

## ESSAY

# Towards a More Perfect Union: An Approach to Rectifying White-Black Racial Inequality in American Life

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How, after 400 years of white racial domination, are we to repair the accumulated damage to black people in the United States?<sup>1</sup> I addressed this issue in a book I wrote a few years ago about the idea of reparations for historical injustices—a notion then sweeping the United States and the world.<sup>2</sup> The book examined a number of different cases of reparations claims-making around the globe, but my main concern was with making sense of the case of reparations for African Americans—an idea that was then garnering a lot of publicity.<sup>3</sup> Much of the discussion of reparations then revolved around attempts to estimate the unpaid wages of slaves, the denial of economic opportunities to blacks, and the consequent gaps in wealth and income between blacks and whites.<sup>4</sup> As anyone who has read the book will know, I came to rather pessimistic conclusions about the prospects for what I called “reparations politics” with regard to black Americans.<sup>5</sup> However justifiable, it seemed to me that the payout of large sums to the black population of the United States in the form of individual checks was a political nonstarter.<sup>6</sup> At the same time, it struck me that many of the leading proponents of reparations were really after concrete policy measures—loans to small businesses, college scholarships, and other forms of economic assistance to blacks—not checks for individual black Americans, as the discussion often suggested was the case.<sup>7</sup> Much of this

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1. JOHN C. TORPEY, *MAKING WHOLE WHAT HAS BEEN SMASHED: REFLECTIONS ON REPARATIONS* 6 (2005).

2. *Id.*

3. *Id.*

4. *Id.* at 129.

5. *Id.*

6. *Id.*

7. CHARLES J. OGLETREE JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* (2004).

seemed equally unlikely to happen, insofar as it entailed policies designed to affect a specific, historically oppressed racial group—even though the country had had no difficulty singling out that group for purposes of their subjugation and exploitation.<sup>8</sup> Repairing damage done on racial lines would be difficult to do along racial lines.<sup>9</sup>

As many have noted, and as would hardly seem to bear repeating, black people in the United States suffer inequalities and disadvantages that are generally rooted in the past.<sup>10</sup> Whites have greater life expectancy at birth than do blacks, even despite the much-discussed uptick in mortality rates among middle-aged whites resulting from “diseases of despair.”<sup>11</sup> Between 1980 and 2015, for example, rates of infant mortality of the children of black women have been roughly twice that of children of white mothers.<sup>12</sup> African Americans have consistently higher rates of unemployment than whites,<sup>13</sup> higher rates of incarceration relative to whites as well as relative to their share of the overall population,<sup>14</sup> lower

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8. TORPEY, *supra* note 1, at 131.

9. *Id.*

10. STEVEN PINKER, *BETTER ANGELS OF OUR NATURE: WHY VIOLENCE HAS DECLINED* 94 (2011); Joel Achenbach, *Life Expectancy Improves for Blacks, and the Racial Gap Is Closing*, *CDC Reports*, WASH. POST (May 2, 2017), [https://www.washingtonpost.com/news/to-your-health/wp/2017/05/02/cdc-life-expectancy-up-for-blacks-and-the-racial-gap-is-closing/?utm\\_term=.e10e98c0d2e2](https://www.washingtonpost.com/news/to-your-health/wp/2017/05/02/cdc-life-expectancy-up-for-blacks-and-the-racial-gap-is-closing/?utm_term=.e10e98c0d2e2); Anne Case & Angus Deaton, *Rising Mortality and Morbidity in Midlife Among White Non-Hispanic Americans in the 21st Century*, *PROC. NAT'L ACAD. SCI.* (2015), <http://www.pnas.org/content/112/49/15078>; see CDC, *INFANT MORTALITY RATES, BY RACE: UNITED STATES, SELECTED YEARS, 1950-2015* (2016), <https://www.cdc.gov/nchs/data/hus/2016/011.pdf>; JESSICA L. SEMEGA ET AL., *U.S. CENSUS BUREAU, P60-259 INCOME AND POVERTY IN THE UNITED STATES: 2016*, at 13 (2017), <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf>; *E-16: Unemployment Rates by Age, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. DEP'T LAB.: BUREAU LAB. STAT., [https://www.bls.gov/web/empsit/cpsee\\_e16.htm](https://www.bls.gov/web/empsit/cpsee_e16.htm); John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison Is Shrinking*, PEW RES. CTR. (Jan. 12, 2018), <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>; Tracy Jan, *White Families Have Nearly 10 Times the Net Worth of Black Families. And the Gap Is Growing*, WASH. POST (Sept. 28, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/09/28/black-and-hispanic-families-are-making-more-money-but-they-still-lag-far-behind-whites/?utm\\_term=.e5f3f6b4322a](https://www.washingtonpost.com/news/wonk/wp/2017/09/28/black-and-hispanic-families-are-making-more-money-but-they-still-lag-far-behind-whites/?utm_term=.e5f3f6b4322a); *Percentage of Persons 25 to 29 Years Old with Selected Levels of Educational Attainment, by Race/Ethnicity and Sex: Selected Years, 1920 Through 2016*, NAT'L CTR. FOR EDUC. STAT., [https://nces.ed.gov/programs/digest/d16/tables/dt16\\_104.20.asp](https://nces.ed.gov/programs/digest/d16/tables/dt16_104.20.asp) (last visited Oct. 7, 2019); Zenitha Prince, *Census Bureau: Higher Percentage of Black Children Live with Single Mothers*, AFRO (Dec. 31, 2016), <http://www.afro.com/census-bureau-higher-percentage-black-children-live-single-mothers/>.

