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Higher Education Redress Statutes: A Critical Analysis of States' Reparations in Higher Education

Christopher L. Mathis
University of Iowa, christopher-mathis@uiowa.edu

Higher Education Redress Statutes: A Critical Analysis of States' Reparations in Higher Education

Christopher L. Mathis*

Abstract

This Article introduces a novel concept, higher education redress statutes ("HERS"), to illustrate efforts that acknowledge and amend past wrongs towards African Americans. More proximally, the Article shines a probing light on the escalation of HERS in southeastern states that serve as a site for state regulation and monitoring. The Author exposes how higher education redress statutes, designed to provide relief or remedy to Black people for states' higher education's harm, categorically ignore groups of Black people who rightfully should also be members of the statutorily protected class. This Article queries whether legislators can expand the scope of such statutes and reveals the myriad ways in which higher education redress statutes now serve as tools for aiding in the erasure of the higher education industry's culpability and complicity in slavery, degradation, and discrimination toward Black people. As such,

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this Article shows the growing hostility toward Black people's contribution to the higher education industry and states' unwillingness to offer redress efforts inclusively, broadly, and robustly. This Article serves as a platform for recognizing Black people's harm and hurt and the degree to which that recognition has been undermined by the states' disparate treatment of their humanity. Lastly, this Article proffers recommendations to activists, legislators, and other relevant stakeholders regarding the enforcement and promulgation of more comprehensive and inclusive higher education redress statutes.

Table of Contents

INTRODUCTION

Beyond the health and epidemiological crisis of 2020,[1] America experienced civil unrest because of her current and historical mistreatment of Black people.[2] Largely fueled by anger about police killings of unarmed Black people,[3] protests erupted across the country that recentered the call for reparations.[4] Activists demanded reparations from America herself,[5] specific industries, and systems that have historically disenfranchised and exploited Black people. Protestors not only demanded reparations and reformations from traditional

1. See *generally* HUSSEIN H. KHACHFE ET AL., NAT'L LIBR. OF MEDICINE, AN EPIDEMIOLOGICAL STUDY ON COVID-19: A RAPIDLY SPREADING DISEASE (2020), https://perma.cc/E28K-UUER (PDF); Maya Sabatello et al., *Structural Racism in the COVID-19 Pandemic: Moving Forward*, 21 AM. J. BIOETHICS 56 (2021).

2. *See* Michael Siegel, *Racial Disparities in Fatal Police Shootings: An Empirical Analysis Informed by Critical Race Theory*, 100 B.U. L. REV. 1069, 1071–73 (2020).

3. *See, e.g.*, Alex Altman, *Why the Killing of George Floyd Sparked an American Uprising*, TIME (June 4, 2020, 6:49 AM), https://perma.cc/N4FD-J5AV; *see also In Pictures: Breonna Taylor Decision Sparks Protests*, CNN, https://perma.cc/ENG4-AEU9 (last updated Sept. 29, 2020, 4:02 AM); Linda Poon & Marie Patino, *A History of Protest of U.S. Police Brutality*, BLOOMBERG (June 9, 2020, 1:39 PM), https://perma.cc/6MEA-G45N (last updated Aug. 28, 2020, 4:57 PM).

4. *See* Lauren Gambino, *Calls for Reparations Are Growing Louder. How Is the US Responding?*, THE GUARDIAN (June 20, 2020, 5:00 AM), https://perma.cc/T8VU-7QW9.

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

sectors like banking,[6] housing,[7] and healthcare,[8] but also from a sector that has usually escaped and evaded public scrutiny and concern—the higher education industry.[9] Activists claimed that Black people are due reparations from states' systems of higher education because the industry needs to atone for its harmful acts toward Black people.[10] Recent attention on the higher education industry (re)exposed the public to higher education's

6. *See, e.g.*, Linda Lutton, *Activists Want Reparations from Chase Bank for Chicago's Black Neighborhoods*, NPR (June 16, 2020), https://perma.cc/5TF4-BA7U; Allana Akhtar, *Companies Like Bank of America Are Facing Demands that They Pay Reparations for Their Role in Perpetuating the Racial Wealth Gap*, BUS. INSIDER (June 27, 2020, 1:13 AM), https://perma.cc/YZR8-7Z7J; Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463, 1466–70 (1994).

7. *See, e.g.*, *Black Residents to Get Reparations in Evanston, Illinois*, BBC NEWS (Mar. 23, 2021), https://perma.cc/2C53-8T28; Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 3 PUB. AFF. Q. 255, 255–56 (2007).

8. *See, e.g.*, Derek Ross Soled et al., *The Case for Health Reparations*, 9 FRONTS. IN PUB. HEALTH, July 8, 2021, at 2–3 (exploring the evolution of medicine's contribution to racial healthcare oppression); *see also* A. Mechele Dickerson, *Designing Slavery Reparations: Lessons from Complex Litigation*, 98 TEX. L. REV. 1255, 1271–81 (2020); Kevin Outterson, *Tragedy and Remedy: Reparations for Disparities in Black Health*, 9 DEPAUL J. HEALTH CARE L. 735, 735 (2005).

9. *See* Vanessa de Oliveira Andreotti et al., *Mapping Interpretations of Decolonization in the Context of Higher Education*, 4 DECOLONIZATION INDIGENEITY EDUC. SOC. 21, 23 (2015). I chose the term 'industry' to reflect the widespread corporatization, industrialization, and violence of modernity in higher education. To provide context, Andreotti and team articulate modernity's definition through a metaphor. *Id.* They write that modernity is the benevolent and altruistic destination where the "bright, shiny side associated with concepts such as seamless progress, industrialization, democracy, secularization, [and] humanism" are espoused and understood. *Id.* However, to attain modernity's "bright, shiny side," historically higher education imposed systematic violence on others. Put simply, as higher education moved toward modernity, it also simultaneously and systematically inflicted violence on Black people.

10. *See* Michela Moscufo, *College Campuses See Growing Reparations Movement*, ABC NEWS (July 30, 2022, 11:55 AM), https://perma.cc/UY4F-EAG9.

role in slavery[11] and its role in the disinvestment,[12] displacement,[13] and degradation[14] of Black people, as well as its part in the intellectualization of Black inferiority.[15] The exposure of this history has affirmed activists' calls for reparations and forced the public to wrestle with the racially charged harm perpetrated and caused by the higher education industry.[16] Underlying the call for reparations from the higher education industry, however, is legislation that has largely eluded critiques from activists and legal scholars, despite its increasing prominence in southeastern states: higher education redress statutes, or what I have termed "HERS."[17]

HERS[18] were developed in response to either the states' or the higher education industry's role in slavery or in the

11. *See generally* LESLIE MARIA HARRIS ET AL., SLAVERY AND THE UNIVERSITY: HISTORIES AND LEGACIES (2019); MAURIE MCINNIS ET AL., EDUCATED IN TYRANNY: SLAVERY AT THOMAS JEFFERSON'S UNIVERSITY (2019); *President's Commission on Slavery and the University: Universities Studying Slavery*, UNIV. OF VA. (2016), https://perma.cc/7NR7-28XL; DAVARIAN L. BALDWIN, IN THE SHADOW OF THE IVORY TOWER: HOW UNIVERSITIES ARE PLUNDERING OUR CITIES (2021).

12. *See* David A. Belden, Urban Renewal and the Role of the University of Chicago in the Neighborhoods of Hyde Park and Kenwood, 76 (2017) (EdD. Dissertation, DePaul University) (on file with DePaul University Libraries).

13. Jake Drukman, *Athens Commission Passes Linnentown Resolution*, THE RED & BLACK (Feb. 17, 2021), https://perma.cc/KSK7-DSU4 (last updated Sept. 13, 2021) (addressing UGA's resolution admitting its role in displacing the Black Community of Linnentown to make way for high-rise dorms); *see also* Kelsey Massey, *Using Tax Law to Perpetuate Gentrification: Vinegar Hill Lives Again in Charlottesville*, GOLDEN GATE UNIV. SCH. L. (Apr. 13, 2021), https://perma.cc/GA7W-T5EL.

14. JAMES ROBERT SAUNDERS & RENAE NADINE SHACKELFORD, URBAN RENEWAL AND THE END OF BLACK CULTURE IN CHARLOTTESVILLE, VIRGINIA: AN ORAL HISTORY OF VINEGAR HILL (1998).

15. *See* Chana Kai Lee, *A Fraught Reckoning: Exploring the History of Slavery at the University of Georgia*, 42 PUB. HIST. 12, 19 (2020) ("[W]orking on a campus history of slavery might result in another instance of undervaluing Black academic labor.").

16. See Drukman, *supra* note 13 (noting activists' disappointment that a "majority-white body, majority-white attorneys and a majority-white state legislature get to determine what redress . . . look[s] like for the community that was harmed by white supremacy").

17. *See, e.g.*, FLA. STAT. § 1009.55 (2014); VA. CODE ANN. § 23.1-615.1 (2021); MD. CODE ANN., EDUC. § 15-128 (West 2021).

18. HERS were first publicly introduced in a presentation at the Ira C. Rothgerber Conference. For an abbreviated version of this concept and speech, see Christopher L. Mathis, *Higher Education Redress Statutes: A Preliminary*

discrimination or degradation of Black people.[19] When states enacted these laws, the laws were intended to provide resources to remedy those wrongs. As later argued in the Article, however, HERS are inequitable and have other significant shortcomings.[20] For example, Florida's HB 591 (1994), forced Florida's public universities to remedy a white racist mob's decimation of a thriving Black Florida neighborhood.[21] Specifically, Florida universities offered scholarships to the members and descendants of the devastated neighborhood.[22] As part of the political maneuvering surrounding the bill's passage, however, legislators conceded other neighborhoods that were also devastated by equivalent or more egregious racist acts. In doing so, the legislature created inequitable and discriminatory boundaries, further harming, isolating, and silencing individuals not included in the redress effort.[23] This Article asserts that if legislative bodies engage in reparative work, all of those harmed by the same exact harm should also enjoy repair and remedy. Put simply, legislators must write reparative efforts broad enough to encompass those harmed by the same actor and experience similar harm.

Figure 1. Statutes

Analysis of States' Reparations in Higher Education, 94 COLO. L. REV. 387 (2023).

19. *See* Anna Liss-Roy, *Virginia Law Requires Universities to Create Scholarships for Descendants of Enslaved Workers*, WUSA9 (Apr. 1, 2021, 7:18 PM), https://perma.cc/EQ2L-HUJS; *see also* Jerry Fallstrom, *Senate OKs $2.1 Million For Rosewood Reparations*, SUNSENTINEL (Apr. 9, 1994), https://perma.cc/5DK2-BCJ2.

20. *See infra* Part II.

21. *See infra* note 56 and accompanying text.

22. *See infra* note 56 and accompanying text.

23. *See* C.J. Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, 22 FLA. STATE U. L. REV. 503, 521 (1994) ("[B]ackers of House Bill 591 steadfastly claim that the Rosewood incident was unique and will not set a legislative precedent for reparations . . . .").

Higher Education Redress Statutes

Statute Title	Statute Overview
Florida: FL HB 591	Rosewood Family Scholarship Program.— (1) There is a Rosewood Family Scholarship Program for the direct descendants of the Rosewood families, not to exceed 50 scholarships per year. (2) The Rosewood Family Scholarship Program shall be administered by the Department of Education.
Georgia: The City of Athens and the University of Georgia Resolution	In support of recognition and redress for Linnentown, its descendants, and Athens-Clarke County Black communities harmed by urban renewal; acknowledging the City of Athens' collaboration with the University System of Georgia in the destruction of the Linnentown community and the displacement of Black property owners through urban renewal; supporting the establishment of memorials and historical places in honor of Linnentown; supporting the allocation of funds in the annual budget for the economic and community development of historically impoverished communities; calling on the Georgia General Assembly to establish a formal body to address the legacy of slavery and segregation in the State of Georgia and to determine the appropriate forms of material redress.

Maryland: HB 1	MD	(1) The state of Maryland wishes to provide all of its citizens with equal access to higher education at excellent and affordable public colleges and universities; (2) The General Assembly has carefully reviewed the memorandum opinions and orders of the District Court of Maryland . . . (3) the District Court found that the state failed to eliminate a traceable de jure era policy of unnecessary duplication of programs at HBCUs in the state that has exacerbated the racial identifiability of Maryland's HBCUs; (4) Maryland's HBCUs should receive additional support to remedy the findings of the district court; (5) the additional support shall be provided in the form of additional funding in the amount of $577,000,000 . . .
Virginia: H.B. 1980	VA	Establishes the Enslaved Ancestors College Access Scholarship and Memorial Program, whereby, with any source of funds other than state funds or tuition or fee increases, are required to annually (i) identify and memorialize, to the extent possible, all enslaved individuals who labored on former and current institutionally controlled grounds and property and (ii) provide a tangible benefit such as a college scholarship or community-based economic development program for individuals or specific communities with a demonstrated historic connection to slavery

> that will empower families to be lifted out of the cycle of poverty.

As such, this Article is a part of a multi-paper analysis that examines the limitations of the four existing HERS as currently constructed.[24] These four are Florida's HB 591 (1994),[25] Maryland's HB 1 (2021),[26] Virginia's H.B. 1980 (2021),[27] and Georgia's City of Athens and the University of Georgia Resolution (2021).[28] While HERS are essential tools for equity, the four HERS that have been passed into law have important limitations that need to be addressed in order to help achieve genuine equity in higher education. As activists' calls for more transformative changes in American institutions and systems persist, systematic evaluation of government solutions must also be present. Therefore, this scholarship initiates a much-needed evaluative process, as HERS display substantial equity and fairness issues worthy of study.

This Article's analysis is concerned with two arguments. First, the author asserts that these statutes fundamentally protect states and universities from being held accountable for their role in Black degradation rather than providing a remedy to all of the people harmed. Second, this Article asserts that HERS are an unexamined and unique area of the law, where substantial archival evidence proves that the laws' boundaries are underinclusive and do not comply with

24. Separate from this analysis, two other forthcoming papers further examine the limiting framework of HERS. For example, the second paper will analyze and critique how the law narrowly includes public universities. Archival evidence and reports, however, indicate that private universities and colleges conducted equal—if not more egregious—harms. It is important to discuss those limitations and the tools to implicate higher education broadly and comprehensively. As such, while there is much to analyze regarding HERS, this Article is focused on introducing HERS and demonstrating that the laws are discriminatory and underinclusive.

25. FLA. STAT. ANN. § 1009.55 (2014).

26. MD. CODE ANN., EDUC. § 15-128 (West 2021).

27. VA. CODE ANN. § 23.1-615.1 (2021).

28. LINNENTOWN RESOLUTION: ATHENS-CLARKE CNTY. (2021), https://perma.cc/UG6E-8EXZ [hereinafter LINNENTOWN RESOLUTION].

tort-remedies-scholarship in reparations, redress, and repair. This Article addresses these arguments through three parts.

Part I offers a brief legislative history and the facts that animate the enactment of HERS. This Part also provides analysis of HERS, examining the statutes' themes, similarities, and differences.

Part II uses a legal remedies theory to evaluate and illuminate the deficiencies embedded in HERS. In this Part, archival and historical evidence is used to describe how states' HERS fail to recognize similarly situated people. More specifically, these Subparts lay out this Article's primary argument and discuss how the boundaries drawn by legislators around redress options lead to inequitable results. The Article contends that allowing lawmakers to strip away Black people's deserved redress based on subjective standards is just the most recent example of a legislative attempt that renders Black people's pain invisible and unworthy of intervention.[29] This Part also adopts a comprehensive assessment of these laws using the Social Healing Through Justice framework and asserts that, given the laws' inadequacies, HERS do not fully comply with legal scholars' recommendations in reparations and remedies scholarship.

Finally, Part III discusses a normative pathway forward that considers all the issues addressed in the Article. This Part provides recommendations for activists and details both what all higher education redress statutes should encompass and for what legislators should be aware of when drafting these laws.

The Conclusion offers thoughts on the urgency of this topic and reminds us of the need to set appropriate and accurate boundaries around these laws.

Interestingly, as of this writing, four states have already enacted HERS in some form that have either compelled higher

29. *See, e.g.*, Michele Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefront*, 102 U.C. L. REV. 781, 784 (2014) (exploring in part state intrusions on the pregnancies of poor women of color); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2083–89 (2017) (examining legal estrangement and alienation from law's enforcers among people in poor communities of color); Nia Johnson, *Expanding Accountability: Using the Negligent Infliction of Emotional Distress Claim to Compensate Black American Families Who Remained Unheard in Medical Crisis,* 72 HASTINGS L.J. 1637, 1639 (2021); Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV 529, 533 (2021).

education institutions to investigate and remedy state or state university involvement in the degradation of Black life;[30] five other states have also shown considerable legislative interest in enacting similar statutes.[31] Yet, with the exception of analysis by one scholar, to my knowledge, HERS have not received substantive analysis by higher education or legal scholars.[32] Instead, as colleges and universities seek to remedy their involvement in slavery, degradation, and discrimination, scholars are typically concerned with specific institutional reparation efforts, rather than with the state laws that are increasingly becoming a conduit for redress.[33] While these statutes have received some public praise,[34] the inequity in the statutes persists, despite the objections from those left unprotected under the statutes and despite existing material that underscores non-equitable and discriminatory practices, including former reparation claims, historical evidence,[35] references in academic literature,[36] and government reports.[37]

As discussed, in detail in forthcoming Parts, HERS are currently inequitable and discriminatory.[38] To be abundantly clear, this Article critiques HERS while simultaneously asserting that HERS are a valuable tool in the struggle for equity. It does not in any way call for the revocation or cancellation of HERS, but instead advocates that the statutes would be more effective if they were more comprehensive in their construction. The recommendations offered to improve these laws[39] provide the foundational legal pretext needed for more notable changes in higher education broadly and

30. *See supra* notes 25–28 and accompanying text.

31. *See infra* notes 115–119 and accompanying text.

32. *See supra* note 23 and accompanying text.

33. *See* Juan C. Garibay et al., *A Critical Analysis of Higher Education Reparations at Universities Founded Pre-Civil War* 13–23 (Aug. 30, 2021) (unpublished manuscript) (on file with authors). This is the first empirical article to do so and also discusses the number of U.S. higher education institutions that have proposed or recommended forms of reparations to amend their institution's history of enslavement.

34. *See infra* Part I.A.1.

35. *See infra* notes 268–285 and accompanying text.

36. *See supra* note 23 and accompanying text.

37. *See infra* note 100 and accompanying text.

38. *See infra* Part II.

