation in his late twenties to fight in the Civil War, returned to the plantation where his “children and grandchildren continued to live and work . . . for decades to come.” *Ned Edwards*, EVERGREEN PLANTATION, <https://www.evergreenplantation.org/ned-edwards> [<https://perma.cc/P58D-2TEQ>].
  22. See JOHN C. RODRIGUE, *RECONSTRUCTION IN THE CANE FIELDS: FROM SLAVERY TO FREE LABOR IN LOUISIANA’S SUGAR PARISHES, 1862-1880*, at 35 (2001); Tamar R. Birkhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595, 1612-16 (2015).
  23. PETE DANIEL, *THE SHADOW OF SLAVERY: PEONAGE IN THE SOUTH, 1901-1969*, at 19-21 (1972).
  24. *Grass, Scrap, Burn: Life and Labor at Whitney Plantation After Slavery*, WHITNEY PLANTATION, <https://gsb-whitney.squarespace.com/the-project> [<https://perma.cc/TUX9-6EVL>].
  25. *Sugar at LSU: A Chronology*, LA. ST. U., <https://www.lib.lsu.edu/sites/all/files/sc/exhibits/e-exhibits/sugar/contents.html> [<https://perma.cc/K4FP-F439>] (“[The] move towards mechanization has freed the industry from the limitations imposed by the availability of a labor force and allowed a steady increase in the acreage devoted to sugarcane. A major breakthrough occurred following World War II when the mechanical harvester was introduced commercially. Proclaimed to do the work of 200 workers, it gained rapid acceptance and changed the face of the industry.”).

along River Road “were lost or destroyed over time due to exposure to the elements, misuse, abandonment, river encroachment or industrial expansion.”<sup>26</sup> Many rice and sugarcane plantations in southeastern Louisiana also transformed beyond their original agricultural function. “After Reconstruction, a combination of expanding railroads” and “nostalgia for the ‘Old South’” transformed many of these plantations into premier tourist destinations.<sup>27</sup>

In southeastern Louisiana, many plantations still stand along River Road, a route along the Mississippi River that connects former slave ports with the present-day cities of New Orleans and Baton Rouge. During the era of slavery, nearly every inch of land between these two cities was claimed by slave owners for the production of sugarcane, indigo, rice, tobacco, and cotton.<sup>28</sup> As of 2018, River Road was home to “[e]leven plantation sites . . . open to the public,” a small number when compared to the “many more . . . privately owned” plantations that “do not offer tours.”<sup>29</sup>

For purposes of this Note, “plantation tourism” primarily refers to the use of plantation grounds and edifices for educating and entertaining tourists,<sup>30</sup> though the term also captures the use of these properties for overnight stays, event spaces, and entertainment production. As several leading cultural geographers explain, “[p]lantations are among the most widely recognizable symbols of the South and play an important role in shaping the public’s interpretation of southern history and understanding of the nature of slavery and race relations during the antebellum period.”<sup>31</sup> At least 375 plantations were open for tours in 2015, concentrated mostly in Georgia, Louisiana, North Carolina, South Carolina, and Virginia.<sup>32</sup>

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26. Derek H. Alderman, David L. Butler & Stephen P. Hanna, *Memory, Slavery, and Plantation Museums: The River Road Project*, 11 J. HERITAGE TOURISM 209, 213 (2015).

27. JESSICA ADAMS, WOUNDS OF RETURNING: RACE, MEMORY, AND PROPERTY ON THE POSTSLAVERY PLANTATION 5-6 (2007).

28. See, e.g., John C. Rodrigue, *Slavery in French Colonial Louisiana*, 64 PARISHES, <https://64parishes.org/entry/slavery-in-french-colonial-louisiana> [<https://perma.cc/FPA2-K26A>].

29. Jessica K. Rapson, *Refining Memory: Sugar, Oil, and Plantation Tourism on Louisiana’s River Road*, 13 MEMORY STUD. 752, 757 (2018).

30. This definition draws from Stephen Small’s description of “plantation museum sites” as “state, county, and private museums and exhibitions, original or reconstructed plantation complexes, working plantations, and related buildings” that are visited by “[m]illions of people, both American and international” each year. Stephen Small, *Still Back of the Big House: Slave Cabins and Slavery in Southern Heritage Tourism*, 15 TOURISM GEOGRAPHIES 405, 405-06 (2013).

31. Alderman et al., *supra* note 26, at 210.

32. See *id.*



As with Holocaust museums, plantation museums have the potential to be sites dedicated to “documenting and interpreting historical tragedy and injustice.”<sup>33</sup> However, unlike other museums that “depict the horrors of the past,” many plantation museums advertise their estates “as a space of aesthetic pleasure.”<sup>34</sup> Docents lead tour groups around plantation grounds, guiding visitors through preserved structures and the “big house,” the home built to comfort and entertain white slave owners.<sup>35</sup> Only some include a visit to original, relocated, or reconstructed slave quarters.<sup>36</sup> Tours usually conclude at plantation gift shops where tourists are invited to purchase souvenirs. In 2007, the gift shop at San Francisco Plantation in Garyville, Louisiana sold “pralines, post-cards, . . . cookbooks[, and] ‘Black People,’ miniature plastic boys eating watermelon and women wearing head rags that sit next to the cash register.”<sup>37</sup> One of the most popular museums in southeastern Louisiana is Oak Alley Plantation, known for the live oaks that adorn the property—“The Deep South’s Most Spectacular Antebellum Setting” that has “come to represent plantation landscapes in the popular imaginary.”<sup>38</sup> Among the first plantation museums to open in the late 1970s, Oak Alley grew in popularity for its formal tours led by historically costumed guides, as well as the development of “a Creole/Cajun restaurant and separate cafe and ice cream parlour, a bar, a gift shop, cottages for overnight stays and a full service for weddings and events.”<sup>39</sup> Likely in response to Oak Alley’s success, other plantation museums along River Road

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33. Matthew Paul Smith, “Ridiculous Extremes”: *Historical Accuracy, Gone with the Wind, and the Role of Beauty in Plantation Tourism*, 55 SOUTHERN Q. 171, 184 (2018).

34. *Id.*; see, e.g., *Oak Alley Plantation Photography Contest*, OAK ALLEY PLANTATION, <https://www.oakalleyplantation.org/visit/oak-alley-plantation-photography-contest> [https://perma.cc/RQK5-FZBC] (advertising a contest inviting representations of Oak Alley that “capture[] the presence of the natural surroundings” or “of buildings and similar structures that are . . . aesthetically pleasing”); *Plantation Overview*, OAK ALLEY PLANTATION, <https://www.oakalleyplantation.org/visit/plantation-overview> [https://perma.cc/JZ5T-ED5P] (describing Oak Alley’s “28 Oaks to its open spaces, to its hidden nooks and crannies,” the “[w]ide pastures . . . where a Pecan Grove once thrived,” and a “1920’s formal garden,” a landscape that “offers visitors an unrestricted opportunity to detach”).

35. Alderman et al., *supra* note 26, at 211, 213-14.

36. Small, *supra* note 30, at 417 (“Most plantation museum sites with twenty-first-century antebellum slave cabins on location currently marginalize or symbolically annihilate [slave cabins] . . . visitors are offered little or nothing about the accommodations in which enslaved people lived.”).

37. ADAMS, *supra* note 27, at 54.

38. *Id.*

39. *Id.*

soon began sprouting up. By the early 2000s, the industry of inviting white tourists to experience a mythologized Old South had been established.<sup>40</sup>

In the mid-2010s, the plantation tourism industry gained greater national attention as plantation museums began to center the history of slavery in tours and educational programming.<sup>41</sup> At Whitney Plantation, for example, tours go beyond the big house, focusing on slave quarters and other plantation structures where enslaved people lived and labored while visitors are invited to engage with narratives of the formerly enslaved.<sup>42</sup> This attention has laid bare deep underlying tensions within and surrounding these museums. As plantations continue to tell idealized stories of their slave past, “specific comments, requests, and criticisms of visitors and locals displeased with a whitewashed story” led to national discussion over the way Americans choose to remember

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40. See Mark H. Hunter, ‘Family Project’ Restores Plantation, HOUMA TODAY (Apr. 28, 2005, 12:01 AM), <https://www.houmatoday.com/article/DA/20050428/News/608095365> [<https://perma.cc/769L-DSK5>]; Laura McKnight, The Courier, *Laura Plantation’s Rebirth*, HOUMA TODAY (Jan. 7, 2007, 12:01 AM), <https://www.houmatoday.com/article/DA/20070107/News/608086574> [<https://perma.cc/BN5W-C92L>]; Mary Ann Sternberg, *Sustaining Evergreen: Preserving a Plantation*, NAT’L TR. FOR HISTORIC PRESERVATION (July 1, 2013), <https://savingplaces.org/stories/sustaining-evergreen> [<https://perma.cc/C4QF-A34V>].
41. See, e.g., David Amsden, *Building the First Slavery Museum in America*, N.Y. TIMES MAG. (Feb. 26, 2015), <https://www.nytimes.com/2015/03/01/magazine/building-the-first-slave-museum-in-america.html> [<https://perma.cc/4E2E-PZ7D>]; Dwayne FATHERE, *Laura Plantation Embraces Creole Past, Seeks to Defy Antebellum Stereotypes*, HOUMA TODAY (Sept. 18, 2015, 11:40 AM), <https://www.houmatoday.com/article/DA/20150918/News/608086498/HC> [<https://perma.cc/6WH5-ZX53>].
42. Erik Johnson, *Slavery, Tourism, and Memory in New Orleans’s “Plantation Country,”* 65 AFR. TODAY 101, 105 (2019).

slavery.<sup>43</sup> Even mainstream wedding-planning sites no longer promote weddings held on former slave plantations in response to the controversy.<sup>44</sup>

Nevertheless, plantation museums fail to reckon with their troubling legacy. Laura Kilcer, curator at Oak Alley Plantation, illustrated this failure by arguing that “[w]hen someone goes to Whitney Plantation, there’s a certain amount of self selection that *I’m ready for this. This is a memorial. I’m prepared emotionally and mentally.* We, however, get everyone. We get people with kids looking for a day away from the French Quarter . . . .”<sup>45</sup> This prioritization of market segmentation over serious engagement with a traumatic history perfectly summarizes the disregard that plantation museums have for descendant communities.

And yet, national discourse about the morality of these practices rarely extends to the deeper local tensions between established plantation museums and descendant communities. These communities have existed since the first slaves were brought on ships from West Africa and have experienced plantations as sites of historical and ongoing racialized harm. Eileen Julien, a professor and descendant of enslaved African Americans in Louisiana, recalled the years when going to a plantation “would’ve been like saying *Let’s go to Mars . . . . It was for whites.*”<sup>46</sup> The contemporary practices of plantation museums have done little to ameliorate this sentiment. Kim Coleman, a museum professional and New Orleans native, asserted her disgust at plantation tours that “gloss over” the history of racialized oppression: “It becomes, *Oh let’s not talk about this because I don’t know who my audience is, and I don’t want to offend anyone.*”<sup>47</sup>

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43. Alderman et al., *supra* note 26, at 211; see, e.g., Daniel Avery, *A Visitor Didn’t Want to Hear About Slavery on Her Plantation Tour. This Historical Interpreter Has Something to Say About That*, NEWSWEEK (Aug. 27, 2019, 6:00 AM EDT), <https://www.newsweek.com/yelp-plantation-michael-twitty-1455983> [<https://perma.cc/U64R-R469>]; Margaret Biser, *I Used to Lead Tours at a Plantation. You Won’t Believe the Questions I Got About Slavery*, VOX (Aug. 28, 2017, 10:16 AM EDT), <https://www.vox.com/2015/6/29/8847385/what-i-learned-from-leading-tours-about-slavery-at-a-plantation> [<https://perma.cc/F2Z9-3ZNS>]; Gillian Brockell, *Some White People Don’t Want to Hear About Slavery at Plantations Built by Slaves*, WASH. POST (Aug. 8, 2019, 4:23 PM EDT), <https://www.washingtonpost.com/history/2019/08/08/some-white-people-dont-want-hear-about-slavery-plantations-built-by-slaves> [<https://perma.cc/T727-39JT>]; *The Complicated Business of Plantation Tourism*, NPR (Sept. 30, 2019, 2:47 PM ET), <https://www.npr.org/2019/09/30/765760021/the-complicated-business-of-plantation-tourism> [<https://perma.cc/RYSV-DHT4>].

44. Heather Murphy, *Pinterest and the Knot Pledge to Stop Promoting Plantation Weddings*, N.Y. TIMES (Dec. 5, 2019), <https://www.nytimes.com/2019/12/05/style/plantation-weddings-pinterest-knot-zola.html> [<https://perma.cc/S9Q4-BF6S>].

45. Johnson, *supra* note 42, at 106.

46. *Id.* at 103.

47. See *id.* at 107.

The tension between River Road's two perspectives—those of the owners and managers of today's plantation museums and the Black descendants of enslaved African Americans still living in the surrounding community—demonstrates the need for a discussion about reparations. As long as “repressed and suppressed histories and marginalized identities [are brought] into dialogue with a tourism industry that until recently had been content with ignoring if not denying these very stories,” descendant communities have legitimate claim to compensation for the original harms of slavery and the legacies of slavery manifested in the continuing injustices committed by plantation museums.<sup>48</sup>

Museum professionals have grappled with the role their institutions ought to play in addressing the histories of slavery, segregation, and other racialized harms experienced by African Americans.<sup>49</sup> Elizabeth Merritt of the American Alliance of Museums lists three ways that museums can contribute to lasting and meaningful reparations for slavery: “economically, through how they manage their money,” “culturally, through the narratives they tell,” and “systemically, through how they share their power.”<sup>50</sup> This Section considers each of these forms of reparations in turn to catalog the economic, narrative, and systemic oppression that plantation museums perpetuate.

#### A. Economic Disenfranchisement

Plantation museums generate substantial economic wealth from tour fees, events, and souvenirs. They cost millions of dollars to operate and maintain<sup>51</sup> and are “an important source of economic income in [the] region,”<sup>52</sup> drawing hundreds of thousands of visitors each year.<sup>53</sup> Tourism along River Road has

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48. Alderman et al., *supra* note 26, at 209-10.

49. See Fath Davis Ruffins, *Revisiting the Old Plantation: Reparations, Reconciliation, and Museumizing American Slavery*, in MUSEUM FRICTIONS: PUBLIC CULTURES/GLOBAL TRANSFORMATIONS 394, 416-17 (Ivan Karp, Corinne A. Kratz, Lynn Szwaja & Tomas Ybarra-Frausto eds., 2006); see also *Forms of Reparations: The Museum and Restorative Justice*, MUSEUM & CURATORIAL STUD., CAL. ST. U., LONG BEACH, <https://www.wedemandreparations.com> [<https://perma.cc/5JCL-A4KL>].

50. Elizabeth Merritt, *Building an Equitable Future: Museums and Reparations*, AM. ALLIANCE MUSEUMS (June 19, 2019), <https://www.aam-us.org/2019/06/19/building-an-equitable-future-museums-and-reparations> [<https://perma.cc/2LLW-N3HC>].

51. Candace Forbes Bright, Derek H. Alderman & David L. Butler, *Tourist Plantation Owners and Slavery: A Complex Relationship*, 21 CURRENT ISSUES TOURISM 1743, 1747 (2018).

52. Rapson, *supra* note 29, at 752-53.

53. *Id.* at 763 (writing that Oak Alley had counted a “total of approximately 5 million” visitors by 2015); Brooke Robichaux, *Whitney Plantation Marks 5 Years: Admission Includes Fellowship*,

become so prevalent that plantation tour-bus companies developed as an ancillary industry to shuttle visitors from New Orleans. Yet, while the average tourist visiting a plantation to learn about slavery typically has a “household income greater than \$100,000”<sup>54</sup> and might spend as much as \$100 per person on a plantation tour package,<sup>55</sup> profits have never been intentionally redistributed to descendants of the enslaved and disenfranchised Black laborers as reparations.