11. Achenbach, *supra* note 10; Case & Deaton, *supra* note 10.

12. CDC, *supra* note 10.

13. *E-16: Unemployment Rates by Age, Sex, Race, and Hispanic or Latino Ethnicity*, *supra* note 10.

14. Gramlich, *supra* note 10.

rates of educational attainment,<sup>15</sup> a roughly 10-to-1 ratio of wealth between white families and black families,<sup>16</sup> higher rates of homicide,<sup>17</sup> higher rates of poverty,<sup>18</sup> higher rates of single-parent-headed households,<sup>19</sup> and many other disparities as well.<sup>20</sup> The glaring fact is that blacks face extensive and often profound differences in social outcomes based on race, even though some of these (such as the gap in life expectancy) have been improving in recent years.<sup>21</sup> But stating these facts does not tell us what causes them, nor does it dictate what should be done about them.<sup>22</sup>

Many whites and other nonblacks think themselves fair-minded and desirous of achieving racial equality.<sup>23</sup> Research has shown that levels of conscious and overt prejudice against blacks have declined significantly since the 1960s; in this limited sense, the United States has become a less racist society.<sup>24</sup> The voters of the United States did, of course, twice elect an African American to the highest office in the land.<sup>25</sup> On the other hand, a 2017 National Academy of Sciences meta-analysis of experimental studies of hiring decisions since 1989 found that there had been “no change in the level of hiring discrimination against African Americans in the last twenty-five years.”<sup>26</sup> Whatever people’s conscious intentions, the previously mentioned outcomes for black people relative to whites (and others) indicate that “structural” or “institutional” racism persist and in

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15. *Percentage of Persons 25 to 29 Years Old with Selected Levels of Educational Attainment, by Race/Ethnicity and Sex: Selected Years, 1920 Through 2016*, *supra* note 10.

16. Jan, *supra* note 10.

17. PINKER, *supra* note 10.

18. SEMEGA ET AL., *supra* note 10.

19. Prince, *supra* note 10.

20. See Timothy J. Cunningham et al., *Vital Signs: Racial Disparities in Age-Specific Mortality Among Blacks or African Americans—United States, 1999-2015*, 66 *MMWR* 444, 446-47 (2017).

21. Kenneth D. Kochanek, Sherry L. Murphy, Jiaquan Xu & Betzaida Tajada-Vera, *Deaths: Final Data for 2014*, NAT’L VITAL STAT. REP., June 30, 2016, at 10.

22. See sources cited *supra* note 10.

23. Juliana Menasce Horowitz et al., *Race in America 2019*, PEW RES. CTR. (2019), <https://www.pewsocialtrends.org/2019/04/09/race-in-america-2019/>.

24. See, e.g., STEVEN PINKER, *ENLIGHTENMENT NOW: THE CASE FOR REASON, SCIENCE, HUMANISM, AND PROGRESS* 217-18 (2018).

25. FED. ELECTION COMM’N, *FEDERAL ELECTIONS 2008 ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES* 13 (2009); FED. ELECTION COMM’N, *FEDERAL ELECTIONS 2012 ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES* 13 (2013).