39. *See infra* Part III.

concerning reparations specifically.[40] Resolving the problems in HERS could also provide reparationists with the requisite tools and framework for expanding the scope of other types of reparations being offered or expanding the scope of the type of reparations they wish to see.[41]

Before proffering any analysis of HERS, I describe my personal politic in this area, which is an essential component of critical scholarship.[42]

Researcher's Positionality

In keeping with Milner's assertion that unforeseen and unexpected dangers appear when researchers are not constantly interrogating their belief system and values,[43] I provide information about my positionality as the researcher to help

40. For example, for higher education scholars, addressing HERS could provide an additional tool for decolonizing higher education and moving institutions into what Vanessa de Oliveira Andreotti and other scholars described as the 'radical-reform' space. *See* de Oliveira Andreotti et al., *supra* note 9, at 33 ("This [radical-reform] space seeks to broaden recognition of this constitutive violence, increase representation of marginalised voices, and expand access to higher education for subjugated groups."). In fact, Juan Garibay and colleagues, using Andreotti's framework, analyzed higher education institutions founded prior to the Civil War that are still operating. *See generally* Garibay et al., *supra* note 33. Their analysis called for institutions to "orient[] [their reparative] efforts toward future-facing spatial-racial organizational aims." *Id.* at 23. If higher education scholars and students want to achieve the goal of more radical reformation at the institutional level, addressing HERS will become even more critical—especially since institutions engaged in reparative work have, in the past, looked to the state for guidance on issues related to offering reparations, repair, and reconciliation. *Id.* at 13–23.

41. Garibay et al., *supra* note 33, at 22–23.

42. *See* H. Richard Milner IV, *Race, Culture, and Researcher Positionality: Working Through Dangers Seen, Unseen, and Unforeseen*, 36 EDUC. RESEARCHER 388, 394–97 (2007) (arguing that importance of researchers reflecting upon their own stories, biases, and beliefs when conducting research); Juan Carlos Garibay et al., *"It Affects Me in Ways That I Don't Even Realize": A Preliminary Study on Black Student Responses to a University's Enslavement History*, 61 J. COLL. STUDENT DEV. 697, 701 (2020) ("In line with N.M. Garcia et al. (2018) we provide information about the positionality of ourselves as the research team to ground our social positions, values, and epistemologies.").

43. *See* Milner, *supra* note 42, at 393 ("[U]nforeseen dangers may show up when researchers and educators take a color- and culture-blind approach to policy and document analyses.").

ground how I have come to see the world and these higher education phenomena.

I am the first person in my family to receive a law degree. I often experienced what I have come to understand as education violence[44] throughout both my law school and graduate school experiences.[45] I also am an interdisciplinary scholar whose research explores critical race theory and access and equity in higher education. More pointedly, I study the framework and incentive structures in higher education's environments to identify factors contributing to the violence in our nation's colleges and universities. I developed my beliefs on race and racism in higher education based on my family's history. During many family cookouts and family reunions, my ancestors would share with me that they wanted to attend law school and graduate school but could not because of the systematic education violence in the higher education arena. Put simply, my great-grandparents could not enroll in law school and graduate education because of segregation laws that disallowed Black people in South Carolina from those spaces.

My experience as a Black American whose family has direct ties to the violence of higher education, coupled with growing up on the land my family bought from their enslaver, has taught

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44. For a discussion of violence in higher education, see Jalil Bishop Mustaffa, *Mapping Violence, Naming Life: A History of Anti-Black Oppression in the Higher Education System*, 30 INT'L J. QUALITATIVE STUD. EDUC. 711 (2017). Mustaffa focuses on violence in higher education, proffering the term "education violence." *Id.* at 711. Education violence is a term borne out of anti-Blackness theory, whereby it exposes "how marginalized people both *in and outside of* formal systems of schooling have had their lives limited and ended due to white supremacy." *Id.* (emphasis in original). More specifically, education violence explains how minoritized people's personhood, access, and inclusion within higher education is limited not only through interpersonal relations but also through structural, cultural, and direct mechanisms. *Id.* at 712. For example, structural education violence happens where institutions are constantly reorganizing to limit racial justice and accessibility. *See id.* at 722–23. In that instance, higher education's violence first excluded Black people based on the need for slave labor, then granted access based on segregation, and expanded access based on tokenization. *Id.* at 723. These responses reflect how structural violence (racism) in higher education has functioned over time.

45. *See* Seanna Leath et al., *"We Need to See Action": An Institutional Case Study of the Summer of Hate and Black Resistance*, J. DIVERSITY HIGHER EDUC., Dec. 1, 2022, at 1. This time also coincided with my time enrolled at the University.

me both the consequential factors of racism and the will of Black Americans to succeed. Together, my scholarly agenda and family experiences shape my worldview on the need for higher education to atone for its systemic violence, both past and present, regarding race and racism in higher education.

I. THE TEXTURE OF HIGHER EDUCATION REDRESS STATUES

This Part offers a background understanding of HERS. Given that scholars, activists, and the general public have not yet examined these statutes, this section will proceed in subparts. Subpart I.A details HERS's statutory landscape and political and legislative histories. Subpart I.B describes and analyzes the variance within and across HERS.

A. Statutory Landscape

This Subpart briefly describes the politics that have animated some HERS and their boundaries. Only one of these statutes was promulgated in the late twentieth century,[46] while the remaining statutes were recently enacted.[47] Whether from the late twentieth century or more recent, these statutes were developed against the backdrop and call for reparations, either for the state's role in Black degradation or for higher education's violence against and mistreatment of Black people.[48] These statutes are primarily driven by activists' interest in ensuring that Black Americans have equitable access to higher education and education benefits.[49] This concern for equitable education, together with broader concerns for racial justice, reparations, equity, and fairness, has continued to spark and inspire even

46. *See* H.R. 591, 13th Leg., 2nd Reg. Sess. (Fla. 1994) (appropriating funds to compensate families victimized by Florida's Rosewood Massacre and establishing a state university scholarship fund for Rosewood families).

47. *See* S. 1, 441st Gen. Assemb., Reg. Sess. (Md. 2021); VA. CODE ANN. § 23.1-615.1 (2022).

48. *See, e.g.*, Ishaan Tharoor, *U.S. Owes Black People Reparations for a History of 'Racial Terrorism,' Says U.N. Panel*, WASH. POST (Sept. 27, 2016, 12:45 PM), https://perma.cc/5M62-2DPE; Nellie Peyton & Christine Murray, *Calls for Reparations Gain Steam as U.S. Reckons with Racial Injustice*, THOMSON REUTERS (June 24, 2020, 2:03 PM), https://perma.cc/W3HG-4CMT.

49. *See, e.g.*, Susan Svrluga, *Georgetown Students Renew Push for Reparations to Descendants of Enslaved People*, WASH. POST (Dec. 9, 2021, 11:28 AM), https://perma.cc/VS7R-PV9N.

the most conservative states in the country to inquire and begin preliminary conversations about HERS.[50] Yet I, and other scholars, argue that these laws are minimal and reductionist.[51] Consider Vineeta Singh's claim that these laws were only "deployed to buttress the progress[ive] narrative at the core of popular and academic common sense about higher education as an inherently democratic and democratizing endeavor."[52] While I contend that the laws are reductionist, hope remains that they can improve and be made more effective if the legislatures' realize their intended purposes and remedy *all* harm while including *all* people who experience the same type of harm induced by the higher education industry.

The history of higher education redress legislation is relatively robust because many states, for political reasons, ensured that the press, universities, and other stakeholders documented every step of the process. Despite the political fanfare,[53] legal scholarship has yet not examined neither their formation nor the laws themselves. Yet, a close reading of archival evidence reveals consistent themes that concerned legislators while they were enacting HERS. Three significant themes were salient in my analysis. First, HERS were drafted with the belief that the harms caused by the higher education industry only affected a small group, as defined by the law, when in fact many more Black people were harmed by higher education practices and should therefore benefit from these laws. Second, by ignoring and dismissing the experiences of

50. *See, e.g.*, Teresa Wiltz, *Talk of Reparations for Slavery Moves to State Capitals*, PEW CHARITABLE TRS. (Oct. 3, 2019), https://perma.cc/6C24-ZUSB ("In April [2019], Democratic lawmakers in Texas introduced a bill urging the passage of a federal reparations bill . . . [a]nd in September, Florida lawmakers introduced a $10 million reparations bill for the descendants of victims of a specific . . . racial atrocity, the [1920] Ocoee massacre.").

51. *See, e.g.*, Vineeta Singh, *Inclusion or Acquisition? Learning About Justice, Education, and Property from the Morrill Land-Grant Acts*, 43 REV. EDUC., PEDAGOGY CULTURAL STUD. 419, 435 (2021).

52. *See id.* at 421.

53. *See* Colleen Grablick, *VA Law Will Require Universities to Create Scholarships for Descendants of Slaves*, NPR (May 6, 2021), https://perma.cc/6PZM-TW8X; *Maryland Gov. Larry Hogan to Sign $577M HBCU Settlement Bill*, PBS (Mar. 24, 2021, 10:59 AM), https://perma.cc/54V9-AJTF (discussing the multi-million dollar settlement in response to lawsuit challenging decades of underfunding to Maryland's historically Black colleges and universities).

those who legislators deem unworthy of redress, these statutes dramatically erase state or university and college culpability and complicity regarding slavery, degradation, and discrimination. More specifically, and related to the first theme, when legislators erroneously limit the state or university and college redress to a small subset of people, those institutions can then avoid blame or guilt for their role in the degradation of Black people.[54] Lastly, HERS consistently appeared to be a response to both state and national political conditions brought on by activist demands for a racial reckoning.[55]

Arguably, the first HERS activity—whereby higher education institutions were required to provide a tangible benefit to Black people for past racial harms and atrocities—appeared in the 1990s.[56] Legislative leaders in Florida, unhappy with the state's unwillingness to acknowledge the harm toward Black people during the Rosewood Massacre,[57]

54. Grablick, *supra* note 53.

55. *See infra* Part I.A.1.

56. *See* H.R. 591, 13th Leg., 2nd Reg. Sess. (Fla. 1994). *See generally* Bassett, *supra* note 23. The Rosewood Massacre was an attack on the vibrant and successful predominantly African American town of Rosewood, Florida, in 1923 by white racists, agitators, and aggressors. *Rosewood Massacre*, HISTORY (May 4, 2018), https://perma.cc/K8N5-XXBV (last updated Apr. 20, 2021). The two-hundred-resident community was entirely devastated by racially motivated violence because of Fannie Taylor, a white woman, who claimed she was raped by a Black man, Jesse Hunter. *Id.* Fannie Taylor's husband took the law in his own hands and, conducting vigilante justice, corralled five hundred Ku Klux Klansmen for a rally to search for the Black man. *Id.* Assuming that Jesse Hunter lived in Rosewood, the five hundred Ku Klux Klansman terrorized and murdered two men, Aaron Carrier and Sam Carter. *Id.* The mob also went to Sarah Carrier's home, where twenty-five people were taking refuge. *Id.* The mob shot and killed Sarah Carrier and her son Sylvester, as she protected those taking refuge in her house. *Id.* The gun battle between Sarah Carrier and the white mob lasted overnight and escalated tensions in the Rosewood community. *Id.* The news of the gunfight spread rapidly. *Id.* The local newspapers purposefully inflated the number dead and falsely reported that bands of armed Black citizens were on a rampage. *Id.* As a consequence, even more white aggressors and terrorists flooded into the area believing that a race war had broken out. *Id.* The white mob, frustrated by the Black folk's indignation, returned to the city of Rosewood and burned down the community's churches, schools, and houses. *Id.* When people ran to escape, they were gunned down and killed. *Id.* Because of the grave and evil violence, Florida offered reparations in the form of free higher education to the residents of the town. *Id.*

57. *See Rosewood Massacre*, *supra* note 56.

introduced two other bills before House Bill 591 finally passed.[58] The Congressional Black Caucus in Florida stated that:

> The time has . . . come for the State of Florida to recognize the courageous individuals, both black and white, who, despite tremendous personal danger, stood up for what was right to help the residents of Rosewood. The state should commemorate these individuals and all the citizens of Rosewood who died with their town . . . .[59]

Despite the disinvestment, death, and pain experienced by members of the Rosewood community at the hands of racist mobs, the bid for reparations was not easy.[60] According to one newspaper account, members of the Black Caucus had to use political ultimatums and strategy to compel then-Governor Lawton Chiles to sign the bill.[61] The newspaper revealed one year later that "the caucus gave Gov. Lawton Chiles an ultimatum: Use the influence of his office to help swing enough votes to pass Rosewood or face the possibility of losing the caucus' support on the governor's critical healthcare package."[62]

Another account claimed that, as part of the political posturing surrounding the bill's passage and to ensure its legislative success, the Black Caucus had to concede other neighborhoods that were also devastated by racist acts.[63] While legislators emphasized that the factors surrounding Rosewood were unique, other people who were also victims of similar or

58. *See* H.R. 813, 1993 Leg., Reg. Sess. (Fla. 1993) (acknowledging Florida's failure to protect Rosewood's residents during the Massacre and calling for appropriation of funds to compensate the victims); H.R. 27B, 119 Leg., Spec. Sess. B (Fla. 1993) (providing a grant to Florida State University to investigate the destruction of Rosewood as a result of the Rosewood Massacre); *see also* Bassett, *supra* note 23, at 510–13.

59. H.R. 813, 1993 Leg., Reg. Sess. (Fla. 1993).

60. *See* Bassett, *supra* note 23, at 507–20.

61. *See* Bill Cotterell, *Lawson Vows to Keep Racial Attack Alive*, TALLAHASSEE DEMOCRAT, Apr. 5, 1993, at A1, A6.

62. Roosevelt Wilson, *Fight Over Rosewood Bill Brings Out the Best in Black Caucus*, TALLAHASSEE DEMOCRAT, Apr. 8, 1994, at A15, https://perma.cc/L2WB-R5ZK (PDF); *see also* Bassett, *supra* note 23, at 512.

63. *See* Bassett, *supra* note 23, at 521 ("Although backers of House Bill 591 steadfastly claim that the Rosewood incident was unique . . . other groups, including officials with the national reparation movement, indicate otherwise.").

even greater types of violence indicated otherwise.[64] Ignoring the assertions of other Black people who were equally injured, House Bill 591 passed.[65] The bill forced Florida's public higher education institutions to offer scholarships only to residents of the Rosewood neighborhood and their descendants.[66] While House Bill 591 is mainly a response to white racist mobs decimating a thriving Black city,[67] this statute is nevertheless deemed a HERS because it requires higher education to provide a tangible benefit to Black people for Florida's past harms.[68] The next Subpart therefore focuses on higher education institutions' response to the bill and subsequent actions.[69]

Upon understanding their legal mandate from House Bill 591, Florida's public higher education institutions used their political power to narrow their responsibility even further. Though Florida's higher education institutions were legally compelled to offer redress,[70] Rosewood survivors claimed that the universities were not living up to their promise and were only setting aside minimal monies for reparations.[71] Some survivors even claimed that the state and the public universities "reneged on a promise to provide $100,000 in scholarships to their descendants."[72] Arnett Doctor, head of the Rosewood Family Advisory Committee, "said . . . that only $60,000 was set aside for scholarships . . . ."[73] He further exclaimed, "I'm really dissatisfied and very upset about the educational scholarship fund . . . .For [the legislature and universities] to say we're going to allocate $60,000 (this year) is going directly against what was legally approved by the state Legislature."[74]

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64. *See id.*

65. *See id.* at 520.

66. *See* H.R. 591, 13th Leg., 2nd Reg. Sess. (Fla. 1994).

67. *See id.*

68. *Id.*

69. *See infra* Part II.

70. *See* H.R. 591, 13th Leg., 2nd Reg. Sess. (Fla. 1994).

71. *See* Cory Lancaster, *Survivors Say Florida Broke Pledge*, TAMPA BAY TIMES (June 26, 1994), https://perma.cc/A5ZG-QWSG (last updated Oct. 7, 2005).

72. *Id.*; *see also* Robert Samuels, *After Reparations*, WASH. POST (Apr. 3, 2020), https://perma.cc/Q9LL-ZM7U.

73. Lancaster, *supra* note 71.

74. *Id.*

The wielding of power against Black people by the state and by Florida's public universities, compounded with the law's dismissal of similarly situated people who were harmed, reinforces the theme that HERS protect the status quo and seek to exonerate higher education, at least politically and socially.

These power dynamics also highlight the fact that reparation efforts are often underinclusive and easily dishonored without much consequence.[75] In other words, reducing universities' role as orchestrators and stakeholders in Black degradation serves to preserve the status quo and erase the fact that the higher education industry continues to ignore, in more ways than one, the totality of their damaging role in the plight of Black people.

Moreover, in analyzing the landscape of HERS, it is evident that most, if not all, of the statutes emerged out of racial controversy that was already taking place in the arena of higher education.[76] Consider Georgia's City of Athens and the University of Georgia Resolution. This resolution was enacted in January 2021 after activists had called for reparations for past harms and the decimation of Linnentown, a Black neighborhood, for decades.[77] For years, a group of former Linnentown residents and activists lobbied and corralled, through mail, protests, and social media, demanding repair for what they deemed as "white supremacist terror"[78] by the

75. *See* David C. Gray, *A No-Excuse Approach to Transitional Justice: Reparations as Tools of Extraordinary Justice*, 87 WASH. U. L. REV. 1043, 1067 (2010) (highlighting how reparations routinely face critique for over and under inclusiveness by virtue of their selectivity); Ashley V. Reichelmann & Matthew O. Hunt, *How We Repair It: White Americans' Attitudes Toward Reparations*, BROOKINGS (Dec. 8, 2021), https://perma.cc/XX8P-9VMJ.

76. *See, e.g.*, Stephen Smith & Kate Ellis, *Shackled Legacy: History Shows Slavery Helped Build Many U.S. Colleges and Universities*, APM REPORTS (Sept. 4, 2017), https://perma.cc/8SSN-BRCT.

77. LINNENTOWN RESOLUTION, *supra* note 28, at 3; *see also* Chris Dowd, *The ACC Commission Passes the Linnentown Resolution, Calls for Reparations*, ATHENS POL. NERD (Feb. 16, 2021), https://perma.cc/5MSD-F8QD.

78. *See* Grant Blankenship, *Reparations for 'Terrorism,' 'White Supremacy' in Athens Mark a Georgia First*, GA. PUB. BROAD. (Apr. 14, 2021, 8:30 AM), https://perma.cc/G8VK-XZGF ("From that relationship came a proposed resolution acknowledging not only the economic damage done to Linnentown but putting a name to the tactics used to force residents out. The names? Terrorism and white supremacy.").