Even smaller family-run plantation museums that attract far fewer visitors than sites like Oak Alley earn substantial revenue from farming operations on their grounds and rental fees from the film industry. St. Joseph’s Plantation, for instance, generates income from both harvesting sugarcane and movie and television contracts involving slavery and its legacies, including the blockbuster film *12 Years a Slave*, Netflix’s *Mudbound*, and the Oprah Winfrey television show *Queen Sugar*.<sup>56</sup>

Compounding the economic disparities inherent in plantation museum operations, land ownership around these plantations is concentrated in the hands of a few. Some plantations span thousands of acres, making their owners some of the largest landholders in the region.<sup>57</sup> None of these properties are known to be owned by descendants of the enslaved. Moreover, high land prices prevent descendants from purchasing these large plots. For instance, as of March 2021, a large property adjacent to Whitney Plantation is on the market for over \$14 million, an amount that only wealthy plantation owners or large corporations can afford.<sup>58</sup>

In stark contrast, communities surrounding plantation museums along River Road—the populations of Edgard, Wallace, and Vacherie, Louisiana—

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*Music & Food*, L’OBSERVATEUR (Dec. 4, 2019, 12:05 AM), <https://www.lobserveur.com/2019/12/04/whitney-plantation-marks-5-years-admission-includes-fellowship-music-food> [<https://perma.cc/J82J-ZM9P>] (noting that Whitney Plantation was projected to have around 100,000 visitors in the year 2019).

54. See Bright et al., *supra* note 51, at 1748.

55. *New Orleans Plantation Tours*, CAJUN ENCOUNTERS TOUR CO., <https://www.cajunencounters.com/tours/plantations> [<https://perma.cc/AC42-YBWK>].

56. Rapson, *supra* note 29, at 758; *Film & TV at St. Joseph Plantation*, ST. JOSEPH PLANTATION, <https://www.stjosephplantation.com/movies> [<https://perma.cc/T2RC-UCZD>]; *The Sugar Plantation*, ST. JOSEPH PLANTATION, <https://www.stjosephplantation.com/about-us/the-sugar-plantation> [<https://perma.cc/L8TK-6D73>].

57. St. Joseph Plantation, for example, owns 2,500 acres of agricultural farmland. See *The Sugar Plantation*, *supra* note 56.

58. See *177 Acres—Mississippi River Industrial Site*, LATTER & BLUM (2021), <http://latterblum.catylist.com/listing/30171845/5249-LA-18-Edgard-LA-70049> [<https://perma.cc/8PVY-2T34>].

experience an entirely different economic reality. At the time of publication, in Edgard, 21% of the population lives in poverty.<sup>59</sup> In Wallace, 17% of the population lacks basic health insurance coverage.<sup>60</sup> In Vacherie, only 15.6% of the population holds a bachelor's degree—the highest percentage of all three towns.<sup>61</sup> Perhaps unsurprisingly, these underserved regions are also predominately communities of color who have lived there for generations. In Edgard and Wallace, over 92% of the population is Black.<sup>62</sup> And in North Vacherie, Black people constitute 70.7% of the population.<sup>63</sup>

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59. *Edgard CDP, Louisiana*, U.S. CENSUS BUREAU, [https://www.census.gov/search-results.html?q=edgard+louisiana&page=1&stateGeo=none&searchtype=web&cssp=SERP&\\_charset=UTF-8](https://www.census.gov/search-results.html?q=edgard+louisiana&page=1&stateGeo=none&searchtype=web&cssp=SERP&_charset=UTF-8) [https://perma.cc/6FYL-9KLP].
60. *Wallace CDP, Louisiana*, U.S. CENSUS BUREAU, [https://www.census.gov/search-results.html?q=wallace+louisiana&page=1&stateGeo=none&searchtype=web&cssp=SERP&\\_charset=UTF-8](https://www.census.gov/search-results.html?q=wallace+louisiana&page=1&stateGeo=none&searchtype=web&cssp=SERP&_charset=UTF-8) [https://perma.cc/X7RS-RYPZ].
61. *Selected Social Characteristics in the United States*, U.S. CENSUS BUREAU, [https://data.census.gov/cedsci/table?q=0400000US22\\_1600000US2222815&y=2018&d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2018.DP02&hidePreview=true](https://data.census.gov/cedsci/table?q=0400000US22_1600000US2222815&y=2018&d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2018.DP02&hidePreview=true) [https://perma.cc/3ECC-BTW9] (showing results for Edgard); *Selected Social Characteristics in the United States*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=&d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=1600000US2279275&lastDisplayedRow=21&hidePreview=true> [https://perma.cc/V2H6-LW8W] (showing results for Wallace); *Selected Social Characteristics in the United States*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=&d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=1600000US2256170&hidePreview=true&lastDisplayedRow=169> [https://perma.cc/GZ52-K3T2] (showing results for North Vacherie); *Selected Social Characteristics in the United States*, U.S. CENSUS BUREAU, [https://data.census.gov/cedsci/table?q=d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=0400000US22\\_1600000US2272092&vintage=2018&hidePreview=true&layer=VT\\_2018\\_040\\_00\\_PP\\_D1](https://data.census.gov/cedsci/table?q=d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=0400000US22_1600000US2272092&vintage=2018&hidePreview=true&layer=VT_2018_040_00_PP_D1) [https://perma.cc/E3LG-YVDU] (showing results for South Vacherie).
62. *ACS Demographic and Housing Estimates*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=&d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP05&tid=ACSDP5Y2018.DP05&g=1600000US2222815&hidePreview=true&lastDisplayedRow=93&y=2018> [https://perma.cc/F88G-EJYP] (showing results for Edgard); *ACS Demographic and Housing Estimates*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=&d=ACS%205Year%20Estimates%20Data%20Profiles&table=DP05&tid=ACSDP5Y2018.DP05&g=1600000US2279275&lastDisplayedRow=21&hidePreview=true&y=2018> [https://perma.cc/6TNH-KJS9] (showing results for Wallace).
63. *ACS Demographic and Housing Estimates, North Vacherie CDP, Louisiana, 2018 5-Year Estimates*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=&d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP05&tid=ACSDP5Y2018.DP05&g=1600000US2256170&hidePreview=true&lastDisplayedRow=93&y=2018> [https://perma.cc/C8JK-4SEA].

The juxtaposition between wealth-generating plantation museums and surrounding economically distressed communities is especially troubling in light of the fact that the disparity arises directly from slavery itself.<sup>64</sup> Following the Civil War, many white Americans managed to rebuild their wealth within one generation,<sup>65</sup> while Black Americans, who never received compensation for lifetimes of labor, were confined to work in the fields where they faced a lifetime of perpetual debt by virtue of the meager wages paid by plantation owners.<sup>66</sup> “Slavery by another name” existed on plantations long after ratification of the Thirteenth Amendment,<sup>67</sup> as convict leasing, sharecropping, and debt peonage shackled the formerly enslaved to truly destitute conditions on plantations.<sup>68</sup> Along River Road, Black field hands were systemically oppressed, forced to work the same or longer hours than white workers for lower wages.<sup>69</sup> A particularly problematic example of such manipulation was the transference of debt ownership when a field hand switched employers, such that debt followed field hands from plantation to plantation.<sup>70</sup> In addition, plantation managers maintained practices borne out of the institution of slavery well into the twentieth century by colluding with the management of local industrial manufacturers to prevent plantation laborers from successfully gaining employment off the plantation, ensuring access to a large and cheap supply of labor during harvest season.<sup>71</sup>

Residents of the river parishes are descendants of many of the men, women, and children who were enslaved or otherwise forced into de facto arrange-

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64. Rapson, *supra* note 29, at 753 (arguing that a connection exists between “past slave labour and present socio-economic marginalisation”).
65. See Philipp Ager, Leah Platt Boustan & Katherine Eriksson, *The Intergenerational Effects of a Large Wealth Shock: White Southerners After the Civil War 2-3* (Nat’l Bureau of Econ. Research, Working Paper No. 25700, 2019); see also Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. CRIMINOLOGY 2.1, 2.7-2.8 (2021).
66. See Ager et al., *supra* note 65, at 4.
67. See generally DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008).
68. See DANIEL, *supra* note 23; DAVID OSHINSKY, *WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE* (1996); Ager et al., *supra* note 65, at 6-7.
69. See *Archival Documents from Whitney*, GRASS, SCRAP, BURN, <https://gsb-whitney.squarespace.com/archival-documents-from-whitney> [<https://perma.cc/7ALV-6NVZ>].
70. *Id.*
71. See, e.g., Letter from Whitney Plantation to Celotex Corporation regarding workers, 1946 (May 22, 1946), <https://gsb-whitney.squarespace.com/archival-documents-from-whitney> [<https://perma.cc/7ALV-6NVZ>]. For other examples of collusion between plantation management and oil refineries, see *Archival Documents from Whitney*, *supra* note 69.



ments of servitude on River Road plantations. Some community members alive today were born in former slave cabins and grew up in conditions akin to those endured by their enslaved ancestors.<sup>72</sup> Today, these communities face additional economic burdens and severe public-health threats due to hundreds of petrochemical plants and refineries that have proliferated across the region since the early twentieth century,<sup>73</sup> often located on the grounds of former plantations.<sup>74</sup> As is true for many Black Americans, these communities “remain disenfranchised, as industrial and cultural conditions replicate the structural inequalities fundamental to the racist organi[z]ation and logic of plantation society.”<sup>75</sup> These communities, therefore, directly inherited economic disenfranchisement from the institution of slavery.

It is profoundly troubling that plantation tourism has become so lucrative for white property owners while generations of Black communities who built and maintained these historic sites remain disenfranchised. The racial capitalism reflected across this arrangement should be plain.<sup>76</sup> As plantation museums continue to profit off of the legacy of the enslaved, while Black descendants remain economically insecure, museum owners and management signal their continued willingness to accumulate wealth by relying on deeply unjust racial hierarchy.

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72. *About Our Narrators*, GRASS, SCRAP, BURN, <https://gsb-whitney.squarespace.com/about-our-narrators> [<https://perma.cc/M72P-95L2>].

73. Craig E. Colten, *An Incomplete Solution: Oil and Water in Louisiana*, 99 J. AM. HIST. 91, 92–93 (2012); Rapson, *supra* note 29, at 756 (“[B]y the 1990s, 85 miles of land between Baton Rouge and New Orleans was dominated by approximately 150 petrochemical plants and refineries.”). Vacherie, for example, is at the center of an area known as “Cancer Alley,” a series of majority-Black communities surrounded by hundreds of petrochemical plants. See Mara Kardas-Nelson, *The Petrochemical Industry Is Killing Another Black Community in ‘Cancer Alley,’* NATION (Aug. 26, 2019), <https://www.thenation.com/article/st-james-louisiana-plastic-petrochemicals-buy-out> [<https://perma.cc/WFG6-L7FN>].

74. Human geographer Thom Davies writes that in the “post-bellum 20th century, former plantations were sold to nascent oil companies . . . keen to secure a convenient slice of riverside territory.” These “polluting” industries settled “on the colonial footprint of former plantations” and have exposed “descendants of slaves” to toxic emissions since their construction. As environmental justice advocates have asserted, “the transfer from Plantation to Chemical Plant was effectively ‘exchanging one plantation master for another.’” Thom Davies, *Toxic Geographies: Chemical Plants, Plantations, and Plants That Will Not Grow*, TOXIC NEWS (Nov. 7, 2017), <https://toxicnews.org/2017/11/07/toxic-plants-in-the-deep-south-chemical-plants-plantations-and-plants-that-will-not-grow> [<https://perma.cc/T35P-DHH2>].

75. Rapson, *supra* note 29, at 756.

76. Dorothy E. Roberts defines “racial capitalism” as the idea that “capital accumulation and labor expropriation in the United States have always relied on a racial hierarchy and the deep inequalities that hierarchy produces.” Dorothy E. Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 14 n.60 (2019).



*B. Narrative Violence*

Beyond the economic inequity of historic and continued plantation operations, plantation museums are noteworthy loci for reparative justice because of their own disturbing engagement in the history of slavery, producing false histories that distort or erase enslaved narratives. Plantation museums have notoriously “ignored, misrepresented, and trivialized African-American contributions and struggles within [their] iconography, cultural narratives, and touristic representations and performances.”<sup>77</sup>

At plantations along Louisiana’s River Road, “[t]he way in which African Americans are ignored . . . can be understood as a continuation of historically rooted racism.”<sup>78</sup> While some museums have taken recent steps to include enslaved narratives on their tours, these plantations have a much longer history of avoiding slave cabins and other physical reminders of racial oppression.<sup>79</sup> At Oak Alley Plantation, “a woman responsible for designing the tours [remarked] that the slave quarters had simply ‘disintegrated and fallen down. There was hardly any point in rebuilding them’ because they were ‘just a part of American history that is no more.’”<sup>80</sup> This attitude toward the homes of the enslaved confirms an understanding that plantations have “typically [been] preserved and showcased as memorials to, and testaments of, elite power.”<sup>81</sup>

References to slave labor that do exist at plantation museums rarely acknowledge the immorality of slavery. In fact, many tour guides reportedly express empathy for slaveholding plantation owners while paying “scarce attention to the labour required to maintain their lifestyles.”<sup>82</sup> Guides at Oak Alley Plantation, for example, have repeatedly assured visitors that the era of slavery on the plantation “was ‘just like today’ and that the owners were ‘just like us.’”<sup>83</sup> Visitors, moreover, are introduced to the plantation house as the “outcome of a love story,” rather than as a site of racial persecution and human suffering.<sup>84</sup> Oak Alley is not alone in perpetuating this narrative violence. At

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77. Alderman et al., *supra* note 26, at 210.

78. Rapson, *supra* note 29, at 754.

79. Small, *supra* note 30, at 407-08.

80. ADAMS, *supra* note 27, at 59.

81. Rapson, *supra* note 29, at 754 (quoting ANTOINETTE T. JACKSON, *SPEAKING FOR THE ENSLAVED: HERITAGE INTERPRETATION AT ANTEBELLUM PLANTATION SITES* 49 (2012)).

82. *Id.* at 760.

83. *Id.*

84. *Id.* at 759.

neighboring St. Joseph Plantation, for instance, visitors are invited “to ‘imagine [that] this is your grandfather’s[] house.’”<sup>85</sup>

Plantation tours designed by and shaped for white Americans inculcate racist thinking in their visitors.<sup>86</sup> As a tourism geographer recalled after visiting a Louisiana plantation called “The Shadows,” “[o]ne middle-aged white woman fantasized, as we stood in the parlor, about how much she would enjoy taking her coffee in the mornings, walking out on the gallery, and seeing (I quote because the phrase is so vividly recorded in my memory) ‘all my little pickaninies running around in the yard.’”<sup>87</sup> Destrehan Plantation encourages white tourists to reenact scenes from the era of slavery through present-day rituals, advertising their wedding ceremonies through photographs of “top-hatted black men in tuxedos driv[ing] carriages filled with white bridesmaids up to the big house.”<sup>88</sup> Tourism researcher David Butler described the harm he experienced as a visitor of Oak Alley Plantation:

During the tour of the “big house,” I was so outraged by the narrative and both the exclusion of the enslaved and the trivialization of the idea of slavery that I started to ask pointed questions of the docent. It got to the point that I was disrupting the tour. After returning to the rental car, I was visibly angry, shaking my hands and arms and banging on the steering wheel. I was outraged that such callousness existed in the world and that people were selling and buying this unjust form of heritage tourism.<sup>89</sup>

The erasure of the history of slavery has long attended the institution of slavery itself. On plantations, the original sites of enslavement, Black people experienced the injustice of information, history, and knowledge suppression to ensure their continued subjugation.<sup>90</sup> Plantations are also among the earliest

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85. *Id.* at 762.

86. Oak Alley Plantation Curator Laura Kilcer has admitted “as a self-critique” that Oak Alley has “provided the means to make [laughter about slavery] comfortable. If you have people who are dressed in costumes and the only time you’re talking about an enslaved person is a trope-supporting anecdote, I think that you’ve provided the components that made that laughter comfortable.” Johnson, *supra* note 42, at 114.

87. Smith, *supra* note 33, at 187.

88. *Id.* at 185.

