Expert Team: Scope of Work for Strategies to Calculate California's Harms

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Introduction

The Expert group will present three models for the Task Force to analyze when calculating compensation for harms in California.

1. Harms/Atrocity Model
2. National Reparations Model
3. Hybrid Model

Each model will be briefly explained in the scope of work with the necessary measurement criteria, timeline, and data requests associated with the methodology.

Important Framing Questions:

a) What are the damage time frames? This becomes even more important for the prioritization of Black descendants of persons enslaved in the United States. 1865-1960?

b) Will there be a California residency requirement? If yes, how will it be determined?

c) What year determines the beginning of harm? Are there different starting points and end points for each atrocity category?

d) Will direct victims and/or all Black descendants of U.S. slavery in California (who meet the residency requirement) be compensated?

e) How will reparations be paid and measured to ensure the form of payment aligns with the estimate of damages?

WHO: Lineage-based/direct victims/family members?

WHAT? Residency Requirements

WHEN? Time frame for each atrocity and harm based on economic evidence.

Tenets of Model* Eligibility – Time – Residency

The **community of eligibility,** as defined by the Task force, is lineage based and includes individuals who are descended from at least one African American chattel enslaved person or the direct descendant of a Free Black person who lived in the US prior to the end of the 19th century.

Model #1: Harms/Atrocities Calculation Model

The Expert group has identified five harms/atrocities the state of California should compensate. From that list, the expert group has selected five categories of harms/ atrocities for which we believe we can develop calculations. The methodology to calculate damages associated with each of the categorized harms/atrocities will be developed by the expert group subject to approved by the Task Force.
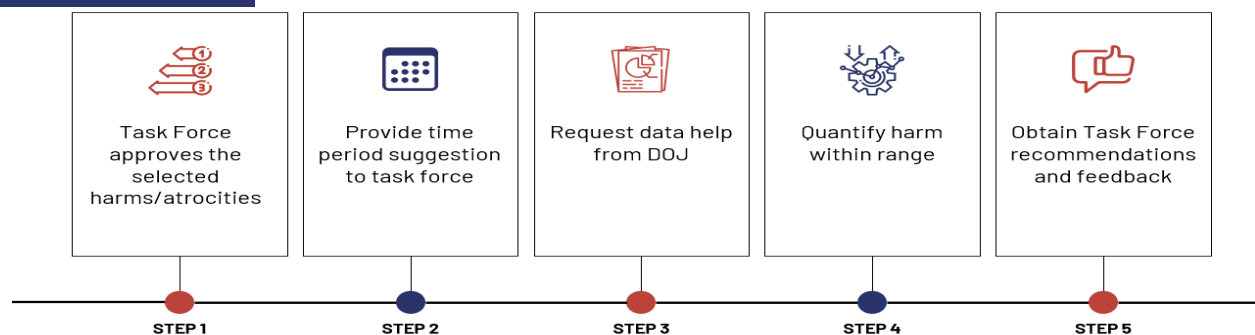
Harms/Atrocities:

1. Unjust Property Takings by Eminent Domain
2. Devaluation of Black Businesses
3. Housing Discrimination and Houselessness
4. Disproportionate Black Mass Incarceration and Over-Policing
5. Health Harms

Remedies/Redress:

While the Expert group has identified five harms/atrocities it believes can be modeled with existing data, there will be ongoing communication with the Expert Team and the Task Force to provide analysis related to direct fiscal redress and/or other forms of reparations and remedies as examined by the Task Force. These atrocities may link to the analysis from the interim report with conversations between the Task Force and the Expert Team around costs, impact, and remedies to harms/atrocities. It is anticipated the Task Force will later suggest various remedies in response to the models and the Expert Team will assess how those proposed remedies compare to the estimated harms.

Expert Team Steps:

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
Task Force approves the selected harms/atrocities	Provide time period suggestion to task force	Request data help from DOJ	Quantify harm within range	Obtain Task Force recommendations and feedback

*All data requests/help from the DOJ will need to be received by the expert group in mid-November (2022) for timely production of estimates.
**The expert team will proceed after the Task Force has confirmed the sequencing of five harms/atrocities for estimation.

Atrocity #1: Unjust Property Takings

First, start with the rolls of Blacks—initially confined to city centers—who cities forced to leave with eminent domain to make room for convention centers, city halls, and museums and/ or look at where they landed—many settled in newly established Black neighborhoods circa 1980, where they hoped to have lower mortgages and property taxes, better schools, and safety. In some cases, their children and grandchildren live in the homes their grandparents built when they were pushed off their property.