University of Georgia (UGA) and City of Athens.[79] In fact, the group sent an email to the president of UGA[80] and even protested on the campus.[81] Despite their decades-long activism and demands, UGA did not respond to their concerns until January 9, 2020, when they defended their past actions.[82] The university claimed that its actions were protected "[u]nder Georgia's law then and now" and that "the Board of Regents' project [of community displacement] was driven [only] by a need for additional housing to accommodate the rapidly expanding campus population" and was an approved component of President Lyndon B. Johnson's "Great Society" initiative.[83] Undeterred by UGA's denial of contributory harm to Linnentown, the activists successfully lobbied and won support from the City of Athens.[84] Thus, as the result of decades of racial reckoning and activism, the city put forth a resolution compelling itself to memorialize the history of Linnentown through the installation of a "Wall of Recognition," provide equitable redress, and—most importantly—supply future reinvestments to historically underfunded and impoverished neighborhoods in the city.[85]

Similarly, Maryland's bill[86] actualized out of direct activism by historically Black colleges and universities (HBCUs) and savvy lawyering.[87] After almost a century of complaining about

79. *See, e.g.*, E-mail from Hattie Thomas Whitehead, Chairperson, Linnentown Project, to Jere W. Morehead, President, Univ. of Ga. (July 22, 2021), https://perma.cc/DP8M-NGE6.

80. *Id.*

81. *Id.*; *see also* Chris Dowd, *Linnentown "Walk of Recognition" Moving Forward Without UGA Participation*, ATHENS POL. NERD (Oct. 20, 2021), https://perma.cc/4M2H-YL2J.

82. *See* E-mail from Alison McCullick, Dir. of Cmty. Relations, Univ. of Ga., to Athens-Clarke Cnty. Comm'rs (Jan. 9, 2020, 5:04 PM), https://perma.cc/79HK-2TVG.

83. *Id.*

84. *See* Stephanie Allen, *'This Is the Beginning': Athens-Clarke Commission Unanimously Passes Linnentown Resolution*, ATHENS BANNER-HERALD (Feb. 16, 2021, 9:13 PM), https://perma.cc/LK8A-AL8V (last updated Apr. 2, 2021, 10:51 AM).

85. LINNENTOWN RESOLUTION, *supra* note 28, at 3–4.

86. S. 1, 441st Gen. Assemb., Reg. Sess. (Md. 2021).

87. *See* Elizabeth Shwe, *Maryland Settles HBCU Federal Lawsuit for $577 Million*, MD. MATTERS (Apr. 28, 2021), https://perma.cc/FE4H-NQM3.

and demonstrating the disparate treatment of the state's four HBCUs, and displeased with Maryland's consistent silence, a coalition of alumni, supporters, and relevant stakeholders filed a lawsuit.[88] The HBCUs argued that the state had underfunded its four historically Black institutions and allowed traditionally white universities to duplicate programs offered at HBCUs, thereby actively sabotaging the Black institutions' ability to attract students.[89] In *Coalition for Equity & Excellence v. Maryland Higher Education Commission*,[90] the court reasoned that "neither party's remedy, as currently proposed, is practicable, educationally sound, and sufficient to address the segregative harms of program duplication at the HBIs."[91] Due to both parties' failure or inability to consult with the other side in pursuit of crafting viable and articulable (i.e., explainable) proposals, the district court then compelled each side to consult with the other.[92] After several years of negotiating and legal wrangling, the parties reached a settlement of $577 million to end the inequitable resources that the four HBCUs had received.[93] The bill required that the funds would be used to supplement and not replace the state's expenditures for the HBCUs.[94] Going forward, the institutions will use these funds to invest in the state's HBCU infrastructure, expanding their educational footprint through academic programs, including online programs.[95] Finally, HBCUs will use the extra dollars to strengthen scholarship and financial aid support and professional development for the students enrolled today and in the future.[96]

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88. *See id.*

89. *See* Coal. for Equity & Excellence v. Md. Higher Educ. Comm'n, 295 F. Supp. 3d 540, 548 (D. Md. 2017), *argued*, 2011 U.S. Dist. LEXIS 59896, at *16–20 (D. Md. June 6, 2011) (recounting that the plaintiffs had proved the existence of unnecessary duplicative programs at historically Black and traditionally white institutions, which stemmed from underfunding and had "segregative effectives").

90. 295 F. Supp. 3d 540 (D. Md. 2017).

91. *Id.* at 585.

92. *See id.* at 586.

93. *See* Shwe, *supra* note 87.

94. *See* S. 1, 441st Gen. Assemb., Reg. Sess. (Md. 2021).

95. *See id.*

96. *See id.*

Lastly, as yet another example of HERS emerging out of racial controversy and activism, observe Virginia's landmark Enslaved Ancestors College Access Scholarship and Memorial Program.[97] This law, originally introduced by Democratic member of the House of Delegates David Reid, requires Longwood University, the University of Virginia (UVA), Virginia Commonwealth University, the Virginia Military Institute, and the College of William & Mary—all institutions that benefitted from and exploited enslaved labor—to provide scholarships and economic development programs to descendants of enslaved people.[98] While America herself and many states have vigorously entertained the idea of proffering reparations for slavery to descendants of enslaved people,[99] this law was the first reparations bill for slavery and for higher education's involvement in slavery in the United States.[100] The legislation, however, came as students across the state demanded that their universities reckon with their histories of racism.[101] Exasperated by the racist, white-nationalist "Unite the Right" rally[102] and responding to demands by Black student

97. VA. CODE ANN. § 23.1-615.1 (2022). The legislation garnered much attention as universities across the Commonwealth of Virginia reckon with their histories of racism, and as higher education institutions generally are finding ways to atone for enabling and profiting off of slavery by offering financial reparations. *See* Joseph Guzman, *Virginia House Votes to Require Colleges to Make Reparations for Their Role in Slavery*, THE HILL (Feb. 5, 2021), https://perma.cc/RN35-XEYR.

98. VA. CODE ANN. § 23.1-615.1 (2022).

99. *See, e.g.*, H.R. 40, 117th Cong. (2021); Deborah Barfield Berry & Nicquel Terry Ellis, *'The Timing is Right for Reparations': Cities Propose Reparations Amid Nationwide Unrest*, USA TODAY (July 21, 2020, 7:00 AM), https://perma.cc/EH6U-XEPH (last updated July 22, 2020, 3:44 PM).

100. See Allen J. Davis, *An Historical Timeline of Reparations Payments Made from 1783 through 2022 by the United States Government, States, Cities, Religious Institutions, Universities, Corporations, and Communities*, UNIV. MASS. AMHERST LIBRS., https://perma.cc/MGF5-ZDFH (last updated June 28, 2022).

101. *See, e.g.*, Jeremy Bauer-Wolf, *UVA Minority Groups Demand Changes*, INSIDE HIGHER EDUC. (Sept. 1, 2017), https://perma.cc/F3UW-DBFP.

102. Hundreds of white nationalists openly and notoriously marched on the University of Virginia campus in Charlottesville, carrying tiki torches and chanting racist epithets and demeaning racial slogans. *See, e.g.*, Emily Blout & Patrick Burkart, *White Supremacist Terrorism in Charlottesville: Reconstructing 'Unite the Right'*, STUD. IN CONFLICT & TERRORISM, 2020, at 2–3. This disgraceful march which turned severely violent was only a prelude to a larger planned "Unite the Right" rally the next day. *Id.* at 3. The next day

unions, affinity groups, and activist groups on campuses, predominantly white public institutions in Virginia began to focus deeply on their nexus with slavery and discrimination.[103] For example, in 2013, the University of Virginia created the President's Commission on Slavery and the University, an interdisciplinary research project focused on understanding slavery's role in the creation and success of the university.[104] The commissioned report, released in 2018, revealed that "all of the men involved" in the institution's creation owned slaves, and that the "vast majority" of early UVA students hailed from slave-owning families.[105]

Similarly, the College of William & Mary created an initiative attempting to rectify its past—the Lemon Project.[106] The project was created as the result of more than a decade's worth of students and faculty demands for an investigation into the College's history.[107] The Lemon Project, named after a man who was once enslaved by William & Mary, reveals the long legacy and complicated history the college had with enslaved people, specifically, and with Black people, generally.[108] The project's success served to reveal to the institution and the

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the violent racist mob protested the removal of confederate statues in the Charlottesville area. *Id.* at 3, 18–19. As a result of their anger and discontent, several people were killed in their violent streaks and uncontrolled rage. *See id.* at 2.

103. For example, UVA minority students group demanded ten separate items in response to the racists culture on campus. *See* Bauer-Wolf, *supra* note 101. Demands range from removing the Confederate plaques on the rotunda to demanding that all students, regardless of area of study, should have required education (either inside or outside the classroom) on white supremacy, colonization, and slavery as they directly relate to Thomas Jefferson, the university, and the city of Charlottesville. *Id.* The students went on to say that "the current curriculum changes only affect the College of Arts and Sciences and allow students to focus in on aspects of difference of their choice." *Id.*

104. *See* MARCUS MARTIN ET AL., UNIV. OF VA., PRESIDENT'S COMMISSION ON SLAVERY AND THE UNIVERSITY 9 (2018), https://perma.cc/QY2V-27BS (PDF).

105. *Id.* at 15, 36.

106. *See* JODY ALLEN ET AL., THE LEMON PROJECT: A JOURNEY OF RECONCILIATION REPORT OF THE FIRST EIGHT YEARS 5 (2019), https://perma.cc/3J69-VXE9 (PDF).

107. *See id.*

108. *See id.* at 35 ("It is apparent that slavery and the hiring of slaves were an integral part of the operation of the College."); *id.* at 38–57.

public William & Mary's original sin.[109] As a result, the school publicly acknowledged that it had "owned and exploited slave labor from its founding to the Civil War; and that it had failed to take a stand against segregation during the Jim Crow Era."[110]

From these two representative examples, it is clear that the Virginia statute emerged as a result of the individual and collective inquiry happening at Virginia's universities and the series of bills addressing this racist legacy.[111] This claim is also buttressed by several newspaper articles that revealed that this law directly responded to the racial reckoning happening on Virginia's campuses.[112]

Other calls for reparations emerged out of the racial reckoning that was happening across the country in 2020. On January 4, 2021, the U.S. Congress introduced H.R. 40, a bill sponsored by Representative Sheila Jackson Lee to establish a "Commission to Study and Develop Reparation Proposals for African Americans."[113] H.R. 40 galvanized activists across the country to call for reparations from America herself, states, and specific institutions and industries that have traditionally harmed Black people.[114] As a result of activists' agendas, several states have recently announced plans to introduce legislation that would award reparations to African American people in their states. Acknowledging the decades-long thread of slavery and its repercussions on Black people, lawmakers in

109. *Id.* at 58–60.

110. *The Lemon Project: A Journey of Reconciliation*, WILLIAM & MARY, https://perma.cc/7BNY-TG9C.

111. *See* Grablick, *supra* note 55.

112. *See, e.g.*, *id.*; Ethan Brown, *Virginia General Assembly Creates New Scholarship Program for Descendants of Enslaved Individuals*, THE FLAT HAT (Feb. 22, 2021), https://perma.cc/W8BZ-NJMQ (discussing how the Virginia Generally Assembly's adoption of H.B. 1980 "mirrors" action taken by the College of William & Mary's Student Assembly).

113. H.R. 40, 117th Cong. (2021).

114. *See* Nkechi Taifa, *Let's Talk About Reparations*, 10 COLUM. J. RACE & L. 1, 14–17 (2020); *see also* Nkechi Taifa, *Reparations—Has the Time Finally Come?*, AM. C.L. UNION (May 26, 2020), https://perma.cc/NUK8-P7AN ("The role that governments, corporations, industries, religious institutions, educational institutions, private estates, and other entities played in supporting the institution of slavery and its vestiges . . . can no longer be ignored."); Press Release, Jenny Durkan, Mayor of Seattle, Seattle Mayor Jenny Durkan Urges Support for H.R. 40 (Dec. 11, 2020), https://perma.cc/J6Z7-RL48.

California,[115] New York,[116] Texas,[117] North Carolina,[118] and Vermont[119] have all introduced legislation exploring compensation for the descendants of enslaved people. In comparison to those more sweeping efforts, other states have addressed specific past racial atrocities and offered some tangible benefits.[120]

Activists have also looked beyond federal and state government to specific industries and institutions, including

115. *See* Tal Axelrod, *California Lawmakers Advance Reparations Bill*, THE HILL (May 13, 2020, 10:01 AM), https://perma.cc/7VCE-AFVA; *see also* Charles R. Davis, *California Becomes First State to Officially Consider Reparations for Slavery*, BUS. INSIDER (Sept. 30, 2020, 6:37 PM), https://perma.cc/JG7D-EDD7.

116. *See* Assemb. B. A3080A, 2019 Leg., Reg. Sess. (N.Y. 2019)

> Relates to acknowledging the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the city of New York and the state of New York; establishes the New York state community commission on reparations remedies to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, the impact of these forces on living African-Americans and to make recommendations on appropriate remedies; makes an appropriation therefor; and provides for the repeal of such provisions.

117. *See* Judson L. Jeffries, *Juneteenth, Black Texans, and the Case for Reparations,* 55 NEGRO EDUC. REV. 107, 111–14 (2004); *see also* Daniel Van Oudenaren, *Reparation Planning for Austin African Americans*, THE AUSTIN BULLDOG (Mar. 16, 2021, 12:07 PM), https://perma.cc/BZC3-MVTX ("The city council March 4th approved a resolution that advocates . . . call restitution payments. Such payments are akin to financial reparations for slavery—and might be implemented in similar or identical ways—but they aim to redress 20th century wrongs, rather than 19th century slavery.").

118. *See* Shawna Mizelle, *North Carolina City Votes to Approve Reparations for Black Residents*, CNN (July 15, 2020, 8:36 PM), https://perma.cc/NH56-JYDV; *see also* Neil Vigdor, *North Carolina City Approves Reparations for Black Residents*, N.Y. TIMES (July 16, 2020), https://perma.cc/USC6-UL4Z ("The city, Asheville, N.C., will provide funding to programs geared toward increasing homeownership and business and career opportunities for Black residents as part of a reparations initiative.").

119. *See* Nora Peachin, *Vermonters Find Reparations Work 'Painful and Messy and Complicated'*, BURLINGTON FREE PRESS (July 26, 2021, 5:46 AM), https://perma.cc/BJ4Y-TTPL.

120. *See, e.g.*, H.B. 591, 1994 Leg., Reg. Sess. (Fla. 1994) (compensating only for damages caused by the white racial mob that terrorized Rosewood but not for any other racial atrocity that had taken place in the state of Florida).

higher education. Activist persuasion, advocacy, and persistence has permeated southeastern state legislatures and affected local officials, which has yielded unprecedented success in the form of renewed attention and legislation. Yet activists' success has nevertheless been mitigated by lawmakers' curtailment of their proposals, as legislators have questioned "whether they can win enough support to succeed on a wide scale."[121] In some cases, their success has been partly mitigated by legislators' and/or administrators' dismissal of the significant role that slavery and degradation played within higher education. As a result, eligible victims have been left out of redress because legislators have opted to limit the scope of redress to make the activist proposals more digestible, rather than crafting legislation as a matter of justice (*see, e.g.*, comments by legislators in Athens).

With this landscape in mind, Subpart B analyzes the types of HERS and the structural differences among them to help make sense of the inadequacies embedded within the laws. In addition, the subsequent sections illustrate what is similarities and differences between these various statutes, while simultaneously revealing the trends that exist in these laws.

B. Types of HERS and Structural Similarities and Differences

This Subpart details the four different higher education redress statutes and their structural similarities and differences. Vineeta Singh noted that these types of laws are "key arenas where calls for justice are corralled into limiting frameworks."[122] The different types of laws and their varying

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121. Piper Hudspeth Blackburn, *Despite Racial Reckoning, State Efforts Stall on Reparations*, ASSOCIATED PRESS (Apr. 25, 2021), https://perma.cc/YR62-A68C.

122. Singh, *supra* note 51, at 420. Singh notes that the clear attention in

> quantifying the number of people enslaved to directly benefit an institution, the number of years an institution was able to directly extract enslaved labor, and the number of college degrees or community grants that will recompense these harms, epitomize the drive to quantify and contain the harm of chattel slavery and its ongoing afterlives into specific numbers, specific debts that can be definitively repaid.

Id.

commitment to justice and equity make analysis harder. However, the difficulty in articulating a consistent epistemological underpinning for HERS may help explain the inadequacies within HERS.

Figure 1 describes each statute analyzed in this Subpart.[123] The four laws all offer repair and reparations for different aspects of the degradation of Black life by higher education institutions.[124] For evaluative ease, I will briefly describe each statute and what each one offers. The Florida statute, HB 591, is the first HERS and is considered as such because it compels Florida universities to provide reparations in the form of scholarships on account of the racist white mob that killed people in and destroyed the town of Rosewood.[125] Maryland's HB 1, enacted in 2021, qualifies as a HERS, as it offers recompense for the state's disparate funding and treatment of its four HBCUs.[126] The Virginia statute, H.B. 1980, is the first statute in the country to offer reparations for involvement in slavery.[127] More specifically, the statute gives reparations in the form of memorialization and provides tangible benefits through college scholarships or community-based economic development programming.[128] Lastly, Georgia's City of Athens and the University of Georgia Resolution is a higher education redress statute because the City of Athens offers reparations for its involvement in the displacement, disinvestment, and deprivation of the Linnentown neighborhood.[129]

It should be noted that these laws vary significantly, they are all constructed narrowly, whereby they only cover a specific event or occurrence. For example, Maryland's HERS—MD HB 1—simply states: "The state failed to eliminate a traceable de jure era policy of unnecessary duplication of programs at HBCUs in the state that has exacerbated the racial

123. *See supra* Figure 1.

124. *See infra* notes 125–129 and accompanying text.

125. *See* H.B. 591, 1994 Leg., Reg. Sess. (Fla. 1994).

126. *See* H.B. 1, 2021 Leg., Reg. Sess. (Md. 2021).

127. *See* VA. CODE ANN. § 23.1-615.1 (2022).

128. *See id.*

129. *See* LINNENTOWN RESOLUTION, *supra* note 28, at 3–4; *id.* at 3 n.27.

identifiability of Maryland's HBCUs."[130] Yet this statute does not account for other traceable de jure era policies that the state also practiced. The statute, for example, ignores other policies like eminent domain seizures, systematic legislative underfunding,[131] lack of access to state subsidies,[132] and a host of other unfair de jure state actions.[133] Such limited framing and narrowing exclude other equal, if not greater, acts of harm to the four public HBCUs. Those other harms must be included in subsequent legislation, assuming recognition of those harms survives the political backdrop of the state, or they may simply be silenced and never addressed. Additionally, states vary in terms of which action is worthy of redress through HERS. What one state considers worthy of redress, another state may find unworthy of legislation and interference. Ultimately, HERS vary based on what factors predicate, or lead to, statutory redress. Some states, like Virginia and Maryland, offer more comprehensive and extensive redress, while others, such as Florida and Georgia, provide a more diminutive remedy for the harm inflicted or caused by the higher education industry.[134]

Overall, there are also differences in the structural elements of each of the four HERS, such as their

130. H.B. 1, 2021 Leg., Reg. Sess. (Md. 2021).

131. *See* Khristopher Brooks, *Black Colleges Were Denied State Funding for Decades. Now They're Fighting Back*, CBS NEWS (June 17, 2021, 12:25 PM), https://perma.cc/82CM-2Q6L (discussing how HBCUs in the U.S. have been underfunded for decades, with billions of dollars in state funding that should have gone to those schools diverted by lawmakers for other purposes); *see also* Krystal L. Williams & BreAnna L. Davis, *Public and Private Investments and Divestments in Historically Black Colleges and Universities*, AM. COUNCIL ON EDUC. (Jan. 2019), https://perma.cc/76KG-AZPK (PDF); Damon Mitchell, *Historically Black Colleges Are Chronically Underfunded*, MARKETPLACE (Nov. 18, 2021), https://perma.cc/FC3V-6V5Q ("From 2010 to 2012, HBCUs nationwide missed out on a combined $57 million in state matches.")