26. Lincoln Quillian et al., *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time*, 114 *PROC. NAT’L ACAD. SCI.* 10870 (2017).

some respects (e.g., residential segregation<sup>27</sup>) may even have worsened since the 1960s.<sup>28</sup> It is these persistent disparities between whites and blacks that have fueled the pessimism of such commentators as Ta-Nehisi Coates, who sees the United States as irremediably committed to white supremacy.<sup>29</sup> The basis for Coates's view has certainly been reinforced by outbreaks of white supremacist rhetoric and violence during the Trump administration, with apparent endorsement (or at least noncondemnation) from the White House itself.<sup>30</sup> Taking issue with Martin Luther King's generally more optimistic view of the situation, Coates has said, "I don't believe the arc of the universe bends toward justice. I don't even believe in an arc."<sup>31</sup> George Packer responded with a searching critique of Coates's analysis of the election of Donald Trump as an expression of an unchanging and universal American racism, impervious to any other considerations in explaining the politics of whites.<sup>32</sup> The climate of race relations in the Trump era is marked by a drift toward the rhetorical extremes.<sup>33</sup> This tendency is not conducive to ameliorating the racial disparities in American life, which are many and persistent.<sup>34</sup>

In the face of unpromising prospects for rectifying the wrongs rooted in our white supremacist past, I have long believed that the only route likely to prove effective and to enjoy broad legitimacy is a bipartisan congressional investigation into the nature and causes of, and the appropriate remedies for, racial inequalities in the United States.<sup>35</sup> Such an investigation would have to involve the country's leading historians of slavery, segregation, and race, as well as sociologists, economists, and political scientists who have studied the social, economic, and political

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27. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); see also DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 9 (1993).

28. MASSEY & DENTON, *supra* note 27.

29. TA-NEHISI COATES, *WE WERE EIGHT YEARS IN POWER: AN AMERICAN TRAGEDY*, at xvi (2017).

30. FRED HARRIS & ALAN CURTIS, *HEALING OUR DIVIDED SOCIETY: INVESTING IN AMERICA FIFTY YEARS AFTER THE KERNER REPORT* 313-14 (2018).

31. Ta-Nehisi Coates, *The Myth of Western Civilization*, ATLANTIC (Dec. 31, 2013), <https://www.theatlantic.com/international/archive/2013/12/the-myth-of-western-civilization/282704/>.

32. See George Packer, *George Packer Responds to Ta-Nehisi Coates*, ATLANTIC (Sept. 17, 2017), <https://www.theatlantic.com/notes/2017/09/ta-nehisi-coates-george-packer-white-president/539976/>.

33. Horowitz et al., *supra* note 23, at 4.

34. *Id.*

35. John C. Torpey, *From '40 Acres and a Mule' to LBJ to the 2020 Election, a Brief History of Slavery Reparation Promises*, CONVERSATION (Apr. 11, 2019), <https://theconversation.com/from-40-acres-and-a-mule-to-lbj-to-the-2020-election-a-brief-history-of-slavery-reparation-promises-114547>.

dimensions of racial inequality in the United States.<sup>36</sup> The ultimate aim would be to have a blue-ribbon panel of investigators tasked with the production of a definitive report on the history of racial inequality in the United States and a series of recommendations aiming to ameliorate such inequality.<sup>37</sup> The disparities described earlier did not begin last year, and their roots often go back many generations.<sup>38</sup> We must therefore explore them from the ground up; only thus can we expect to begin adequately to rectify them and, in so doing, “to form a more perfect Union,” as the American Constitution enjoins us to do.<sup>39</sup> The body I propose should explore the following:

- (1) The history of racial slavery and the subordination of black people (African slaves) to white people, beginning with the first settlement of the colonies in the early seventeenth century at the latest.<sup>40</sup>
- (2) The story of abolition and how it came to pass, both in the United States and in other slave states in the Americas and elsewhere, in an effort to make sense of the different patterns of abolition and emancipation in different countries.<sup>41</sup>
- (3) The American Civil War and the place of slaves and of emancipation in the conflict.<sup>42</sup> Why was the Civil War fought? What role did slaves play in the conflict? What was emancipation’s role in the war? What were the social, economic, and political consequences of emancipation?
- (4) The Reconstruction period.<sup>43</sup> What was Reconstruction? What was the meaning of the thirteenth, fourteenth, and fifteenth Amendments to the Constitution, and what effect did they have on the lives of freed slaves? Why did Reconstruction end? How did

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36. *Id.*

37. *Id.*

38. See sources cited *supra* note 10.

39. U.S. CONST. pmb.

40. IRA BERLIN, *MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA* 29 (1998).

41. DAVID BRION DAVIS, *INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD* 15 (2006).

42. MICHAEL VORENBERG, *FINAL FREEDOM: THE CIVIL WAR, THE ABOLITION OF SLAVERY, AND THE THIRTEENTH AMENDMENT* 27 (2001).

43. See ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877* (1988); see also W.E.B. DUBOIS, *BLACK RECONSTRUCTION: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880* (Reprint Servs. Corp. 1992) (1935).

