# Corporate Responsibility and Repair for Anti-Black Racism

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In an era when the public and shareholders increasingly demand greater accountability from institutions for racial injustice and slavery, scholarship on corporate reparations is more and more essential. This article argues that corporations have played a significant role in the *cultural dehumanization of Blackness* and therefore have a particular responsibility to make repair. Cultural dehumanization refers to embedding anti-Blackness into US culture in service of capitalist profit accumulation, which has resulted in status and material inequalities between Blacks and whites that have persisted from slavery to the present. More specifically, the article argues corporations have a moral duty to offer reparations to Black Americans regardless of any redress offered by other perpetrators of anti-Blackness. It appeals to tort law in providing a moral justification for corporate reparations to Black Americans.

**Key Words:** reparations, racism, corporate moral responsibility, tort law, critical race theory

There is growing interest in "politically oriented approaches to business ethics" (Moriarty 2005; Smith 2019, 128). Some scholars interpret business ethics as those which facilitate the moral and political duty of businesses to enable efficient competition in the market (Boatright 1996; Heath 2014; Martin 2013). Another group of business ethicists argues that firms have a responsibility to promote social and political justice by virtue of their societal function (Blanc and Al-Amoudi 2013; Hsieh 2009; Singer 2019). Within the same general debate, others have formulated a political theory of corporate social responsibility wherein businesses have some state-like obligations and occupy a role in democratic discourse (Scherer and Palazzo 2007; Scherer, Palazzo, and Baumann 2006).

Yet few political business ethics articles have seriously grappled with racial justice as an ethical responsibility of business (Singer 2022). This is concerning because business fulfills a major institutional role and has immense capacity. Even so, its power and influence have traditionally excluded and disadvantaged some groups (Derry 2012). Especially in the Anglo-American context, business has come to reproduce the racialization that evolved during slavery (Thompson 2020). Given that racial subordination is both immoral and antidemocratic, a discussion of the race-related obligations of business is integral to research in political business ethics.

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Racial justice talk ought to prompt further dialogue about the idealized responsibilities of firms. At the same time, it should encourage deliberation about the importance of moral repair following unethical behavior (Goodstein and Butterfield 2010).

The purpose of this article is to argue that business firms have a moral responsibility to offer reparations to Black people in the United States for racial injustice. In an era when the public and shareholders increasingly demand greater accountability from business firms, it is important to recognize the longstanding role business institutions have played in perpetuating the *cultural dehumanization of Blackness*. That is, while the initial harm stems from colonial slavery and Jim Crow segregation, corporations have created a culture of anti-Blackness that continues to sustain Black-white racial inequality in the US. In this article, I argue that firms have a moral duty to offer Black reparations regardless of any redress offered by other perpetrators of anti-Blackness. A key aim of this article is to provide a justification for holding corporations responsible for reparations to Black Americans.

On terminology, note that I use "business firms" and "firms" interchangeably throughout this article to refer to a wide array of entities or legal forms of organization including cooperatives, (closely held to publicly traded) corporations, conglomerates, franchises, government corporations, hybrid social enterprises (e.g., benefit corporations), limited liability companies, partnerships, sole proprietorships, subsidiaries, state-owned enterprises, and trusts (Orts 2013, 175–222). My view of business firms also includes nonprofits, especially "operating nonprofits" that provide goods or services (Hansmann 1980). An exhaustive list of modern business enterprises is not included here, but most business forms are implicated in my account.

Additionally, in this work, Blackness should be understood as it is commonly understood in the US context. The crude "one-drop-rule" adopted in the US South during slavery to define Black (then-Negro) identity has persevered in the nation's dominant culture despite growing multiculturalism (Davis 2010). Throughout this article, Black people or Black Americans refers to individuals *residing* in the US who have self-identified or legally been identified as African American, African-Descended, Afro-American, Black, or Negro. Identifying with more than one race, ethnicity, or culture does not preclude anyone who has historically identified with Blackness from being entitled to repair in this account.

The topic of whether to capitalize the "b" in Black has been the subject of much public debate. The discussion has extended to question whether the "w" in white should also be capitalized. Throughout, I capitalize Black and not white because this article uses Black interchangeably with African American, a specific racial and cultural group. If not for slavery, Black Americans may well have been referred to as Senegalese American or Ghanaian American, but those cultural ties have been long untethered. Conversely, white Americans may refer to themselves as Italian American or Irish American, if they so choose. This distinction is as much about historical understanding and political agency as it is about accuracy.

By way of a roadmap, the article proceeds as follows. In section 1, I explain the cultural dehumanization of Blackness and chronicle anti-Blackness from slavery to the present. Section 2 explores the unique role firms have played in anti-Blackness

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and argues they have a responsibility to make repair. Section 3 explores the current state of reparations activity in the US and in scholarship. Tort law is explored as a useful conceptual framework for fusing moral and political responsibility in section 4. Section 5 reviews the theoretical contributions to the literature before concluding in section 6.

## 1. CULTURAL DEHUMANIZATION OF BLACKNESS

### *1.1 Defining Black Cultural Humanization*

Black Americans suffer status inequality despite attempts at reform. Over the last century, Africana philosophers, Critical Race Theorists, Black Radicalists,[1] and their predecessors and posterity have sought to determine how social and political institutions have created a Black underclass. As Charles Mills has framed it, Blackness relegates one to a state of perpetual subordination (Mills and Vucetic 2021, 158).[2] Early on, Black theorists realized that for slavery, colonialism, or anti-Blackness to endure, Black people must be culturally condemned and legally relegated to a subjugated position. For Du Bois (1903, 132), this meant immutable "humiliation and oppression." Césaire (2000, 42) described the colonization process as *thingification*, wherein the colonized submit to the role of the means of production by force of the colonizer, who must dominate. For domination to continue, the dominating power must ensure that the subordinated group maintains its inferior positionality in every aspect (Césaire 2000). As such, Black people only exist as the *socially dead* to supply a vulturous society, as enslaved Africans served as hosts for the individual and systemic parasitism that constructed the US sociocultural order (Patterson 1985, 337). In other words, as "the development, organization, and expansion of capitalist society pursued essentially racial directions, so too did social ideology," such that "it could be expected that racialism would inevitably permeate the social structures emergent from capitalism" (Robinson 1983, 2). More recently, Mbembe (2019, 16) has been keen to point out that while contemporary democracy largely eliminated violence from slavery and colonialism, violence persists in the "nocturnal body" of democracy via anti-Black racism and other forms of sociocultural othering. In this necropolitical characterization of democracy, anti-Black racism that deteriorates the moral and physical person (body, dignity, and self-esteem) is a daily cultural practice to maintain the construction of an enemy (Mbembe 2019, 57–58). On his account, the need for an enemy to commodify and subsequently monopolize constrains capitalist political economies (Mbembe 2019, 177). Regardless of how these scholars have interpreted the Black experience, they have all identified what Derrick Bell (1992) referred to as the "permanence of racism."