132. *See* Coal. for Equity & Excellence in Md. Higher Educ. v. Md. Higher Educ. Comm'n, 295 F. Supp. 3d 540, 548 (D. Md. 2017) ("Unnecessary program duplication within Maryland's system of higher education continues to have segregative effects for which the State has no sound educational justification.").

133. *See* Brooks, *supra* note 131.

134. *Compare* VA. CODE ANN. § 23.1-615.1 (2022) (mandating reparation action by five separate universities to address the legacy of slavery), *with* H.B. 591, 1994 Leg., Reg. Sess. (Fla. 1994) (reacting to one instance of racial violence, the Rosewood Massacre, but not addressing similar instances of racial violence within the state).

implementation and enforcement, as well as their funding source(s). For example, take Florida's statute, FL HB 591. The oldest of the four, it is poorly drafted and has no legal teeth in its implementation.[135] The statute never mentions the consequences that would result if and when the state or the universities fail to comply with the statute's terms. In fact, there is nothing in the statute that incentivizes compliance or disincentivizes non-compliance, despite the law being in play since the late twentieth century. Such interpretative tasks are left to Florida courts, if the courts even accept such complaints under the statute.

HERS also vary in how the terms of the statute are enforced and who enforces them. Consider the Florida statute again. It is the only law that specifies which state agency, as provided for in the state's constitution, will regulate and oversee the development and disbursement of the benefits.[136] The Florida statute has been adopted under the state's Department of Education, while the remaining HERS in other states are simply left to governance by other administrative or legislative committees.[137] Across all other statutes, the terms and fulfillment of the law are left up to a particular legislative committee within the legislative body.[138] The decision in other states not to have regulatory oversight at the appropriate agency can lend itself to ambiguity in the law's implementation and regulation. In contrast, state agency regulatory oversight can help set specific requirements and proffer substantive recommendations surrounding a law.[139] For example, a regulation issued by a state's environmental protection agency to implement the Clean Air statute might explain what levels of

135. *See* Bassett, *supra* note 22, at 521.

136. *See id.* at 504.

137. *See* H.B. 591, 1994 Leg., Reg. Sess. (Fla. 1994).

138. *See, e.g.*, H.B. 1, 2xe021 Leg., Reg. Sess. (Md. 2021) (providing that the Historically Black Colleges and Universities Reserve Fund will be administered by the Maryland Higher Education Commission as well as the State Treasurer and State Comptroller).

139. *See* Michael Asimow, *The Fourth Reform: Introduction to the Administrative Law Review Symposium on State Administrative Law*, 53 ADMIN. L. REV. 395, 395 (2001) (discussing the breadth of regulation that state agencies have and noting that "state and local agencies resolve a vast number of adjudicatory issues relating both to government benefits and government regulation").

a pollutant—such as sulfur dioxide—adequately protect human health and the environment. It could tell industries how much sulfur dioxide they can legally emit into the air and the penalty if they emit too much. Once the regulation is in effect, the state's applicable agency then works to help citizens and companies comply with the law and enforce it. Similarly, when laws are under a state's department of education guidance, that agency, too, can help those who want to bring claims under the law and help institutions comply with its requirements.

Another important feature of HERS worthy of acknowledgment is their funding source(s). Virginia's H.B. 1980 has a provision that limits the law's funding sources[140]—disallowing any funds "from any state fund[ing] or tuition or fee increases."[141] Lawmakers were concerned with this as they wanted to ensure that the Virginia universities used their half a billion, and in some cases billion, dollar endowments to supply the reparations—funds they were able to generate in the first place because of their involvement in slavery. Since the law is relatively new, only time will tell if institutions offer robust funding for this program when they are required to raise the funds to comply with the law. Other HERS are either silent about the reparations funding source or leave such administrative duties to the universities.[142]

To this end, the inadequacies within some HERS arguably disregard tenets that traditionally appear in comprehensive legislation and remedies.[143] Still, and most frustratingly, these laws are written so narrowly that they do not protect all of those individuals who are similar in status. The shortcomings of each of these types of HERS often interface with the issues surfaced by tort-law-remedies scholarship related to reparations, redress, and repair. That will be the topic of the next Parts.

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140. *See* VA. CODE ANN. § 23.1-615.1(B) (2022).

141. *Id.*

142. *See, e.g.*, H.B. 591, 1994 Leg., Reg. Sess. (Fla. 1994).

143. *See* Alan Rosenthal, *Beyond the Intuition that Says "I Know One When I See One," How Do You Go About Measuring the Effectiveness of Any Given Legislature?*, NAT'L CONF. OF STATE LEGISLATURES, https://perma.cc/Z7MZ-A84Y.

II. THEORETICAL CONTOURS OF HIGHER EDUCATION REDRESS STATUTES

Across the southeast, HERS demonstrate that higher education institutions were highly involved in every aspect of chattel enslavement, degradation, and discrimination against Black people. As a result, several states are finally reckoning with the impact of their injuries on Black lives. Yet it appears that state interventions seem more concerned with limiting and restricting reparations, mitigating the cost of redress, and protecting states and universities from being held accountable for their actions toward Black degradation. While HERS demonstrate an applaudable legislative intent, these laws routinely have unintended ramifications that work adversely against their intended goals.

Therefore, this Part offers the first jurisprudential examination of HERS using an analytical framework from remedies scholarship to highlight several concerns embedded within HERS. This Part adopts philosophies from the Social Healing Through Justice framework to demonstrate the inadequacies within HERS. Moreover, this Part also situates my objections and concerns within the larger legal or jurisprudential conversation. In doing so, these forthcoming sections will lay out the groundwork for Part III's normative solutions and claims.

A. Remedies Analytical Framework

Legal scholars of remedies have provided several analytical frameworks to help legislators, policymakers, activists, and other stakeholders evaluate reparations for slavery and other civil injustices. [144] Analytical frameworks in this area were

144. *See, e.g.*, Kaimipono David Wenger, *Too Big to Remedy—Rethinking Mass Restitution for Slavery and Jim Crow*, 44 LOY. L.A. L. REV. 177, 217–32 (2010); *see also* Valorie E. Douglas, *Reparations 4.0: Trading in Older Models for a New Vehicle Note*, 62 ARIZ. L. REV. 839, 851–62 (2020); Eric K. Yamamoto & Ashley Kaiao Obrey, *Reframing Redress: A Social Healing Through Justice Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 ASIAN AM. L.J. 5, 5–9 (2009); de Oliveira Andreotti et al., *supra* note 9, at 32–33 (discussing "soft-reform" and "radical-reform" in higher education); Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 689–748 (2003).

conceived to help improve and make sense of the messiness and inconsistencies that abound in reparative efforts.[145] Frustrated with the contemporary limitations of tort law and its treatment of, or disposition toward, mass racial injustices, a new generation of remedies thinkers emerged, calling for the legal process to move from the litigation-compensation model to a legal model that repairs the "deep harms to society (divisions, guilt, shame, lack of moral standing) by healing the continuing wounds of injustice."[146] Scholars in the field note that "it is important to recall the central theme of our legal system where every violation of a right should have a remedy."[147] Some even claim that a constitutional right to tort law remedies—that is, redress for wrongful acts—exists.[148] Professor John C.P. Goldberg famously asserted that "American citizens have a right to a body of law for the redress of private wrongs."[149] Ultimately legal remedies are based on the basic principle that it is morally unacceptable not to acknowledge, address, and restore harms of any magnitude.[150] Despite legal remedies' basic principles, complaints surrounding under-compensation are often and regularly articulated by those who were harmed.[151] In using a remedies analytical framework, however, I demonstrate that HERS are not simply under-compensatory, but they fail to recognize the depth and breadth of the injury and, therefore, are immensely under-compensatory.

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145. *See* Eric K. Yamamoto et al., *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 31–38 (2007).

146. Yamamoto & Obery, *supra* note 144, at 30.

147. Wenger, *supra* note 144, at 192.

148. *See id.*

149. John C.P. Goldberg, *The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs*, 115 YALE L.J. 524, 524 (2005).

150. *See* Wegner, *supra* note 144, at 194–95.

151. *See* Stephen J. Shapiro, *Overcoming Under-Compensation and Under-Deterrence in Intentional Tort Cases: Are Statutory Multiple Damages the Best Remedy*, 62 MERCER L. REV. 449, 450–51 (2010) (discussing how inadequate damages result in both plaintiffs being undercompensated and defendants being undeterred from tortious conduct); *see also* Stephen D. Sugarman, *Doing Away with Tort Law Symposium: Alternative Compensation Schemes and Tort Theory*, 73 CALIF. L. REV. 555, 559–90 (1985).

While there were several frameworks to choose from,[152] I will employ understandings from Yamamoto and Obrey's remedies framework as it offers practical evaluative tenets in reviewing reparations.[153] This legal-remedies framework offers comprehensive evaluation while simultaneously providing recommendations to strengthen already enacted reparative efforts. In addition, this framework is already closely aligned to the very purpose and aim of HERS. Furthermore, this framework is widely accepted and used as it has been used already to evaluate other reparative efforts. Lastly, this framework carries considerable similarities to other frameworks constructed within this field.

Consider Yamamoto and Obrey's Social Healing Through Justice ("STJ") framework. Their practical and theoretical framework is proffered to enable groups and, most importantly, governments interested in reparative efforts, providing them with the ability to enact steps toward the "kind of transformative justice that promotes social healing."[154] This framework thus connects directly to HERS, as these government-sponsored efforts are reparative actions that focus on the systematic harm that the higher education industry inflicted on Black people. This sentiment is expressed in the text of most HERS.

The STJ framework is an interdisciplinary approach to remedies that advocates for reparatory justice in several ways, but it is mainly concerned with ensuring that efforts possess the "Four R's" of social healing: recognition, responsibility, reconstruction, and reparation.[155] The Four R's offer points of inquiry to assist groups and governments in assessing whether

152. *See* Wenger, *supra* note 144, at 221–30 (advocating the use of nontraditional remedies like storytelling and restorative community approaches); Douglas, *supra* note 144, at 170–75 (arguing that reparations emphasizing rehabilitation will be more effective than monetary compensation); de Oliveira Andreotti et al., *supra* note 9, at 32–35 (finding the need for decolonization in higher education); Posner & Vermeule, *supra* note 144, at 725–36 (advancing reparation regime based on monetary compensation, affirmative action, apologies, land, and political autonomy).

153. *See* Yamamoto & Obrey, *supra* note 144, at 32–33.

154. *Id.* at 31.

155. *See* Yamamoto et al., *supra* note 145, at 47.

their reparative efforts are on the path toward genuine social healing or heading toward failure.[156]

Recognition requires empathy and be historically accurate reparation efforts so that one can conduct robust scrutiny and deconstruction of "stock stories" that corroborate the injustices.[157] *Recognition* also illuminates how organizational structures (*e.g.,* laws) can embody discriminatory policies that deny fair access to resources and remedies. In this reparations space, *recognition* often interfaces with the concept of under-inclusion in constitutional law.[158] Under-inclusion can occur when statutes affirmatively order the government or a third party to confer a benefit to people unequally.[159] While under-inclusion is typically exposed in doctrinal analysis, it is important to note that under-inclusion often appears in reparation statutes or in cases where the benefit is largely

156. *See id.*

157. *See id.* at 48.

158. *See id.* at 48 n.241.

159. Traditionally there are two types of underinclusive statutes. First, statutes that unequally impose unnecessary and undue penalties on a person are deemed underinclusive. *See, e.g.*, Moritz v. Comm'r of Internal Revenue, 469 F.2d 466, 470 (10th Cir. 1972) (finding statutes with discriminatory under-inclusion to be invalid). Second, statutes that affirmatively order the government or a third party to confer a benefit to people unequally are also underinclusive. *See, e.g.*, U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 538 (1973); Graham v. Richardson, 403 U.S. 365, 382 (1971) (finding that state welfare laws conditioned on citizenship and residency violated the Equal Protection Clause). As Candace Kovacic claimed, "One can generally distinguish between the two types of underinclusive statutes by determining whether the excluded or included class member is bringing suit." Candace S. Kovacic, *Remedying Underinclusive Statutes*, 33 WAYNE L. REV. 39, 42 (1986). When a statute grants benefits unfairly, the excluded person will bring suit to attain the benefits. *Id.* Conversely, when a law burdens unfairly, the person covered by the statute will bring suit to invalidate the law. *Id.* While it may be challenging to know when a statute confers a benefit or imposes a burden in some cases, the benefit delineation is relatively clear in the situation of HERS. HERS' language undergirds this notion. For example, the Virginia statute proclaims to "give a tangible benefit" to individuals. *See* VA. CODE ANN. § 23.1-615.1 (2021). Therefore, this Part will not discuss the imposition of burdens unequally on individuals given that no HERS fit this description. It is important to discuss, however, that under-inclusion often appears in reparation statutes or in cases where the benefit is largely conferred to minoritized people.

conferred to minoritized people.[160] Reparations advocates in remedies have embraced the spirit of under-inclusion as one way to make the policy argument that reparative efforts routinely and systematically fail to comprehensively recognize minoritized people who were equally harmed. It is important to note that reparationists are often not making a constitutional claim of under-inclusion, however, they are to some extent using the underlying presumptions within the claim.

Consider the North Carolina eugenics program that forced Black women over ten years old to be sterilized inu counties across the state with explicit designs to "breed [Black people] out" of North Carolina specifically and humanity generally.[161] More specifically, Professor Price and team, in their empirical study, found that "over the 1958 to 1968 time period, North Carolina's eugenic sterilization was apparently tailored to asymptotically breed-out the offspring of a presumably genetically unfit and undesirable surplus black population" so they could not exist in the future.[162] Given the inhumane torture and the irreparable state-sanctioned harm and violence of the state's program, the General Assembly of North Carolina passed an extraordinarily narrow bill which denied eligible victims repair and redress. The *New York Times* reinforces this point in its account of Bob Bollinger, a North Carolina lawyer who represented Black eugenics victims deemed ineligible for reparations under North Carolina's reparations statute.[163] In

160. A forthcoming publication discusses the constitutional remedy to HERS.

161. *See* Gregory N. Price et al., *Did North Carolina Economically Breed-Out Blacks During its Historical Eugenic Sterilization Campaign?*, 15 AM. REV. POL. ECON. 1, 10 (2020).

162. *Id.* at 1.

163. *See* Adeel Hassan & Jack Healy, *America Has Tried Reparations Before. Here Is How It Went.*, N.Y. TIMES (June 19, 2019), https://perma.cc/YE6W-ENQX. The victims were largely poor, disabled, or African-American. State lawmakers set up a $10 million fund to compensate them. *See* Gary Robertson, *NC Court Upholds Denial of Eugenics Compensation*, CITIZEN TIMES (June 6, 2017, 3:05 PM), https://perma.cc/3YUH-SAQV; Hassan & Healy, *supra* ("Conflicts then arose over who was eligible. A state commission and state courts denied claims from relatives of victims who had died. Others were deemed ineligible because they had been sterilized by county welfare offices and not the state eugenics program . . . ."); *see also* Eric Mennel, *Payments Start for N.C. Eugenics Victims, but Many Won't Qualify*, NPR (Oct. 31, 2014, 5:04 PM), https://perma.cc/35Y9-QZ38.

reference to legislators, he lamented that "[y]ou've got to draw your reparations law broadly enough that you don't leave out the people you're trying to help."[164] He recounted that when the General Assembly of North Carolina enacted this legislation, the eligibility requirements for reparations seemed reasonable.[165] After reparations requests under the statute came in, however, courts and legislatures denied victims' claims because the law, as written, only protected victims sterilized by one specific actor.[166] Due to their incomplete analysis of the breadth of injury, lawmakers were unaware that other actors, also sanctioned by the state, sterilized Black women.[167] Consequently, some Black women who were victims of the sterilization surgeries, with the same irreversible injury, were deemed ineligible for reparations under the narrowed construction of the law.[168] Nevertheless, Bollinger's frustration highlights the crux of this tenet, *recognition*, including the point that reparations laws often leave out equally harmed survivors, never making them whole.[169]

The subsequent R, *responsibility*, examines the level of control and "power over" others while encouraging those who created the harm to accept full responsibility for repairing the damage.[170] Additionally, this tenet requires an arrest of the contemporary political dynamics, alignments, and identities that impose disabling constraints on those harmed and broadly advocates for comprehensive accountability in healing all resulting wounds.[171]

The third R is *reconstruction*, which calls for the reframing of history to accurately depict the breadth of interactions;[172] most importantly, reconstruction calls for the reallocation of

164. Hassan & Healy, *supra* note 163.

165. Mennel, *supra* note 163.

166. *See id.*

167. *Id.*

168. *Id.*

169. *See* Yamamoto et al., *supra* note 145, at 47.

170. *Id.*

171. *Id.*

172. *See id.* ("Acts of *reconstruction* are aimed at building a new productive relationship, including apologies and other acts of atonement, along with efforts to restructure social and economic institutions.").

political and economic power to assure non-repetition of events that created the injustice in the first place.[173]

"The fourth R, *reparations*, encompasses much more than money."[174] Here, STJ essentially advocates for comprehensive restoration in all aspects. More specifically, it asserts that reparations should restore survivors' property; culture; economics; and medical, legal, educational, and financial claims.[175] "The Handbook of Reparations suggests that reparations cover restitution, rehabilitation, and monetary payments."[176] Public education can also be an integral component of reparations, including study commissions, school curricula, media presentations, or scholarly publications.[177]

Yamamoto and Kaiao Obrey dictate that legislators must fully engage in all four of these Rs to heal social wounds. If all four are not comprehensively engaged, "the most sincere healing efforts will likely be experienced as incomplete, insufficient, and ultimately, a failure [to the harmed group]."[178] Put another way, undeveloped piecemeal reparation actions, even when well-intentioned, will likely be deemed symbolic, performative, and hollow, lacking substantive impact in light of the depth and breadth of the harm perpetrated.

As relevant stakeholders reveal higher education's nexus in perpetuating violence toward Black people, some scholars have begun using analytical frameworks to ask how efforts and responses should be designed to dismantle those systems. As a case in point, Garibay and colleagues recently employed Andreotti's framework.[179] They asked if, and to what extent, higher education institutions have been engaging in the necessary reparative justice agendas.[180] Similarly, the analytical framework employed in this Article opens avenues of analysis that help articulate frustrations with HERS. Thus, as

173. *See* Yamamoto & Obrey, *supra* note 144, at 34.