Second, two potential approaches to calculate the amount of compensation are the following: 1) Examine the market value at the time the property was taken. Determine the amount that was paid to the owner. Subtract that figure from the value of the property and increase the net value of the property by adding in a fair measure of the estimated appreciation to the present day. 2) Use the current value of the property as a measure of compensation due. There is a complication here if the property value has declined or it is being used for infrastructural purposes that will make it difficult to quantify the value of the property. There are some strategies we could use to overcome that hurdle.

General statistics:

- Census data: CA went from a "high of **7.7%** Blacks in 1980 to **5.5%** Blacks in 2018."

- In 2018 alone, **75,000** Blacks leave the state and **48,000** come to California.

- Over the past three decades, the more expensive coastal cities have lost **275,000** Black residents

Data Required for Calculations:

- Bruce's Beach ("BB")—market price for properties adjacent to the Bruce Family's holdings.

- BB—who were the other Black families that owned land within ¼ mile of the Bruce Family Resort? Were there also White families whose land was taken at the same time? If so, what was their compensation?

- Year-by-year estimates of average equity value of Black and White homes in California? Potentially drawn from appraiser records adjusted for possible discrimination on the part of the appraiser.

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- Los Angeles Convention Center, City Hall, LAX, LA County Museum of Art and other state-subsidized public properties—when was eminent domain instituted, who lost their property and what was paid for those properties?

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- Likewise, bridges (average California construction date 1982), transportation networks, water systems—wastewater and treatment centers, including dams (70% built 1970s), water mains (San Francisco's installed c. 1920) and Los Angeles' before 1938); airports (top six major hubs: Oakland and San Francisco 1927, San Diego 1928, San Jose 1939, Los Angeles 1938, and Sacramento 1967) and school buildings.

An analysis for lost profits can provide a proxy of calculations related to business damages from discrimination. Business value is estimated by profits and/or losses.

The following is the basic formula for lost profits calculations:
Lost Revenues – Avoided Costs = Net Lost Profits

The use of lost profits is lost revenues less incremental costs (business interruption and discrimination can be operationalized using a lost profit framework). Incremental costs used throughout the analysis are based on a percentage of revenue.

Success = F [business traits (financing, industry, location, employer, home-based, owners, firm age), owner traits (gender, race, age, education, reasons for starting, previous experience)]… **Equation (1)**

Lost profits only can be claimed during the damage period. The beginning of the period begins when the discriminatory event occurs, and the damage period ends when the business returns to a normal level of operations. The damage period could be just a few days or could continue for years. When the period of loss is ongoing, lost profits are projected into the future based on the estimate of time for the plaintiff to fully recover from the harmful act.

A lost profits calculation typically consists of determining what profits could have been able to achieve "but for" the alleged damaging acts. The amount of lost profits is calculated as the difference between the "but- for" profits and the actual profits that did exist during the damage period. The purpose of a damage award is to restore the injured party to the position they were in prior to the damaging act.

Data Requirements for California: Rough estimate of business losses by sector.
- Black Business Profits or Revenues by sector/industry – disaggregated by size if possible
- White Business Profits or Revenues by sector/industry – disaggregated by size if possible
- Average business size by race (Black non-Hispanic v. White non-Hispanic) – operationalized as # of firms.

Atrocity #3: Housing Discrimination and Houselessness
Time Frame: 1933 (HOLC) – 1977 (Community Reinvestment Act)

There was local zoning discrimination everywhere in the United States, including California, before 1933 with "zoning rules decreeing separate living areas for Black and white families … prohibiting African Americans from buying homes on blocks where whites were a majority and vice versa" (Rothstein 2017, p. 44).

The focus will be on of de jure homeownership discrimination beginning with the New Deal in 1933 and lasting for 44 years until the Community Reinvestment Act of 1977 banned redlining practices.

Eligible would be all Black California descendants of people enslaved in the United States who lived in California between 1933 and 1977 (or their legal heirs). It is likely that not all Blacks who lived in California in 2021 also resided in the state between 1933 and 1977 or are legal heirs of eligible recipients who did, thus only a portion of this census category would be eligible. To estimate the state's maximum liability from racist redlining practices, the average-per capita housing wealth gap is multiplied with the number of Black California residents in 1980 (1,819,281), yielding **$569,362,181,760, or $569 billion** in 2021 dollars.

If all 2,550,459 Black California residents who lived in the state in 2021 were descendants of the enslaved in the United States and had spent the entire time period from 1933 to 1977 in California (or were the legal heir of a person that did), **each would receive an award of $223,239, or $5,074** for each year between 1933 and 1977 spent as a resident of the state. Heirs not residing in California could file claims independently of this harms identification program, and members of other groups (Blacks who are not descendants of the enslaved or other non-Whites who were discriminated against through redlining) could file their claims later.