[1] See Robinson (1983) for a detailed overview of Black Radicalism. Robinson (1983, 171) summarizes the Black Radical Tradition as "the continuing development of a collective consciousness informed by the historical struggles for liberation and motivated by the shared sense of obligation to preserve the collective being, the ontological totality."

[2] Mills's account contends that this is a global phenomenon. This article offers no position on the pervasiveness, as it is beyond the scope of this project.

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The afropessimist framework captures this sentiment. As Frank B. Wilderson III (2020, 2010) describes it, afropessimism is a metatheory situated in an analytical lens that views Blackness as an incomparable structural position sustained by anti-Black violence. The account of the *cultural dehumanization of Blackness* extends these ways of diagnosing and characterizing racial subjugation.[3]

The cultural dehumanization of Blackness is a status injury that results from the cultural entrenchment and association of Blackness with inferiority, which allows institutions to capitalize on anti-Black ideology and practice. Neither commodification nor exploitation fully capture the phenomenon. Instead, the cultural dehumanization of Blackness is a form of culturally embedded anti-Blackness that is non-analogous to other struggles.[4] The continuous practice (Mbembe 2019, 58) of Black dehumanization is necessary to sustain the cultural maintenance of Black inferiority that accompanies the social, political, and legal mechanism of subordination. Although different mechanisms work together to reproduce anti-Blackness, Blackness is the theoretical foundation for democratic and capitalist modernity. That is, slavery is the foundation of modern political economy, as it created a racial hierarchy that subdued poor whites and created intraracial unity by giving them elevated status to police and subjugate Black people in order to facilitate white democracy and capital accumulation at the expense of Blacks (Du Bois 1935, 17–30). The day-to-day existence of anti-Blackness may appear distinct from the explicit violence of slavery and segregation. However, I argue that the institutional apparatus is the same. That is, the cultural dehumanization of Blackness is an institutional enforcement mechanism for social and political economic sustenance.

The harm of anti-Blackness may be ideological (Logan 2019), but the institutional function is to maintain cultural dehumanization at a material level. This concept is not to be confused with cultural hegemony—commonly interpreted as the theory that the cultural influence of elite social institutions over a consenting public facilitates domination (Gramsci 2005). Cultural dehumanization of Blackness requires neither consent nor prestige, merely the institutional power to engage in such a way that externalizes the subordinated status of Black individuals. This effectuation of anti-Blackness thereby inflicts a status injury, concluding at what, at the institutional level, is a consistently reproducible process.

However, we should not be quick to conclude that institutions merely exploit the anti-Blackness inherent in the current regime for their own gain. For institutions to capitalize on anti-Blackness, they must create proprietary tools to enforce Black dehumanization and maintain inferior status. Institutions harness anti-Blackness at the organizational level of the material realm to shape ongoing dialectics between Black and white Americans at the macro level. These relational and material disparities compound through "social structures that generate economic advantages for European Americans through the possessive investment in whiteness"—or social and

[3] Blackness may refer to the state of being Black or of African descent. Here, I mean this specifically as the repercussions of Black identity and personhood.

[4] Mills (2018) described race as a sui generis category because of its temporally recent yet immovable presence.

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monetary interests in maintaining white privilege (Lipsitz 2006, 2). Accordingly, one can leverage whiteness as a form of usable property for benefits and power (Harris 1993, 279–82). Blackness, on the contrary, prescribes a persistent state of deprivation and subordination (Mills 2018; Mbembe 2019). In this way, institutional enforcement mechanisms reify anti-Blackness internally such that they have the external effect of structuring society in a way that oppresses Black Americans.

Moreover, the institutional role embeds anti-Blackness into US culture. By perpetuating the ideological notion of Black inferiority through racialized enforcement practices, entities profit from anti-Blackness *and* induce the cultural dehumanization of Blackness. The magnitude of the institutional role stems from the fact that institutions play an integral part in the lives of Americans. Institutions shape employment, education, healthcare, banking, and other arrangements vital to our daily existence in a capitalist society. Individual institutions' immense influence over various aspects of American life compounds into a totalizing cultural effect.

### *1.2 Chronicling Anti-Blackness*

The purpose of this section is to demonstrate the pervasiveness and egregiousness of the harm that is anti-Blackness in the United States. It is not intended to be an account of race-based wrongdoing in its entirety. Rather, what follows is a broad overview of anti-Blackness and its impacts from slavery to the present. More pointedly, this section aims to establish that racial inequality in the US persists as a contemporary collective harm resulting from an earlier atrocity. I use "racial inequality" to refer to disparities between persons of different races, in this case, Black and white, in various areas of social, economic, and political life. Racial inequality may result from intentional discrimination or systemic racism, and this article does not differentiate between the two.

The harm is extensive. Racial disparities exist across sectors but are challenging to separate from one another. This difficulty is due primarily to the interconnected impacts of the various sectors, such as education and income or income and wealth. Oliver and Shapiro (2013, 51) capture this interdependence well:

> Practically, every circumstance of bias and discrimination against blacks has produced a circumstance and opportunity of positive gain for whites. When black workers were paid less than white workers, white workers gained a benefit; when black businesses were confined to the segregated black market, white businesses received the benefit of diminished competition; when [Federal Housing Authority] policies denied loans to blacks, whites were the beneficiaries of the spectacular growth of good housing and housing equity in the suburbs. The cumulative effect of such a process has been to sediment blacks at the bottom of the social hierarchy and to artificially raise the relative position of some whites in society.

Racial subordination and privilege are elements of inequality that can be traced in every sector from the days of slavery to the Jim Crow era and still today. In lieu of attempting to separate these interconnected harms, they are presented chronologically.

The harms identified here begin with slavery. During the slavery period, Black people were dehumanized and oppressed in many ways. For example, enslaved

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Black people were deprived of access to education, as literacy was often prohibited and punishable (Williams 2009). While whites could seek paid employment and accumulate wealth, the enslaved, as "property," were generally denied those opportunities. Thus, Black people were legal objects—rather than subjects—refused the rights necessary to participate politically or change their circumstances.[5] Along with that decision to deny Black people citizenship came a complete denial of Black personhood—a rejection of their humanity and legal standing. Achille Mbembe (2019, 92) articulates this decision-making about the experience of the enslaved as a form of "necropower," which is the social and political capacity to dictate life and death, trapping people in "deathworlds" that force certain people into a life of civil, social, or moral danger or death. The precarious moral and legal status of the Black body is a holdover from slavery, a recurring theme throughout the Black American socio-historical narrative.