174. *Id.* at 35.

175. *See id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *See generally* Juan C. Garibay et al., *Black Student Views on Higher Education Reparations at a University with an Enslavement History*, 25 RACE ETHNICITY & EDUC. 1 (2022).

180. *See id.*

states' higher education industries continue to contend with their storied pasts and relationships with the Black community, the STJ framework helps to illuminate the key point that their efforts may be more concerned with limiting and narrowing justice rather than with transformative justice and widespread healing. This study of the laws helps us begin to understand where states fall in offering redress, and it also helps us make sense of how states are addressing historical inequities.

B. Social Justice Through Healing Framework Applied to HERS

While HERS are a vital tool toward equity in higher education, these laws often offer remedies that neither comply with the survivors' wishes nor with legal remedies scholarship in this arena. This Subpart proffers two cases that demonstrate HERS' deficiencies with regard to remedies scholarship.

Other laws could have been analyzed in place of the two cases described below, but these statutes were of interest for several reasons. First, they each have expressed a goal of remedying past wrongs. Second, these statutes display the most apparent connections between the harm and the legislators' remedy and thus epitomize ideal sites for an examination of the statutory remedies' adequacy. Lastly, each statute represents legislators' varying degrees of engagement in redress and comprehensiveness.

1. The City of Athens and the University System of Georgia Resolution

In evaluating the City of Athens and the University System of Georgia Resolution using Yamamoto and Obrey's framework, I find that the Resolution does not fully engage with all Four R's. More precisely, the Resolution's commitment to redress is fractional and incomplete: The Resolution (i) demonstrates *recognition* of the physical, cultural and economic harms in Linnentown, yet "embod[ies] discriminatory policies that deny fair access to resources" and remedies to those who were equally harmed;[181] (ii) accepts the *responsibility* for Black degradation by committing to a process of reconciliation for one aspect of

181. Yamamoto & Obrey, *supra* note 144, at 33.

harm, but neither arrests contemporary political dynamics that impose disabling constraints on those harmed nor offers comprehensive accountability in healing all resulting wounds; and (iii) gives no *reconstruction* or reframing of history to accurately depict the breadth of interactions between Athens and the University System of Georgia and Black people and, further, does not make any "significant change in structure, subjectivities, or power relations."[182] As such (iv) the resolution offers incomplete *reparations* as the Resolution cannot possibly restore survivors' property, culture, economics, etc., if the Resolution ignores the survivors very existence.

a. *Recognition*

On January 19, 2021, Athens and the UGA system signed a resolution supporting redress for Linnentown and the various Black communities harmed by UGA's urban renewal plan.[183] This urban renewal partnership between Athens and UGA effectively terrorized fifty Black families, dispossessed twenty-two acres of land, displaced dozens of businesses, and economically devastated groups of Black people.[184] In this process, as outlined in the resolution, UGA conspired, namely with the city of Athens, and lobbied state and federal officials to allow them to "clear out the total slum area" where Linnentown existed.[185] Unfortunately, instead of complying with their sworn oaths to serve all citizens, elected officials chose to protect the interest of a few. As a result of this partnership, Linnentown was demolished in the name of "slum clearance" so that UGA could erect three luxury dormitories—Brumby, Russell, and Creswell Halls.[186] Utilizing intimidation, fear, and eminent domain, Athens removed the residents of Linnentown and offered $216,935 to the residents, which roughly translated, on average, to $4,338 per family.[187] In some cases, however, families received dramatically less. For example, Hattie Thomas Whitefield recounts that her father saved for years to buy their

182. de Andreotti et al., *supra* note 9.
183. *See generally* LINNENTOWN RESOLUTION, *supra* note 28.
184. *See id.*
185. *See id.*
186. *Id.*
187. *See id.*

home yet received a much more diminutive settlement—she claimed that her family would never become homeowners again.[188] Hattie Thomas Whitefield's story is a clear example of intergenerational devastation. Put plainly, that same neighborhood's current land value is now worth more than $76 million, with "a return on investment of 35,000 percent with an annualized return of approximately $8.8 million."[189] While it remains unclear if Linnentown's economic value would have appreciated at the same rate as UGA's stolen land, it is indisputable that the land today would be worth more than what the residents originally invested.

While the tangible effects are overwhelmingly clear, Geneva Johnson, a survivor of the actions taken by the City of Athens and UGA, carries the intangible and psychological impacts that are often left out of the conversation.[190] In recounting the terroristic behavior of UGA and the city of Athens, Ms. Johnson often teared up, and her "voice [today still] would shake when she would talk about this thing that's happened, you know, 50, 60 years ago."[191] In her article, Mindy Thompson Fullilove notes that urban renewal or "clearance of slums" can cause ill health to victims.[192] She further explains that "urban renewal caused a great deal of stress, which has been implicated, at least anecdotally, in deaths among the elderly and aggravation of some kinds of existing illness."[193] While the most obvious consequences remain evident, including loss of money, loss of land, loss of social organization, and psychological trauma, other latent implications flow from the

188. *See* Rachel M. Cohen, *Inside the Winning Fight for Reparations in Athens, Georgia*, THE INTERCEPT (Apr. 9, 2021, 7:00 AM), https://perma.cc/Z4G7-PGV9.

189. LINNENTOWN RESOLUTION, *supra* note 28, at 2.

190. *See* Cohen, *supra* note 188.

191. Blankenship, *supra* note 78.

192. *See* Mindy Thompson Fullilove, *Root Shock: The Consequences of African American Dispossession*, 78 J. URB. HEALTH BULL. N.Y. ACAD. MED. 72, 72–80 (2001) (discussing urban renewal as one of the processes that contributed to the deurbanization of American cities). Fullilove further discusses urban renewal's aim in "clearance" of "blight" and "slum" areas so that they could be rebuilt for new uses other than housing the poor. *Id.* Most importantly, Fullilove draws attention to both the short- and long-term consequences that flow from urban renewal plans. *Id.*

193. *Id.* at 74.

"social paralysis of dispossession and collapse of the [victims'] political action."[194]

As a result of the direct harm to the people of Linnentown, legislative redress in partnership with UGA was rightfully offered. My critique, however, centers on the tailoring of the legislation, which created the redress in so narrow a way as to absolve Athens and UGA from their contributions to the relentless degradation of Black people over the centuries. That is to say, this legislation, as crafted, confines redress narrowly to the residents and descendants of Linnentown and ignores other instances where the UGA System conspired and conducted other acts of equivalent or even more significant harm.[195] This point is underscored by the frustration of District 1 Commissioner Patrick Davenport, who called the resolution an "insult" to Black people.[196] He further lamented that he does not understand why Linnentown is "being put on a pedestal" when there are incidents of similar actions against Black communities that have gone unaddressed.[197] "I think this resolution is an insult to all the [Black] people who have suffered grievances," said Davenport.[198]

When woven together, Davenport's comments support the claim that the City of Athens and the University System of Georgia have a long history within the Black community of unfairly acquiring property through eminent domain. Furthermore, these comments illustrate other residents' anger and frustration with the fact that legislators did not include them in legislation. For example, archival evidence from UGA's Board of Trustee minutes discloses that Linnentown was not the only tract of land that the University divested from Black people.[199] The 1920 minutes reveal that the University needed to buy the Negro property "abutting on our grounds and

194. *Id.* at 72.

195. *See* Allen, *supra* note 84 (highlighting the Commissioner's belief that "more needs to be addressed on the issues that allowed the dismantling of Linnentown").

196. *Id.*

197. *Id.*

198. *Id.*

199. *See generally Minutes of the Board of Trustees Volume VII 1915–1931*, UNIV. OF GA. (1915), https://perma.cc/AB5F-9VL4 (PDF).

contiguous to the new Woman's Building."[200] The University agreed to purchase the "Negro property," also within the city of Athens, as soon as possible for $25,000 as they claimed it "was essential to the protection of our property and the safeguarding of the young [white] women in our charge."[201] As a result, the University forced Black people out of their land to build a new women's building and a "safer environment."[202] Interestingly enough, in the same meeting the Board also approved another $25,000 purchase to equip the University with necessary and proper fire equipment.[203] With these two approvals, the Board apparently decided that the families, businesses, neighborhoods, and communities that were presumably located on "Negro property" were no more valuable than fire protective equipment.[204]

While the statute of focus here is governed and enforced within the City of Athens (and has no direct authority under the University System of Georgia), it would be imprudent not to recognize the racial disinvestment patterns in the University System of Georgia, which not only terrorized the families in Athens, but also displaced and disturbed Black families and business owners at satellite campuses across the state. Take, for example, the Medical College of Georgia ("MCG") in Augusta, Georgia, the flagship medical school of the University System of Georgia, and one of the top ten largest medical schools in the United States.[205] The medical school cleared the "blighted" and "slummed" twenty-five acres of land in downtown Augusta, Georgia.[206] The medical school's president, Harry Barron O'Rear, purchased land across "Gwinnett Street to support this vision and asked the city of Augusta for assistance."[207] In 1962, to modernize and lead Georgia's medical education and innovation, the Board of Regents approved President O'Rear's

200. *Id.* at 131.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *See About Medical College of Georgia (MCG)*, MED. COLL. OF GA. AT AUGUSTA UNIV., https://perma.cc/VD25-4Y42.

206. *See History of the Medical College of Georgia (MCG)*, MED. COLL. OF GA. AT AUGUSTA UNIV., https://perma.cc/SG78-QNRP.

207. *See id.*

plan, and the school purchased the twenty-five acres of land off of Laney Walker Boulevard.[208]

Former residents, newspapers, and historians, however, revealed that while the land was purchased, residents' property was often devalued and they frequently were coerced, intimidated, and silenced to make way for Augusta's and MCG's modernization plans.[209] Borrowing from the playbook used by the Athens campus, the MCG also conspired, namely with the City of Augusta, and lobbied state and federal officials, to allow for the clearing of slums where the Laney Walker neighborhood had existed.[210] Former resident Grady Abrams emotionally recalled the forcible actions of the government: "It is one thing to leave your home, your neighborhood on your own, to be forced out is a different manner."[211] And while the government claimed that they purchased the land, the residents rarely experienced fair compensation, aid, or assistance. Professor Robert Nelson has noted that "while the federal policy was supposed to compensate people for their property, aid in their relocation, or place them in public housing, this assistance was often late or never arrived at all."[212] As a result of these actions, 123 families of color were displaced, and businesses were lost.[213] This loss is even more troubling given the historic nature of the neighborhood. The neighborhood came into existence during the early twentieth century.[214] "By the early 20th century, Jim Crow 'zoning' laws requiring blacks and whites to settle in blocks designated by race quickly transformed the Laney-Walker District into Augusta's principal black neighborhood."[215] Given this history, it is clear that Augusta, too, has a long history of

208. *See id.*

209. *See infra* notes 211–213 and accompanying text.

210. *See infra* notes 211–213 and accompanying text.

211. *See* Brent Cebul, *Tearing Down Black America*, BOS. REV. (July 22, 2020), https://perma.cc/95K2-D3X3.

212. *See* Katharine Schwab, *The Racist Roots Of "Urban Renewal" and How It Made Cities Less Equal*, FAST CO. (Jan. 4, 2018), https://perma.cc/7JA3-QKFJ.

213. *See* Robert K. Nelson & Edward L. Ayers, *Renewing Inequality*, DIGIT. SCHOLARSHIP LAB, UNIV. OF RICHMOND, https://perma.cc/9VFM-292Z.

214. *See Laney-Walker-North Historic District*, NPS https://perma.cc/M4BH-SNYC.

215. *Id.*

forcing and instructing Black people to move, uproot, and live in particular areas so that whiteness is able to thrive. With this land taken from the Laney-Walker District, the all-white medical school[216] built a student center, student housing, and the Carl T. Sanders Research and Education Building.[217] Yet among its materials documenting this strive for modernity,[218] university archives do not reveal the 123 families of color that were displaced and forced to leave their homes and property.[219] As with the case in Athens, which resulted in the HERS, the medical school used tactics such as partnering with the City of Augusta to ensure that the purchase be free from any political pressure or hesitation.[220]

Given the resemblance of the harm done to the Laney-Walker District residents and the Linnentown residents, and seeing that the residents of that "Negro property" and their descendants are not accounted for in reparation bills, I may argue that this statute is incomplete and discriminatory. The STJ framework, reparation advocates, and those not included under the statute, however, argue that the rights and benefits of this law should be extended to other members who are similarly situated as a matter of justice and fairness.[221] In keeping with that position, and in looking at the residents of Linnentown, their harm is neither different nor more egregious than that of the residents of the Laney-Walker District—yet officials set out the repair for them alone.[222] When the city officials make such determinations, one must interrogate

216. Drs. Frank Rumph and John T. Harper Sr., Class of 1971, were the First African Americans to graduate from the Medical School. *See* Toni Baker, *Welcome Home Tommy*, AUGUSTA UNIV. MAGS. (June 21, 2017), https://perma.cc/C4NZ-ERYJ. Dr. Tommy Leonard was the third African American to enroll in the Medical School in 1973. *Id.*

217. *See Campus Overview*, MED. COLL. OF GA. AT AUGUSTA UNIV., https://perma.cc/H4CJ-5ZWU.

218. *See id.*

219. *See* Nelson & Ayers, *supra* note 213.

220. *See History of the Medical College of Georgia*, *supra* note 206.

221. *Cf.* U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 543 (1973) (Douglas, J., concurring) ("[G]overnment 'may not accomplish [its purposes] by invidious distinctions between classes of citizens.'" (quoting Shapiro v. Thompson, 394 U.S. 618, 633 (1969))).

222. *See* LINNENTOWN RESOLUTION, *supra* note 28, at 2 nn.10–15, 19.

whether the benefit should also be extended to those from other neighborhoods, like the "Negro property" neighborhood.

Indeed, as a matter of justice and fairness, there are other atrocities between UGA and the City of Athens that arguably merit the extension of benefits.[223] Another prominent and glaring example deemed unworthy of redress in legislation is slavery. Archives and historical documents reveal that UGA itself did not own enslaved people, but instead rented or employed enslaved Black people from neighboring enslavers, including the City.[224] Throughout its first decades, UGA relied on uncompensated labor from enslaved Athenians in its daily operations.[225] The industry of slavery was such an accepted practice that part of the students' tuition and fees included "servant's hire," according to an 1839 to 1840 catalog published in the Southern Banner.[226] Additionally, from 1794 until 1865, the University's Board of Trustees minutes routinely had a recurring budget line for enslaved labor.[227] Surprisingly, in some instances, UGA elected to thin out its academic offerings and faculty rather than its enslaved labor force, even at economically uncertain times.[228] It is abundantly clear that the City of Athens provided part of the monetary incentives, land, and enslaved

223. Archival evidence demonstrates that UGA and City of Athens displaced another Black neighborhood east of the university. *See id.* They also conducted exploratory surgeries on enslaved people and Black people in the early 1900s. Edward C. Halperin, *The Poor, the Black, and the Marginalized as the Source of Cadavers in United States Anatomical Education*, 20 CLINICAL ANATOMY 489 (2007); R.L. BLAKELY, BONES IN THE BASEMENT: POSTMORTEM RACISM IN NINETEENTH-CENTURY MEDICAL TRAINING (1997). Additionally, they implemented adverse admission practices to keep Black people from enrolling and matriculating at UGA. *See* Tarek C. Grantham et al., *From USG shame to UGA GAAME*, *in* DESEGREGATING THE UNIVERSITY SYSTEM OF GEORGIA (USG) AND ESTABLISHING THE AFRICAN AMERICAN MALE INITIATIVE AT THE UNIVERSITY OF GEORGIA (UGA) (2018). Lastly, they purposefully allowed environmental catastrophes and injustices inside the Black neighboring communities. *See* LINNENTOWN RESOLUTION, *supra* note 28.

224. *See* Lee, *supra* note 15, at 12, 21; *see also* Marc Parry, *Buried History*, CHRON. HIGHER EDUC. (May 25, 2017), https://perma.cc/D2T8-5NXW.

225. *See Mention of Enslaved Workers on Campus, Prudential Committee Meeting Minutes*, *1834-57: pages 15-16*, AFR. AM. EXPERIENCE IN ATHENS, https://perma.cc/V7BD-6VFA.

226. S. BANNER, Mar. 9, 1839, at 3, https://perma.cc/4PTU-URRL.

227. *See, e.g.*, *Servant Hire in Board of Trustees Minutes, Vol. 2: page 187*, AFR. AM. EXPERIENCE IN ATHENS, https://perma.cc/FZH2-E2XK.

228. *See, e.g.*, *id.*

labor that was foundational to UGA. As demonstrated, Athens and UGA have a long and rich history of Black degradation that spanned far beyond the confines of Linnentown, as described in the City of Athens and University of Georgia Resolution.[229] While UGA's degradation is demonstrated in proximity to Athens, it is also likely that UGA's degradation expanded past Athens and affected statewide practices and understandings of slavery.

Nevertheless, this academic exercise is not to compare and contrast the hurt and suffering of UGA victims to create an "Olympics of oppression."[230] Instead, this Article demonstrates how people are excluded from redress and how the law should be extended to provide benefits to them too. It also demonstrates the importance of promulgating inclusive legislation for all Black people who have been injured by the University and its policies. As depicted, the Georgia resolution sets an incomplete and arbitrary boundary, limiting the groups of people who are entitled to redress such that other individuals that UGA and Athens gravely harmed are dismissed. This practice leaves members of the excluded community with more questions than answers: Does this then mean that Athens and UGA's only act worthy of redress was in Linnentown? Does that, in turn, mean that pain inflicted by UGA and Athens on other Black people is rendered a necessary evil? Do their hurt and pain not matter? What does this legislation communicate to other families and descendants who survived despite UGA and Athens' adverse actions?

The reductive narrative embedded in the Georgia Resolution diminishes both the City of Athens's and UGA's role in Black degradation to one singular act—Linnentown. In this way, an incomplete review of the pain inflicted on Black people serves to exonerate—at least politically and socially—UGA's duty to remedy other harms to Black people. Ultimately, the Resolution fails to recognize other people harmed by acts of equivalent, if not more significant, harm. In applying the STJ

229. *See* LINNENTOWN RESOLUTION, *supra* note 28, at 1–3.