- whites respond to the realities of black political power and to blacks' efforts to gain education?
- (5) Jim Crow—that is, the period of legalized segregation that followed the collapse of Reconstruction.<sup>44</sup> What were the legal foundations of segregation? What social, economic, and political opportunities were available to blacks during the period? What were the patterns of violence against blacks, especially in the form of lynching? How did the American political system serve or disserve blacks during the years of segregation?
  - (6) World War II and its aftermath.<sup>45</sup> How did blacks participate in the American war effort? What was their experience in the United States armed forces and in the countries in which they served abroad? How did these experiences affect their views of American life? What opportunities did the GI Bill offer—or deny—blacks who had served in the military, and how did “affirmative action for whites” work?<sup>46</sup>
  - (7) How did *Brown v. Board of Education* (1954), the Supreme Court decision striking down “separate but equal” public educational facilities, affect blacks and American society more broadly?<sup>47</sup> What kinds of efforts were made to integrate public schools? How successful have those efforts been?
  - (8) Practices such as redlining (denying mortgages to blacks) and restrictive covenants (provisions in deeds precluding sale of houses to blacks) have widely excluded blacks from opportunities to purchase homes, the most significant form of wealth held by most Americans.<sup>48</sup> To what extent have such practices driven the disparity in wealth between blacks and whites (and other ethnic groups)?
  - (9) Gerrymandering of congressional districts and efforts to stem alleged voter fraud are widely regarded as a major limitation on

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44. See C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1958).

45. See MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000); see also BRENDA GAYLE, *WINDOW ON FREEDOM: RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS, 1945-1988* (2003).

46. 38 U.S.C. § 3701 (2019) (corresponds to the Servicemen's Readjustment Act of 1944, ch. 268, Pub. L. No. 346, 58 Stat.); see IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005).

47. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

48. FED. HOUS. ADMIN., *UNDERWRITING MANUAL* 110-13, §§ 936-939 (1938); Michael Jones-Correa, *The Origins and Diffusion of Racial Restrictive Covenants*, 115 *POL. SCI. Q.* 541-68 (2000-2001).

- black (and other minority) political power.<sup>49</sup> How are districts gerrymandered to help insure racial disparities in political power? How can such practices be curbed? How are efforts to stem voter fraud affecting black and minority rates of electoral participation?<sup>50</sup>
- (10) Patterns of educational attainment. To what extent are blacks participating in the “educational revolution” that has swept the country since the 1960s?<sup>51</sup> What are their rates of educational success at all levels of the educational system? What are the causes of gaps in educational achievement relative to whites?
- (11) Patterns of incarceration. As many have noted, the weight of the unprecedented American experiment in mass incarceration has fallen disproportionately on blacks and Latinos. Why has this been the case, especially when the evidence suggests that, for example, rates of drug use by these groups are no higher and are often lower than the rates of white users?<sup>52</sup> How has the experience of incarceration affected their families and their communities, their ability to reintegrate into society after they have served their time, or their participation in electoral politics?<sup>53</sup>
- (12) Blacks have different rates of incidence of diseases, lower life expectancy, and different rates of disability than whites.<sup>54</sup> What accounts for these disparities in health and longevity? How much are the differences a matter of economic inequalities and how much are they a product of specifically racial differences?
- (13) Blacks suffer disparate rates of violence compared to whites.<sup>55</sup> What are the causes of these disparities? How do they vary by state

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49. See ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (2009); Kim Soffen, *How Racial Gerrymandering Deprives Black People of Political Power*, WASH. POST (June 9, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/>.

50. See Julie Bosman, *Judge Rejects Kansas Law Requiring Voters to Show Proof of Citizenship*, N.Y. TIMES (June 18, 2018), <https://www.nytimes.com/2018/06/18/us/kris-kobach-voting-fraud-lawsuit.html>.