The Fourteenth Amendment to the US Constitution is another example of the in-between status and devaluing of the Black body. While it is true that the Fourteenth Amendment granted Black Americans citizenship in 1868, it did not include full political participation. It was not until the passage of the Fifteenth Amendment two years later that Black men were permitted to vote.[6] This progress was part of the Reconstruction Era, which lasted from the end of the US Civil War in 1865 to the Compromise of 1877. It brought a short and modest respite, demonstrating the potential of a US not sullied by anti-Black racism. However, as Nneka Logan (2019) argues, slavery and the racist ideology that developed alongside it "destabilized" the notion of personhood such that the ratification of the Fourteenth Amendment facilitated the notion of corporate personhood established in *Santa Clara v. Southern Pacific Railroad* (1886). More specifically, *Santa Clara* granted constitutional protections to businesses as legal persons. In her view, these acts were part of the cheapening of Black personhood. The amendment granting Black people rights could also extend those rights to things.

A brutal century of Jim Crow segregation followed Reconstruction. This period of US segregation lasted from the late 1870s until the 1960s. The Supreme Court's *Plessy v. Ferguson* decision enshrined the "separate-but-equal" doctrine into law,[7] even while subsequent measures continued to implement outright unequal treatment. Regarding income and wealth, the New Deal and Fair Deal policies of the 1930s and 1940s overwhelmingly excluded Blacks from social welfare policies, such as the G.I. Bill, Fair Housing Act, social security, and minimum wage benefits (Lipsitz 2006). These policies, in addition to others, produced structural disadvantages to asset accumulation. Benefit dispersals followed racialized regional norms, the exclusion of predominantly Black houseworkers and farmworkers from general welfare programs, and the practice of redlining while housing values were steadily

[5] Dred Scott v. Sanford, 60 U.S. 393 (1857).

[6] Black women technically gained the right to vote along with white women with the passage of the Nineteenth Amendment in 1920. However, many Black women were unable to exercise their right because it was won during a period of racial segregation and disenfranchisement.

[7] Plessy v. Ferguson, 163 U.S. 537 (1896).

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increasing (Katznelson 2005; Oliver and Shapiro 2013, 2019). Discrimination was not limited to these areas. Further, legal separation continued in public schools until *Brown v. Board of Education* desegregated them.[8] Even following the Court's decision, the government had to enforce the desegregation of public schools using military force. Additionally, the use of discriminatory measures like poll taxes and literacy tests barred Black Americans from voting until the passage of the Civil Rights Act of 1964 (CRA) and the Voting Rights Act of 1965 (VRA) (Alexander 2010).

Jim Crow segregation was also a significant period in economic history. As has been argued by Professor John Sibley Butler (2005, 151), Black Americans suffered an exceptional form of segregation called "economic detour," under which the law barred them from participating in the broader economic society. However, economic detour did not begin during Jim Crow. To a great extent, Black Americans' involvement in the economic sphere up until Emancipation was *as* a market good.[9] The brief Reconstruction era between slavery and segregation may represent the sole period in US history when Black Americans legally had access to full economic participation (Butler 2005, 152). Unfortunately, Jim Crow laws and practices systematically regressed Black integration into the economic sphere.

Efforts at stifling the Jim Crow period of employment discrimination that pervaded US law and society proved a difficult battle. After all, race-based employment discrimination continued legally until the passage of the CRA. Unfortunately, the legislation erroneously targeted individual prejudice as the root cause of racial discrimination instead of the institutionally entrenched racism from slavery until its passage. This point is of particular importance because there is a common misconception that the CRA or affirmative action policies not only remedied racial inequality but also gave Black people an unfair advantage from the 1960s to the present day. Much to the contrary, historically, the beneficiaries of affirmative action policies are overwhelmingly white women (Crenshaw 2006). Though the CRA and accompanying policies have not offered as much repair to Black Americans as initially may have been intended, the Act provided significantly more protections for racially marginalized persons than any prior legislation (Brown 2014). Policies and practices from the slavery and segregation periods contributed to present racial disparities, but those have been replaced with significant contemporary policies and practices that cement Black Americans as an underclass. The seamless way that new policies and practices can replicate and reinforce the initial injustices of slavery and similar atrocities is why Olúfẹ́mi O. Táíwò assesses racial injustice as structural harm (2022, 143).

One way that racial segregation and economic detour ramify into the present is through a system of segregated economies—mainly through housing and financial systems—that have exacerbated the present wealth gap (Baradaran 2017; Taylor

[8] Brown v. Board of Education, 347 U.S. 483 (1954).

[9] Approximately 90 percent of the US Black population was enslaved in the last census before the passage of the Fourteenth Amendment. See US Census Bureau. *Population of the United States in 1860: Introduction*, 1860. https://www2.census.gov/library/publications/decennial/1860/population/1860a-02.pdf.

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2019). Baradaran (2017) demonstrates how practices like burdening Black Americans with costly payday lending and check-cashing services while limiting their access to no- or low-interest loans and free banking services disproportionately available to white and wealthy Americans inhibit the growth of Black wealth. Similarly, higher interest rates and less friendly terms saddle Black Americans with economic burdens that comparable white mortgagees circumvent (Brown et al. 2023, 14). Over time, the interaction between systems like banking and housing has compounded into a cumulative wealth disadvantage for Black Americans (Brown et al. 2023, 22).

Income inequality is another driver of racial inequity in today's economic sphere. In more than half a century since the passing of the CRA, income inequality has only decreased by 1 percent (Manduca 2018, 182). Studies show that racial discrimination still contributes to income inequality in the labor market. Notably, even Black job applicants from the most selective and prestigious universities tend to fare only as well as whites from less selective universities, albeit with smaller salaries and lower status positions (Gaddis 2015). A recent study on employment suggests that the COVID-19 pandemic only worsened racial disparities in employment (Gemelas et al., 2022). With all else equal, the labor sector is yet another sphere in which Black Americans experience inequality.

In voting and education, the reformulation of policies and practices from slavery and segregation legally supports the reinstitution of previously outlawed racial oppression. The VRA technically ended voter suppression, but legal attacks and practices such as gerrymandering erode its protections.[10] Yet, as Michele Alexander (2010) notes, Black disenfranchisement in modern-day voting and higher education primarily results from disproportionate incarceration, which permits the legal subjection of Black people to restrictive conditions similar to those during slavery and Jim Crow.[11] Incarceration is a legal mechanism that deprives Black Americans of the rights granted by the Thirteenth, Fourteenth, and Fifteenth Amendments. Similarly, in education, school integration gave rise to "segregation academies," where

[10] See *City of Mobile v. Bolden*, 446 U.S. 55 (1980) (In 1911, the predominantly white city of Mobile implemented an at-large system of elections for electing City Commissioners, which resulted in no Black candidate ever holding the office. The Court held that a municipal electoral system is constitutional if it does not have a discriminatory purpose, even if it has a discriminatory effect. Congress changed the law with the 1982 amendments to Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, so plaintiffs must only show discriminatory effect.) See *Shelby County v. Holder*, 570 U.S. 529 (2013) (The Court held that Section 4 of the Voting Rights Act is unconstitutional, meaning its formula can no longer be used to subject jurisdictions to preclearance.) See also *Brnovich v. Democratic National Committee*, 594 U.S. ___ (2021) (The Court held that neither Arizona's out-of-precinct policy nor HB 2023 violate Section 2 of the Voting Rights Act, nor was HB 2023 enacted with racially discriminatory intent. The Majority Court narrowly interpreted Section 2, which makes it more difficult to challenge discriminatory voting laws in court.) See also *Merrill v. Milligan*, 2022 WL 354467 (February 22, 2022) (This redistricting case under Section 2 of the Voting Rights Act is on the Court's shadow docket. The application for a stay was treated as a petition for a writ of certiorari before judgment. The Court granted that petition and stayed the injunction while it resolves the appeal. The decision has the potential to further erode the Voting Rights Act.)