Data Requirements for Calculations:

- 1930 Black non-Hispanic population total and percentage of the overall CA population
- 1930 White non-Hispanic population total and percentage of the overall CA population
- 1930 Average (not median!) Black non-Hispanic home value in California
- 1930 Average (not median!) White non-Hispanic home value in California
- 1930 Black non-Hispanic home ownership percentage
- 1930 White non-Hispanic home ownership percentage
- 1980 Black non-Hispanic population total and percentage of the overall CA population
- 1980 White non-Hispanic population total and percentage of the overall CA population
- 1980 Average (not median!) Black non-Hispanic home value in California
- 1980 Average (not median!) White non-Hispanic home value in California
- 1980 Black non-Hispanic home ownership percentage
- 1980 White non-Hispanic home ownership percentage
- The average (not median!) Black non-Hispanic and White non-Hispanic California home prices for each year from 1933-1977,
- The average (not median!) down payments, the average interest rates, and average duration of the loan, both in the government insured White housing market, and in the non-government insured non-White housing market
- Houseless individual and family profiles from the USC Houseless Research Center
- What evidence is there regarding the immediate cause of their houselessness?
- Number of cases where there is evidence of a connection between redlining and eminent domain seizures? (An overlay of HOLC's Redlining Maps with later property takings)
- How many eminent domain seizures took place in redlined compared to non-redlined neighborhoods?

Atrocity #4: Disproportionate Black Mass Incarceration and Over-Policing

While sentencing disparities may go back to the beginning of the State of California, the phenomenon of mass incarceration in the United States has its starting point with the beginning of the so-called "War on Drugs." The term was popularized in 1971 after Nixon declared drug abuse "public enemy number one" in a press conference on June 18th that year (Wikipedia, 2022a). Figure 1 suggests that the incarceration rate from 1920 to 1970 hovered around 0.1%-0.2% of the population. Thereafter it rose to 0.8% of the population in 2008 (Wikipedia, 2011), when it peaked.

The explosion of the prison population in the United States was driven by convictions for drug offenses in the so-called "War on Drugs." It should be mentioned that according to Alexander (2010, p. 99), "patterns of drug crime do not explain the glaring racial disparities in our criminal justice system. People of all races use and sell illegal drugs at remarkably similar rates."

Due to discriminatory practices, however, it is not surprising that non-Hispanic African Americans were by far the most over-represented group in the US prison population. While they represented 13% of the US population in 2010, they represented 40% of the prison population, an over- representation of 27 percentage points. In contrast, Hispanics (of any race) were overrepresented by only 3 percentage points (16% of the US population and 19% of the prison population). Asian Americans were underrepresented by 4.1 percentage points (5.6% of the US population and 1.5% of the prison population), and white non-Hispanics underrepresented by 25 percentage points (64% of the US population and 39% of the prison population; Wikipedia, 2022b).
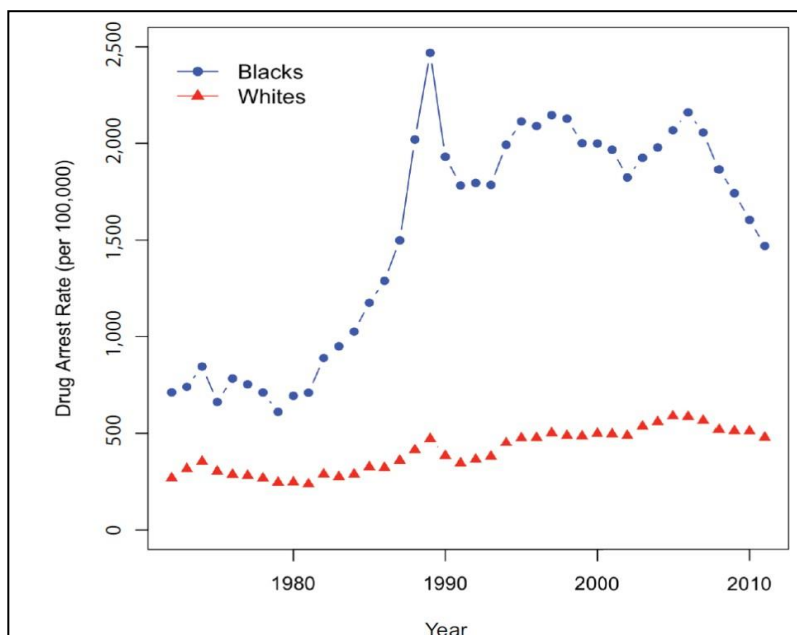
Figure: Drug arrest rates for Blacks and whites per 100,000 population, 1972 to 2011. SOURCES: Uniform Crime Reports race-specific arrest rates, 1980 to 2011 (accessed from BJS). 1972 to 1979 is taken from Federal Bureau of Investigation (1990). (Travis, Western, & Redburn, 2014, p. 61)