51. STEVEN BRINT, *TWO CHEERS FOR HIGHER EDUCATION: WHY AMERICAN UNIVERSITIES ARE STRONGER THAN EVER—AND HOW TO MEET THE CHALLENGES THEY FACE* 29-32 (2019).

52. Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 STAN. L. & POL’Y REV. 257, 257 (2009).

53. See BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* (2006).

54. Cunningham et al., *supra* note 20.

55. PINKER, *supra* note 10, at 94; Robert J. Sampson & Janet L. Lauritsen, *Racial and Ethnic Disparities in Crime and Criminal Justice in the United States*, 21 CRIME & JUST. 311, 321-22 (1997).

and city? To what extent are they a product of the differential availability of guns in different jurisdictions and to the stringency or laxity of gun laws? How are blacks and other groups treated by the police, whom we entrust to keep our streets and our population safe?

- (14) How well are blacks integrated in the labor market?<sup>56</sup> What sorts of job opportunities do they have? What are their labor market prospects as more and more jobs are automated? What remedies will be available for blacks and others who are disadvantaged by changes in the nature of work?

Although the final details may remain to be worked out, an understanding of the aforementioned issue areas constitutes the essential foundation of any true appreciation of the history and dimensions of the inequalities suffered by blacks in the United States today.<sup>57</sup> Understanding them is the key to developing workable and effective approaches to ameliorating these disparities.<sup>58</sup> Doing so should be a matter of urgent national concern, as it is long overdue and crucial to the creation of a social and political order that meets our highest aspirations as a nation.<sup>59</sup> Clearly, the creation of an investigative commission of this sort is not going to take place overnight.<sup>60</sup> It will require patient organizing.<sup>61</sup> But if it were ever to become a reality, its recommendations would have the imprimatur of the highest legislative body in the land, and the pressure to carry out those recommendations would be substantial.<sup>62</sup>

Where do “reparations” fit in this picture? Ta-Nehisi Coates has argued eloquently for reparations.<sup>63</sup> In making that case, however, he

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56. *E-16: Unemployment Rates by Age, Sex, Race, and Hispanic or Latino Ethnicity*, *supra* note 10.

57. 38 U.S.C. §3701 (2019) (corresponds to the Servicemen’s Readjustment Act of 1944 ch. 268 Pub. L. No. 346, 58 Stat.); Brown, 347 U.S. 483 (1954); BERLIN, *supra* note 40; FED. HOUS. ADMIN., *supra* note 48; GAYLE, *supra* note 45; MICHAEL T. MARTIN & MARILYN YAQUINTO, REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES 44-48 (2007); VORENBERG, *supra* note 42; Bosman, *supra* note 50; Cunningham et al., *supra* note 20; Fellner, *supra* note 52; Claire Parfait, *Reconstruction Reconsidered: A Historiography of Reconstruction, From the Late Nineteenth Century to the 1960s*, 62 *ÉTUDES ANGLAISES* 440-54 (2009); Sampson & Lauritsen, *supra* note 55; Jones-Correa, *supra* note 48; Soffen, *supra* note 49.

58. TORPEY, *supra* note 1, at 6.

59. Torpey, *supra* note 35.

60. HARRIS & CURTIS, *supra* note 30, at 3-4.

61. *Id.*

62. Torpey, *supra* note 35.

63. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.



makes clear that he is not simply talking about monetary redress, the main feature of the official apology to Japanese-Americans “interned” during World War II.<sup>64</sup> Instead, Coates writes,

What I’m talking about is more than just recompense for past injustices—more than a handout, a payoff, hush money, or a reluctant bribe. What I’m talking about is a national reckoning that will lead to spiritual renewal . . . . Reparations would mean a revolution of the American consciousness, a reconciling of our self-image as the great democratizer with the facts of our history.<sup>65</sup>

In short, reparations are not purely an economic matter; they also involve our self-understanding as a nation and the prospects for racial comity in American life.<sup>66</sup> A bipartisan congressional inquiry could constitute the first step toward the “revolution of the American consciousness” that Coates envisions.<sup>67</sup>

An approach of the kind that I am proposing has been tried before with the National Advisory Commission on Civil Disorders—known universally, after the name of its chair, as the Kerner Commission.<sup>68</sup> As its official name suggests, the commission was created in response to the racial unrest of 1967, especially the riots that took place in Newark and Detroit but the dozens of others as well.<sup>69</sup> President Lyndon Johnson convened the commission with the aim of understanding the causes of the upheavals and making recommendations to insure that they would not be repeated.<sup>70</sup> Famously, the Commission concluded grimly that “our Nation is moving toward two societies, one black, one white—separate and unequal.”<sup>71</sup> More strikingly from our current vantage point, the report found that “white society is deeply implicated in the ghetto; White institutions created it, white institutions maintain it, and white society condones it.”<sup>72</sup> Conditions in the ghetto and “white racism,” the study argued, were the fundamental causes of the urban riots of the late 1960s.<sup>73</sup>

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64. COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (1997).