[11] "Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII, § 1 (emphasis added).

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white families could escape the imagined perils of integrated schools (Champagne 1973). Housing apartheid keeps schools racially segregated (Katznelson 2005), concentrating Black students in low-quality, high-poverty schools (Reardon et al. 2019).

Any broad account of racial inequity would be incomplete without a discussion of US policing. While Black Americans experience disparate impacts in nearly every aspect of police interactions (Owusu-Bempah 2017), deadly use of force is perhaps one of the most salient and jarring instances of racial injustice and inconsistency in contemporary discourse. Compared to their white counterparts, Black men and women are nearly 250 percent and 140 percent, respectively, more likely to be killed by police (Edwards, Lee, and Esposito 2019, 16794). Indeed, the latest sensationalized police murder to make national news, that of Tyre Nichols, should shed light on a crucial aspect of inequality in policing.[12] Discussion about the disparate impacts of policing is not intended to draw attention to police of a specific race or even individual bad actors but to the history and structure of the institution. The first police forces in the US were slave patrols in the South formed to quell rebellions and recapture escaped enslaved persons (Walker and Katz 2018, 32; Brucato 2021). In the North, the formation of modern police forces coincided with the abolition of slavery and the mass resettling of Black people in that region (Brucato 2014, 2021). A notable historical theme of US policing includes a disposition toward Black people that allows Black bodies to be captured, subdued, or even killed in service of protecting corporate or white property.

That brings us full circle. This section began with an account of slavery and ended with policing, showing that the Black body remains in a similarly precarious moral and physical position. Despite legal and policy advancements, little has changed regarding the comprehensiveness of racial subordination that Black Americans experience.

## 2. FIRM DUTY TO REPAIR

### *2.1 Firm Cultural Dehumanization of Blackness*

This section provides examples of how the cultural dehumanization of Blackness from a previous age of business firms—first during slavery and later during Jim Crow—not only persists but is and has been renewed by the present generation of firms. Contemporary dehumanization is accomplished by devaluing Black labor, associating Blackness with lesser status, and failing to give credence to assertions of Black humanity. In some instances, firms founded during slavery still exist, including Aetna, Inc., which insured Black people as property to their white "owners," and Tiffany & Co., who founded their first store using profits from a cotton gin (Farrow, Lang, and Frank 2006). Where the historic purveyors no longer exist, modern firms fulfill that role of advancing white supremacy. Contemporary anti-Blackness fails to differ radically from the historical version.

[12] Note that all five of the former Memphis Police Department officers indicted in relation to the extrajudicial killing are Black.

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During slavery, firms treated Black individuals as mere means to capital rather than as humans of intrinsic value. Whether by insuring enslaved Africans as property or devaluing Black labor in the failure to compensate them for work, firms fostered a cultural dehumanization of Blackness. Banks, railway operators, shipping companies, clothing manufacturers, and the like worked distinctly yet collectively to further this racialized ideology.[13]

Business firms were not the sole beneficiaries of the slave trade, but like many other institutions, firms were complicit. Moreover, the term "trade" insinuates that exchange was central to the practice of enslavement. Consequently, those engaging with firms were also culpable. Though not all firms enslaved Black people, they are all distinctly inculpated in the institutionalization of the cultural dehumanization of Blackness. As the foundation of American capitalism and the US economy, business firms globalized and exacerbated a human and cultural genocide. For that reason, their moral loads weigh heavily.

Business firms furthered the cultural dehumanization of Blackness during the era of Jim Crow segregation. This racialized oppression primarily took place on two fronts: employment and service. In the workplace, firms denied positions to Black workers or subjugated them to precarious or lower-status positions (Goluboff 2005). Discrimination was so prevalent, particularly in unionized industries such as longshoring and railroad, that the National Association for the Advancement of Colored People focused on labor litigation during the final decades of de jure segregation (Goluboff 2005). These industries were among those implicated in the segregation of services. The transportation sector, for example, was specifically implicated in *Plessy*.[14] However, the decision federally legalized the "separate but equal" doctrine across sectors. Firm participation in employment discrimination and segregated services devalued Black workers and consumers.

The cultural dehumanization of Blackness exists on a continuum that began during the Transatlantic Slave Trade, evolved under Jim Crow, and is ongoing. Scholar Saidiya Hartman eloquently captures this sentiment:

> If slavery persists as an issue in the political life of black America, it is not because of an antiquarian obsession with bygone days or the burden of a too-long memory, but because black lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago. This is the afterlife of slavery—skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment (2008, 6).

This legacy of the slavery era—the cultural dehumanization of Blackness—manifests today, only in different forms.

Business firms devalue Black Americans in many ways. The racial wage gap in which Black workers are paid less than whites for performing the same tasks is a blatant example of the devaluation of Black people and their labor (Jaret, Reid, and

[13] Farmer-Paellmann v. FleetBoston Fin. Corp., No. 02-CV-1862 (E.D.N.Y. filed Mar. 26, 2002). The complaint provides a long list of business firms complicit in the slavery trade.

[14] Plessy v. Ferguson, 163 U.S. 537 (1896).

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Adelman 2003). Black applicants with "whitened" résumés are more likely to receive callbacks than those whose names or experiences signal their race (Kang et al. 2016). Banning so-called "unprofessional" hairstyles like afros, braids, and locs, which Black Americans disproportionately wear, remains a commonplace employment practice (Donahoo 2023; Donahoo and Smith 2022). The National Football League dismissed Colin Kaepernick, not for poor performance but for silently protesting racial oppression and police brutality (Boykoff and Carrington 2019). This is a workplace enforcement tactic and an example of what Penelope Muzanenhamo and Rashedur Chowdhury (2022) describe as "noncooperative spaces," or environments that are performatively anti-racist yet reprimand individuals who challenge racism. The fear of and exposure to backlash for upsetting the institutional structure of racial dominance is a means to control and subdue Blackness. These instances send messages, either implicitly or explicitly, that Blackness is inferior to whiteness, Black laborers are expendable, and even moderate resistance to the status quo of white supremacy warrants punishment. The Kaepernick example further illustrates how employers regard Black bodies as devoid of value, disposable objects to throw away when they no longer serve their desired purpose or dissent by asserting their humanity.