89. Alderman et al., *supra* note 26, at 213.

90. John W. Fields, enslaved in his youth, recalled how

[i]n most of us colored folks was the great desire to able to read and write. We took advantage of every opportunity to educate ourselves. The greater

sites where myths of Black inferiority and subhumanity were created and proliferated by and for white subjects.<sup>91</sup> This narrative violence has prevented generations of Americans from understanding their historical roots, and has perpetuated racism and racial acts of violence.<sup>92</sup> Four thousand eighty four known victims<sup>93</sup> of gruesome racial terror lynchings remind us of the horrific power of “the racial hierarchy narrative,” one that allowed “entrenched white power structures [to adopt] rhetoric defending racialized vigilante violence as necessary to protect white property, families, and the Southern way of life from black ‘criminals.’”<sup>94</sup> By obfuscating their histories of racialized violence, plantation museums make it more difficult for white tourists to learn from their ancestors’ transgressions and recognize the ways in which they may perpetuate anti-Black violence in the present. Further, without a deep comprehension of the humanity of the enslaved, white Americans visiting these sites today may be less able to appreciate and respect Black humanity in the present, and consequently may be more likely to perpetuate racial injustice and brutality. Thus, by disseminating harmful falsehoods about the enslaved, plantations continue to engender racially violent narratives that help keep Black Americans in a state of brutal subjugation.

### C. Structural Inequity

Plantation museums are proven sources of social capital or “repositories of societal wealth, . . . stewarding all kinds of intangible wealth” from

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part of the plantation owners were very harsh if we were caught trying to learn or write. . . . Our ignorance was the greatest hold the South had on us.

*Image 82 of Federal Writers’ Project: Slave Narrative Project, Vol. 5, Indiana, Arnold-Woodson, LIBR. CONGRESS 78 (1937), <https://www.loc.gov/resource/mesn.050/?sp=82> [<https://perma.cc/BU2K-NPXG>] (page two of the document titled “Interview with Mr. John W. Fields, Ex-Slave of Civil War period,” dated September 17 1937).*

91. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1717 (1993).
92. See generally S. Plous & Tyrone Williams, *Racial Stereotypes from the Days of American Slavery: A Continuing Legacy*, 25 J. APPLIED SOC. PSYCHOL. 795, 812 (1995) (describing the link between racial stereotypes and racial prejudice); L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 OHIO ST. J. CRIM. L. 115, 118-19, 121 (2014) (discussing the link between implicit bias and racial violence).
93. *Lynching in America: Confronting the Legacy of Racial Terror*, EQUAL JUST. INITIATIVE 40 (3d ed. 2017), <https://eji.org/wp-content/uploads/2020/09/lynching-in-america-3d-ed-091620.pdf> [<https://perma.cc/K6HK-XBTZ>].
94. Jennifer Rae Taylor, *A History of Tolerance for Violence Has Laid the Groundwork for Injustice Today*, AM. BAR ASS’N (May 16, 2019), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/black-to-the-future/tolerance-for-violence](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future/tolerance-for-violence) [<https://perma.cc/T289-J3LQ>].

“knowledge” to “reputational power, social networks, and influence.”<sup>95</sup> Since their creation, plantations have perpetuated social hierarchies. Nineteenth-century historians have described the ways in which “[p]ower and privilege were visually encoded in the landscape and architecture” of plantations, as they were intentionally built to “emphasiz[e] the social hierarchy.”<sup>96</sup> Today, plantation museums sustain their social inheritance by positioning themselves as premier sites for social gatherings of the elite. By hosting weddings,<sup>97</sup> corporate meetings and retreats,<sup>98</sup> and university events,<sup>99</sup> plantation museums have become spaces for social networking and connection, fostering “institutionalized relationship[s] of mutual acquaintance and recognition”<sup>100</sup> with influential organizations to enhance their proximity to power.

Museum owners and staff have also gained social clout through stewardship of plantations as historical sites. Plantation owners are “carriers of historical values and cultural tradition,” playing a key role in “constructing a national identity.”<sup>101</sup> Oak Alley Plantation Executive Director Zeb Mayhew was celebrated by local newspapers and won a lifetime achievement award for “his efforts promoting Louisiana tourism.”<sup>102</sup> Matilda Gray Stream, owner of Evergreen Plantation, has received multiple awards for her stewardship,<sup>103</sup> including being honored as a 2007 “Louisiana Legend” for her work as a “preservation-

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95. Merritt, *supra* note 50.

96. MICHAEL D. HARRIS, COLORED PICTURES: RACE AND VISUAL REPRESENTATION 22 (2003).

97. See *Weddings*, LOUISIANA'S RIVER PARISHES, <https://lariverparishes.com/weddings> (advertising twelve plantation museums and offering their grounds for plantation weddings).

98. *Oak Alley Restaurant 2020 Professional Meeting Facilities*, OAK ALLEY PLANTATION, [https://www.oakalleyplantation.com/sites/drupal-29536-63959-171825.cloudwaysapps.com/files/west\\_pavilion\\_professional\\_meetings\\_2021.pdf](https://www.oakalleyplantation.com/sites/drupal-29536-63959-171825.cloudwaysapps.com/files/west_pavilion_professional_meetings_2021.pdf) [<https://perma.cc/5EUH-KJH7>].

99. *Event Testimonials*, OAK ALLEY PLANTATION, <https://www.oakalleyplantation.com/host-event/event-testimonials> [<https://perma.cc/MGL4-4QN2>] (testimonial thanking Oak Alley for hosting Tulane University's Student Affairs staff).

100. Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241, 248 (J.G. Richardson ed., 1986).

101. Bright et al., *supra* note 51, at 1746, 1749.

102. Thad Angelloz, *Plantation's Leader Has Unique Relationship with Home*, HOUMA TODAY (Feb. 2, 2011, 8:59 AM), <https://www.houmatoday.com/article/DA/20110202/News/608080533/HC> [<https://perma.cc/UHT9-BFLP>]; see also Thad Angelloz, *Q and A: Zeb Mayhew Jr.*, DAILY COMET (May 16, 2012, 5:02 PM), <https://www.dailycomet.com/news/20120516/q-and-a-zeb-mayhew-jr> [<https://perma.cc/2GTY-YV8Y>] (interviewing Zeb Mayhew “so readers can get better acquainted with the man charged with running and operating the historic plantation”).

103. Sternberg, *supra* note 40 (“When Stream accepted one of the many awards she has received for her work in preservation, she smiled serenely and said simply that the work had been ‘a duty and an honor.’”).

ist . . . [who] has donated her time and her talents and her family's resources to preserve [her] state's history."<sup>104</sup>

Plantation managers also accrue social capital and other forms of wealth. Curators and executive staff often meet at public history conferences, where they exchange knowledge and information to improve their own exhibits and make connections with others in their field.<sup>105</sup> These staff members, therefore, develop a richer account of the public history landscape, have a wider (and arguably more affluent) social network, and gain reputational power and influence within their industry. This wealth, in turn, generates its own kind of social and economic currency.

The knowledge necessary to partake in this exchange of social capital does not flow as easily to descendant communities, some of whom are not even able to learn about the history of their ancestors on the plantation unless they are hired as tour guides.<sup>106</sup> This exclusion alone precludes many descendants from engaging in public history work around their own history, preventing them from obtaining leadership positions on the plantation museum staff, or growing influential networks across the public history industry. In fact, as of publication, top leadership positions at these plantations appear to be held exclusively by white individuals.<sup>107</sup>

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104. *Matilda Gray Stream, Louisiana Legend Gala*, LA. DIGITAL MEDIA ARCHIVE at 7:43-7:55 (June 24, 2007), [http://ladigitalmedia.org/video\\_v2/asset-detail/LLLGA-2007-02\\_Stream](http://ladigitalmedia.org/video_v2/asset-detail/LLLGA-2007-02_Stream) [<https://perma.cc/MD6D-ZTTH>].

105. *See, e.g., Monticello Announces Major International Conference, Free Public Forum on Slavery*, MONTICELLO (Mar. 1, 2018), <https://www.monticello.org/press/news-releases/Monticello-announces-major-international-conference-free-public-forum-on-slavery> [<https://perma.cc/C4HQ-SQFR>].

106. *See, e.g., Andrea Gallo, Louisiana's Plantations Are Reckoning with Their Racist Past; Here's How Some Are Evolving*, NOLA.COM (Sept. 4, 2020, 5:00 AM), [https://www.nola.com/news/article\\_937000dc-d5d0-11ea-b150-237b10ac5da1.html?1599195098958](https://www.nola.com/news/article_937000dc-d5d0-11ea-b150-237b10ac5da1.html?1599195098958) [<https://perma.cc/U2KS-VL6F>] (describing how a descendant started working at Oak Alley "to learn more about her own ancestors").

107. *See, e.g., Davis Allen, Putting a Face to a Name: New Slavery Exhibit at Laura Plantation Personalizes the History of Slavery*, PRESERVATION RESOURCE CENTER NEW ORLEANS (March 2, 2017), <https://prcno.org/laura-exhibit> [<https://perma.cc/4936-TDXX>] (identifying Norman and Sand Marmillion as the current owners); *About*, EVERGREEN PLANTATION, <https://www.evergreenplantation.org/about> [<https://perma.cc/E2KB-S5RQ>] (listing Jane Boddie as Director); *Contact Whitney Plantation*, WHITNEY PLANTATION, <https://www.whitneyplantation.org/contact> [<https://perma.cc/R99A-XB2W>] (listing Ashley Rogers as Executive Director); *Joseph Waguespack Family*, ST. JOSEPH PLANTATION, <https://www.stjosephplantation.com/the-families/joseph-waguespack-family> [<https://perma.cc/86HL-VMDD>] ("Waguespack's purchase of the plantation in 1877 began a timeline of family ownership that has continued unbroken to this day."); *Management Staff Direc-*

In contrast, descendants who are employed at these museums might typically work as tour guides or hold other non-senior positions. While the role of a tour guide is essential—fostering the environment for visitors to understand their position relative to the history of slavery—that value does not appear to translate into opportunities to amass greater reputational power within and beyond the plantation tourism industry. Excluded from the privileged areas enjoyed by plantation owners and executive staff, descendant tour guides might spend their days confined to the plantation-tour route, subject to the vitriol of tourists who have referred to them as “slave[s]” and “house n\*\*\*\*\*[\*].”<sup>108</sup>

This structural inequity emanates directly from slavery. Following the Civil War, economic recovery for slaveowners primarily took place through the redistribution of “non-financial assets, principally social networks that provided access to jobs, advantageous marriages, and other economic opportunities.”<sup>109</sup> The following generations of slaveholding families, “recovered . . . [and] surpassed their [ancestors] in education and occupational attainment by 1940.”<sup>110</sup> Such an accelerated increase in wealth was largely due to “social networks [which] facilitated this recovery,” specifically “sons marrying into other former slaveholding families,” rather than “transmission of entrepreneurship and skills.”<sup>111</sup> At the same time, “numerous legal and de jure forms of labor discrimination and exploitation limited the life chances” and social opportunities of the formerly enslaved and their descendants, ensuring their continued status as a “vulnerable supply of low-wage workers.”<sup>112</sup> The experience of racialization endured by descendants has been understood as one of social death.<sup>113</sup>

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tory, OAK ALLEY PLANTATION, <https://www.oakalleyplantation.com/management-staff-directory> [<https://perma.cc/J7QD-MK69>] (listing Zeb Mayhew, Jr. as President).

108. Gallo, *supra* note 106 (describing the experience of a descendant tour guide working at Oak Alley Plantation).
109. Merritt, *supra* note 50.
110. Ager et al., *supra* note 65, at 2.
111. *Id.*
112. Laura Pulido, *Geographies of Race and Ethnicity II: Environmental Racism, Racial Capitalism, and State-Sanctioned Violence*, 41 *PROGRESS HUM. GEOGRAPHY* 524, 528 (2017).
113. FRANK B. WILDERSON III, SADIYA HARTMAN, STEVE MARTINOT, JARED SEXTON & HORTENSE J. SPILLERS, *AFRO-PESSIMISM: AN INTRODUCTION* 8 (2017) (expanding upon Orlando Patterson’s conception of social death, in which slaves are “not recognized as a social subject and are thus precluded from the category of ‘human’—inclusion in humanity being predicated on social recognition, volition, subjecthood, and the valuation of life”). See generally ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY* (1982) (a comparative study of the nature of slavery, focusing on the “parasitic” relationship between master and slave and the violent domination of the enslaved which renders them “socially dead”).

Such systemic inequality is troubling because it perpetuates a racialized, hierarchical system of labor that substantially mirrors the antebellum plantation-labor system itself. Just as white landowners and managers oversaw Black labor on plantations through the eighteenth, nineteenth, and much of the twentieth century, visitors touring plantations in 2021 might still see predominantly white curators and directors overseeing Black tour guides and staff, some of whom are descendants of those formerly enslaved or disenfranchised on the plantation.

Because of “the racialized history . . . of the United States, racialization affects the way workplaces operate day-to-day.”<sup>114</sup> Racialization of labor involves “groups of people being cordoned off” based on perceived racial and ethnic differences.<sup>115</sup> This produces a hierarchical labor system, which limits upward mobility of employees based on race. White workers are considered to be “dominant” and thus are “afforded benefits from their collective racialization,” while “subordinate racialized groups,” such as African American workers, are forced to operate “within a hierarchical system of labor exploitation” that often leads to worse economic outcomes.<sup>116</sup> As sociologists have observed, “[p]eople of color, especially women of color, continue to do the hardest work for the lowest pay under the harshest working conditions.”<sup>117</sup> Thus, so long as plantation museums reify this historically unequal system—with whites on the top and Blacks at the bottom—labor inequities will continue to flourish and centuries-old wounds will continue to fester.

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114. Marta Maria Maldonado, *‘It Is Their Nature to Do Menial Labour’: The Racialization of ‘Latino/a Workers’ by Agricultural Employers*, 32 ETHNIC & RACIAL STUD. 1017, 1018 (2009) (footnote omitted).

115. Edna Bonacich, Sabrina Alimahomed & Jake B. Wilson, *The Racialization of Global Labor*, 52 AM. BEHAV. SCIENTIST 342, 343 (2008).

116. *Id.* at 343-44. For a breakdown of the Black-white racial wealth gap, see Kriston McIntosh, Emily Moss, Ryan Nunn & Jay Shambaugh, *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap> [https://perma.cc/V4BZ-FXYY].

117. Bonacich et al., *supra* note 115, at 345.



## II. LOCAL REPARATIONS ON THE AMERICAN PLANTATION

### A. *The Significance of Local Reparations*

Recent fights for reparations have focused on national initiatives such as the passage of legislation establishing a commission to study reparations.<sup>118</sup> Yet, as the Black Lives Matter Healing Justice Working Group explains, “[a]t the very root of healing justice is an analysis of trauma.”<sup>119</sup> We must do the deeper, individualized work of tracing the traumas of slavery to their source, speaking restorative truth into our deepest wounds, and moving forward—irrevocably changed, yet eternally healed.

To begin this work, Americans should look to the success of local reparations programs, which movement advocate Kamm Howard describes as processes that “allow communities to prioritize and plan intentionally for reparations initiatives and focus intensely on outcomes.”<sup>120</sup> Local governmental bodies in what is now the United States have engaged in such processes for centuries.<sup>121</sup> More recently, state legislatures have successfully enacted legislation providing partial yet tangible reparations for victims of racial violence and their descendants. In 2014, for example, North Carolina paid \$10 million in compensatory reparations to living survivors of a former eugenics program that forcibly sterilized over 7,000 people.<sup>122</sup> This inspired Virginia, another state that practiced forced sterilization on Black women, to award \$25,000 to survivors of state-sanctioned sterilization.<sup>123</sup>

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118. H.R. 40, 116th Cong. § 2(b) (2019); see also Sheryl Gay Stolberg, *At Historic Hearing, House Panel Explores Reparations*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/us/politics/slavery-reparations-hearing.html> [<https://perma.cc/YNL2-QKGX>].

119. BLACK LIVES MATTER, *HEALING IN ACTION: A TOOLKIT FOR BLACK LIVES MATTER HEALING JUSTICE & DIRECT ACTION* 3 (2017).

120. Mary Helt Gavin, *Sharper Focus on Local Reparations at Second Reparations Town Hall Meeting*, EVANSTON ROUNDTABLE (May 26, 2020, 1:52 PM), <https://evanstonroundtable.com/Content/City-News/City-News/Article/Sharper-Focus-on-Local-Reparations-at-Second-Reparations-Town-Hall-Meeting/15/26/18000> [<https://perma.cc/HN7P-JVLQ>].