230. ANGE-MARIE HANCOCK, SOLIDARITY POLITICS FOR MILLENNIALS: A GUIDE TO ENDING THE OPPRESSION OLYMPICS (2011) (describing Oppression Olympics as the idea that minoritized people are in competition of determining the relative weight of overall oppression of individuals or groups, based on identity).

framework, the individuals not included in the Resolution will continue to face social subordination. Put differently, without comprehensive recognition, the Resolution runs afoul of the mission of STJ and adopts a policy that discriminately denies access to the Resolution's remedies and resources.

b. *Responsibility*

Responsibility requires both an assessment of power over others and an acceptance of the responsibility for repairing damage imposed on others.[231] In this case, the Resolution accepts responsibility for Linnentown, but not for other neighborhoods destroyed by similar methods or any other harm inflicted. As previously discussed, UGA and the City of Athens inhumanely asserted violence over other predominantly Black communities outside of Linnentown and have not accepted responsibility for repairing the damage stemming from their political, financial, and social power abuse. District 9 Commissioner Ovita Thornton, frustrated with the politics and the narrowness of the reparations, acknowledged that the power that dismantled Linnentown is the same power that dismantled other Black communities.[232] He also claimed that this first Resolution must be only "the beginning" because there are other acts for which UGA and the City of Athens must be held accountable.[233] While the City of Athens seems to be ready to interrogate its role in Black degradation, the University System of Georgia, though clearly aware of power abuses as determined from reviewing its university minutes and other historical documents,[234] has not yet acknowledged, let alone taken responsibility for repairing, the damage to those forgotten

231. *See* Yamamoto & Obrey, *supra* note 144, at 34 ("[Responsibility] entails an assessment of 'power over' others and an acceptance of responsibility of repairing the damage of 'disabling constraints' imposed on others through power abuses.")

232. *See* Allen, *supra* note 84.

233. *Id.*

234. *See, e.g.*, *University of Georgia Board of Trustees Correspondence and Reports*, HARGRETT RARE BOOK & MANUSCRIPT LIBR., UNIV. OF GA., https://perma.cc/5BTP-PH5N.

neighborhoods.[235] In fact, in its political posturing, the University System has routinely defended its decimation of Black communities by maintaining that its actions were "legal" and were endorsed and encouraged by the federal government.

c. *Reconstruction*

"The kind of justice that promotes social healing . . . entails the third R—*reconstruction*."[236] Reconstructive acts aim to build "a new productive relationship" that reallocates power so that the harmed party can "participate fully and freely" in society.[237] "They include apologies and forgiveness . . . ; a reframing of the history of interactions; and, most important, the reallocation of political and economic power" to assure the non-repetition of events that created the injustice.[238] The "reconstruction R" in the Resolution presents several concerns. First, and parallel to concerns previously articulated, the Resolution does offer an apology and accurate historical facts, but the apology and the historical facts are only for Linnentown and not for any other acts.[239] The more considerable concern with this Resolution, however, surrounds the tenet that the STJ framework considers most critical—power reallocation.[240] So, in addition to the incompleteness of the harm depicted in the resolution, the reparations efforts in it simply preserve business as usual or present no significant change to the City's organization or to the experiences of Linnentown's residents or their descendants.[241] This claim is bolstered by the fact that city leaders ignored calls from the descendants of Linnentown, former residents themselves, and other prominent city leaders.[242] As a result, the Resolution proffered what the representative from District 1, Patrick Davenport, called an "insult[ing]" reparation effort: it

235. *See* Rachel M. Cohen, *Inside the Winning Fight for Reparations in Athens, Georgia*, THE INTERCEPT (Apr. 9, 2021, 7:00 AM), https://perma.cc/UAQ3-VGE7.

236. Yamamoto & Obrey, *supra* note 144, at 34 (emphasis in original).

237. *Id.*

238. *Id.*

239. *See supra* notes 195–198 and accompanying text.

240. *See* Yamamoto & Obrey, *supra* note 144, at 34.

241. *See generally* LINNENTOWN RESOLUTION, *supra* note 28.

242. *See* Cohen, *supra* note 235.

makes no significant change in structure, subjectivities, or power relations.[243] Davenport's frustration is supported by the fact that the Resolution only came with an apology and a laundry list of future promises.

Recognizing that from the outset the conversations surrounding repair and reparations are often skewed and saddened at the shallowness of the Resolution and the maintenance of the status quo, District 2 Commissioner Mariah Parker noted that what the community had in this case was "[a] majority-white body, majority-white attorneys and a majority-white state legislature [that got] to determine what redress and recognition look like for the community that was harmed by white supremacy."[244] This Resolution reflects the legislators' unwillingness to engage in making structural changes to contemporary power dynamics. Without conscious reconstruction efforts, there is no compelling sense of reparatory justice that can foster the social healing that STJ seeks to achieve.

d. *Reparations*

Lastly, the STJ model requires reparations that encompass much more than money. Reparations should restore survivors' property, culture, economics, and address their medical, legal, educational, and financial claims.[245] Seemingly understanding the overall mission of reparations, the Resolution does seem to promise to investigate the *possibility* of several aspects that are in line with the mission of the STJ model, including memorialization, "promises" of payment to close the intergenerational wealth gap for former residents, "promises" to initiate capital projects to provide equitable redress, a research center, and "promises" to revise the law to account for eminent domain and its predatory nature toward Black people.[246] If all of these efforts are subsequently adopted, then they would fall in

243. Allen, *supra* note 84; *see also* Yamamoto et al., *supra* note 145, at 49 ("In order to heal, acknowledgments and actions must entail significant changes in institutional structures, public attitudes, and economic support for those still hurting . . . .").

244. Drukman, *supra* note 13.

245. *See* Yamamoto & Obrey, *supra* note 144, at 35.

246. LINNENTOWN RESOLUTION, *supra* note 28, at 3–4.

line with the STJ model. Only time will tell as to which, or whether all, of these efforts will be implemented by the City of Athens.

Again, my complaint centers less around what the Resolution promises to offer and more around the City and the University System's failure to offer the same type of comprehensive repair to other well-documented communities that were also decimated by the predatory nature of their actions. Without comprehensive reparation, there is no true reparatory justice that will heal the broader Black community in the city. The STJ model claims that there can be no meaningful relationship between the Black community and the City of Athens and the University System of Georgia where there is incomplete redress.[247] The framework further claims that these inadequate actions can usher in incomplete healing, which may lead to a "failing commitment to reconciliation."[248] Ultimately, as the STJ framework predicts, the incomplete repair and reparations offered will only divide and exacerbate disunity between the communities it seeks to heal.

As the STJ framework helps reveal, the Athens resolution is well-intentioned, but remains incomplete. When incompletion persists, many uncertainties and questions are unearthed. Borrowing the controlling question from the framework,[249] this Article asks what types of meaningful *reconstruction* and comprehensive, sustained *reparation* will compose the kind of redress that genuinely heals the various Black communities, the City of Athens, and the University System of Georgia? The responses to these questions largely hinge on how the repair is framed. If justice is expanded to include other events of similar significance, and if current political divisiveness and dynamics continue to lessen as the public learns more, then the aspiration for comprehensive reconciliation, though tenuous, will remain. The Social Healing Through Justice framework thus offers a pathway forward in terms of ensuring that repair is expanded to effect comprehensive and transformative justice.

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247. *See* Yamamoto & Obrey, *supra* note 144, at 32.

248. *Id.* at 49.

249. *See id.* at 51.

2. H.B. 1980 Enslaved Ancestors College Access Scholarship and Memorial Program

Applying the STJ Framework to Virginia's H.B. 1980,[250] I found that the analysis unearths very similar concerns brought to light from examining the Linnentown Resolution. In short, Virginia's H.B. 1980 also fails to engage comprehensively with the Four R's from the framework. The House Bill (i) demonstrates *recognition* of the physical, cultural and economic harms in some aspects, but also "embod[ies] discriminatory policies that deny access to resources" and remedies to those harmed by the universities;[251] (ii) accepts the *responsibility* of Black degradation by committing to a process of reconciliation for one demographic, but neither arrests contemporary political dynamics that impose disabling constraints on those harmed nor offers comprehensive accountability in healing all resulting wounds; (iii) provides no *reconstruction* or reframing of history to depict the breadth of interactions accurately; and, as such, (iv) the law offers incomplete *reparations* because the Bill cannot possibly restore survivors' property, culture, economics, and other losses if the Bill does not even acknowledge their hurt.

a. *Recognition*

Higher education redress statutes such as Virginia's Enslaved Ancestors College Access Scholarship and Memorial Program demonstrate that the greater Virginia community in some sense is ready to atone for its past abuse toward Black people. The City of Athens and UGA example illustrates that the narrowing of legislations' language, its arbitrary boundaries, and the hedging of activists' agenda tend to disqualify equally hurt or injured people from redress, especially when HERS fail to contextualize an institution's role in slavery, degradation, and discrimination. The Athens and UGA case demonstrates a mercurial standard that renders people's stories invisible and evokes significant frustration.

Local activists in Virginia demanded more ambitious steps from Virginia's universities to atone for their role in degrading

250. H.B. 1980, Gen. Assemb., Spec. Sess. I (Va. 2021).

251. Yamamoto & Obrey, *supra* note 144, at 33.

Black people.[252] Then-Governor Ralph Northam of Virginia signed H.B. 1980 into law on March 30, 2021.[253] This legislation established the Enslaved Ancestors College Access Scholarship and Memorial Program.[254] The law requires Longwood University, the University of Virginia, Virginia Commonwealth University, Virginia Military Institute, and The College of William & Mary to atone, in obscurity, for their role in slavery and discrimination. This statute requires five public universities in Virginia to fulfill two items. First, it requires that the universities identify and memorialize all *enslaved individuals* who *labored* on former and current university-controlled property.[255] Second, it requires that the universities provide a tangible benefit, such as a college scholarship or community-based economic development program, to individuals or specific communities with a demonstrated historical connection to slavery that "will empower families to be lifted out of the cycle of poverty."[256] As in the Georgia case, these two individual clauses render similarly situated Black people invisible and diminish universities' cruel actions toward Black people to one act—slavery.

Analyzing the first clause of the statute, an individual must have "labored" on the university campus to be worthy of identification and memorialization.[257] Superficially, this language reads as relatively straightforward. Yet, given the

252. *See* Lisa O'Malley, *As Virginia Colleges Begin Restitution Plans for Slavery, Widespread Reparations Remain in Question*, INSIGHT INTO DIVERSITY (Aug. 17, 2021), https://perma.cc/48PB-XMFZ ("[S]tudents have been at the forefront of demanding that colleges and universities make concrete efforts to atone for their historical ties to slavery."); DEVON T. LOCKHARD ET AL., STUDENT ACTIVISM, POLITICS, AND CAMPUS CLIMATE IN HIGHER EDUCATION 189 (Demetri L. Morgan & Charles H.F. Davis III eds., 2019) (describing student protests at various universities, including a University of Virginia protest against "the violent arrest of a fellow Black student"); *see also* Susan Adams, *Virginia House Votes to Force Colleges to Make Slavery Reparations*, FORBES (Feb. 5, 2021, 3:37 PM), https://perma.cc/X6LA-2SB9; Singh, *supra* note 51, at 421; P.R. Lockhart, *A Virginia Seminary Is the First School to Create a Reparations Fund*, VOX (Sept. 10, 2019, 5:30 PM), https://perma.cc/73QK-DTU3.

253. H.B. 1980, Gen. Assemb., Spec. Sess. I (Va. 2021).

254. *Id.* § 1.

255. *Id.*

256. *Id.*

257. *Id.*

unforgiving rigidity and apparent simplicity of the law, stories will likely be forgotten if the law remains unchanged. To illustrate this point further: archives and historical documentation maintain that the College of William & Mary participated in every aspect of chattel slavery.[258] The College purchased enslaved people for labor, forced them to work its tobacco plantation, and insidiously sold enslaved people away from their families, even young children, who were unlikely to have labored for the University given their age.[259] In fact, in 1777, John Carter, the Bursar, attempted to meet the University's economic demands by advertising in the Virginia Gazette that "thirty likely Negroes," presumably including children, are "to be sold . . . for ready money."[260] Taking the statute's words on its face, the sold children or people who did not "labor" on the campus would fall outside the law's confines. As a result, their stories, narratives, and existences would not materialize in the state's mandated memorialization.

This phenomenon also existed at other universities in Virginia. Archival history at the University of Virginia denotes that "[a]pproximately 40 percent of the known burials in the University's enslaved cemetery were young children."[261] This evidences that there were young babies who died before they were obligated to labor. To illustrate this point, John Minor, a professor at University of Virginia School of Law in the mid-nineteenth century, notes that Edward, one of his enslaved babies, died May 7, 1863.[262] Therefore, in applying the statute

258. *See* JENNIFER OAST, INSTITUTIONAL SLAVERY: SLAVEHOLDING CHURCHES, SCHOOLS, COLLEGES, AND BUSINESSES IN VIRGINIA, 1680–1860, 12 (2016); Terry L. Meyers, *Thinking About Slavery at the College of William and Mary*, 21 WM. & MARY BILL RTS. J. 1215, 1215 (2013); Terry L. Meyers, *A First Look at the Worst: Slavery and Race Relations at the College of William and Mary*, 16 WM. & MARY BILL RTS. J. 1141, 1141–54 (2008); *Slavery at William & Mary: A Brief Overview*, WM. & MARY, https://perma.cc/2GR2-XQUU.

259. *See* Slave Sale Advertisement, VA. GAZETTE, PURDIE, Nov. 28, 1777, at 2.

260. *Id.*

261. *Pavilion X Exhibition*, JEFFERSON'S UNIVERSITY . . . THE EARLY LIFE, https://perma.cc/5PWZ-EULZ. As a result of the inhumane and violent acts of university faculty, hotelkeepers, and students, "enslaved people navigated a frightful landscape of tyranny." *Id.*

262. *See* Anne E. Bromley, *Pavilion X Exhibit Highlights Slavery History of Its Former Residents*, UVA TODAY (Jan. 26, 2022), https://perma.cc/WS52-

to cases like this, Edward and his collateral descendants would not be able to take advantage of the statute, given that Edward's life prematurely ended—likely due to the inhumane effects of slavery[263]—before he labored on campus. Put simply, the adverse effects of slavery killed him before he was obligated to labor on the campus. Because of his premature death as an enslaved baby at the University of Virginia, the Enslaved Memorial Program designed to memorialize the enslaved people dehumanized by public universities in Virginia would not be available to him.

Though it is also evident that enslaved children served a substantive role in on-campus labor,[264] it is apparent in the academic literature that some of them were too young to "labor" and, consequently, would be ineligible for recognition under the law's first provision. Take, for instance, Isaiah, an enslaved baby who was born on the University of Virginia campus in February 1863.[265] Given his birth date, he would have only been two years old when the United States formally abolished slavery in December 1865.[266] As a result, Isaiah would have been too young to "labor." There also were other young, enslaved children at the University of Virginia.[267] Consider Sarah, Adelaide, and John,

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GSA6. In Minor's tax records, he listed all of the people who he enslaved each year. *Id.*

263. *See* Julia Munro, ----, *Rachel*, JEFFERSON'S UNIVERSITY . . . THE EARLY LIFE, https://perma.cc/73DW-2D9V.

264. *See Pavilion X Exhibition*, *supra* note 261 ("Enslaved children served a critical role in the University's labor force and proved particularly vulnerable to abuse . . . ."). The University bolsters this claim by proffering a saddening illustration. As a case in point, in 1856, student Noble B. Noland beat a ten-year-old enslaved girl until she passed out. *Id.* In a chilling defense of his actions, Noland insisted to the faculty "that the correction of the servant for impertinence, when done on the spot & under the spur of the provocation, is not only tolerated by society, but . . . maybe defended on the ground of the necessity of maintaining due subordination." *Id.* (omission in original).

265. Munro, *supra* note 263.

266. *See* PATRICK RAEL, EIGHTY-EIGHT YEARS: THE LONG DEATH OF SLAVERY IN THE UNITED STATES, 1777–1865, xviii (2015). *See generally* JAMES OAKES, FREEDOM NATIONAL: THE DESTRUCTION OF SLAVERY IN THE UNITED STATES, *1861–1865* (2012); MICHAEL VORENBERG, FINAL FREEDOM: THE CIVIL WAR, THE ABOLITION OF SLAVERY, AND THE THIRTEENTH AMENDMENT (2001).

267. *See* Bromley, *supra* note 262 (noting that about half of people listed as being enslaved by John B. Minor were children).

three enslaved babies born in 1861.[268] Given their birth date, they would have either been three or four years old when the United States formally abolished slavery in December 1865.

Although conditions were inhumane, young children such as Edward, who was two, and Sarah, Adelaide, and John, who were approximately three to four years old, would have likely been excluded from enslaved labor. This assertion is buttressed by academic literature. While scholars debate the tasks performed and at what age enslaved children entered into the "field" or hard labor, Professor Damian Alan Pargas, in his pioneering piece tracing child enslavement, shares no account that suggests enslaved labor began before age four.[269] He also chronicles vividly how "the nature of childcare and childhood for [enslaved people] differed by degrees throughout the South during the antebellum period."[270] This claim is corroborated by a survey from the Slave Narrative Collection that disclosed that only 48% of interviewees in the Slave Narrative Collection described doing any form of work before the age of seven.[271] Closer to the University of Virginia experience, Thomas Jefferson, the founder of the University of Virginia,[272] also enslaved children at his home estate, Monticello,[273] and forced

268. *See List of African-American Individuals*, JEFFERSON'S UNIVERSITY . . . THE EARLY LIFE, UNIV. OF VA., https://perma.cc/7F69-G7ZC.

269. *See* Damian Alan Pargas, *From the Cradle to the Fields: Slave Childcare and Childhood in the Antebellum South*, 32 SLAVERY & ABOLITION 477, 478 (2011).

270. *Id.* at 490.

271. Richard H. Steckel, *Women, Work, and Health Under Plantation Slavery in the United States*, *in* MORE THAN CHATTEL: BLACK WOMEN AND SLAVERY IN THE AMERICAS 43, 44 (David Barry Gaspar & Darlene Clark Hine eds., 1996).

272. *See* HERBERT BAXTER ADAMS, THOMAS JEFFERSON AND THE UNIVERSITY OF VIRGINIA 99 (1888) ("Never was an institution more completely the materialization of one man's [Thomas Jefferson] thought than is the University of Virginia."); Mark R. Wenger, *Thomas Jefferson, the College of William and Mary, and the University of Virginia*, 103 VA. MAG. HIST. BIOGR. 339, 365–74 (1995) (explaining Thomas Jefferson's role as founder of the University of Virginia and his impact upon its initial educational pedagogical structure).

273. *See, e.g.*, JACK MCLAUGHLIN, JEFFERSON AND MONTICELLO: THE BIOGRAPHY OF A BUILDER 103–04 (1990) (describing Thomas Jefferson's purchase of an enslaved woman and her children); ISAAC JEFFERSON, MEMOIRS OF A MONTICELLO SLAVE AS DICTATED TO CHARLES CAMPBELL IN THE 1840'S BY

them to labor.[274] He also adopted age requirements for hard labor: at Monticello, work for enslaved boys and girls seemed to actualize at ten.[275] More specifically, historical evidence suggests that the Monticello estate assigned children aged ten and above to tasks in the fields, nailery, and textile workshops, or in the house.[276]

Although archival history does not reveal the exact age at which child labor began at the University of Virginia, it is reasonable to assume that the University implemented standards similar to those mentioned above. That means that when applying H.B. 1980, none of the descendants of enslaved children—alongside countless other unnamed children with connections to the University or their descendants—will fulfill the "labored" on the university campus requirement. Thus, the statute's "labor" term will ultimately render these children and their descendants ineligible from benefiting from H.B. 1980 memorialization.[277] While it is likely that the children will benefit from the second method of redress offered in the statute, the dismissal of their role again protects the imperceptibility of the universities' role in child exploitation and enslavement.[278] In effect, this law protects the universities and their legacy of

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ISAAC, ONE OF THOMAS JEFFERSON'S SLAVES 11–12 (Rayford W. Logan ed., 1951).