Similarly, we unquestioningly allow predominantly Black (and Brown) charter schools to utilize strict dehumanizing rules and high-stakes testing while operating as for-profit businesses (Keisch and Scott 2015). These practices allow charter schools to deny education to students with disabilities, students who do not perform well on standardized tests, and students who do not willingly follow rigid behavioral codes. Black—not white—students disproportionately face harsh disciplinary responses (Anyon et al. 2014; Kennedy, Murphy, and Jordan 2017). Because these practices are institutional enforcement mechanisms, it makes sense to target Black bodies—those deemed subhuman and inferior. Only because of that can charter schools, like other institutions, make tangible the abstraction of anti-Blackness. Business firms are then a locus of anti-Black violence.

Penal labor is yet another example of dehumanization by business firms. The issue here is twofold—one set of firms profits from possessing Black bodies, and another increases profits by devaluing Black labor. As scholars argue (Alexander 2010; Davis 2011), the sharp rise in Black incarceration serves as a contemporary mechanism to achieve the same subordinating and sociopolitically alienating functions as slavery and segregation. A disproportionate number of those incarcerated, regardless of gender, are Black (Alexander 2010). Black people represent roughly 13 percent of the US population and approximately 38 percent of people incarcerated in jails or prisons (Sawyer and Wagner 2023). And private prisons are firms that literally profit from holding Black bodies captive. Secondly, business firms invoke the cultural dehumanization of Blackness when they reinforce Black inferiority through payment below the minimum set for all subjects of the state or people in the populace. As a society, we do not question the moral conflict in business firms paying the overwhelmingly Black prison population less than the Federal Minimum Wage in prison labor programs (Leung 2018). A prominent case of penal labor involves Whole Foods, which paid imprisoned persons in Colorado under $1 a day

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to raise fish that they sold for $11.99 per pound (Townes 2015). The issue at hand is not simply the use of prison labor by a multibillion-dollar operation but the fact that a firm can value the humanity of its overwhelmingly Black producers at far less than minimum wage. Both examples—prisons that profit from amassing Black bodies and firms that pay below minimum wage for prison labor—are instances in which modern business firms engage in the cultural dehumanization of Blackness. Firms use tactics like commodification and exploitation to support the reification of anti-Blackness.

More analytically speaking, two pervasive forms of cultural dehumanization of Blackness cut across industries. Let us categorize these as *investment* and *divestment.*

### *2.2 Investment*

Employers typically offer retirement plans to some or all employees, but many popular funds invest in prisons. As addressed earlier, prisons serve the present-day function that enslavement and segregation did in the past to dehumanize and subjugate Black bodies. According to the nonprofit As You Sow (2023), employer-backed mutual funds contribute to the billions of dollars invested in prison-complicit industries by many popular asset managers. American Funds, BlackRock, Fidelity, State Street, and Vanguard are five managers with some of the most significant holdings in companies involved in the prison industry and, more troublingly, in private prisons. Private prisons, in particular, are immoral because the industry's growth is contingent upon increasingly holding more people captive, constantly building more prisons, and lobbying for policy changes to incarcerate more people for longer sentencing terms to fill those new prisons (cummings and Lamparello 2016, 411–13). In other words, private prisons are a legal mechanism through which enterprises can regard people as commodities for the explicit purpose of capital accumulation. These five funds alone have approximately 1.4 billion invested in private prisons and upwards of 1.5 trillion in prison-complicit companies. For the "Big Three" firms that dominate the market—meaning BlackRock, State Street, and Vanguard—most of their assets under management come from "pension plan assets that are managed on behalf of corporations, governments, and unions" (Lund 2022, 98). Many US employers subsidize the modern plantations where Black people again serve as the chattel for capitalist growth and liberal democracy by investing in prisons and thereby fostering Black dehumanization.

### *2.3 Divestment*

In the dynamic where organizations have the most control over their interactions with Black people, they opt to divest from Black workers. Two ways that employers engage in disinvestment from Black people in whom they have shown some baseline interest by hiring them is 1) by failing to invest in diversity, equity, and inclusion policies (Wingfield 2019); and 2) by tracking them into the least sustainable and desirable positions (Gaddis 2015; Wingfield 2019). Even when entities signal interest in Black workers, they find subtle and not-so-subtle ways to mark them as inferior. Employers divest from the Black employees they should be

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investing in supporting by failing to create a workplace environment that fosters equity. Muzanenhamo and Chowdhury's (2022) concept of noncooperative spaces—where institutions signal anti-racist virtues yet fail to support or outright oppose those who engage in internal anti-racist activism—captures this notion. Secondly, by relegating Black employees to subordinate positions while predominantly white and non-Black staff occupy positions of power, employers recreate a version of the dialectic between the enslaved person and their overseer. Simultaneously, organizations signal both internally and externally that Black people are inferior.

Moreover, while business firms share some paradigmatic ways of maintaining the cultural dehumanization of Blackness, these institutions also contribute to the harm in distinctive ways. All those actions and inactions are integral to the cultural dissemination of anti-Blackness. Irrespective of the many internal and external forms this dehumanization takes, firms are liable for repair. As a rule, firms, past and present, establish and perpetuate white supremacy and anti-Blackness through a particular set of institutional actions. The sum of those actions has a culture-shaping effect that negatively impacts most aspects of Black life.

### *2.4 The Responsibility to Repair*

There are several philosophical justifications for redress.[15] John Locke's argument, as articulated in *Two Treatises of Government*, seems most appropriate in the business context:

> [H]e who hath received any damage, has, besides the right of punishment common to him with other men, a particular right to seek reparation from him that has done it … That he who has suffered the damage has a right to demand in his own name, and he alone can remit: the damnified person has this power of appropriating to himself the goods or service of the offender (Locke 2003, 104).

In other words, for Locke, a harmed party is entitled to reparation for said harm from the party which caused the damage. Additionally, the harmed person becomes entitled to reparation in the form of the property of the injuring party, which likely includes money. It follows from Locke's account that when wronged parties make claims against injurers, they are due financial gains. On his account, reparations claims on a wrongdoer or their heirs are only mitigated in the case of a child's subsistence (but not inheritance) claims (Locke 2003, 182–83).