121. BROPHY, *supra* note 4, at 23 (describing a practice of legislatively enacted reparations dating back to the Salem witchcraft trials and continuing “throughout the eighteenth and nineteenth centuries”).

122. Scott Neuman, *North Carolina Set to Compensate Forced Sterilization Victims*, NPR (July 25, 2013, 5:20 PM), <https://www.npr.org/sections/thetwo-way/2013/07/25/205547272/north-carolina-set-to-compensate-forced-sterilization-victims> [<https://perma.cc/AD2B-ULGH>].

123. Gary Robertson, *Virginia Lawmakers OK Payout to Forced Sterilization Survivors*, REUTERS (Feb. 26, 2015, 12:06 PM), <https://www.reuters.com/article/us-usa-virginia-sterilization/virginia-lawmakers-ok-payout-to-forced-sterilization-survivors>



American cities have also begun to reckon with their role in perpetuating the legacies of slavery and Black oppression. In 2015, the City of Chicago, through a municipal ordinance, granted \$5.5 million through individual payments, college scholarships, and priority for city employment and social services to fifty-seven living survivors of police torture.<sup>124</sup> The Chicago City Council also made reparations through public memory and education initiatives, mandating the teaching of the history of police torture in all public schools and the creation of a memorial dedicated to the survivors of police violence.<sup>125</sup> The nearby city of Evanston followed, enacting a reparations plan in 2019 that directed tax revenue from the sale of newly legalized cannabis to fund “race-based reparations for its black residents” related to injustices perpetrated in the name of the War on Drugs and “the city’s history of redlining.”<sup>126</sup> Some commentators refer to Evanston’s program as a “blueprint for the nation.”<sup>127</sup> Politicians and community activists have progressively embraced similar models across the country, advocating for state or municipal reparations in California,<sup>128</sup> Georgia,<sup>129</sup> Kentucky,<sup>130</sup> Massachusetts,<sup>131</sup> Minnesota,<sup>132</sup> New Jersey,<sup>133</sup> North Carolina,<sup>134</sup> Pennsylvania,<sup>135</sup> and Vermont.<sup>136</sup>

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-idUSKBN0LU2D420150226 [https://perma.cc/5LU9-SFZ4]. For additional examples of state reparations initiatives, see HENRY, *supra* note 11, at 69-92; and M4BL, *supra* note 2, at 95-96.

124. Mitch Smith & Monica Davey, *Chicago to Pay \$5 Million to Victims of Police Abuse*, N.Y. TIMES (May 6, 2015), <https://www.nytimes.com/2015/05/07/us/chicago-to-pay-5-million-to-victims-of-police-abuse.html> [https://perma.cc/Z95Y-K2D4].
125. *Id.*
126. Teo Armus, *A Chicago Suburb Wants to Give Reparations to Black Residents. Its Funding Source? A Tax on Marijuana*, WASH. POST (Dec. 2, 2019, 7:25 AM EST), <https://www.washingtonpost.com/nation/2019/12/02/evanston-illinois-reparations-plan-african-americans-is-marijuana-tax> [https://perma.cc/32N9-S95N].
127. Eric Lutz, *One City’s Reparations Program That Could Offer a Blueprint for the Nation*, GUARDIAN (Jan. 19, 2020, 3:47 AM EST), <https://www.theguardian.com/us-news/2020/jan/19/reparations-program-evanston-illinois-african-americans-slavery> [https://perma.cc/D78L-NRXX].
128. Tal Axelrod, *California Lawmakers Advance Reparations Bill*, HILL (June 13, 2020, 10:01 AM EDT), <https://thehill.com/homenews/state-watch/502582-california-lawmakers-advance-reparations-bill> [https://perma.cc/8B74-M257].
129. Chris Dowd, *Protestors Demand Linnentown Reparations at Emotional Commission Meeting*, FLAGPOLE (Feb. 12, 2020), <https://flagpole.com/news/city-dope/2020/02/12/protesters-demand-linnentown-reparations-at-emotional-commission-meeting> [https://perma.cc/D7BP-V93R].
130. Drew Gardner, *Local Groups Say It’s Time to Talk About Reparations and What They Really Mean*, WLKY (Sept. 26, 2020, 1:31 PM EDT), <https://www.wlky.com/article/local-groups>

The nation's oldest educational institutions have also engaged in local forms of reparations. Several years after acknowledging that its institution profited from the sale of 272 slaves, Georgetown University, in 2019, agreed to raise \$400,000 a year for reparations to the descendants of the enslaved after substantial student advocacy to create a reparative fund.<sup>137</sup> Princeton Theological Seminary announced a \$27 million reparations plan to provide scholarships to African Americans and fund additional research into the school's ties to slavery,<sup>138</sup> and Virginia Theological Seminary plans to create a \$1.7 million fund for

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-say-its-time-to-talk-about-reparations-and-what-they-really-mean/34169577 [https://perma.cc/8UTR-GE94].

131. Scott Merzbach, *Amherst Pursues Reparations to Black Residents*, DAILY HAMPSHIRE GAZETTE (Dec. 8, 2020, 7:56 PM), <https://www.gazettenet.com/amherst-adopts-resolution-in-support-of-reparations-for-black-residents-37677477> [https://perma.cc/X5NF-PYUT].
132. Jackie Renzetti, *St. Paul Joins Handful of Cities Moving Towards Reparations for Descendants of Slaves*, BRING ME NEWS (Jan. 28, 2021), <https://bringmethenews.com/minnesota-news/st-paul-joins-handful-of-cities-moving-towards-reparations-for-descendants-of-slaves> [https://perma.cc/CP5M-SM2L].
133. Brent Johnson, *Black N.J. Leaders Want to Explore Reparations over Slavery in the State*, NJ.COM (Nov. 15, 2019), <https://www.nj.com/politics/2019/11/black-nj-leaders-want-to-explore-reparations-over-slavery-in-the-state.html> [https://perma.cc/9NNT-J9H3].
134. Shawna Mizelle, *North Carolina City Votes to Approve Reparations for Black Residents*, CNN (July 15, 2020, 8:36 PM ET) <https://www.cnn.com/2020/07/15/us/north-carolina-asheville-reparations/index.html> [https://perma.cc/KUB6-5EFJ]; Associated Press, *North Carolina County Becomes Latest to Back Reparations*, ABC NEWS (Dec. 9, 2020), <https://abcnews.go.com/US/wireStory/north-carolina-county-latest-back-reparations-74630484> [https://perma.cc/DM2F-HFT5].
135. John L. Micek, *Pa. Out Front: How the Argument over Reparations Is Moving into State Capitols*, PA. CAPITAL-STAR (Oct. 4, 2019), <https://www.penncapital-star.com/commentary/pa-out-front-how-the-argument-over-reparations-is-moving-into-state-capitols-friday-morning-coffee> [https://perma.cc/HG4R-PDZL].
136. Katya Schwenk, *Burlington Task Force Gets to Work on Issue of Reparations for Chattel Slavery*, VT DIGGER (Nov. 13, 2020), <https://vtdigger.org/2020/11/13/burlington-task-force-gets-to-work-on-issue-of-reparations-for-chattel-slavery/> [https://perma.cc/ME99-XXAG].
137. P.R. Lockhart, *Georgetown University Plans to Raise \$400,000 a Year for Reparations*, VOX (Oct. 31, 2019, 11:05 AM EDT), <https://www.vox.com/identities/2019/10/31/20940665/georgetown-reparations-fund-slavery-history-colleges> [https://perma.cc/YM5R-EXNV].
138. Harmeet Kaur, *A New Jersey Religious College Will Set Aside Nearly \$28 Million for Slavery Reparations*, CNN (Oct. 26, 2019, 12:05 AM EDT), <https://www.cnn.com/2019/10/26/us/princeton-seminary-slavery-reparations-trnd/index.html> [https://perma.cc/3A2M-WUKE].

descendants of the enslaved who worked at the seminary and for current Black clergy and alumni.<sup>139</sup>

These groundbreaking state, municipal, and institutional programs have made significant strides towards reparative justice and illustrate the unique value of engaging in local reparations, rather than exclusively pushing for nationwide initiatives. First, local programs investigate specific harms experienced within immediate communities and tailor initiatives to those particular harms.<sup>140</sup> Given that slavery took distinct forms in different regions of the country, harms emanating from slavery were and are experienced differently. Local reparations acknowledge and respect these intricacies, and require governments and institutions to put in the work to address them,<sup>141</sup> recognizing that reparations cannot be based on a one-size-fits-all conception of the remedy.

Second, local initiatives can better allocate the financial burden of reparations to institutions or individuals that committed historical harm and inherited power from that harm. Similarly, localized programs are best positioned to distribute the benefits of reparations to specific individuals or communities that inherited suffering from historical harm.<sup>142</sup> National plans, on the other hand, cannot identify specific perpetrators and victims to the same degree.<sup>143</sup>

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139. P.R. Lockhart, *A Virginia Seminary Is the First School to Create a Reparations Fund*, VOX (Sept. 10, 2019, 5:30 PM EDT), <https://www.vox.com/identities/2019/9/10/20859407/virginia-theological-seminary-reparations-slavery-segregation> [https://perma.cc/QH8X-JDUS].

140. For example, while Chicago's and Evanston's local reparations initiatives focused on police torture and the War on Drugs, respectively, local reparations in Linnestown, Georgia and Asheville, North Carolina sought remedies for the specific injustice of redlining. See Dowd, *supra* note 129; *What Might 40 Acres and a Mule Look Like in 2020 Asheville?*, N.C. PUB. RADIO (July 16, 2020) [hereinafter *40 Acres and a Mule*], <https://www.wunc.org/post/what-might-40-acres-and-mule-look-2020-asheville> [https://perma.cc/Z6AQ-RDL3].

141. Reparations advocates have argued that local reparations give activists "more immediate access to institutional pressure points, while decision-makers are often less shielded from criticism and thus more likely to yield." Thai Jones, *Slavery Reparations Seem Impossible. In Many Places, They're Already Happening*, WASH. POST (Jan. 31, 2020), <https://www.washingtonpost.com/outlook/2020/01/31/slavery-reparations-seem-impossible-many-places-theyre-already-happening/?arc404=true> [https://perma.cc/UW2K-QFX2].

142. Institutions like Georgetown, for example, have traced the direct descendants of enslaved men, women, and children. In the course of the reparations provided to the descendants of the 272 Africans it enslaved, Georgetown identified itself as the main wrongdoer and the descendants as survivors of this grave injustice. See Lockhart, *supra* note 139.

143. Some federal bodies have actively resisted the work of identifying specific perpetrators and victims. For example, federal courts adjudicating reparations claims in the early 2000s were able to resist the movement's progression by preventing plaintiffs from bringing claims if they couldn't show their injury was "fairly traceable to the defendant's allegedly unlawful

Given that “localities have historically been central to the construction of systemic racial and economic inequality,” local reparations ought to be a focal point in ongoing movements for reparations.<sup>144</sup>

Third, descendant communities that experience specific historical harms can exert greater control over the structure of local reparations. In Asheville and Chicago, reparations initiatives were driven by grassroots community members and organizers, and in Evanston, political leaders sought to incorporate ongoing community input about what reparations might look like.<sup>145</sup> Local reparations initiatives, therefore, establish community control over the process of repair and healing from centuries of oppression.<sup>146</sup> Shifting power to the historically disenfranchised is essential to the redistributive work of reparations. Local reparations initiatives shift power when they transfer control over community resources to those who have experienced historical injustice so that they might actually heal. Importantly, with communities in control of local reparative efforts, programs can be quickly evaluated and reassessed if they fail to meet the needs of the communities they serve.

These localized efforts point to an essential element of any meaningfully successful reparations program: descendants. Reparations ought to be based in

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conduct.” Yanessa L. Barnard, *Better Late than Never: A Takings Clause Solution to Reparations*, 12 WASH. & LEE J. C.R. & SOC. JUST. 109, 115 (2005).

144. K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 686 (2020); see also Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413, 450-64 (2017) (describing how active participation in local governments during Reconstruction was spurred by racial resentment).

145. See Julia Richardson, *Reparations Subcommittee Discusses Plans for Moving Forward with Their Goals, Including a New Commission*, DAILY NW. (Sept. 27, 2020), <https://dailynorthwestern.com/2020/09/27/city/reparations-subcommittee-discusses-plans-for-moving-forward-with-their-goals-including-a-new-commission> [<https://perma.cc/E8RJ-6F9T>]; *40 Acres and a Mule*, *supra* note 140, at 11:00-11:17, (Asheville organizer describing how proposals for reparations “need[] to be communicated to the community . . . [to] receive their opinion and how they feel about it” and how “the plan shouldn’t be created for the Black community, it needs to be created with the Black community”); Joey Mogul, *Chicago Activists Obtain Reparations for Chicago Police Torture Survivors*, NAT’L LAWS. GUILD, <https://www.nlg.org/guild-notes/article/chicago-activists-obtain-reparations-for-chicago-police-torture-survivors> [<https://perma.cc/3G3M-B4ED>] (describing how a grassroots coalition asked “police torture survivors and the larger community to imagine how they would propose to publicly memorialize these cases” and through teach-ins and “community dialogue . . . sought to spark the collective imagination of the community to conceptualize what was necessary for the City to provide in order for individuals and communities to heal from torture”).

146. Jocelyn Simonson and K. Sabeel Rahman define community control as “giv[ing] historically disempowered populations power over the very levers of decision-making that control the distribution of local resources.” Rahman & Simonson, *supra* note 144, at 691.

the aspirations of descendants because they experience, first-hand, the legacies of enslavement—the very wounds we are trying to repair when we talk about reparations. Descendants of the enslaved are brutalized and killed by white supremacists in and out of uniform, whether in their homes or out in their communities.<sup>147</sup> They are incarcerated at higher rates than their white counterparts and placed into forced confinement reminiscent of that endured by their ancestors.<sup>148</sup> Descendants are not just symbolic placeholders for their ancestors; they also carry the burdens of the past each day of their lives.<sup>149</sup> When we fail to center the perspective of descendants, we create hollow remedies for their intergenerational suffering. Mari Matsuda has argued that reparations are built by voices “from the bottom”—individuals “who have experienced discrimination [and thus] speak with a special voice to which we should listen.”<sup>150</sup> Descendants of the enslaved should be central to any effort to remedy the historical wrongs of slavery and its legacies “precisely because it takes a nation so long to recognize historical wrongs against those on the bottom.”<sup>151</sup>

*B. Normative Framework for Local Reparations on River Road*

Given the inherent significance of descendant perspectives, it is supremely important that descendant communities control any processes aimed at identifying and rectifying the historic injustices committed by plantation museums. For this reason, it is impossible to articulate a specific policy agenda or normative prototype for localized reparations initiatives. Thus, this Part endeavors to present normative factors that descendant communities might consider when structuring reparations programs that address the specific harms relevant to their collective experiences.

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147. Deneen L. Brown, ‘It Was a Modern-Day Lynching’: Violent Deaths Reflect a Brutal American Legacy, NAT’L GEOGRAPHIC (June 3, 2020), <https://www.nationalgeographic.com/history/2020/06/history-of-lynching-violent-deaths-reflect-brutal-american-legacy> [<https://perma.cc/GL72-DZYL>]; Aaron Ross Coleman, *Black Bodies Are Still Treated as Expendable*, VOX (June 5, 2020, 8:00 AM), <https://www.vox.com/2020/6/5/21277938/ahmaud-arbery-george-floyd-breonna-taylor-covid> [<https://perma.cc/JQ44-XZ7X>].

148. See generally M4BL, *supra* note 2, at 14-15 (explaining the lasting harm of systemic racism which plagues descendants of the enslaved to this day).

149. See JOY DEGRUY, POST TRAUMATIC SLAVE SYNDROME: AMERICA’S LEGACY OF ENDURING INJURY AND HEALING 8-10 (2005); Gilda Graff, *The Intergenerational Trauma of Slavery and Its Aftermath*, 2014 J. PSYCHOHISTORY 181, 189-96.

150. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324, 353 (1987).

151. *Id.* at 381.

It is also important to acknowledge that not all descendants want or are able to engage in processes of reparative justice on plantations. Intergenerational exposure to the economic, narrative, and structural violence perpetuated on these plantations has understandably convinced many that reconciliation and repair are impossible goals to achieve.