274. *See Slavery FAQs—Work*, THOMAS JEFFERSON'S MONTICELLO, https://perma.cc/73HF-KMQX ("[E]nslaved children were forced to labor on this plantation.").

275. *See id.* Children under the age of ten "assisted in the care of the very young enslaved children or worked in and around the main house." *Id.*

276. *Id.*

277. *See* H.B. 1980 § 1, Gen. Assemb., Spec. Sess. I (Va. 2021).

> Each institution [named in H.B. 1980] shall [continue to provide tangible benefits to the descendants of enslaved people] pursuant to the Program for a period equal in length to the period during which the institution used enslaved individuals to support the institution or until scholarships have been award to a number of recipients equal to 100 percent of the population of enslaved individuals . . . *who labored on former and current institutionally controlled grounds and property*, whichever occurs first.

(emphasis added).

278. *See id.*

discrimination rather than depicting the robust and widespread nature of their exploitation and maltreatment accurately. By limiting the scope of those memorialized, it rewrites history by masking or playing down the widespread harm that the universities caused. Disregarding children's role in universities' stories serves as a reminder that remedy attempts can also be acts of racial violence in and of themselves—in part because they can be ahistorical and far afield from the role universities played in Black degradation.

Moreover, the first clause of the statute only extends to those who were "enslaved individuals" laboring on "former and current institutionally controlled grounds and property."[279] Archival evidence demonstrates, however, that universities also employed servants who were, in some cases, free people but contractually bound to similar inhumane conditions as enslaved people.[280] In particular, the University of Virginia hired servants alongside its enslaved population.[281] The servants, too, were expected to labor and were physically, sexually, and emotionally abused by faculty or students.[282] For example, William Carr, a university student in 1831, sexually harassed and assaulted both female slaves and free servants during his time there.[283] The university corroborates this claim and notes that it was not an uncommon practice for women servants to be sexually assaulted and abused.[284] The dual system of slaves and servants, and the elements of their experiences that were similar, is also codified in contemporary official University of Virginia literature.[285] In recognizing the similarity of the servants' work to that of enslaved people, the punishments received, and the shared subjugation and maltreatment

279. *Id.*

280. *See, e.g.*, *Indentured Servants*, THOMAS JEFFERSON'S MONTICELLO, https://perma.cc/6MDM-D7TG ("[I]ndentured servants had little personal freedom and their services could be bought or sold.").

281. *See* NICOLE SUNE BAILEY ET AL., SLAVERY AT THE UNIVERSITY OF VIRGINIA: VISITOR'S GUIDE (2013), https://perma.cc/FQ3G-JNU9 (PDF).

282. *See id.*

283. *Id.* (noting that Carr was expelled for this behavior, readmitted to the university a year later before being expelled again for "disorderly behavior and intoxication," only to be readmitted to finish his education).

284. *See id.*

285. *See* Bromley, *supra* note 262.

received via students and faculty, it is clear that there is no substantive difference in their roles. But for their distinct titles, both servants and enslaved people were essentially the same. Yet given the rigidity of the statute, servants and their descendants are unlikely to be recognized under either provision of the statute.

Like the other statutes described, the Virginia legislation is myopically focused on the act of slavery—as if to suggest this was the only harm that the named universities committed—ignoring other tangential implications and consequences that were borne out of Black degradation. That is to say, the legislation has ignored the continued harm the public universities in Virginia did to Black people. For example, archival records reveal that the University of Virginia has also displaced majority-minority neighborhoods to build facilities for students and faculty.[286] Like the City of Athens and UGA, Charlottesville and UVA cleared out the "unsightly houses" in the sightline of the university.[287] The University of Virginia's urban renewal plan and expansion displaced more than 600 Black families and closed more than 30 Black-owned businesses in the neighborhood of Vinegar Hill.[288] It is abundantly clear that Black neighborhoods and Black people are expendable and viewed as "something to get rid of" in the long history of Charlottesville and UVA's physical footprint. Verily, several other examples exist in which the University played a direct role in the physical destruction, displacement, and devaluing of Black neighborhoods.[289] While legislation should rightfully focus on slavery, it should also be comprehensive enough to include the residents of Vinegar Hill and others subjected to atrocities based on race worthy of redress and reconciliation.

To that end, while H.B. 1980 trends in an applaudable direction, it too dismisses injured Black people who have

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286. *See* Brian Cameron & Andrew Kahrl, *UVA and the History of Race: Property and Power*, UVA TODAY (Mar. 15, 2021), https://perma.cc/43JV-P4GP.

287. *Id.* (quoting THOMAS JEFFERSON'S ACADEMICAL VILLAGE 57 (Richard Guy Wilson ed., 1993)).

288. *Id.*

289. *See id.* (describing actions by UVA and Charlottesville to destroy Black neighborhoods such as an area "just south of the Academical Village" known as "Canada" in reference to the free Black people living here, McKee Row, and Gospel Hill).

grievances against these five institutions. When Virginia and other states ratify legislation that ignores the many communities of Black people harmed, a simplistic, homogenous, and incomplete narrative of Black people's interaction with and among universities emerges. Put differently, when these acts do not offer comprehensive remedy and repair, they often exasperate the distrust that Black people experience within and toward higher education[290]—and will likely stifle social healing as well.

Analyzing the legislation with the STJ framework, the bill makes it clear that the Virginia government chose not to recognize all of the people harmed by the slaving economy, such as servants, loaned or work-for-hire employees, and more. The choice not to comprehensively include all people affected by the five public universities' actions will, as the STJ framework predicts, initiate serious resistance to the social healing of the harmed people.[291] Among many things, this choice represents a denial of their contribution, unique story, and, in some cases, their existence in the development of the higher education industry in Virginia. The law's omission means that this group of excluded people will not enjoy the full remedies and

290. *See* David R. Johnson & Jared L. Peifer, *How Public Confidence in Higher Education Varies by Social Context*, 88 J. HIGHER EDUC. 619, 637 (2017); David E. Leveille, ACCOUNTABILITY IN HIGHER EDUCATION: A PUBLIC AGENDA FOR TRUST AND CULTURAL CHANGE 99 (2006) (noting that accountability is one of the major requirements for higher learning institutions to regain trust). An analysis of survey responses from 8,351 college students enrolled across twenty-nine U.S. colleges and universities looked at trust across five categories: (i) college trust, (ii) out-group trust, (iii) social institutional trust, (iv) media trust, and (v) civil society trust. Kevin Fosnacht & Shannon Calderone, Who Do Students Trust? An Exploratory Analysis of Undergraduates' Social Trust 19–20 (2020) (presented at the Annual (Virtual) Conference of the Association for the Study of Higher Education) (on file with IUScholarWorks, Indiana University). The study found higher levels of college distrust among students of color, especially Black students, and students with disabilities. *Id.* at 16–19. Also, the results demonstrate a linear relationship between college trust and a sense of belonging. *Id.* at 21–23. Given this correlation, colleges must examine this dynamic since students of color disproportionately noted mistrust.

291. *See* Yamamoto & Obrey, *supra* note 144, at 27–28 ("[G]roup healing (and healing society itself) can only occur by engaging the self-determined goals of those harmed in multi-layered efforts at achieving transformative justice. . . . This entails engagement by all sectors of society, including communities, public organizations, businesses, and governments.").

reparations afforded by the law and will have to forge their own legal pursuits or claims with the Virginia legislature. The Virginia legislature therefore created a hierarchization of harm that contrasts with the STJ's framework and path to social healing. No recognition of the contribution, status, or existence of these excluded groups means there is little chance of genuine social healing.

b. *Responsibility*

The Virginia legislature's unwillingness to grapple with the breadth of the slaving economy in higher education and its refusal to recognize all those harmed also reflects a denial of responsibility for the full range of longstanding hurts to the Black community. H.B. 1980 only claims responsibility for specific people and acts worthy of repair, rather than providing comprehensive healing that would address the deep wounds of all of those who were harmed. While the law will lead to some memorialization, restoration, and preservation of those who were victims of the slaving economy, its omissions also embody discriminatory boundaries that deny responsibility and, ultimately, mask the abuse, suffering, and disinvestment Virginia universities have caused to those ignored by the statute.

c. *Reconstruction*

The statute's inability to recognize and take responsibility for all harms contributes to the inadequate efforts proffered with regard to reconstructing and restoring both the community of people included in the statute and those omitted. As a reminder, the statute provides memorialization for some people and a tangible benefit for individuals or specific communities who have a demonstrated nexus to slavery.[292] The statute does very little, however, in terms of mentioning actions that restore or foster new and improved relationships with members of the Black community. At first glance, the statute does not include one of the most fundamental steps in most remedies frameworks, including the STJ: a genuine apology. It is important to note that remedies frameworks call for apologies

292. H.B. 1980 § 1, Gen. Assemb., Spec. Sess. I (Va. 2021).

that also reveal changes in the apologizer's perspective.[293] No apology exists in this repair.

Considering the history of abuse and disinvestment in the Black community by Virginia's public universities, the STJ framework suggests that any repair must mention reforms that will reallocate and restore power to the harmed group.[294] More pointedly, power-restructuring aims should "remake institutions to assure non-repetition of the underlying abuses."[295] In this case, the law remains silent regarding any substantive or structural changes that would significantly alter the lives of those harmed by the universities' actions. As demonstrated, the harm caused by university actions was "comprehensive, encompassing [an assault on Black people's] resources, culture, and governance; sustained over generations; and systemwide, implicating both [state] and local governments, businesses, and citizens."[296] Because of the nature of that harm, the framework demands that the reconstruction portion of redress create substantive change that is "*comprehensive*, *sustained*, and *systemwide* in order to foster the kind of justice that heals."[297] While the statute offers scholarships or a community development plan,[298] most universities have elected to offer scholarships rather than large community efforts.[299] Given this nexus, these actions are unlikely to shift the political and economic power in Virginia's current political and economic structures.

While scholarships are certainly a step in the right direction, symbolic payment in and of itself does not promote healing. Remedies and reparations advocates have long expressed concerns with this concept of reparations, where

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293. *See* Yamamoto & Obrey, *supra* note 149, at 34 n.179 (noting that an apology that does not reveal these changes risks being perceived as "cheap reconciliation" (citation omitted)).

294. *See id.* at 34 n.180 ("*Reconstruction* of the political relationship to prevent recurrence of the underlying courses of harm is essential." (emphasis in original)).

295. *Id.* at 34–35.

296. *Id.* at 36 (internal quotations omitted).

297. *Id.*

298. H.B. 1980 § 1, Gen. Assemb., Spec. Sess. I (Va. 2021).

299. Garibay et al., *supra* note 33, at 19–20 (observing that even the endowment of scholarships is considered to be "radical" reform).

symbolic payment is offered but excludes apologies, structural change, public education, and truth and reconciliation commissions.[300] The STJ model claims that without a comprehensive reconstruction of political and economic relationships that responds to the broad harms of those victimized, "there will not likely be the kind of justice that fosters social healing."[301] Without full reconstruction, the intended reconstruction that Virginia seemingly wishes to see "will likely be temporary or illusory—and the pain, dislocation, and social division will persist."[302]

d. *Reparations*

Lastly, although very closely aligned with reconstruction, reparations are paramount to the social healing process. The Virginia statute incompletely repairs and accounts for specific harms of past suppression and oppression. Again, the statute offers memorialization for some and scholarships or a community development plan; however, that is where the reparatory efforts end. Whereas the Athens Resolution promises to gauge the feasibility of more comprehensive reparations and measures,[303] the reparations from Virginia's H.B. 1980 are not as developed and committed to social healing, as demonstrated by applying the STJ Framework.

Therefore, applying the Social Healing Through Justice framework's Four R's helps articulate the many frustrations members of these communities feel and why these repair efforts are both fractional and incomplete. While these efforts are certainly an essential step toward equity in the higher education industry, the efforts fall short of comprehensive repair for the lasting damage of higher education's harm toward these people. However, because these states have a demonstrated willingness

300. *See, e.g.,* Posner & Vermeule, *supra* note 144, at 732 (describing the belief of "some black opponents of slavery reparations that a cash payment will inflict net harm on recipients by taking the government or the white majority 'off the hook' without requiring any further structural change or commitments" (citation omitted)).

301. Yamamoto & Obrey, *supra* note 144, at 59.

302. *Id.*

303. *See supra* Part II.B.1.d.

to offer redress, adopting the Four R's could help provide advances toward substantial and comprehensive healing.

While one certainly cannot capture and share all of the classes of people who have experienced similar harms, it is important to advocate for more comprehensive legislation that is broad enough to help all of those who are similarly situated.

III. A NORMATIVE PATH FORWARD

Given the arguments put forth in this article, a logical question is: what should be the next step in reconciling the tensions in these statutes? Historically, such analysis and interrogation of statutes happen when an invested party brings suit under the law and to the courts.[304] While this Article is not a legal opinion and does not offer any constitutional analysis, there are still options outside of judicial intervention that can help strengthen the statutes. As such, this Part proffers some recommendations regarding how to help strengthen and deepen the impact of higher education redress statutes. Like other legal scholars, I too assert that, when addressing problems related to Black people and the law, the solution cannot just be legal.[305] The assortment of practical concerns in law, politics, and higher education—antiblackness and racism,[306] Black people's distrust

304. Candace S. Kovacic, *supra* note 159, at 41.

305. *See, e.g.*, Ossei-Owusu, *supra* note 29, at 535 (arguing for the elimination of police quotas as a non-legal step toward criminal justice reform).

306. *See* Dian Squire et al., *Plantation Politics and Neoliberal Racism in Higher Education: A Framework for Reconstructing Anti-Racist Institutions*, 120 TCHRS. COLL. REC. 1, 4–9 (2018) (mapping the parallels between "plantation structures and processes" and elements of modern higher educational institutions); Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11, 16 (2016) (arguing that the "Black struggle for educational opportunity" is "a struggle against specific anti-Black ideologies, discourses, representations, (mal)distribution of material resources, and physical and psychic assaults on Black bodies in schools"); Mustaffa, *supra* note 44, at 711 (identifying universities and colleges as sites of "education violence," wherein Black people's lives have been "limited and ended" due to white supremacy); Garibay & Mathis, *Does a University's Enslavment History Play a Role in Black Student-White Faculty Interactions? A Structural Equation Model,* 11 EDUC. SCIENCES 12, 809 (2021) (demonstrating the negative connection between a university's history to enslavement with contemporary relationships with white faculty at a Research 1 university). Lori D. Patton, *Disrupting*

of higher education,[307] political resistance to reparations,[308] the general public's unwillingness to support reparations,[309] and many others—are arguably too burdensome for one singular law to fix. As reparations theorist Robin Kelley notes, reparations should be a fuller strategy that holds significant promise for equity and justice and that "propose[s] a different way out of our constrictions."[310] Thus, as I call for states' higher education industries with histories of slavery, discrimination, and degradation of Black life to comprehensively acknowledge and address these histories, I employ an interdisciplinary approach that articulates how states' ideas of higher education reparations should be more focused on social healing among

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Postsecondary Prose: Toward a Critical Race Theory of Higher Education, 51 URB. EDUC. 315, 317 (2016)

> **Proposition 1:** The establishment of US. Higher education is deeply rooted in racism/White supremacy, the vestiges of which remain palatable.
>
> **Proposition 2:** The functioning of higher U.S. education is intricately linked to imperialistic and capitalistic efforts that fuel the intersections of race, property, and oppression.
>
> **Proposition 3:** U.S. higher education institutions serve as venues through which formal knowledge production rooted in racism/White supremacy is generated.

307. *See supra* note 290 and accompanying text. The results of the Fosnacht and Calderone's study observed two critical differences in college trust across student groups. The first is that, with the exception of Asians, students of color (Black, Latina/o, multiracial, another race or ethnicity) exhibit substantially less trust in their college than white students. Fosnacht & Calederone, *supra* note 290, at 39 tbl. 2. The difference is particularly notable among Black students. *Id.* Second, Fosnacht and Calderone also observed sizeable differences by disability status. Students with a disability express lower college trust level than able-identified students. *Id.*

308. *See* Jeffrey Prager, *Do Black Lives Matter? A Psychoanalytic Exploration of Racism and American Resistance to Reparations*, 38 POL. PSYCH. 637, 648 (2017)

> Policies and practices insuring African American subordination serves as the vehicle through which the petulant White child refuses to grow up. This child has resisted love by refusing to know of its own interdependence with others. So love through reparations, though self-interested, also serves broad social interests and cements together a world characterized by human connectedness.

309. *See id.* at 347.

310. *See* ROBIN D.G. KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION xii (2002).

those harmed and on eliminating discriminatory constraints on redress. Put simply, any attempt to strengthen HERS must be both foolproof and interdisciplinary.

Additionally, this Part is not concerned with proposing and providing improved strategies for specific higher education institutions. I chose not to explore these suggestions, as social scientists in higher education are examining those strategies[311] and contemporary negative manifestations of universities' histories.[312] Indeed, four southeastern states have already enacted some version of HERS,[313] with more looking to implement similar statutes; consequently, the question of what specific schools are doing to offer reparations is not a concern. Moreover, states with inadequate or no HERS replicate, encourage, and deepen inequality in the higher education systems.[314] I therefore focus on how contemporary HERS can be improved and how states can introduce them.

A. States' Interdisciplinary Commission to Study and Develop Higher Education Reparations for Black People

As Yamamoto and Obrey demonstrate in their analysis across reparation initiatives, there is a clear need for truth-telling study commissions.[315] Traditionally, in the reparations arena, as people learn through storytelling, testimonies, and archival data, and as stories are brought to the surface, it becomes much harder to ignore those people and their stories and experiences.[316] For example, in Indonesia, the Commission for Reception, Truth, and Reconciliation was empaneled to investigate the human rights violations committed in East Timor between April 1974 and October 1999 which resulted in the death of an estimated 200,000 East Timorese people.[317] However, the Commission, as a statutory,

311. *See generally, e.g.*, Garibay et al., *supra* note 33.

312. *See generally, e.g.,* Garibay & Mathis, supra note 306.

313. *See supra* note 17 and accompanying text.

314. *See supra* note 9 and accompanying text.

315. *See* Yamamoto & Obrey, *supra* note 144, at 20.

316. *See id.* at 20–21 (describing the "individual and societal benefits of storytelling" as a part of reconciliation).