It is important to remember that Locke (2003, 178–79) wrote his reparations theory in the context of colonial conquests and unjust wars. He sought to refute the

[15] See Janna Thompson (2002) for reparations as racial reconciliation; Boris Bittker (2003) and Christopher Kutz (2004) for the view that the harm in need of repair is the lasting legacy of slavery; Charles W. Mills (2007) arguing that the domination contract was founded on a breach of respect for nonwhites and (Mills 2003) that racial domination has multiple dimensions in need of reparative justice; Andrew Valls (2018) for the view of racial injustice as a Jim Crow era harm; Daniel Fryer (2022) arguing repair is needed for unjust social relations created by prior wrongdoing; and Olúfẹ́mi O. Táíwò (2022) defending the view that reparations are needed for creating a global structure that replicates the harms of slavery and colonialism.

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notion of the divine right of kings and the righteousness of colonialism by arguing the right to rule is based on the consent of the governed. Locke was appealing to Natural Law and the rights it affords us all. A more contextualized reading of Locke (2003, 177–87) appears to condemn colonialism and slavery as products of violent injustice and for which reparations are due.

Philosopher Bernard Boxill utilizes this Lockean logic to argue for Black American reparations for slavery. Boxill (2003) claims Locke would endorse Black reparations if he were alive today and remained steadfast in his principles. He postulates that if slavery harmed present-day Black Americans, they are entitled to reparations from those who caused the harm—even if slavery officially ended long ago (Boxill 2003). The moral obligation does not dissipate after a particular time nor disappear after the death of those first harmed by the wrong. The ethical duty persists because the harm is ongoing, and the perpetrators still exist. Boxill (2003) also explains, using a Lockean approach, that even if a government or some other party that did not commit the injury decides to provide compensation, the moral duty persists for the injurer. Boxill (2003, 64) and Locke (2003, 104) assert that only the offender can be held responsible for repairing the harm they cause. Therefore, repair offered by other entities will not fulfill the responsibilities of another individual or firm. In the case of reparations, the offender would be culpable even if the government had fulfilled its promise of repair (e.g., "40 acres and a mule") (Sepinwall 2006). The promise remains unfulfilled.

Additionally, Boxill's account is particularly relevant to business firms because it is grounded in Lockean property rights (2003). Firms are sensitive to the Lockean conception of property rights because it provides the logic for the modern property rights that firms rely on to justify their holdings (tangible assets) or seek redress for intellectual property infringement (intangible assets). This is particularly interesting because Locke's (2003) theory of property was used to justify English colonialism and slavery—Locke had a hand in composing the *Fundamental Constitutions of Carolina* while writing the "Of Property" section of the *Second Treatise* (Armitage 2004). In some ways, a Lockean argument for Black reparations may represent a clever subversion of the initial rights Locke intended to defend. Yet Boxill's account uses sound logic that firms value dearly, such that they would encounter quite the paradox if they attempted to escape accountability. Nonetheless, it is possible that firms would object on the grounds of changing property rights. That is, firms might appeal to considerations like shifting property laws or mergers and acquisitions to lessen accountability for claims against their holdings. Given that claims on an initial wrongdoer's bequest are permissible (Locke 2003), this appears to be an ineffective defense.

## 3. THE STATE OF CORPORATE RESPONSIBILITY AND REPAIR

Reparations are an emergent and salient topic in mainstream and academic circles (e.g., Coates 2014; Gayle 2021; Har 2021; Kuo and Means 2021; Robinson 2002;

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Táíwò 2022). Governments and private institutions have found ways to engage in reparations-minded projects. Reasons for embarking on the path to racial repair vary, ranging from reconciliation to constituent pressure. These rationales are all meaningful in some way, but they do not offer a robust conception of moral repair. Within academia, reparations research that implicates business firms is an innovative yet understudied domain. Many of these approaches appeal to the law, but it is far from the best tool available to pursue reparations.

### *3.1 Existing Models for Repair*

This section briefly surveys some popular recommended and attempted efforts for repair that target parties other than business firms. The intention is to illuminate some of their strengths and weaknesses, and in particular, why they are likely to fail. It also shows that even if successful, these efforts do not preclude the necessity of repair by firms. Additionally, the section points to a heightened public interest in holding responsible parties accountable for their racialized harms. While contemporary reparations efforts have included holding police accountable for their anti-Black brutality (Taylor 2016), most calls for reparations overwhelmingly focus on injustices from the slavery and segregation eras.

To start with the most obvious suggestion: the government should be found responsible for ongoing racial inequity and thus provide reparations to Black Americans. Perhaps the US government, like other governments involved in the Transatlantic Slave Trade, should provide reparations for its sanctioning of slavery. The government should also be held responsible for the ongoing aftermath of slavery—the cultural dehumanization of Blackness. Congress did pass legislation to vote the Commission to Study and Develop Reparation Proposals for African Americans (H.R. 40) out of committee in April 2021. However, even in a historical moment of heightened public and political attention to systemic anti-Black racism, there seems to be little political will to offer reparations to Black Americans.

Short of reparations, there has been some support for truth and reconciliation commissions at the federal and state levels. Most recently, in 2021, Representative Barbara Lee and Senator Cory Booker introduced legislation that proposes forming a national Commission on Truth, Racial Healing, and Transformation to document the effects of slavery and the related ongoing racial inequity.[16] In 2019, Maryland established the Maryland Lynching Truth and Reconciliation Commission to research lynchings and to provide public opportunities to learn and share related experiences.[17]

Calls for reparations also target local governments. In the case of Evanston, Illinois, a municipal government is engaging in what it understands to be a program of repair. The City of Evanston mandated the identification of a direct connection

[16] A Concurrent Resolution Urging the Establishment of a United States Commission on Truth, Racial Healing, and Transformation, Sen. Con. Res. 6, 117th Cong. (2021).

[17] H.R. 307, 2019 Leg., Reg. Sess. (Md. 2019): Maryland Lynching Truth and Reconciliation Commission.

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between the reparations project and the city's previous actions. It identified a disparate impact on the Black community caused by its zoning ordinances between 1919 and 1969.[18] The City describes the reparations program as a "Restorative Housing Program" offering $25,000 grants to qualified "Ancestors" for purchasing a home, home improvement, or mortgage assistance.[19] The Evanston program does not make direct cash payments to all Black residents; grants are only available to a portion of the narrowly tailored pool of eligible applicants. However, housing discrimination is an ongoing issue (Quillian, Lee, and Honoré 2020). The program makes no guarantee that the underlying conduct will cease, nor does it offer restitution or commensurate compensation. The housing program lacks widespread accessibility, comprehensiveness, and responsiveness for those presently harmed by contemporary discrimination.

In sum, the current modes of repair represent positive developments. Nevertheless, they are offered to too few individuals, have minimal benefits, or fail to offer customized repair. Further, they fail to address, let alone remedy, the harms caused by the cultural dehumanization of Blackness. Black Americans ought to have a model of redress geared toward restitution, compensation, and rehabilitation in an individualized, comprehensive, and expedient manner.