Others, however, might see the potential for plantation museums to be sites for profound reckoning and racial healing. Reparations scholar Roy Brooks has argued that the “museum of slavery will pull a racially divided nation together through a mixture of awareness, understanding, and in some cases, empathy.”<sup>152</sup> The Movement for Black Lives maintains that museums are necessary to “begin to heal from the trauma” of our collective history.<sup>153</sup> Plantations in particular have the potential to be transformed into sites of racial healing. Descendant communities in southwest Georgia have transformed “one of the largest slaveholder estates in Georgia”<sup>154</sup> into a space where people of “different cultures and backgrounds” come “together for times of sharing and fellowship . . . in an effort to end racial and gender discrimination”<sup>155</sup> and to “promote racial reconciliation and healing in Southwest Georgia.”<sup>156</sup> This model is especially conceivable in the context of plantation museums in southeastern Louisiana and surrounding descendant communities. With descendants in

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152. ROY L. BROOKS, *ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS*, 158 (2004).

153. Arielle Humphries & Marbre Stahly-Butts, *Reparations for the Cultural and Educational Exploitation, Erasure, and Extraction of Our Communities in the Form of Mandated Public School Curriculums that Critically Examine the Political, Economic, and Social Impacts of Colonialism and Slavery and Funding to Support, Build, Preserve and Restore Cultural Assets and Sacred Sites to Ensure the Recognition and Honoring of Our Collective Struggles and Triumphs*, VISION FOR BLACK LIVES: POLY DEMANDS FOR BLACK POWER, FREEDOM, JUST., <https://m4bl.org/wp-content/uploads/2020/05/CulturalReparations-OnePager.pdf> [<https://perma.cc/7VR8-3NMN>].

154. *Resora*, NEW COMMUNITIES INC., <https://www.newcommunitiesinc.com/resora.html> [<https://perma.cc/X82G-ZQ7Q>].

155. *The Village*, NEW COMMUNITIES INC., <https://www.newcommunitiesinc.com/the-village.html> [<https://perma.cc/874G-HPMD>]. Descendants Shirley and Charles Sherrod were able to purchase the estate with funds from the United States Department of Agriculture given as compensation for racial discrimination against Black farmers in the “largest civil rights settlement in history.” Jim Kavanagh, *Sherrod’s Steadfast Motto: ‘Let’s Work Together,’* CNN (July 22, 2010), <http://www.cnn.com/2010/politics/07/21/sherrod.profile/index.html> [<https://perma.cc/P3QL-HYHB>]. Scholars have argued that the money secured through the settlement might be understood as a form of reparations. See Kindaka Jamal Sanders, *Re-Assembling Osiris: Rule 23, the Black Farmers Case, and Reparations*, 118 PENN ST. L. REV. 339, 353–55 (2013).

156. See *The Village*, *supra* note 155.



control of the lands, narrative, and working structure of museums, the plantation can become a site of collective repair; where local descendants are empowered to heal in a space that “provides public recognition of suffering,” where visiting Black descendants can pilgrimage to honor their ancestors and “mourn their loss in a social space that symbolizes respect,” and where others can begin to envision how they might personally atone for the injustices they’ve profited from, determined to no longer “overlook grievous abuses of human dignity.”<sup>157</sup> In this spirit, I use this Part to articulate a framework for reparations at the plantation museum, centering descendants who still remain in surrounding communities and who may be interested in transforming plantation museums into sites of racial healing.

1. *Economic Reparations: Financial Compensation and Land Redistribution*

Reparationists have long argued that descendants of the enslaved should receive economic redress from institutions that profited from slavery, including corporations, educational institutions, and state and federal governments. The case for monetary compensation has played an integral role in this discussion since the inception of the reparations movement,<sup>158</sup> generally based in the idea that financial restitution is “sufficient to indicate that the United States truly wishes to make Blacks whole for the losses they have endured.”<sup>159</sup> Some reparationists even argue that the “hit in [white Americans’] pockets” from reparative payments is necessary for white Americans to “feel their ‘investment’ in racial reconciliation.”<sup>160</sup> Advocates differ over whether this compensation might take the shape of payments to individual descendants or the creation of group funds for African American communities. Robert Westley makes the case that group reparations “would create the need and the opportunity for institution-building that individual compensation would not.”<sup>161</sup> William Darity and Kristen Mullen, conversely, argue that “while a personal check or its equivalent

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157. Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 19 B.C. THIRD WORLD L.J. 429, 452 (1998).

158. See MARY FRANCES BERRY, *MY FACE IS BLACK IS TRUE: CALLIE HOUSE AND THE STRUGGLE FOR EX-SLAVE REPARATIONS* (2006); BROPHY, *supra* note 4, at 26 (“Representative Thaddeus Stevens of Pennsylvania . . . introduced a bill in 1867 to condemn Confederate property and provide compensation to freed slaves, in the form of forty acres to heads of households, along with fifty dollars.”).

159. Westley, *supra* note 157, at 470.

160. Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279, 307 (2003).

161. Westley, *supra* note 157, at 468.

need not be the only form in which [a reparations] program makes payments," direct payment is necessary for the "autonomy it conveys."<sup>162</sup>

Descendants in the river parishes might receive individual payments from plantation museums based on a "present-value calculation for unpaid wages, the purchase prices of the human property, or the land promised to the formerly enslaved."<sup>163</sup> Plantations such as Oak Alley, which receives money from tour ticket sales, hotel stays, events, and a membership program called "Friends of Oak Alley," could financially support such a program.<sup>164</sup> Alternatively, a coalition of plantation museums could fund group reparations. Such a fund might be used to remove "substantive barriers to liberty," most notably "[m]oney for education, housing, medical care, food, job training, cultural preservation, recreation and other pressing needs" to promote the "survival and participation" of descendant communities.<sup>165</sup>

Nevertheless, money can only address so much. Mari Matsuda writes that "[m]onetary grants will not compensate for the terrible losses sustained" as a result of slavery because no sum of money can make up for the collective "loss of freedom or sovereignty."<sup>166</sup> Monetary compensation thus serves a largely symbolic function; the act of paying reparations says, "[s]omething terrible has happened for which we are responsible . . . [W]e offer here a symbol of our deep regret and our continuing obligation."<sup>167</sup>

Thus, beyond their symbolic function, economic reparations on plantations must also work to redistribute an essential vessel of economic power: land. One reparations scholar has argued that "[p]roperty ownership is one of the key reasons why there is comparatively much more wealth held by white than Black people in the United States" and thus that "racial repair" requires "redistributing land ownership to Black people."<sup>168</sup> Property law scholars recognize land as the basis of power<sup>169</sup> and as linked to the "dream of wealth and pros-

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162. WILLIAM DARITY JR. & A. KRISTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE 21ST CENTURY 265 (2020).

163. *Id.* at 259. For an analysis of monetary compensation calculations, see *id.* at 259-64.

164. *Friends of Oak Alley*, OAK ALLEY PLANTATION, <https://www.oakalleyplantation.org/donate-and-support-oak-alley/friends-oak-alley> [<https://perma.cc/YM57-2GUU>].

165. Matsuda, *supra* note 150, at 391.

166. *Id.* at 395.

167. *Id.*

168. KATHERINE FRANKE, REPAIR: REDEMING THE PROMISE OF ABOLITION 3, 15-16 (2019).

169. See, e.g., Robert C. Ellickson, *Property in Land*, 102 YALE L.J. 1315, 1353 (1993) ("[L]and remains a particularly potent safeguard of individual liberty.").



perity” in the United States.<sup>170</sup> Black communities have also long understood land as the means through which they will become “economically sovereign”<sup>171</sup> and experience total freedom and liberation.<sup>172</sup> Economic reparations might therefore entail the transfer of full ownership of plantation properties to descendant communities. In possession of plantation lands, descendants would be in full control of any profits made on the grounds and direct these profits back into their communities. Moreover, with full access to these lands, they can begin to heal from the additional traumas of slavery and its legacies by communing with one another on the grounds where their ancestors once toiled in bondage.<sup>173</sup> This transfer of lands would not only address the “real and quantifiable” debt owed to Black descendant communities for centuries of stolen labor, but also create physical sites where the work to upend deeply imbedded racial capitalism can actually begin.<sup>174</sup> Thus, when structuring a reparative program, descendant communities might consider advocating for land redistribution in addition to individual and group monetary compensation in order to properly effectuate the normative goals of economic reparations.

## 2. Narrative Reparations: Descendants as Knowledge Producers

Truth-telling is another essential element of any reparations program. Randall Robinson contends that uncovering historical truths is central to Black in-

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170. Daniel J. Sharfstein, *Atrocity, Entitlement, and Personhood in Property*, 98 VA. L. REV. 635, 655 (2012).

171. DAVID A. CHANG, *We Were Negroes Then: Political Programs, Landownership, and Black Racial Coalescence, 1904-1916*, in *THE COLOR OF THE LAND: RACE, NATION, AND THE POLITICS OF LANDOWNERSHIP IN OKLAHOMA, 1832-1929*, at 149, 155 (2010); see also Sharfstein, *supra* note 170, at 676 n.201 (“Land ownership was a central priority of newly freed slaves . . . African Americans whose ancestors did manage to acquire property in the nineteenth century are far less likely to be on the wrong side of the wealth gap that continues to divide black from white.”).

172. See Malcolm X, *Message to the Grassroots 1963*, BLACKPAST (Aug. 16 2010), <https://www.blackpast.org/african-american-history/1963-malcolm-x-message-grassroots> [<https://perma.cc/YWG7-9QAS>] (arguing that “[r]evolution is based on land. Land is the basis of all independence. Land is the basis of freedom, justice, and equality”); *Theory & Strategy: Mapping a Path to Liberation*, NAT’L BLACK FOOD & JUST. ALLIANCE, <https://www.blackfoodjustice.org/rationale-strategy> [<https://perma.cc/X4DX-TL33>]; *Who We Are*, NORTHEAST FARMERS COLOR LAND TRUST, <https://nefoilandtrust.org/our-work> [<https://perma.cc/6NX3-D9DS>].

173. For more on how Black Americans have understood the role of land in healing from racial trauma, see LEAH PENNIMAN, *FARMING WHILE BLACK* 263-80 (2018).

174. Merritt, *supra* note 50.

dividuals' understanding of themselves.<sup>175</sup> Both remembering our historical suffering and appreciating our profound, intergenerational capacity to survive atrocity is key to Robinson's understanding of reparations. "Blacks, and no less whites," must come to understand the Atlantic slave trade and the "invention of a virulent racism to justify it" as constructs birthed out of the colonization of the Americas.<sup>176</sup> Many reparationists share this view<sup>177</sup> and have long advocated for the establishment of truth commissions as a means of producing new knowledge, providing "a new sense of power to those whose version of history is vindicated," and serving as "a basis for subsequent arguments about equality and reparations."<sup>178</sup> H.R. 40, a congressional bill at the center of the national reparations movement, is intended to establish a type of truth commission "to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans."<sup>179</sup>

Plantation museums can engage most intentionally in truth telling by giving total access to historical artifacts and archival resources to descendants and allowing descendants to enjoy ultimate authority over the narratives told at these sites. Nowhere can the story of slavery be told as truthfully and viscerally as on a plantation. Many of the "blunt truths" are still there: from the bills of sale, to the plantation logs, diaries, and payroll books.<sup>180</sup> Reparations for narrative harms created and sustained on plantations means providing descendants

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175. RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* 56 (2000).

176. *Id.* at 17.

177. See, e.g., Alfred L. Brophy, *The Tulsa Race Riot Commission, Apology, and Reparation: Understanding the Functions and Limitations of a Historical Truth Commission*, in *TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION* (Elazar Barkan & Alexander Karn eds., 2006) (examining the Tulsa Race Riot Commission and determining what truth commissions can and cannot accomplish); Sherrilyn A. Ifill, *Creating a Truth and Reconciliation Commission for Lynching*, 21 *LAW & INEQ.* 263 (2003) (discussing the role of truth commissions in responding to the history of lynchings in the United States); Carlton Waterhouse, *Total Recall: Restoring the Public Memory of Enslaved African-Americans and the American System of Slavery Through Rectificatory Justice and Reparations*, 14 *J. GENDER, RACE & JUST.* 703, 706 (2011) (arguing for the development of a "shared public memory of slavery" as a part of a reparations program).

178. BROPHY, *supra* note 4, at 12-13.

179. Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 117th Cong. (2021).

180. Merritt, *supra* note 50; see also Alderman et al., *supra* note 26 (discussing artifacts often found at plantation museums); *Collections*, OAK ALLEY PLANTATION, <https://www.oakalleyplantation.org/about/research-and-collections> [<https://perma.cc/8RK2-KTD8>].

with access to these vestiges to “document[] the crime” of slavery and its outgrowths for public reckoning.<sup>181</sup> Descendants would then be able to use these sources to piece together comprehensive accounts of their intergenerational experience of oppression stemming from acts on the plantation. Notably, comprehensive truth-telling must not only encompass the history of slavery, but also the parallel history of settler colonialism and environmental devastation that occurred at these very same sites.<sup>182</sup> Descendants would have the opportunity to learn more about how their intergenerational struggle intersects with environmental and anticolonial struggles and specifically how their oppression as Black people intersects with the destruction of the planet and attempted elimination of Indigenous people. Ultimately, reparative intergenerational healing can allow a community to gain a deeper understanding of one’s historical-political self, rectify the centuries-old injustice of being kept from a deeper knowledge of one’s own history, and become empowered to share that history with others.

The narrative injustices committed by plantation museums can be repaired when descendants control the narrative. The perspective of the oppressed matters, especially when it comes to the retelling of atrocity, and descendants must be at the forefront of this work.<sup>183</sup> When descendants command the narrative, plantation museums “stand[] a chance of becoming the rare place[s] . . . where the dynamic among the mainly mixed-race tours can offer an ancillary form of education.”<sup>184</sup> In positions of narrative authority, descendants can craft a history that centers Black and Indigenous humanity and the ongoing harms suffered by these communities to help others “remember and understand how much of our current prosperity is built on theft and exploitation.”<sup>185</sup>

At Whitney Plantation, Harriet Batiste, the granddaughter of a Black laborer who lived and worked on the plantation in the mid-to-late twentieth century, shows photographs of her grandfather during her tours of slave quarters on the premises.<sup>186</sup> Visitors pass around the photographs, beginning to under-

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181. Merritt, *supra* note 50.

182. See Wolfe, *supra* note 18, at 391-92.

183. See, e.g., Ruffins, *supra* note 49, at 399 (describing how the U.S. Holocaust Memorial Museum is considered to be “one of the greatest of all memorials” because “Jewish Holocaust survivors and their descendants have claimed exclusive authority to speak”).

184. Amsden, *supra* note 41.

185. Merritt, *supra* note 50.

186. Matthew Hinton, *Dread Scott Plans to Lead Reenactors from LaPlace to Kenner*, VERY LOCAL NEW ORLEANS (Oct. 7, 2019), <https://nola.verylocal.com/on-to-new-orleans-freedom-or-death-more-than-500-to-march-to-reenact-1811-slave-revolt/85644> [https://perma.cc/2M3X-XSND].

stand how close in time the vestiges of slavery are to the present. The white visitors, in particular, on Harriet's tour are forced to engage with their own complicity in slavery and its legacies. One visitor even described the tour as "one of the most important experiences of my life," particularly "as a white person who is wanting to deepen my understanding about white supremacy and both the history and present of anti-blackness in America."<sup>187</sup> Such experiences demonstrate that plantation museums have the power to encourage "visitors to understand the importance of solidarity with the oppressed in the present."<sup>188</sup> Moreover, for Black visitors outside the directly descendant community, witnessing descendants command their narrative demonstrates the capacity of all Black Americans to learn about and control the telling of our own history. Therefore, descendant communities seeking narrative reparations might consider advocating for unrestricted access to artifacts and archives as well as full narrative control on the plantation in order to engage in the truth-telling essential to narrative repair.

Randall Robinson argues that a reparative reshaping of American public history will force America to "come to grips with the . . . reality that [it] is *not* a white nation" and thus, to "reconfigure its symbolized picture of itself, to itself."<sup>189</sup> Plantation museums engaged in narrative reparations will not only create fuller histories that educate the public about the racialized wounds of our past, but become the places where racial reckoning—its discomforts and its possibilities for radical social transformation—can be powerfully embraced.