317. *Truth Commission: Timor-Leste (East Timor*), U.S. INST. OF PEACE (Feb. 7, 2002), https://perma.cc/DQ2M-85EY.

government-created entity,[318] sought to explore and learn more. The Commission extended a call to victims to share their stories, and then it heard firsthand, through storytelling and testimonies, of the "horrific" treatment East Timor women endured for two decades from soldiers.[319] After hearing these stories, the Commission then expanded, recommended, and offered immediate remedies to women who were not initially included in the projected repair.[320] In particular, the Commission recognized their trauma, pain, economic deprivation, and humiliation and offered "immediate individual and group counseling, job training, artistic expression, social welfare, and financial aid."[321] It is unlikely that these women would have received immediate attention and repair without the efforts of a well-resourced, purpose-driven commission dedicated to exposing, learning, and studying all the human crimes from that era. Put simply, their voices and stories would have been rendered silent without the Commission.

With an understanding of the power of a truth-telling commission, issues of under-inclusion highlighted in this Article partly stem from the legislatures' ignorance regarding the widespread injury that the higher education industry committed. To my knowledge, no state has commissioned a panel of scholars, historians, legislators, and members of the harmed community to provide opportunities—such as testimonies, archival mining, and storytelling to learn, study, and unearth the widespread harm its higher education industry committed against Black people. If the governments are not measuring and studying the problem, how can we create a solution? Additionally, these statutes arguably were not created out of altruistic and benevolent motives, but rather were the results of political pressure and posturing "just to say they done something" (to recall the words of an Athens resident in the wake of the Georgia Resolution).[322]

Consequently, in their effort to meet the moment quickly, the laws were passed without understanding the full scope of

318. *See id.*

319. Yamamoto & Obrey, *supra* note 144, at 33 n.174.

320. *Id.*

321. *Id.*

322. *See supra* notes 241–243 and accompanying text.

harm conducted. Because of the line-drawing exercises states engage with in HERS, this Article calls for establishing an interdisciplinary commission to study higher education's widespread acts of violence and their impact on Black lives. If such an initiative is taken, it is likely that, as legislators learn more, they will be able to more comprehensively address the harm perpetrated by their states' higher education industries, as has been the case in Indonesia and elsewhere.

Lastly, it is critical that any such commission include interdisciplinary experts on topics including, but not limited to, government, reparation and tax, and legislative practices. Including these scholars on a commission will mean providing the necessary tools to help strengthen the commission's recommendations for remedies. For example, in states where HERS were implemented or are pending, scholars in government and political science can provide meaningful analysis. Those scholars would be able to investigate trends or predictors of success in their states' legislature, which could then help provide significant insight to local leaders who seek to introduce bills to their colleagues during the legislative session. Legal scholars investigating reparations at a local, national, and international level can also help create legislation that is more in line with the legal scholarship surrounding remedies and reparations. For example, tax law scholars can help bring nuance and intelligibility to the relationship between local tax law and policy, and reparations. Tax law scholars can also help ensure that the people harmed are not paying for their own reparation. Finally, in recognizing the political divisiveness of reparations, legislative experts can help legislators employ the best tactics to pass comprehensive HERS in their state.

B. Use of Third-Party Pressure

Given that HERS largely originated from the work of dedicated activists,[323] activists should continue to play an

323. See *supra* note 49 and accompanying text. I use the term activists in this section as a broad term to capture all people invested in higher education equity (for example, student-activists, scholar-activists, politician-activists, and reparationists). This term is intended to include the traditional meanings of activists, but also seeks to include untraditional people who want to bring about political or social change in the higher education industry.

important role in ensuring that HERS are comprehensive. While activists should rightfully continue to lobby their legislators to create more comprehensive laws, I also call on activists to look beyond the statehouse to other influential third-party entities that can persuade legislators or state institutions of higher education to proffer comprehensive repair and reparations. Activists should expand their dialogue to include accrediting academic bodies and the *U.S. News and World Report*'s ("USNW&R") rankings. If activists are successful in attaining the proposed recommendations outlined in the subsequent paragraphs, then legislators and universities will be more likely to offer comprehensive redress to prevent their own state's institutions from experiencing negative consequences that subsequently affect the public universities' academic stature and standing. Put bluntly, if institutions choose not to embrace factors or measures that are salient to accrediting bodies or to the USNW&R, then both their accreditation and ranking would likely be in jeopardy.

Consider regional accrediting bodies. Regional accrediting bodies in higher education are critical to an institution's survival. Without accreditation, universities and colleges are unable to receive federal student loans or financial aid, and many institutions cannot survive without federal financial aid.[324] The Fourth Circuit Court of Appeals recently described accrediting bodies' influence and noted that they are neither state actors subject to constitutional due-process requirements nor subject to any express private right of action.[325] Congress has given accrediting agencies "life and death" power over these schools by delegating to them decision-making power.[326] While there are six regional accreditors that measure institutions' "quality," the accrediting process is relatively unified nationwide.[327] Accreditors all investigate numerous areas of an institution, including, but not limited to, institutions' finances, academic programs, mission, governing boards, donations, library resources, aspects of diversity, and student support

324. Pro. Massage Training Ctr. v. Accreditation All. of Career Schs. & Colls., 781 F.3d 161, 170 (4th Cir. 2015).

325. *See id.* at 169–71.

326. *Id.* at 170.

327. *See id.* at 167.

services.[328] Because accrediting bodies are private, self-regulated, decentralized, nongovernmental entities, they are at their own liberty and discretion to create measures important to an institution's quality.[329] For example, the Southern Association of Colleges and Schools Commission on Colleges ("SACSCOC") can evaluate anything that goes to "the effectiveness of institutions," ensuring that institutions meet standards that "address the needs of society and students."[330] Given this mission, activists could make the case that comprehensive HERS will help address societal needs and thus ensure that redress efforts are included as part of accreditation and rankings.

Activists can also lobby accrediting bodies and urge them to add measures that question whether institutions engaged in Black degradation and how the institution has attempted to redress those harms. While one may think that accrediting bodies do not respond to the public's requests, recent examples demonstrate that, while the process is complex, accrediting bodies are influenced by the needs of society.[331] Take, for example SACSCOC, the accrediting body that would oversee three of the four HERS covered in this Article. In 2019, SACSCOC created a diversity, equity, and inclusion position statement that fortified its commitment to those ideals, and detailed the mechanisms and standards used to demonstrate institutions' commitment to them.[332] I posit that the statement was partly in response to relevant stakeholders interrogating and demanding that SACSCOC demonstratively commit to ensuring that its assessment is broad enough to include diversity, equity, and inclusion. Another example of accrediting bodies meeting the moment is when standards moved away from a rigid application of quantitative measures to those that

328. *See id.* at 173–74.

329. *Id.* at 170.

330. S. ASSOC. OF COLLS. AND SCHS. COMM'N ON COLLS., THE PRINCIPLES OF ACCREDITATION: FOUNDATIONS FOR QUALITY ENHANCEMENT 3 (6th ed. 2017) [hereinafter SACSCOC, THE PRINCIPLES OF ACCREDITATION].

331. *See, e.g.*, S. ASSOC. OF COLLS. AND SCHS. COMM'N ON COLLS., DIVERSITY, EQUITY, AND INCLUSION: A POSITION STATEMENT (2020), https://perma.cc/SMX9-4Z29 (PDF).

332. *See id.* at 1 (listing strategies such as "[e]ngaging in thoughtful discussions," "[p]romoting diversity," "[d]edicating staff to advocate for and lead diversity initiates," and more).

embrace the idea that institutions should set forth their own educational missions and then be assessed according to how well the educational mission is accomplished.[333] Researchers posit that this shift was largely in response to non-research universities claiming that the standards were too narrow and were not flexible enough to accommodate the wide array of institutions in the United States.[334]

When activists lobby third-party entities, they can circumvent the unpredictable nature of states' political dynamics, which frequently stifle reparation movements or initiatives. Activists can bypass political dynamics in these cases because accrediting bodies are independent, private, and government-free entities.[335] Additionally, in adopting this strategy, activists would, in essence, tie elements of the accreditation process to comprehensive reparations. Therefore, if a college or university chose not to offer comprehensive reparations, the injury would metastasize beyond the harmed individuals to cover many citizens in the state who care about the accessibility and prestige of their local university. By tying aspects of accreditation and reparations together, activists will be able to enlist the help of current students, alumni, donors, legislators, and businesses that care about their state colleges' academic standing. I predict that lawmakers (and institutions voluntarily) would likely implement comprehensive HERS if activists adopted this approach. This type of recommendation is also theoretically underpinned by Derrick Bell's interest convergence theory, wherein he explains that some advancements for Black people are successful when their

333. *See, e.g.*, SACSCOC, THE PRINCIPLES OF ACCREDITATION, *supra* note 330, at 5 ("Accreditation acknowledges an institution's prerogative to articulate its mission . . . within the recognized context of higher education and its responsibility to show that it is accomplishing its mission.").

334. *See* Christopher A. Burnett, *Diversity Under Review: HBCUs and Regional Accreditation Actions*, 45 INNOVATION HIGHER EDUC. 3 (2020); Jeremy Crawford II, *HBCUs: Accreditation, Governance and Survival Challengers in an Ever-Increasing Competition for Funding and Students*, 2 J. RES. INITIATIVES 1 (2017) (demonstrating how academic accrediting bodies do not account for institutional historical differences, aims, and goals).

335. *See Overview of Accreditation in the United States*, U.S. DEP'T OF EDUC., https://perma.cc/6FU6-D2YN (last updated Sept. 14, 2022).

interests converge with the larger majority.[336] Here, by linking the repair to accreditation, activists are better able to bring about convergence with the larger community, thereby incentivizing legislators and universities to offer comprehensive HERS.

Activists can also employ similar strategies and lobby the influential *U.S. News and World Report*. To ascertain quality and value, the rankings measure an institution's reputation, library resources, selectivity, placement success, faculty, and more.[337] Whether they like it or not, colleges, universities, standalone professional schools, and all other institutional types are influenced by USNW&R.[338] Employers, donors, alumni, prospective students, and scholars use the rankings to help gain insight into the best colleges, universities, HBCUs, law schools, medical schools, and other types of educational institutions.[339] Given the rankings' popularity and influence on so many stakeholders, they play a substantial role in institutions' abilities to achieve their own institutional and academic goals.[340] For example, the USNW&R are so influential that some law schools' administrators only address the institutional factors measured by the USNW&R.[341] Because law schools want their ranking to remain the same or improve, they are unlikely to prioritize important measures that are not calculated or adequately assessed by the USNW&R.[342] Thus, what factors rankings systems prioritize are of particular concern because they end up defining which law schools are of high quality and value.[343]

Given the USNW&R's influence, activists also can lobby the private organization to create and assess colleges and

336. *See generally* Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV L. REV. 518 (1980).

337. *See* Christopher L. Mathis, *An Access and Equity Ranking of Public Law Schools*, 74 RUTGERS U. L. REV. 677, 686 (2021).

338. *See id.* at 690 (describing USNW&R's "influence and popularity among alumni and donors" despite the fact that the rankings do not measure or consider racial diversity).

339. *See id.* at 680.

340. *See id.* at 690.

341. *See id.*

342. *Id.*

343. *Id.* at 681.

universities' commitment to comprehensive redress. Activists can request that the rankings adopt a measure that assesses whether institutions engaged in Black degradation and how the institutions subsequently attempted to redress those harms. It is essential to note that the USNW&R also responds to the demands of the public. To illustrate, albeit insufficiently, incompletely, and with great controversy, the USNW&R responded to legal scholar activists' concerns surrounding diversity.[344] In the early 2000s, a group of legal academics were concerned about the USNW&R failing to assess aspects of diversity.[345] After convincing the USNW&R of diversity's importance to legal education, the USNW&R conceded and created a separate diversity index.[346] Subsequently, scholar-activists, frustrated and upset with the methodology of the diversity index, protested and demanded that the USNW&R recalculate and design a better metric to capture diversity.[347] The rankings then stopped producing the diversity index and announced that it would take scholar-activists' perspectives in mind when building the new and improved methodology.[348]

Even more recently, the USNW&R again is changing and recalculating its ranking algorithm to address law school academics, deans, and legal stakeholder's requests and frustrations.[349] To pander and please the law school community, the magazine announced, due to legal communities' pressure and complaints, that it will change its ranking. For example, the publication claimed it would "place less importance on surveys that ask academic administrators, lawyers and judges to rate the quality of institutions and more emphasis on measures such as bar exam pass rates and employment

344. *See id.* at 687–88.

345. *See id.* at 687 n.42.

346. *Id.* at 687–88.

347. *See id.* at 688 n.55.

348. Id.

349. *E.g.*, Risa Goluboff, *An Open Letter to Prospective Law Students From Dean Goluboff, Admissions* (Jan. 12, 2023, 1:16 PM); John Manning, *Decision to Withdraw from U.S. News & World Report Process*, HARVARD LAW TODAY (Jan 12, 2023; 1:18 PM); Hari Osofsky, *Northwestern Pritzker School of Law Will Not Participate in the U.S. News Rankings*, (Jan. 12, 2023; 1:33 PM).

outcomes."[350] It is important to note that the USNW&R is changing its approach because of the conversations with more than 100 law school deans and representatives,

Understanding the fluidity of the rankings, I encourage activists to lobby and pressure the USNW&R to adopt a measure that assesses reparations. Like accrediting bodies, redress should be tied to the institution's reputation and ranking. Assuming legislators care about their state institutions' perceived reputation, they will then likely offer comprehensive repair to protect the value and caliber of the institution. Lastly, even if the state does not offer comprehensive redress, given the influence of the rankings on university practices and actions, individual institutions would themselves be likely to provide comprehensive redress so as not to jeopardize the institution's standing.

C. Statutory Reform

The subsequent concerns address how to successfully enact HERS in states and to improve existing statutes by encouraging legislators to adopt a legal remedies framework such as the Social Healing Through Justice framework. Akin to drafting inclusive and comprehensive HERS, passing new HERS is both simple and complex. It is simple in the sense that well-drafted and inclusive HERS can be drafted, adopted, and enacted rather seamlessly and promptly, particularly when states have studied the issue through an interdisciplinary commission. In addition, statutory reform for HERS may be even more tangible given the fact that HERS in several states were passed with bipartisan support, partly due to graphic stories shared via the news and social media. I contend that HERS and other reparation bills may decreasingly face opposition from political contrarians as Americans begin to learn and digest the effects of the many historical harms against Black people.

At the same time, getting well-crafted, inclusive HERS passed is not easy, as demonstrated by the states where dialogue has ceased, primarily because some people see redress as threatening, meritless, and divisive. Lawmakers claim that

350. Robert Morse & Stephanie Salmon, *Plans for Publication of the 2023–2024 Best Law Schools*, (2023), https://perma.cc/QF2V-HNNE.

such statutes will lessen their electability and wonder whether there is enough bipartisan support to pass them.[351] Legislators, however, will likely be unable to ignore, dismiss, and disregard concerns from a larger demographic of people because current HERS demonstrate that as public interest in HERS has improved, and the public has learned about higher education's racial atrocities, support for reconciliation has followed. For example, as the residents of Athens learned more about Linnentown and UGA's treatment toward its residents, there was a public outcry for reconciliation and redress in Athens.

The other task is to further develop existing statutes. Most HERS have significant and articulable inadequacies, as noted in this Article, including ambiguity, discriminatory practices against similarly situated people, unclear consequences if institutions fail to comply with the statutes, and many others. Given this nexus, I advocate for a basic HERS framework that acknowledges some of the inadequacies discussed here, while simultaneously aggregating the finest qualities of current laws. This basic model should adopt a legal remedies framework like the STJ framework detailed above. In embracing a legal remedies framework, legislators will promote social healing and will be able to undergird and strengthen statutory redress using theoretically sound approaches. Furthermore, legislators who advocate for HERS can find comfort in adopting a framework, like the STJ framework, because it calls for the suspension of the political economy and focuses on social healing and reconciliation.

D. Other Considerations for Current and Future HERS

Considering the pitfalls and features of enacted HERS, I set guidelines for legislators to consider when promulgating them.

First, careful consideration should be given to how the legislative benefits proffered to the victims will be paid for and implemented. That is to say, as was the case for Virginia's bill, legislators should disallow universities from using state resources (as the people who were or are injured contributed to that pool of resources) or from increasing tuition rates, student

351. *See* Eugene Scott, *Support for Reparations Has Grown. But It's Still Going to Be a Hard Sell for Congress*, WASH. POST (Apr. 15, 2021, 6:14 PM), https://perma.cc/PDQ8-ZX49.

fees, or any other student-facing charge to cover the costs of the redress proffered. To require colleges and universities to contribute from their reserve or to find external resources would be fairer than allowing the injured parties to pay for their redress. For example, the University of Virginia, knowing it must follow and comply with Virginia's statute, recently secured a $10 million dollar gift that is earmarked for diversity, equity, and inclusion, which includes efforts that will bring the university into compliance with the new law.

Second, what is missing from current HERS is a careful consideration of assessment and enforcement of the law. Most HERS currently build-in ambiguity concerning when universities must fulfill the statutes. In not specifying or proffering assessment tools, legislative bodies will allow universities and colleges the opportunity to take advantage of the ambiguity by taking liberties and extended timeframes for fulfilling the statute. This point is similar to the historic *Brown v. Board of Education II*[352] debacle, whereby the United States Supreme Court introduced the phrase "with all deliberate speed" to curb the South from taking advantage of the courts' first ambiguous order one year before.[353] In the same vein, legislators should also consider consequences for universities that are out of compliance with the statute. As currently enacted, the legislation fails to consider the appropriate consequence when universities do not promptly comply with the law. Typically, in common law, organizations that violate the law face fines, injunctions, damages, and any number of other unpleasant consequences. Careful consideration should be given to the consequences for non-compliance in universities' actions.

CONCLUSION

Although higher education redress status has circumvented serious in-depth scrutiny for a host of reasons, a growing group in the public rejects their current use and believes that a comprehensive structure must replace current laws. This Article provides descriptive insights into how HERS work and

352. 349 U.S. 294 (1955).

353. *Id.* at 301.

why they are a pressing issue.[354] Importantly, this Article has shown how higher education redress efforts, while intending to promote reconciliation and redress, impose discriminatory practices and arbitrary boundaries on equally situated and harmed people.[355] These inadequacies emerge as a reminder that higher education harmed Black people in some of the most egregious ways. Higher education has also reinforced that point by rendering certain people's pain and harm unworthy of attention, ignoring their contribution to the foundational and subsequent success of higher education, and enacting undeveloped and inadequate legislation.

Ultimately, these statutes do very little to achieve states' interests in true reconciliation and redress. HERS, as currently passed, simply have appreciable inadequacies. This Article thus takes steps toward unpacking the complexities underlying higher education redress statutes.

354. *See supra* Part I.

355. *See supra* Part II.