### *3.2 The Law*

Despite many municipal and state-level reparations schemes, the law may not be the best tool for a thorough national reparations effort. At the federal level, in particular, the law faces challenges as an avenue to pursue reparations. As longtime law professor Boris Bittker noted, there are several complications for legal action to redress wrongdoing stemming from slavery. Challenges to legal recourse that forestall a path to redress include a long-expired statute of limitations,[20] lack of legal standing to sue wrongdoers for *what are legally considered past harms*, and the Supreme Court's designation of Black reparations as a political question (Bittker 2003).

Though quick-witted attorneys attempted legal approaches, no case for Black reparations has succeeded in the US (Darity 2008). Amy J. Sepinwall (2006, 184–89) has enumerated some of the most common repudiations of a legal path to reparations, which include direct culpability (Ogletree 2003),[21] temporal constraints,

[18] See "Evanston Local Reparations," the City of Evanston's web landing for the program, available at https://www.cityofevanston.org/government/city-council/reparations. Qualified "Ancestors" are "defined as an African American or Black individual, at least 18 years old at the time, who was an Evanston resident between 1919 and 1969." Of the 122 Ancestor applicants who applied, only 16 will initially be deemed eligible by random selection.

[19] See "Evanston Local Reparations."

[20] This was the case in *Farmer-Paellmann v. FleetBoston Fin. Corp.*, No. 02-CV-1862 (E.D.N.Y. filed Mar. 26, 2002). While an expiration of the statute of limitations has overwhelmingly been used as a justification for dismissing cases related to reparations for slavery, those provisions would not be applicable to new legislation.

[21] Ogletree (2003, 1052) references Former Representative Henry Hyde's comment, "I never owned a slave. I never oppressed anybody. I don't know that I should have to pay for someone who did [own slaves] generations before I was born."

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prior remedy,[22] and racism (Allen and Chrisman 2001).[23] Moreover, precedent establishes no basis for a legal remedy to slavery; this will likely remain unless a more justice-oriented Supreme Court were to decide to hear such a case. At the very least, such a Court would need to reinterpret the statute of limitations or standing to address the ongoing nature of the harm.

Critical Race Theory (CRT) insights indicate that the legal efforts to remedy racial harm may have failed due to the racism inherent in the law. As Neil Gotanda (1991) indicates, race-neutral laws maintain white privilege and Black subordination. The law demands that claims of racial subordination stem from "individual, intended, and irrational prejudice" (Gotanda 1991, 46). Thus, structural racial inequality is mainly illegible to the law. There is no klansman to blame for flagrant and intentional bigotry—just a legalized culture of white supremacy. There should be an investment in mitigating disparate impact rather than proving discriminatory intent.

It should come as no surprise that legal recourse is unavailing. After all, the law is one of *the master's tools*.[24] Attempts at racial justice, such as reparations, have long been considered possible "only when it converges with the interests of whites" (Bell 1980, 523). Therefore, civil rights reform and other efforts toward liberal equality are unsuccessful in remedying racial inequality due, in part, to a failure to account for the composition, culture, and enshrining of racism into US legislative and judicial institutions (Crenshaw et al. 1995). Racism is a mundane feature of US society and institutions. The law maintains the status quo subordination of Black Americans and, as such, should not be seen as a viable tool to remedy racial inequality (Bell 1992). So, even while the law *should* recognize the need for repair, reparations accounts must exist outside the legal framework that once institutionalized and justified slavery and apartheid.[25]

For this reason, critical race theorists have suggested scholars should instead "look to the bottom"—look to those who have experienced racial oppression and the false promises of liberalism—for normative insights on remedying racial injustice (Matsuda 1987). While these scholars are critical of the law as a tool for repairing racial inequality, Professor Mari Matsuda has made valuable recommendations as to how tort law might be expanded and modified to support reparations claims by racial groups (1987, 380–85). In the absence of legal relief, critical race scholars remain reluctant to entrust liberal political philosophy with the project of racial justice.

[22] Prior remedies have failed repeatedly. See Special Field Orders, No. 15 (1865). Additionally, opponents often proffer Affirmative Action as a solution that remedied the wrongs of slavery. However, this falsehood has already been addressed by Katznelson (2005). See also Coates (2014) for additional examples of existing practices that further racial inequity, such as the compounding effects of redlining and home loan distribution.

[23] I do not cite the original "Ten Reasons Why Reparations for Blacks Is a Bad Idea for Blacks—and Racist, Too!" by David Horowitz. The piece is archived in various corners of the Internet. The Allen and Chrisman piece lists the points raised by Horowitz and does a thorough job of responding to them.

[24] This a reference to the piece and oft-quoted refrain, "The Master's Tools Will Never Dismantle the Master's House," from Audre Lorde (2007). This is not to suggest that the law should not be utilized as a tactic but to be clear about its limitations as a strategy for racial justice.

[25] My intention is not to obviate the potential for legal remedies based on my moral argument, only to suggest that law has historically failed as a tool for Black reparations.

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Matsuda has cautioned against seeking answers for the harms of racism from academic philosophers that rely on idealized abstractions of morality and justice rather than what is required to actualize these concepts in the nonideal world (1987, 325). CRT helps illustrate an inconsistency between the liberal legal-philosophical framework and racial justice.

### *3.3 Existing Scholarly Accounts of Reparations*

In recent years, academics have also taken up the mantle of theorizing about reparations in exciting new ways. Some efforts identify the government as the responsible party (Kuo and Means 2021), others target businesses (Robinson 2002; Logan 2019), and at least one scholar thinks we should collectively engage in a world-making project (Táíwò 2022).[26]

The debate over culpability usually turns on three things: existence, periodization, and substance. Existence refers to whether or not racial injustice exists. Periodization concerns in what temporal moment one perceives the harm of racial injustice to be situated. Finally, substance refers to the nature of the harm, meaning whether it stems from interpersonal bigotry or structural oppression. By fleshing this out, one can determine what wrongs, if any, have been committed, which parties are blameworthy, and what corrective duties those parties bear.

Susan S. Kuo and Benjamin Means (2021) invoke corporate law to make a moral case for the US to pay reparations. They argue that theorists commonly misassign guilt when it comes to Black reparations. That is, the blameworthiness of the US is about as dependent on the guilt of its citizens as corporate liability is on the culpability of its shareholders (Kuo and Means 2021). The authors make use of the federal *Corporate Charging Guidelines* to show that if legal claims against the US were viable, there would be a strong case against the country based on considerations such as the prevalence of wrongdoing, the acceptance of responsibility along with the enacting of measures to mitigate future harm, and the voluntary effort to offer restitution to victims (Kuo and Means 2021). As Kuo and Means (2021) acknowledge, legal claims against the US are not an available remedy. They offer a purely theoretical contribution at this juncture, but there is value in making a moral case with legal dimensions. We gain an understanding of the types of wrongdoing for which the government legally ought to be held accountable and, subsequently, gain a substantive legal argument for moral repair. Blame and calls for accountability have also been placed elsewhere, including on US business firms. Alfreda Robinson and Nneka Logan offer two distinct accounts for corporate responsibility and repair.