### 3. *Systemic Reparations: Descendants as Leaders Within and Beyond the Plantation*

Reparations advocates not only seek compensation for the harms of slavery, but also aim to dismantle its enduring hierarchies.<sup>190</sup> Reparationists have argued that the dismantling of a racialized labor hierarchy requires having "people of color in leadership at all levels" to "[t]ransform[] an organization toward

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187. Shannon W., *Review of Whitney Plantation*, TRIPADVISOR (Mar. 3, 2018), [https://www.tripadvisor.com/ShowUserReviews-g14166006-d7276731-r564131215-Whitney\\_Plantation-Wallace\\_Louisiana.html](https://www.tripadvisor.com/ShowUserReviews-g14166006-d7276731-r564131215-Whitney_Plantation-Wallace_Louisiana.html) [https://perma.cc/L2YS-4UGJ].

188. Alderman et al., *supra* note 26, at 216.

189. ROBINSON, *supra* note 175, at 173.

190. See M4BL, *supra* note 2, at 36 ("As abolitionists, we believe what is required is a transformation of all systems, institutions, and structures which continue to oppress Black people, [and] a systemic shift in social and economic systems and relations of power . . .").

power-sharing.”<sup>191</sup> The South African Truth and Reconciliation Commission Report specifically articulates how this process ought to look within museums as part a comprehensive reparations program. The report specifies that museums should go beyond the retelling of history by associating “with endeavours that improve the everyday lives of victims and their communities” by “involv[ing] victims prominently . . . in the running of museums.”<sup>192</sup> To ensure that centuries of concentrated power are effectively and permanently redistributed, leadership and authority within plantation museums should be ceded to descendants as part of a program towards structural reparations. In positions of authority, descendants can transform the reputational power of plantations, from sites that uphold social hierarchy and exclusivity, to places that encourage collective power.

Structural reparations on the plantation must begin with the transferring of organizational power to descendant communities. This would require the transition of white owners and management out of executive positions so Black-descendant community members can assume these senior leadership positions. Depending on the organizational structure of the museum, this might entail descendant-controlled nonprofit boards with final authority over key operational decisions or transference of plantation ownership to descendant community members. Once descendants are in these positions of authority, they can determine what organizational labor structures provide the most meaningful access to advantageous opportunities and most expand social and economic mobility for other members of the descendant community. Structural reparations will be realized when, as a result of the shift in museum leadership, descendants experience a shift in “the flow of social assets” such that they can “build their own personal assets of status [and] prestige.”<sup>193</sup>

For example, as leaders of plantation museums, descendants would be empowered to forge influential networks with other African Americans who have “begun challenging racist landscapes of memory and heritage tourism,”<sup>194</sup> from organizers tearing down confederate monuments in New Orleans<sup>195</sup> to the

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191. *Food Sovereignty Action Steps*, SOUL FIRE FARM 12-13 (2018), [https://docs.google.com/document/d/1dtohicyhGdJSKIC3qyE1AbG9fdDrONjUh\\_M\\_bEoKMGs](https://docs.google.com/document/d/1dtohicyhGdJSKIC3qyE1AbG9fdDrONjUh_M_bEoKMGs) [<https://perma.cc/3DSZ-KG8Z>].

192. 2 *Report of the Reparation and Rehabilitation Committee*, TRUTH AND RECONCILIATION COMMISSION OF S. AFR. 163 (1998).

193. Merritt, *supra* note 50.

194. Alderman et al., *supra* note 26, at 210.

195. See Laura McKnight, *Take ‘Em Down NOLA Calls for Widespread Removal, Renaming of ‘Symbols of White Supremacy,’* NOLA.COM (July 22, 2019, 9:55 AM EDT), <https://www.nola>

Equal Justice Initiative erecting the National Memorial for Peace and Justice.<sup>196</sup> In positions of leadership, and in partnership with other progressive institutions and movement actors, descendants would be able to create occupational and social opportunities rooted in knowledge of their own histories of oppression and resistance. They could also use plantation grounds as sites to organize for radical change, transforming the plantation from a site that fosters exclusivity and supremacy to one that encourages and cultivates collective enfranchisement and empowerment. Descendants committed to structural reparations might therefore advocate for a mass transition of organizational power, shifting executive responsibilities and property ownership from white owners and managers to Black descendant community members who can subsequently develop descendant community networks within and beyond the plantation.

### III. USING EMINENT DOMAIN TO IMPLEMENT LOCAL REPARATIONS

To effectuate a form of reparations that embodies the visions articulated in Part II, descendants could demand that their local governments utilize eminent domain powers to reparatively redistribute the landholdings of current plantation owners and make those lands available to descendants. The land redistribution, narrative control, and structural transformation essential to a local reparations initiative on plantations are most synchronously realized through the instrument of eminent domain. This Part suggests the creation of descendant-controlled land redistribution commissions as one possible vehicle by which descendants can control the processes of land redistribution via the eminent domain power. This Part also grapples with the significant practical and theoretical issues that arise in the course of utilizing eminent domain, including the legal requirement of just compensation and the theoretical dilemma of utilizing a historically oppressive mechanism of the state as a tool for reparative justice.

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.com/news/politics/article\_a45d43b1-e781-5d00-bd25-624bb65893b7.html [https://perma.cc/B3JH-6L4B].

196. Holland Cotter, *A Memorial to the Lingering Horror of Lynching*, N.Y. TIMES (June 1, 2018), <https://www.nytimes.com/2018/06/01/arts/design/national-memorial-for-peace-and-justice-montgomery-alabama.html> [https://perma.cc/68F8-ZP4A].

## A. Legal Requirements of Eminent Domain

### 1. Kelo: The Current Standard

The Takings Clause of the Fifth Amendment of the U.S. Constitution provides that no “private property be taken for public use, without just compensation.”<sup>197</sup> This language creates the eminent domain power, which grants sovereign governments the authority to take private property from landowners provided that they “just[ly]” compensate the landowners who suffer a loss from the taking, and that the property will be put to “public use.”

The two most relevant Supreme Court decisions on eminent domain in the last forty-years, *Hawaii Housing Authority v. Midkiff*<sup>198</sup> and *Kelo v. City of New London*,<sup>199</sup> greatly expanded the eminent domain power. In *Kelo*, the Court held that the state has the right to “transfer property from one private party to another” so long as “future ‘use by the public’ is the purpose of the taking.”<sup>200</sup> Perhaps most notably, the *Kelo* Court granted substantial deference to local governments to determine whether a taking constitutes a public use. Justice Stevens, writing for the majority, asserted that the Court “decline[d] to second-guess the City’s determinations as to what lands it needs to acquire in order to effectuate” a public project.<sup>201</sup> Citing *Midkiff*, the Court restated its stance that “[w]hen the legislature’s purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings – no less than debates over the wisdom of other kinds of socioeconomic legislation – are not to be carried out in the federal courts.”<sup>202</sup> Subsequent judicial decisions<sup>203</sup> and scholarly evaluation<sup>204</sup> support the notion that *Kelo* effectively removed most constitutional limits on the “public use” requirement of eminent domain power.

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197. U.S. CONST. amend. V.

198. 467 U.S. 229 (1984).

199. 545 U.S. 469 (2005).

200. *Id.* at 477.

201. *Id.* at 488-89.

202. *Id.* at 488 (quoting *Midkiff*, 467 U.S. at 242-43).

203. See, e.g., *Justice v. Hosemann*, 771 F.3d 285, 289-90 (5th Cir. 2014); *Whittaker v. Cty. of Lawrence*, 437 F. App’x 105, 108 (3d Cir. 2011); *Goldstein v. Pataki*, 516 F.3d 50, 58 (2d Cir. 2008).

204. See Dana Berliner, *Looking Back Ten Years After Kelo*, 125 YALE L.J.F. 82, 90 (2015); Gideon Kanner, *Kelo v. New London: Bad Law, Bad Policy, and Bad Judgment*, 38 URB. LAW. 201, 202 (2006); Julia D. Mahoney, *Kelo’s Legacy: Eminent Domain and the Future of Property Rights*, 2005 SUP. CT. REV. 103, 118, 132.



2. *A Reparative Reading of Midkiff*

The *Midkiff* decision might also be understood as partial precedent for enacting land-based reparations through use of the eminent domain power. There, the Court took an expansive reading of the “public use” requirement to allow the Hawaii state government to transfer property ownership from one private party to another private party—a legislative scheme Native Hawaiians argued would help rectify the historic injustice of colonial settlement.<sup>205</sup>

The Hou Hawaiians, a Native Hawaiian “tribal body” that “advocates and represents the interests” of Native Hawaiians and “educates the public on Native Hawaiian land rights,” filed an amicus brief in support of the Hawaiian land-redistribution scheme.<sup>206</sup> They argued that redistribution via the eminent domain power would allow Native Hawaiian communities to reclaim their ancestral lands.<sup>207</sup> The Hou Hawaiians explicitly asked the Court to “consider the century or more of injustice” suffered by Native Hawaiians and to abide by the principle “that land may be redistributed to serve the needs of the people” to respect the “right” of Native Hawaiians “to restoration to their ancestral

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205. In the early nineteenth century, a land division process known as the Great Mahele created the right to own parcels of land in fee simple in Hawaii. This shift in the property system to allow fee simple land ownership has been recognized to be “an outgrowth of the influence of [the] white man” as it allowed for settlers “to acquire the fee title to lands in Hawaii.” John J. Hulten, *Land Reform in Hawaii*, 42 *LAND ECON.* 235, 236 (1966). By 1850, “under the pressure of Western influence,” the Mahele had created a legal structure that “permitted Western capital to acquire ownership of the great bulk of valuable and productive land in the Hawaiian Islands” for sugar cultivation on plantations. Brief of Amici Curiae the Hou Hawaiians and Maui Loa, Chief of the Hou Hawaiians at 8, 16-17, *Midkiff*, 467 U.S. 229 (No. 83-141). The Hawaiian plantation economy mirrored that of the “pre-Civil War South” with a “small and powerful planter aristocracy . . . in full possession of economic and social privileges.” *Id.* at 17 (quotations omitted). Similarly to Louisiana, “sugar was king[] and dominated the Hawaiian economy.” *Id.* The “descendants of those who [had] invaded the islands from abroad during the last 200 years” continued to hold the land in fee simple, leasing it through a system in which Hawaiians were deprived of “any realistic choice to live [] on land they could call their own.” *Id.* at 4; Brief for Appellants at 3, *Midkiff*, 467 U.S. 229 (Nos. 83-141, 83-283). Similar to descendant communities in Louisiana, the hardship emanating from this system was borne by Native Hawaiians “more heavily than any other residents of the state.” Brief of Amici Curiae the Hou Hawaiians and Maui Loa, Chief of the Hou Hawaiians, *supra*, at 34.

206. Brief of Amici Curiae the Hou Hawaiians and Maui Loa, Chief of the Hou Hawaiians, *supra* note 205, at 1-2.

207. *Id.* at 3. According to the Hou Hawaiians, breaking up the land oligopoly would “relieve the pressure on land prices” such that “more affluent non-Native Hawaiians” would no longer bid for houses at prices far beyond what Native Hawaiians could afford. *Id.* at 35.



land.”<sup>208</sup> While it remains unclear how much the Hou Hawaiian brief informed the Court’s ultimate decision, by upholding a law that Native Hawaiians felt could achieve reparative goals, the Supreme Court tacitly allowed reparations advocacy to play a role in state-condemnation proceedings.

Though the use of eminent domain to transfer land to third-party private owners remains limited, the capacious definition of “public use” in *Kelo* almost certainly includes the ability to transfer privately owned public-facing institutions, such as plantation museums, to descendant communities—a transfer that need not be made directly between private parties, as will be discussed below. Thus, pursuant to the constitutional standard articulated in *Midkiff* and *Kelo*, state legislatures can and should explore the use of eminent domain to reparatively redistribute land by embracing a deeper understanding of public-use doctrine that accounts for both historical inequity and the ability of state governments to define public use in accordance with their own histories. For states with thriving plantation tourism economies, such as Louisiana, legislatures ought to consider the plantation as the first site for state-enacted land reparations.

### 3. *State Limitations: The Louisiana Constitution*

The *Kelo* Court expanded the eminent domain power, though also acknowledged that the Constitution establishes a floor of protection that states are free to bolster with supplemental protection for property owners.<sup>209</sup> Accepting this invitation, forty-four states have amended their eminent domain laws since *Kelo* came down.<sup>210</sup> In 2006, Louisiana voters ratified an amendment to the state constitution that increased restrictions on governmental expropriation of private land.<sup>211</sup> Amendment 5, codified in Article I, Section 4 of the Louisiana Constitution, prohibits the taking of property “for predominant use by any private person or entity” and narrows the definition of “public purpose” to mean (1) a “general public right to definite use of the property,” (2) “[c]ontinuous public ownership of property” dedicated to a set of enumerated

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208. *Id.* at 37.

209. *Kelo v. City of New London*, 545 U.S. 469, 489 (2005) (“We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.”).

210. *50 State Report Card*, CASTLE COALITION, <http://castlecoalition.org/50-state-report-card> [<https://perma.cc/DR3F-TWBC>].

211. *Louisiana Ratifies Eminent Domain Reform*, CASTLE COALITION (Oct. 4, 2006), <http://castlecoalition.org/louisiana-ratifies-eminent-domain-reform> [<https://perma.cc/6QQZ-BHWG>].

uses, or (3) the “removal of a threat to public health or safety caused by the existing use or disuse of the property.”<sup>212</sup> Article I, Section 4 additionally forbids local governments from considering economic development, tax revenues, or “any incidental benefit to the public” in determining whether the taking is for a public purpose.<sup>213</sup>

Under Louisiana’s more stringent eminent-domain laws, it is unlikely that municipal governments are empowered to transfer lands in fee simple to descendants for their *exclusive* use. Article I, Section 4(B)(1) explicitly bars descendants, in their capacity as private individuals, from taking possession of plantation lands for their “predominant use” through eminent domain.<sup>214</sup>

Nevertheless, other provisions of the same Section provide that, for the purposes of eminent domain, “continuous public ownership of property” dedicated to “parks, . . . museums, [and] historical buildings . . . generally open to the public” qualifies as a “public purpose.”<sup>215</sup> Descendants who embrace the vision of reparations articulated in Part II would necessarily continue to keep plantation lands open to the public, as that framework advances the reparative transformation of plantation museums into sites of racial healing. Thus, parish or state authorities may well be able to use their eminent-domain power to grant land-based reparations consistent with Louisiana’s stringent public-use requirement.

*B. Eminent Domain on River Road: Suggesting Descendant-Controlled Land Redistribution Commissions*

One vehicle for achieving land-based reparations through the eminent-domain power could be the creation of a public reparations commission comprised of descendant community members with the power to condemn plantation lands. Article I, Section 4 of the Louisiana Constitution extends state eminent domain power to the state’s “political subdivisions.”<sup>216</sup> Political subdivisions are defined as a “parish, municipality, and any other unit of local government . . . authorized by law to perform governmental functions.”<sup>217</sup>

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212. LA. CONST. art. 1, § 4; *see also* 2006 La. Acts 2957 (proposing this amendment).

213. LA. CONST. art. 1, § 4.

214. *Id.* § 4(B)(1).

215. *Id.* § 4(B)(2)(b)(iv).

216. *Id.* § 4(B)(1); *see also* LA. STAT. ANN. § 19:2(1) (2020) (authorizing the “state or its political corporations or subdivisions created for the purpose of exercising any state governmental powers” the right to expropriate property).