65. Coates, *supra* note 63.

66. *Id.*

67. *Id.*

68. NAT’L CRIMINAL JUSTICE REFERENCE SERV., REPORT OF THE NAT’L ADVISORY COMM’N ON CIVIL DISORDERS 1-2 (1968).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

Unfortunately, however, these conclusions were not well received by the President who had empaneled the study commission.<sup>74</sup> As the 1968 presidential election approached, Lyndon Johnson was under increasing pressure to respond to a conservative white backlash against the disorder in the nation's streets.<sup>75</sup> Many citizens and politicians wanted "law and order" as the primary response to the racial and antiwar unrest that was afoot throughout the land.<sup>76</sup> Accordingly, a high-profile commission that President Johnson had himself created came to be a major thorn in his side.<sup>77</sup> The "white racism" charge dominated headlines when the report was formally issued on the last day of February 1968.<sup>78</sup> Howls of opposition arose from many quarters.<sup>79</sup> Johnson cancelled a planned formal presentation to him of the report and declined even to sign the customary letters of thanks to the members of the commission for their service.<sup>80</sup> This was all "especially sad because . . . [it] came from a president who had achieved greater progress in the fight against racism and poverty than any of his predecessors or successors to date."<sup>81</sup> Johnson had pushed through the Civil Rights Act of 1964, the Voting Rights Act of 1965, Medicare and Medicaid, and the various elements of the War on Poverty (Head Start, VISTA, Job Corps) as part of his Great Society program.<sup>82</sup> Unlike many of the New Deal programs, these initiatives helped black people as much as or more than they did whites.<sup>83</sup> On the racial divide more specifically, Johnson argued in his commencement speech at Howard University that it was "not enough" to give "freedom" to the Negro in the form of civil and political rights.<sup>84</sup> More was necessary to achieve racial equality:

We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result. For the task is to give 20 million Negroes the same

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74. HARRIS & CURTIS, *supra* note 30, at 7.

75. *Id.* at 2.

76. *Id.*

77. *Id.* at 7.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. JULIAN E. ZELIZER, *THE FIERCE URGENCY OF NOW: LYNDON JOHNSON, CONGRESS, AND THE BATTLE FOR THE GREAT SOCIETY* (2015).

83. See IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* 14 *passim* (2005).

84. President Lyndon B. Johnson, Commencement Address at Howard University: To Fulfill These Rights (June 4, 1965).

chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental, and spiritual, and to pursue their individual happiness.<sup>85</sup>

Yet just one month after the Kerner Commission report came out, sensing that he could no longer prosecute both the war on poverty and the war in Vietnam, Johnson announced that he would not seek the Democratic nomination for the 1968 presidential campaign.<sup>86</sup>

Only a few days after that announcement, a sniper assassinated Martin Luther King, Jr., on a hotel balcony in Memphis, Tennessee.<sup>87</sup> The streets were again filled with angry protesters and looters.<sup>88</sup> The white backlash gathered force, and Richard Nixon was elected President on a “law and order” platform.<sup>89</sup> Meanwhile, George Wallace, who had a well-deserved reputation for racist politics, won five states.<sup>90</sup> Sympathetic approaches to black grievances gave way to police responses, and the black freedom movement turned increasingly toward nationalism and separatism.<sup>91</sup> The recommendations of the Kerner Commission were widely seen as costly measures that would reward lawless protesters.<sup>92</sup> One of the authors of the report, Senator Fred Harris, reported that his father, a small farmer in southwestern Oklahoma, understood the document to be saying, “You should pay more taxes to help out the black people who are rioting in Detroit.”<sup>93</sup> Over time, the political will that the Commission insisted would be necessary to implement its recommendations flagged or ran into changing political headwinds.<sup>94</sup>

But that is different than saying that the report had no impact.<sup>95</sup> For one thing, the report became a bestseller; the book sold nearly a million

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85. *Id.*

86. President Lyndon B. Johnson, Address to the Nation (Mar. 31, 1968).

87. *Investigation of the Assassination of Martin Luther King, Jr.: Hearings Before the Select Comm. on Assassinations*, 95th Cong. Second Session (1979).