To measure racial mass incarceration disparities in the 50 years of the War on Drugs from 1971 to 2021, we estimate disproportionate years spent behind bars for Black non-Hispanic compared to White non-Hispanic drug offenders. Since these disparities are measurable in years, we can attach a monetary value to these

Data Requirements for Calculations:

- California population estimates for each year from 1970 to 2020

- California Black non-Hispanic population estimates for each year from 1970 to 2020

- Black non-Hispanic percentage of total CA population from 1970 to 2020

- Drug Felony Arrests in California from 1970 to 1980 (missing on data chart published on the Internet)

- Black non-Hispanic Drug Felony Arrests in California from 1970 to 1980

- Stop and Frisk can result in your imprisonment or death. How many resulted in neither? Do we want to include compensation for the harassment effect? What is the racial extent of police stops?

- Collect data for individual Blacks who were incarcerated and match them with whites charged with comparable crimes and look at sentencing outcomes. Major data assembly task—look at all incarcerees and their characteristics.

- Younger and younger Black people are being incarcerated. What is this history and how many have been imprisoned? How many have life or "virtual life" sentences?

disproportionate prison years by calculating what a California State employee would have earned in a year on average. We suggest taking California state employees as a baseline of comparison since the imprisoned were forced, unpaid 'employees' of the state. Of course, average private sector wages and benefits earned before incarceration could be taken as a baseline of comparison as well. Of course, whether in the public or private sectors, the average earnings of prisoners were low and with fewer benefits, but this would be due to past employment and wage discrimination and would therefore taint our calculations.

In 2019, full time California state workers earned on average $143,000 annually with benefits (Ring, 2020). According to Friedman's (n.d.) Inflation Calculator, this would be $154,862 in 2021. To that we could add compensation for loss of freedom, comparable to Japanese American World War II internees who received $20,000 in 1988 dollars for 3 years of incarceration from 1942 to 1945 (Craemer et al. 2020, p. 236). This would amount to $20,000/3 = $6,667 per year in 1988 dollars, or $15,795 in 2021 dollars (Friedman, n.d.). The total average compensation would therefore be $154,862 + $15,795 **= $170,657 per year of disproportionate incarceration in 2021 dollars.**

Disproportionate law enforcement was directed at the entire African American community, and therefore affects all Black Californian descendants of the enslaved in the United States who lived in the state during the "War on Drugs" roughly coinciding with the 1970-2020 timeframe. For example, people in neighborhoods targeted for the "War on Drugs" may avoid encounters with the police lest they be treated as suspects. This may interfere with legitimate law enforcement investigations and may lead to elevated levels of unresolved crime. This in turn would reduce the quality of life, depress property values, which in turn would lead to underfunded schools in the neighborhood, and so on. The whole neighborhood may suffer from disproportionate policing because of the "War on Drugs." Thus, all eligible Black descendants of the enslaved should be compensated for lost quality of life due to racial profiling and biased law enforcement.

We multiply Black non-Hispanic excess drug felony arrests by the average drug-related prison term of 1.48 years (Ehlers & Ziedenberg, 2006, p. 24) and the annual compensation amount of $170,657 (2021 full time state workers salary with benefits according to Ring, 2020, and Friedman, n.d., of $154,862 plus $15,795 for loss of freedom based on Japanese American World War II Internment reparations). The annual amounts are added up and yield the sum of $246,476,420,795 or $246.5 billion in 2021 dollars.

We then divide the sum **$246,476,420,795** among the estimated 1,976,911 Black non-Hispanic California residents who lived in the state in 2020, for an amount per recipient of **$124,678 in 2021 dollars, or $2,494** for each year of residency in California during the 50-year-period (1970-2020).

These damages could be paid out to individuals deemed eligible under the Reparation Task Force's definition. Individuals that would otherwise be eligible but who left the state because of race-targeted policing, or other Americans affected by disproportional incarceration (e.g., Hispanics of any race or African Americans not descending from people enslaved in the United States) could file claims separately following the same computational strategy.