217. LA. CONST. art. VI, pt. V, § 44(2).

These additional units commonly include public commissions, which the legislature can “create or authorize the creation of” with “such rights, powers, and authorities as it deems proper.”<sup>218</sup> Louisiana public commissions enjoy a wide range of powers; for instance, they can be authorized to exercise the power of taxation.<sup>219</sup>

As part of a comprehensive reparations program, the Louisiana state legislature might authorize parishes to create public reparations commissions with the power to exercise eminent domain. A descendant-controlled commission might be modeled after the Dudley Neighbors Incorporated Community Land Trust (DNI) in Roxbury, Boston. There, Black community members experiencing ongoing suffering from the legacies of slavery—manifested in their community through a history of redlining<sup>220</sup>—gained eminent domain authority through an urban redevelopment corporation established by the Massachusetts legislature.<sup>221</sup> This “allowed DNI to accept the power of eminent domain to acquire privately-owned vacant land in the area,” placing Black community members in control of the management of their community lands.<sup>222</sup>

A descendant-controlled reparations commission could similarly acquire private plantation land and provide for descendant stewardship in compliance with state law. First, if plantation lands are taken by a public commission, they would necessarily remain in “continuous public ownership.”<sup>223</sup> Second, if the lands continue to be managed as historical sites or are made available to the surrounding community through other usages determined by descendants, such as community gardens or farms, then the constitutional requirement that taken lands be used as public “parks . . . museums, historical buildings, and recreational facilities” is easily met.<sup>224</sup> Parish authorities could take direction from descendants when developing procedures to appoint commissioners to ensure continued descendant control.

If properly implemented, these commissions could effectuate the normative vision for local reparations on the plantation established in Part II. The land

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218. *Id.* pt. I, § 19.

219. *Id.* pt. II, § 30(A). For an example of a public commission with taxation power, see LA. STAT. ANN. § 33:4574.2 (2012).

220. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (describing a history of redlining).

221. Elizabeth A. Taylor, Note, *The Dudley Street Neighborhood Initiative and the Power of Eminent Domain*, 36 B.C. L. REV. 1061, 1074-77, 1080 (1995).

222. *History of DNI*, DUDLEY NEIGHBORS INCORPORATED: THE COMMUNITY LAND TRUST, <https://www.dudleyneighbors.org/history-of-dni.html> [<https://perma.cc/5Z64-QKJN>].

223. LA. CONST. art. 1, § 4(B)(2)(b).

224. *Id.* at § 4(B)(2)(b)(iv).

redistribution essential to a comprehensive program of economic reparations is most synchronously achieved through the eminent domain mechanism. Because the commission would own the plantation lands, descendant community members would have direct access to the land's resources, and would be in the best position to benefit from any economic gains made from ongoing public history work or additional public-facing projects. Moreover, commission ownership would enhance the ability of descendants to ensure that plantation lands are kept within their community across generations.

A descendant commission that enjoys ownership of lands taken via eminent domain additionally controls how such land is used. Thus, descendants would gain the ability to craft narratives relating to plantation lands, having complete access to archives and complete freedom to decide how such narratives are shared with the broader public. The same is true with regard to systemic reparations – if descendant-controlled commissions enjoy full ownership of plantation lands, descendants have final authority over labor structure and the power to ensure that the workplace no longer facilitates racial hierarchy, and can more easily transform the reputational power of the plantation to facilitate racial healing and progressive change.

This descendant-controlled land redistribution commission would embody the vision of “community control” central to the local reparations model, giving descendants “more direct forms of control” with the “explicit goal of countering systemic inequalities” – in their particular context. This reality, in turn, would allow descendants to dismantle unequal access to land, narrative violence, and racialized labor hierarchy rooted in slavery.<sup>225</sup>

### C. Critiques of the Master's Tools

Utilizing eminent domain as a tool for rectificatory justice creates some noteworthy problems – namely, that takings via the eminent domain power require that the property owner who suffers the taking be justly compensated. This reality has important implications as to whether eminent domain might achieve or miscarry the framework for reparations outlined in Part II.

When private property is taken via the eminent domain power, the Supreme Court has articulated that just compensation is due to the “owner of the condemned property,” such that they are “in as good a position pecuniarily as if [their] property had not been taken.”<sup>226</sup> The purpose of paying just compensa-

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225. Rahman & Simonson, *supra* note 144, at 682.

226. *United States v. 564.54 Acres of Land*, 441 U.S. 506, 510-11 (1979) (quoting *Olson v. United States*, 292 U.S. 246, 254 (1934)).

tion is to make the property owner suffering the loss “whole,” which is usually accomplished by paying them the fair market value for the taken property.<sup>227</sup> In the “small number of situations where fair market value is not the appropriate measure of damages,”<sup>228</sup> the Court has found that owners are at least entitled to “receive ‘what a willing buyer would pay in cash to a willing seller’ at the time of the taking.”<sup>229</sup>

In light of this legal requirement, a land-based reparations scheme premised on eminent domain power might involve paying plantation owners after taking their lands and redistributing them to descendants. Though there may be an argument for lowering the value of compensation based on the historical injustices perpetuated by plantation museums,<sup>230</sup> this arguably cuts against the normative goals of a reparations program, as it makes it more difficult to redistribute wealth from the beneficiaries of historic oppression to the descendants and victims of such oppression.

This issue reveals a larger normative critique of enacting land-based reparations through a state tool such as eminent domain. A critical analysis might find that eminent domain power, a tool of property law, can never completely rectify the injustices of slavery that created an unequal apportionment of land, as that inequality is the foundation on which property law has historically stood.<sup>231</sup> As Audre Lorde famously put it: “[T]he master’s tools will never dismantle the master’s house.”<sup>232</sup>

These concerns are valid and must be explored. The eminent domain power in particular has been notoriously used to displace communities of color.<sup>233</sup> Justice Thomas’s dissent in *Kelo* notably highlights the ways use of the eminent domain power in “urban renewal” programs has devastated Black communities,

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227. *Id.* at 511.

228. Katrina Miriam Wyman, *The Measure of Just Compensation*, 41 U.C. DAVIS L. REV. 239, 252 n.45 (2007).

229. *Id.* at 252 (quoting *564.54 Acres of Land*, 441 U.S. at 511).

230. See generally T. Nicolaus Tideman, *Takings, Moral Evolution, and Justice*, 88 COLUM. L. REV. 1714, 1714 (1988) (providing an analysis of why just compensation may be morally inappropriate when it “perpetuates any injustices that exist in the initial distribution of entitlements”).

231. See Harris, *supra* note 91, at 1716, 1721.

232. AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* 112 (1984) (emphasis omitted).

233. Daniel B. Kelly, *The Public Use Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence*, 92 CORNELL L. REV. 1, 40 (2006) (finding that “the history of eminent domain shows a pattern of invidious discrimination against racial and ethnic minorities” and that “[e]minent domain traditionally has imposed a disproportionate impact on racial and ethnic minorities, as well as the economically disadvantaged and elderly”).

as “urban renewal came to be known as ‘Negro removal.’”<sup>234</sup> Justice Thomas’s arguments ring especially true in Louisiana, where Black communities, including the descendant communities described in this Note, have been routinely displaced and forced to watch their family lands be destroyed through the use of eminent domain.<sup>235</sup>

Ruth Wilson Gilmore takes an expansive view of Audre Lorde’s famous assertion.<sup>236</sup> Gilmore argues that “[t]he issue is not whether the master uses, or endorses the use of, some tool or another.”<sup>237</sup> Rather, what matters is “who controls the conditions and the ends to which any tools are wielded.”<sup>238</sup> Gilmore asserts that Lorde’s “focus on the master’s house guides our attention towards institutions and luxury. The house must be dismantled so that we can recycle the materials to institutions of our own design, usable by all to produce new and liberating work.”<sup>239</sup> The tool of eminent domain is imperfect, but in the hands of descendant communities, it may do a great service in the process of dismantling and decomposing land-based inequality. If used in this way, eminent domain can make space for “institutions of [descendants’] own design,” ones that give descendant communities control over the resources they need to heal themselves. Putting the tool of eminent domain in the hands of descendants might also transform the concept of public use itself—moving away from a history exclusively concerned with the white “public” and moving toward a conception of public use that encompasses what is best for *all* people, particularly those who have been historically disenfranchised.

Finally, land-based reparations should be understood as just one of many forms of local reparations available to descendants. Local reparations support

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234. *Kelo v. City of New London*, 545 U.S. 469, 522 (2005) (Thomas, J., dissenting) (quoting Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 47 (2003)).

235. See Tristan Baurick, ‘They Do Not Need Louisiana’s Permission’: Pipeline Companies Seize Land Rights with Eminent Domain, SOUTHERLY (Aug. 20, 2019), <https://southerlymag.org/2019/08/20/they-do-not-need-louisianas-permission-using-eminent-domain-pipeline-companies-seize-land-rights> [https://perma.cc/U397-987D] (“Bayou Bridge routed the pipeline through mostly poor, rural areas with high percentages of black residents.”); E.A. Crunden, *Louisiana Judge Sides with Black Residents, Rules Against Bayou Bridge Pipeline Backers*, THINKPROGRESS (May 8, 2018, 10:33 AM EDT), <https://archive.thinkprogress.org/ruling-louisiana-bayou-bridge-pipeline-impact-black-residents-33ef6eede994> [https://perma.cc/6SQE-EHUM].

236. Thanks to Kelly Hernández for sharing Gilmore’s perspective with me.

237. Ruth Wilson Gilmore, *Public Enemies and Private Intellectuals: Apartheid USA*, 35 RACE & CLASS 69, 70 (1993).

238. *Id.*

239. *Id.*

historical redress grounded in the wishes of those directly experiencing harms from historic injustice and thus should not be confined to the boundaries of legal definition or creative policy loopholing. Other localities should be free to choose alternative methods that are most effective to redress the legacies of slavery most salient to them.

#### IV. LESSONS FOR THE BROADER REPARATIONS MOVEMENT

##### A. Local Reparations in Other Localities

Plantation and heritage tourism industries across the United States are perpetuating injustices comparable to those committed by plantation museums along River Road. Plantations in South Carolina,<sup>240</sup> Mississippi,<sup>241</sup> Alabama,<sup>242</sup>

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240. Ritu Prasad, *The Awkward Questions About Slavery from Tourists in US South*, BBC NEWS (Oct. 2, 2019), <https://www.bbc.com/news/world-us-canada-49842601> [<https://perma.cc/2JDA-SJ7N>] (describing violent comments made by tourists at McLeod Plantation); see *Home/About*, MAGNOLIA PLANTATION & GARDENS, <https://www.magnoliaplantation.com> [<https://perma.cc/DHZ5-7V5J>] (inviting visitors to tour “the oldest public tourist site in the Lowcountry, and oldest public gardens in America”); *Stay*, MIDDLETON PLACE, <https://www.middletonplace.org/inn-at-middleton-place> [<https://perma.cc/9SWR-9CMH>] (offering tourists hotel accommodations in its fifty-five-room “[i]nn”); *Tours and Admission*, BOONE HALL PLANTATION & GARDENS, <https://www.boonehallplantation.com/#tours-admissions> [<https://perma.cc/6XQL-SREX>]; *Visit*, DRAYTON HALL, <https://www.draytonhall.org/visit> [<https://perma.cc/MKZ6-CW5Y>]; see also FRANKE, *supra* note 168, at 1-4 (describing the exploitative tourism industry in the Sea Islands of South Carolina and Georgia).
241. See *History*, BRANDON HALL PLANTATION, <https://brandonhallplantation.com/history> [<https://perma.cc/LYG8-JSFK>]; *Home*, MONMOUTH HISTORIC INN & GARDENS, <https://www.monmouthhistoricinn.com> [<https://perma.cc/8BMS-5YEY>]; LINDEN PLANTATION GARDENS & B&B, <http://www.lindenplantationgardens.com/history.htm> [<https://perma.cc/92PX-SK7A>].
242. See *About Arlington*, ARLINGTON ANTEBELLUM HOME & GARDENS, <https://www.arlingtonantebellumhomeandgardens.com/about> [<https://perma.cc/4GMT-74PY>]; *Welcome*, HOLMESTEAD COMPANY: MOORE-WEBB-HOLMES PLANTATION, <https://www.holmesteadcompany.com> [<https://perma.cc/JEK4-DNCM>]. The State of Alabama and Alabama Historical Commission also own a number of plantations, including Gaineswood, Magnolia Grove, and Pond Spring. *Gaineswood*, ALA. HIST. COMM’N, <https://ahc.alabama.gov/properties/gaineswood/gaineswood.aspx> [<https://perma.cc/ZL7T-9L7G>]; *Magnolia Grove*, ALA. HIST. COMM’N, <https://ahc.alabama.gov/properties/magnoliagrove/magnoliagrove.aspx> [<https://perma.cc/QP2F-HHDR>]; *Pond Spring*, ALA. HIST. COMM’N, <https://ahc.alabama.gov/properties/pondspring/pondspring.aspx> [<https://perma.cc/8M4Y-X9ED>] (noting that the plantation was the home of General Joe Wheeler, a “Confederate lieutenant general”).



and Virginia<sup>243</sup> derive profit from their status as tourist attractions and continue to enjoy economic benefits from the commodification of historical suffering. For example, while Drayton Hall, a plantation in South Carolina's Lowcountry, enjoys a corporate patron program where "business and business leaders" pay the plantation between \$500 and \$25,000 for complimentary tours and exclusive treatment,<sup>244</sup> the median annual income for Black families in the neighboring community was only \$29,799 in 2015, "less than half . . . [of] the median income for white families."<sup>245</sup>

Narrative and systemic violence also persists. At Ferry Plantation in Virginia, Indigenous and African American subjects are relegated to the paranormal, described only in states of total annihilation or eternal subservience.<sup>246</sup> Until February 2020, Mount Vernon, the former plantation and home of President George Washington, sold magnets resembling George Washington's dentures, which were originally made with the teeth of those he enslaved.<sup>247</sup> Nearly all of

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243. See *About Belle Grove Plantation*, BELLE GROVE PLANTATION, <https://bellegrove.org/about> [<https://perma.cc/72KB-8QJZ>]; *Home*, BERKELEY PLANTATION, <http://www.berkeleyplantation.com/index.html> [<https://perma.cc/P3E6-389T>]; *Home*, FERRY PLANTATION, <https://ferryplantationva.net> [<https://perma.cc/5864-W2J4>]; *The Mount Vernon Estate*, GEORGE WASHINGTON'S MOUNT VERNON, <https://www.mountvernon.org/the-estate-gardens> [<https://perma.cc/VAM2-936C>]; SHIRLEY PLANTATION, <https://shirleyplantation.com> [<https://perma.cc/BS8J-NPUZ>]; *Tour Information*, SHERWOOD FOREST, <http://www.sherwoodforest.org/tours.html> [<https://perma.cc/UM4T-B3AQ>] (advertising tours of the plantation and home of President John Tyler).
244. *Corporate Friends of Drayton Hall*, DRAYTON HALL, <https://www.draytonhall.org/give/corporate-friends-of-drayton-hall> [<https://perma.cc/BH7H-LYLT>].
245. Deanna Pan, *Poverty, Unemployment Disproportionately Affect Charleston County's Black Residents, Report Says*, POST & COURIER (Sept. 14, 2020), [https://www.postandcourier.com/news/poverty-unemployment-disproportionately-affect-charleston-countys-black-residents-report-says/article\\_33ab5884-c801-11e7-818d-17852f54b04b.html](https://www.postandcourier.com/news/poverty-unemployment-disproportionately-affect-charleston-countys-black-residents-report-says/article_33ab5884-c801-11e7-818d-17852f54b04b.html) [<https://perma.cc/J92R-PN84>]. Owners of the Moore-Webb-Holmes Plantation in Marion, Alabama directly profit from the economic exploitation of slavery and its legacies, as the plantation, which offers tours of its grounds, has been owned by "the same family since the early 1800s." *Welcome*, *supra* note 242.
246. See, e.g., *Paranormal*, FERRY PLANTATION, <https://ferryplantationva.net/paranormal> [<https://perma.cc/U3ZP-TYWX>] (describing the grounds as built on "a Native American graveyard" and recounting stories of "[t]he spirit of an old African-American gentleman [who] would come from the basement, cross the room, and kneel in front of the west wall apparently intent on some long ago task").
247. Justine Coleman, *Mount Vernon Discontinues Washington Magnet over Slave Teeth Controversy*, HILL (Feb. 20, 2020, 11:32 AM EST), <https://thehill.com/blogs/blog-briefing-room/news/483842-mount-vernon-discontinues-washington-magnet-over-slave-teeth> [<https://perma.cc/T7N7-PPZQ>].

these plantations cater to social elites for use of their grounds<sup>248</sup>—none of their senior management positions appear to be occupied by descendant community members, and no social capital cultivated on these plantations appears intentionally distributed towards descendant communities. Local governments in these states could borrow from the normative framework outlined in Part II to construct a comprehensive reparations program on these plantation grounds.