88. Lorraine Boissoneault, *Martin Luther King Jr.’s Assassination Sparked Uprisings in Cities Across America*, SMITHSONIAN MAG. (Apr. 4, 2018), <https://smithsonian.com/history/martin-luther-king-jrs-assassination-sparked-uprisings-cities-across-america-180968665/>.

89. LEWIS L. GOULD, 1968: THE ELECTION THAT CHANGED AMERICA 88 (1993).

90. Clyde Haberman, *George Wallace Tapped into Racial Fear. Decades Later, Its Force Remains Potent*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/us/george-wallace-tapped-into-racial-fear-decades-later-its-force-remains-potent.html>.

91. HARVARD SITKOFF, *THE STRUGGLE FOR BLACK EQUALITY, 1954-1980* (1981).

92. STEPHEN GILLON, *SEPARATE AND UNEQUAL: THE KERNER COMMISSION AND THE UNRAVELING OF AMERICAN LIBERALISM* 271 (2018).

93. *Id.* at 289.

94. *Id.* at 293.

95. *Id.* at 291.

copies in the first two weeks after its publication.<sup>96</sup> The Roman Catholic diocese of New York bought 50,000 copies and had them distributed throughout the diocese.<sup>97</sup> The National Council of Catholic Bishops used the report as a foundation for its own proposals for solving urban ills.<sup>98</sup> The Chicago school board made it required reading for its teachers.<sup>99</sup> Other religious organizations made extensive use of the document.<sup>100</sup> Municipalities adopted some of its recommendations for themselves.<sup>101</sup> Community leaders inspired by the report convened meetings to discuss the problems and solutions that it described.<sup>102</sup> The report, in one expert's view, "would shape the conversation about race in American [life] for a generation."<sup>103</sup>

There is little reason to think another effort of this sort is likely to happen in the foreseeable future.<sup>104</sup> There are reasons to doubt that it would make a difference in rectifying the inequalities outlined at the beginning of this paper.<sup>105</sup> It may well be that, just as the Great Society programs that did so much to improve the wellbeing of so many Americans came in a climate of increasing affluence, the most important precondition for making major improvements in the situation of African Americans in our society is economic growth.<sup>106</sup> Yet, as many have noted, the robust growth that has taken place since the Great Recession has been very unequally distributed.<sup>107</sup> Distributional concerns are critical, and a rising tide does not lift all boats equally.<sup>108</sup>

In any case, we are unlikely to address the legacy for African Americans of white racial domination without a serious examination of the nature, causes, and remedies of racial inequality in the United States.<sup>109</sup> That problem has grown more complex with the immigration of massive

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96. *Id.* at 269.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 270.

101. *Id.*

102. *Id.*

103. *Id.* at 291.

104. TORPEY, *supra* note 1 at 129.

105. *Id.*

106. See BENJAMIN M. FREIDMAN, *THE MORAL CONSEQUENCES OF ECONOMIC GROWTH* 7-8 (2005).

107. Ben Casselman, *Feel That Post-Recession Bounce? The Rich Feel It the Most*, N.Y. TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/business/economy/wealth-inequality-study.html>.

108. *Id.*

109. Torpey, *supra* note 35.

numbers of Asians and Latinos since the new immigration law of 1965, as can be seen in recent controversies over procedures for admission to elite institutions of higher education in which Asians complain that they are being discriminated against.<sup>110</sup> But we must bear in mind that, when we talk about rectifying racial inequality in American life, we are not *only* talking about the money.<sup>111</sup> We are talking about an exploration of our self-understanding and of our capacity for living together in a more perfect union than the one we have today.<sup>112</sup> And that we must do.

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110. Anemona Hartocollis, *Asian-Americans Suing Harvard Say Admissions Files Show Discrimination*, N.Y. TIMES (Apr. 4, 2018), <https://www.nytimes.com/2018/04/04/us/harvard-asian-admission.html>.

111. John Torpey & Maxine Burkett, *The Debate over African American Reparations*, ANN. REV. L. & SOC. SCI. 21 (Dec. 2010).

112. *Id.*