

A forensic economics approach to reparations



Michelle Obama reminded the world that the White House was built by slaves. Here, a brief history of constructing the iconic home

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House of Representatives **Bill 40**, introduced three years ago as of Wednesday — back when Freddie Gray was still alive in Baltimore and a **Donald Trump** presidency seemed implausible — suggests that reparations should be paid to descendants of slaves held between 1619 and 1865. The bill is conceptual and political, but, like many reparations efforts, short on details regarding dollar amounts and eligibility; it instead proposes the creation of a commission to study the cause.

The reason for reparations is captured in section 3, paragraph B.1.D of the bill, which describes “the treatment of African slaves in the colonies and the United States,” as the “deprivation of their freedom, exploitation of their labor, and destruction of their culture, language, religion, and families.”

Yet three weeks after its Jan. 3, 2015, introduction in the House, the bill was referred to the Subcommittee on the Constitution and Civil Justice, with no other action taken since. Given the current climate of racial tension in America, with Baltimore and the nation as a whole grappling with issues of race and institutional racism, now seems as good a time as any to revive the discussion.

We propose a very preliminary conceptual model that may be useful in addressing the reparations issue. The model relies on a standard forensic economics framework used in U.S. courts. In a typical personal injury litigation situation, a wrong (known as a tort) is brought to a trier-of-fact for analysis and possible recompense or “making the victim whole.”

Typically, the first step is to estimate income “but for” the wrongdoing, and subtract it from a post-injury income. For example, if a mail carrier is viciously attacked by a dog on her route, and no longer able to walk, we would subtract her pre-attack income from her post-attack income to determine the difference. This is an annual calculation, carried forward through work life expectancy, which takes into account various factors. Next, the difference, or loss, in each year, is discounted to present value. This process reflects the earning power of a lump sum award, thus avoiding over-compensation of the plaintiff.

In the reparations context, a likely initial data acquisition goal might involve assessing prevailing wages in the historical period covered by H.R. 40 (1619-1865). An initial step would be to review economic history journals, to ascertain if such an estimate is possible.

Similarly, one would need to make an estimate of the average price of subsistence room and board. Since, despite the horror of the conditions in many cases, slavery did provide room and board, that amount would be subtracted from the prevailing wage. That differential would be the first quantum of a forensic economics approach damage calculation. Typically, in current forensic practice, increments for fringe benefits are addressed. This is hard to support in the H.R. 40 review period, and will not be added here.

Before we move to the overwhelming issue of accumulated interest, also known as “opportunity cost” in economics, we comment on the dramatic issue of enslavement itself. This travesty is reminiscent of an economic loss element that is admissible in only a few U.S. jurisdictions. The term used is “hedonic damages,” a referral to the loss of the enjoyment of life. The economic literature with respect to hedonic valuation speaks to non-trivial sums, based on studies of how much people will pay to avoid risks. However, applicability in the

present discussion is fraught with computational difficulties, and in fact may be secondary to the more accessible issue of accumulated interest.

In modern courtroom settings, accumulated interest is referred to as pre-judgment interest. The economic term is opportunity cost; a delay in access to funds denies the plaintiff the opportunity to deploy the earned money in a profitable way. In typical litigation, the number of years is limited, and interest is not a major element of damages. However, given the multi-century outlook of H.R. 40, accumulated interest might comprise the largest component of reparations. The identification and verification of lineal descendants adds issues of “standing” and administrative complexity.

If reparations can be thought of as a lost profits metaphor from a litigation context, it may contribute to our understanding to append a political or cultural viewpoint.

Incomes and net worth of African-American households and individuals lag those of other subsets of the American polity. It is beyond the scope of this note to delve into causation. However, there is an emerging voice that links at least some of this monetary gap to the legacy of slavery and subsequent inequities in housing policy and lending practice.

Naturally, in a time of conservative efforts to reduce the federal debt level, a massive budget line item for reparations will face intense scrutiny. But that’s hardly a reason to abandon the effort, particularly now, when its symbolic value could be worth more than its monetary one.

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