Atrocity #5: Health Harms

Black people have been sicker and died younger than White people. Disproportionate disadvantageous health outcomes can be calculated by differences in life expectancy for Black and White Americans, a measure of excess Black mortality. Disparities in illness and morbidity correlate with higher death rates among Black Americans during the adult years.

The rate of diabetes is higher among adult African Americans at 11.3% compared with White Americans at 6.8%, the incidence of hypertension is 41.3% compared with White Americans 28.6%, the rate of premature death from heart disease is higher among African Americans than White Americans (65.5 vs. 43.2 per 100,000 persons), and rates of prostate cancer are 208.7 and 123.0 per 100,000 persons in African Americans and White Americans, respectively. African Americans show significantly higher stress in a range of life domains (acute life events, financial, relationship, life, and job discrimination) and these were predictive of depressive symptoms, poor self-rated health, functional physical limitations, and chronic illness. Again, these correlate with elevated mortality.

Health Disparities by Race and Ethnicity in California (2021, Kuang, 2022)

1. Black non-Hispanic Californians had the shortest life expectancy at 71 years White non-Hispanic Californians had a life expectancy of 78.6, for a life expectancy gap of 7.6 years.

2. The Black population in California experienced the highest death rates from breast, cervical, colorectal, lung, and prostate cancer among all racial and ethnic groups.

3. Black Californians experienced the highest rates of prenatal and postpartum depressive symptoms; low-risk; first-birth cesareans; preterm births; low- birthweight births; infant mortality; and maternal mortality.

Health Harms Calculations

- **Value of Statistical Life (VSL) in the United States in 2020** = $10,000,000
- **Value of Life Expectancy Gap** =($10M*(7.6 years / 78.6 years))/7.6
  = $127,226 **per year of life expectancy**

- **WBHG CA** = $966,921 is the health harm estimate for Black descendants of slavery who spent *all* their lives in CA.
- **WBHG CA =** $966,921/7.6 years =$127,226 for each year spent in CA.

Based on 2020-2022 data
- Life expectancy gap = 7.6 (difference between non-Hispanic Black and White Californians in 2021)

- Value of Statistical Life= $9M to $11M (Rogers 2020, for the US)

- All 2,550,459 Black California residents in 2021 were eligible, should be eligible to be compensated for lost years due to disproportionate health outcomes leading to total:

HEALTH HARMS CALCULATION OF
$2.5 trillion maximum.

Data Requirements for Calculations:
- Value of Statistical Life (VSL) estimate for California in 2020
- California White non-Hispanic Life expectancy estimate for each year from 2020-2022
- California Black non-Hispanic life expectancy estimate for each year from 2020-2022
- Police executions—excess mortalities
- Individuals harmed disproportionately as consequence of living near highways—pollution—and toxic waste sites, electrical stations

Model #2: National Reparations Model

The framework of this model requires a population be identified meriting compensation, calculation of the amount due, and division of the amount across the eligible population.

For the U.S., it is relatively straight forward to calculate what is owed in reparations to the Black descendants of people who were enslaved in the United States. Darity and Mullen (2020, p. 263) write, "we view the racial wealth gap as the most robust indicator of the cumulative economic effects of white supremacy in the United States." This includes intergenerational wealth effects of slavery and post-slavery racial discrimination.

There are 2.36 persons per White non-Hispanic household and 2.44 persons per Black non-Hispanic household according to the Census surveys. Hence the average per person racial wealth gap is approx. **$358,293**. National Reparations are estimated to be **$14.7 trillion**.

Model #2: National Reparations Framework

Key points to take into consideration for this approach per the expert group

- California's Share of Black non-Hispanic population is 5.399%.

- Estimates of the Black non-Hispanic population in California is **2.2 million**.

- A conservative estimate of the share of Federal Reparations for California is **$795.9 billion**.

Model #2: National Reparations Framework

Key points to take into consideration for this approach per the expert group

- If paid to a conservatively estimated 1.8 million black Californians with an ancestor enslaved in the U.S. (80% of the 2.2 million), the amount required will be **$636.7 billion**.

Model #3: Hybrid Framework: National Model & Harms/Atrocities Model

The Task Force will develop and make clear a threshold or procedure for determining what constitutes a harm the state of California should compensate. The methodology to calculate damages associated with all the categorized harms/atrocities will be developed by the expert group subject to the approval of the Task Force.

> **A hybrid national/state model is conceivable if state governments accept the federal minimum of $358,293 per Black descendant of the enslaved in the United States in 2019 dollars and make a down payment towards that debt.**

Under this scenario, California would not assume the total debt of $795.9 billion. The Task Force would determine what percentage of the total debt California will undertake.