Some of these states might utilize eminent domain to redistribute plantation lands to descendants of the enslaved. However, as with Louisiana, other states have adopted similar restrictions on the use of eminent domain. In Virginia, officials would have to show that any lands transferred would not primarily be used “for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development.”<sup>249</sup> In the states of Alabama and South Carolina, state actors may be empowered to enact reparative land redistribution utilizing the eminent domain power,<sup>250</sup> yet both require “the consent of the owner” in order to take private property for private use<sup>251</sup>—an additional obstacle if property owners are not yet sympathetic to the need for reparative justice.<sup>252</sup> The state of Mississippi appears to be most amenable to a process of reparative land transfer via eminent domain. There, local governments are empowered to transfer property from one private party to another, but the recipient must use the property for ten years before selling or transferring those lands. Advocates may not prefer such private transfers over the descendant-controlled commission structure outlined in Part III, but the possibility of transferring property to descendants in fee simple at the conclusion of the ten-year period could provide additional reparative benefits. All of these states and their local governments, however, would have to grapple with the

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248. At Drayton Hall, for example, corporate and individual patrons gain access to *The Society of 1738* and can utilize the Drayton Hall online platform as an advertising space for their company website. See DRAYTON HALL, *supra* note 240.

249. VA. CONST. art. I, § 11.

250. Each state’s supreme court has defined public use in very broad terms. In Alabama, it appears local governments would need to show that the taking satisfies the public use requirement because it is “beneficially employed for the community.” *Gober v. Stubbs*, 682 So. 2d 430, 434 (Ala. 1996) (citing *Aldridge v. Tuscumbia, C. & D.R. Co.*, 2 Stew. & P. 199, 203 (Ala. 1832)). In South Carolina, it appears local governments would similarly need to show that the use of the transferred properties will be for the “benefit, utility or advantage to the public” in order to comply with “the meaning of the law of eminent domain.” *Timmons v. S.C. Tricentennial Comm’n*, S.E.2d 805, 812 (S.C. 1970).

251. ALA. CONST. art. I, § 23; S.C. CONST. art. I, § 13.

252. See *supra* Section III.B. for a discussion about how descendant commissions might constitute a public use and thus sidestep a state’s consent requirement.

central imperfection of using the eminent domain power as a tool for reparative justice, the obligation to pay just compensation for the taking.

Beyond plantations, other types of property should also face scrutiny over legacies of racial oppression. California missions, for example, might also provide powerful sites to engage in local reparative processes through usage of the eminent domain power. Similar to plantation museums that continue to perpetuate harms stemming back to the era of slavery, missions play a central role in the historic and ongoing injustices of settler colonialism. Historians have highlighted the unique atrocities committed against Indigenous communities at missions along El Camino Real, the 600-mile road connecting twenty-one Spanish missions in California.<sup>253</sup> Scholars argue that “[a]ll 21 missions are places of suffering, of death, and of domination” and should be treated like similar sites of historical injustice, including “Auschwitz where they have memorials to the atrocities that happened.”<sup>254</sup> As with plantations, missions historically played a “dual role as an institution of colonial control and as an economic enterprise,”<sup>255</sup> combining “violent social and cultural change” and forced labor to control and economically exploit Indigenous communities.<sup>256</sup> Missions have failed to fully rectify their economic transgressions, demonstrated by the fact that Indigenous communities continue to advocate for return to their lands.<sup>257</sup> Narrative erasure has also been perpetuated by both missions them-

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253. See generally ELIAS CASTILLO, *A CROSS OF THORNS: THE ENSLAVEMENT OF CALIFORNIA'S INDIANS BY THE SPANISH MISSIONS* (2017) (describing the atrocities that were committed against Indigenous communities during the mission period); Michelle M. Lorimer, *Reconstructing the Past: Historical Interpretations and Native Experiences at Contemporary California Missions* (Aug. 2013) (unpublished Ph.D. dissertation, University of California Riverside) (on file with author).

254. Caitlin Harrington, *The Lesser-Told Story of the California Missions*, HOODLINE (Mar. 20, 2016), <https://hoodline.com/2016/03/the-lesser-told-story-of-the-california-missions> [<https://perma.cc/R2YC-7773>]; see also Erich W. Steinman, *Decolonization Not Inclusion: Indigenous Resistance to American Settler Colonialism*, 2 SOC. RACE & ETHNICITY 219, 226 (2016) (“California Indian activists continue to challenge the virtuous representation of Father Junípero Serra, architect of the Spanish mission system, who was nominated for sainthood and canonized in 2015. . . . Serra represents enslavement and forced religious conversion. His sainthood symbolizes a naturalization of Spanish colonial destruction . . .” (citations omitted)).

255. ROBERT ARCHIBALD, *THE ECONOMIC ASPECTS OF CALIFORNIA MISSIONS*, at xi (1978).

256. Robert Archibald, *Indian Labor at the California Missions Slavery or Salvation?*, 24 J. SAN DIEGO HIST. (1978), <https://sandiegohistory.org/journal/1978/april/labor> [<https://perma.cc/7LVV-R5K4>] (“The regimentation, organized labor and extreme paternalism of the missions resulted in despondency and weakening of desire to live.”).

257. *Land Trust*, AMAH MUTSUN TRIBAL BAND, <http://amahmutsun.org/land-trust> [<https://perma.cc/K48R-AEFY>] (“We trace our ancestry and heritage through a keyhole in time

selves<sup>258</sup> and by the Catholic Church's highest leader, Pope Francis.<sup>259</sup> California's constitutional eminent domain language is similar to Louisiana's, as the California Constitution allows state or local governments to exercise the power of eminent domain for the purpose of acquiring private property "for a public work or improvement," which includes takings for "education, . . . parks, [or] recreation."<sup>260</sup>

### B. Local Reparations and the National Plan for Reparations

Beyond the proposed formation of a commission to study reparations, national leaders are struggling to build consensus as to how best to repair descendant communities.<sup>261</sup> Local reparations initiatives guided by descendant communities ought to inform the national programs for reparations. While local movement actors have focused on tailoring reparative projects to the unique harms endured in their communities, they have always described their initia-

when the Spanish occupied our traditional lands and held us in their missions at San Juan Bautista and Santa Cruz. . . . [W]e stand united . . . reclaiming our sovereignty, honoring our Creator and protecting our homeland."); *More than 1 Thousand Acres of Esselen Ancestral Land Returned to Tribe*, NPR (Aug. 2, 2020, 8:02 AM EDT), <https://www.npr.org/2020/08/02/898274915/more-than-1-thousand-acres-of-esselen-ancestral-land-returned-to-tribe> [<https://perma.cc/TMZ7-2HFL>] (describing how the Esselen Tribe, removed from their lands and sent to missions to be converted, have succeeded in advocating for the return of some of their lands). For an example of churches returning land to tribes and acknowledging the history of missions, see Harmeet Kaur, *Indigenous People Across the US Want Their Land Back—and the Movement Is Gaining Momentum*, CNN (Nov. 26, 2020, 6:24 PM ET), <https://www.cnn.com/2020/11/25/us/indigenous-people-reclaiming-their-lands-trnd/index.html> [<https://perma.cc/XC42-HMBM>].

258. Mark R. Day, *Dispelling the Mission Myths in California*, INDIAN COUNTRY TODAY (Aug. 22, 2017), <https://indiancountrytoday.com/archive/dispelling-the-mission-myths-in-california-VAG-Ws72dEGG75LjJP2NBA> [<https://perma.cc/5XG9-NXPD>] (referencing the "head do-cent" at Mission San Diego dismissing "any discussion of the mistreatment of Kumeyaay women" and declaring that "I will not let anyone say anything negative about the Franciscans or the Spanish soldiers. We are not about negativity").

259. See Harrington, *supra* note 254 (describing "brutal" treatment of Indigenous people under the direction of missionary Junípero Serra); see also *Pope Francis' Homily at the Canonization Mass for the Rev. Junípero Serra*, N.Y. TIMES (Sept. 23, 2015), <https://www.nytimes.com/2015/09/23/us/pope-francis-homily-at-the-canonization-mass-for-the-rev-junipero-serra.html> [<https://perma.cc/7QEU-MMZS>] (praising the missionary).

260. CAL. CONST. art. I, § 19(d)-(e).

261. Jacob M. Schlesinger, *Reparations to Black Americans for Slavery Gain New Attention*, WALL ST. J. (July 26, 2020, 4:23 PM EDT), <https://www.wsj.com/articles/reparations-to-black-americans-for-slavery-gain-new-attention-11595685600> [<https://perma.cc/Z29Q-8CPM>] (describing how activists, scholars, and politicians remain divided over federal spending for reparations).

tives as strategic efforts towards a comprehensive national plan.<sup>262</sup> Scholarly advocates of local reparations have echoed these sentiments.<sup>263</sup> Drafters of a national plan for reparations can learn from these local efforts, particularly by taking note of the remedies descendant communities on the ground define as reparative. Because local programs can craft creative remedies that are closely tailored to legacies of slavery in their unique community, they offer detailed data that can inform the requirements of a national program. Moreover, national programs can use these local initiatives to learn from the voices and perspectives of as many African American communities as possible, rather than relying exclusively on “the convictions and expertise” of those elevated to positions of national prominence and power.<sup>264</sup>

National programs can also learn from the missteps of local programs and can fill in gaps with federal resources. This is especially true in regard to monetary compensation. Robert Thomas, a community organizer central to the push for reparations in Asheville, North Carolina, has acknowledged that “[u]ltimately, local government does not have the resources and finances” to enact full reparations, and that local reparations programs must “use [their] collective force” to articulate financial needs that can only be met by the federal government.<sup>265</sup> Other advocates have echoed these remarks, finding that “[e]ven combining their efforts, local and corporate entities couldn’t afford the

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262. See, e.g., *Interview with Robert Thomas and Phoebe Kilby*, REPARATIONS 4 SLAVERY, <https://reparations4slavery.com/interview-with-robert-thomas-phoebe-kilby> [<https://perma.cc/L4EH-F8UF>] (“We hope many other cities and counties around this nation will adopt similar [local] resolutions to fit their own communities so that we gain national awareness around reparations.”); *Local Reparations, Evanston Town Hall 5/21/2020*, CITY EVANSTON 6, <https://www.cityofevanston.org/home/showdocument?id=57472> [<https://perma.cc/QME9-UGEZ>] (describing the purpose of the Evanston program to “Push HR 40”); Leah Penniman, *Leah Penniman on Land Based Liberation*, FOR WILD (Apr. 11, 2018), <https://forthewild.world/listen/leah-penniman-on-land-based-liberation> [<https://perma.cc/3QXV-WT72>] (arguing that “we must, must, must continue to organize for the government to institute large-scale reparations, [local reparations efforts are] not to excuse that”).

263. See, e.g., Renee Heberle, *Local Reparations Initiatives Can Lead to National Policy Remediating Racial Injustice*, HILL (July 6, 2020), <https://thehill.com/opinion/civil-rights/506054-local-reparations-initiatives-can-lead-to-national-policy-remediating> [<https://perma.cc/92YF-4PP8>] (“All of these local and differentiated efforts are ground-breaking moves toward repairing the effects of America’s original sin of slavery and remediating ongoing racial injustice. They should be studied and taken into account as we work toward an effective form of national reparations policy.”); Jones, *supra* note 141 (arguing that local reparations “could also help develop momentum for national redress”).

264. DARITY & MULLEN, *supra* note 162, at 27.

265. See *Interview with Robert Thomas and Phoebe Kilby*, *supra* note 262; *40 Acres and a Mule*, *supra* note 140, at 7:57.

scale of repayment . . . that a federal reparations law would probably entail” and thus that “[a] federal law awarding reparations to the descendants of enslaved African Americans would be a matchless act of remorse and restitution.”<sup>266</sup> A national program, therefore, could be responsive to the particular amount of monetary compensation envisioned by local movement actors such as Robert Thomas, providing funding most effectively and intentionally. Using the local descendant commission structure developed in Part III as an example, a national program could dedicate funds to the Louisiana state legislature to support descendant communities in transforming plantation grounds after descendant-controlled commissions execute land transfers, or could simply provide additional monetary compensation to individual descendants for whatever needs they might have. This vision of national reparations deemphasizes repair in “a single time or in a single way” because “[t]he scope of harm we are repairing certainly did not” occur in such a static fashion.<sup>267</sup> It instead recognizes that “[t]hese strategies, like the harms they address, could unfold on different and sometimes overlapping timelines and places.”<sup>268</sup> In working to become “a nation that will transcend the violence of its origin,”<sup>269</sup> national leaders have much to learn from local descendant leaders about what repair actually means to those who have been denied it.

## CONCLUSION

Reparations make radical and imaginative social change possible—they unlock the “vision of a more just world.”<sup>270</sup> For public and private institutions that have committed grave offenses, reparations create space to resolve historic institutional trauma. Reparations are challenging in that they disrupt the status quo, and if successful, likely dismantle most of the ways of being to which we have grown accustomed. But reparations can also be deeply cathartic and “transformative” for institutions and individuals alike, providing the opportunity to do better work on behalf of our society and our Earth.<sup>271</sup>

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266. Jones, *supra* note 141.

267. DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 240 (2019).

268. *Id.*

269. Mari J. Matsuda, *This Is (Not) Who We Are: Korematsu, Constitutional Interpretation, and National Identity*, 128 *YALE L.J.F.* 657, 677 (2019).

270. Matsuda, *supra* note 150, at 394.

271. *Id.*



This Note bridges concepts from property law and reparations scholarship to envision a case for reparations along Louisiana's River Road. The exact details of reparations are to be worked out by descendants in the river parishes. Their visions and aspirations must guide accountability for centuries of economic exploitation, narrative violence, and racial hierarchy on plantations. My proposals seek to redistribute resources such that those who are responsible for descendants' intergenerational suffering may better support their healing.

This Note also aspires to foster discussion as to how land reparations can help atone for the history of slavery and its legacies. It thus understands land as integral to the liberation of descendants of the enslaved, appreciating it as "a tool to heal from racial trauma,"<sup>272</sup> and recognizing its redistribution as part of "a healing process for the nation."<sup>273</sup> This Note seeks to inspire discussion about land reparations beyond "equat[ing] freedom and justice with a small piece of the plunder made possible by the past and present removal of [I]ndigenous people from the landscape."<sup>274</sup> It therefore seeks to engage with Black and Indigenous movement actors and scholars about how reparative land redistribution might be realized in a way that also centers the ongoing realities of settler colonialism.

Though local reparations on plantation museums can only encompass so many of the harms emanating from slavery and its legacies, they teach us a more empowering truth: that we can begin our process of healing in the places where we most closely witness and experience the afterlives of slavery—within our own communities—and that reparations can manifest entirely from what we ourselves decide repair looks and feels like. Danielle Sered's principles of accountability help to highlight this crucial significance of local reparations.<sup>275</sup> When our communities commit to reparations, they in effect "concretize repair in a way that makes clear to responsible parties that such repair is, despite what they feared, possible. Through these processes, they turn the corner, see down the long road to 'doing sorry' and know they can walk it."<sup>276</sup> Local reparations shift our understanding of participation in this process of repair, where we move from waiting for the "trickle down" to actively committing ourselves to

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272. *Strategic Goals*, SOUL FIRE FARM, <https://www.soulfirefarm.org/about/goals> [<https://perma.cc/UQJ8-AK7C>].

273. Penniman, *supra* note 262.

274. Laura Pulido & Juan De Lara, *Reimagining 'Justice' in Environmental Justice: Radical Ecologies, Decolonial Thought, and the Black Radical Tradition*, 1 ENV'T & PLAN. E: NATURE & SPACE 76, 78 (2018).

275. SERED, *supra* note 267.

276. *Id.* at 113.



forge a reparationist future—one where reparations initiatives become obsolete because communities who have suffered for centuries have the tools they need to heal themselves. Fortified with the assurance of our collective ability to repair, we are no longer afraid of a world reshaped by reparations, a world that looks very different from the one we've come to know. We are, instead, uplifted, strengthened, and affirmed in knowing that “[w]e have nothing to lose but our chains.”<sup>277</sup>

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277. ASSATA SHAKUR, *ASSATA: AN AUTOBIOGRAPHY* 52 (1987).