Robinson synthesizes Critical Race Theory and corporate social responsibility to develop an account supporting US corporate reparations to Black Americans, which

[26] There is reason to think that what some scholars (Robinson 2002; Logan 2019; Táíwò 2022) refer to as "corporations" is meant to include a broader subset of business firms. Corporations is often used colloquially to reference a variety of legal business forms. In the sections that analyze their accounts, direct quotations using the term "corporation" should be understood in this context. Elsewhere in the article, I use "business firms" or "firms" to refer to the diverse collective of legal forms used to organize business activity and corporations to specifically refer to the corporate form.

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she terms "Critical Race Corporate Law Theory." More precisely, Robinson (2002, 344) is one of the first to argue that corporate wrongdoing in the form of forced labor (e.g., chain gangs) in the South from slavery through the 1930s justifies corporate reparations. On her account, the wealth gained by those firms and passed down to their corporate heirs constitutes unjust enrichment, just as the victims of forced labor passed down wealth impoverishment to their descendants (Robinson 2002, 339–40). Robinson (2002, 381) argues that her Corporate Reparations Investment Remedy could alleviate the racial wealth gap if culpable firms voluntarily distribute some of their stock via a professionally managed trust to Black Americans who suffered as a result of forced labor programs. Although this is a novel approach to reparations, the model represents a relatively narrow solution for a pervasive problem. One of the most pressing concerns is that relatively few Black Americans would presumably benefit from the reparations program using this model. In the example Robinson gives, *only* Black Americans who were forced laborers or are the descendants of forced laborers would be eligible to receive stocks (2002, 340, 381). There is the additional consideration that because markets ebb and flow, there is no guarantee that beneficiaries could liquidate or collateralize their shares to address their financial concerns. Aside from the practical aspects, a more expansive conception of unjust enrichment by business firms could lead to them admitting greater responsibility and those harmed receiving more substantial repair. So, one way of looking at Robinson's valuable contribution is as a theoretical legal framework that presents a compelling argument for one subset of Black Americans.

More recently, Logan defended an account of corporate responsibility that has reparational elements. She locates the harm in "the ideological degradation of blacks as profit-producing property, devoid of humanity, without intellectual acumen, and deserving of racial subjugation" that happened concurrently with the granting of personhood to business firms (Logan 2019, 979). Logan (2019) argues that the passage of the Fourteenth Amendment allowed firms to root the modern corporate form and corporate power in racial oppression. In response, Logan proffers her "corporate responsibility to race" theory. Corporate responsibility to race is "corporate discourse that uses corporate resources to proactively address racial tensions by illuminating the implications of racial oppression and privilege, giving voice to racial issues, and heightening public awareness of racism in order to foster a more just, egalitarian and harmonious society" (Logan 2019, 983). For example, she suggests public speech from business leaders about racial issues expresses a corporate responsibility to race (Logan 2019, 984). From this and the other examples she provides, we can conclude that Logan's account may provide no more than public relations efforts. To be sure, a corporate responsibility to race should be part of any racial justice effort undertaken by business firms. That is the baseline. Yet if, as Logan argues, the responsibility of business is profound, firms owe significantly more repair to Black Americans for racial subordination and its material impacts.

Olúfẹ́mi O. Táíwò (2022) makes a "constructive" global case for reparations as a world-making project that addresses the developing impacts of slavery, colonialism, and climate change in order to build a better social order for future generations. Táíwò (2022) argues that groups susceptible to environmental harm were likely

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impacted by slavery and colonialism because the world is structured to replicate those injustices. For example, many former plantations were sold to petrochemical companies, disproportionately exposing the overwhelmingly Black nearby residents, often descended from those who had been enslaved on those same plantations, to increased toxins (Bullard 1993; Davies 2018). The injustice was constructing an unjust global structure, such that repair entails constructing it anew without a cumulative disadvantage rooted in historical injustice. As such, Táíwò's moral and political project offers a framework for reparative and redistributive justice. His account aims to ensure that communities who have borne the brunt of globalized racial oppression that emerged from slavery and colonialism gain the "capabilities" and "resources" necessary to realize their vision of justice. As a matter of course, Táíwò (2022, 140) lays out three "standards" for global racial reparations: (1) change the material conditions of people's lives; (2) attempt to remedy the primary moral wrongs of slavery and colonialism; and (3) appropriately assign and discharge responsibility concerning those principal moral wrongs.

Because the scope of Táíwò's decolonial reparations project is global and constructive, his conception of responsibility is broad. He insists, "it demands that we distribute the costs of making the just world toward those corporations, governments, and people that have inherited the moral liabilities of the worldmaking that preceded us" (Táíwò 2022, 98). This framework identifies multiple targets, which is a familiar and laudable strategy.

In past movements for social justice, like the US civil rights, gay rights, and American Indian movements,[27] much of the success has been attributed to engagement with many targets, tactics, and strategies. Multiple approaches, including legal, philosophical, and business models, have worked together to serve a diverse strategy for success. As hard fought as those victories were, so also has been the necessary effort in an attempt to maintain them, as has been detailed in Africana (Táíwò 2022, 19), Indigenous (Pieratos, Manning, and Tilsen 2021, 53), Critical Race Theory (Bell 1991), and other decolonial scholarship. Those battles have become, in their more critical contemporary forms, the Movement for Black Lives, queer liberation, and LandBack movements. These social movements utilize collective action, community organizing, public policy, and legal tactics in service of a larger strategy, sometimes even working collaboratively.

Despite the appeal of a project like Táíwò's, it is incredibly ambitious. It will require significant time, coordination, and strategy. In the interim, it is worth exploring more focused programs that forge a pathway for Táíwò's comprehensive endeavor.

Moreover, in this burgeoning area of scholarship, we should employ multiple frameworks in various disciplines until we find the most appropriate cooperative strategy. This requires mindfulness that the prevalence of any one approach does not mean it is the most suitable.

[27] This is a specific reference to AIM or the American Indian Movement, which rose to prominence in the 1970s. In this article, Indigenous is the term used to refer to the Indigenous Peoples or Native Peoples of Turtle Island.

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### *3.4 Building on Existing Knowledge*

The state of reparations in popular and academic discourse is promising. There are exciting developments in government and scholarship. Existing reparations models are inspiring and demonstrate what is possible with political will. Yet more is necessary in terms of scale and the repair offered. The frameworks tend to focus on governmental responsibility, but many more parties are blameworthy. CRT insights suggest that the law in its current form seems largely unavailing to Black reparations claims, but changes to tort law could allow meaningful change toward racial justice (Matsuda 1987).

Scholarly accounts identify different targets for Black reparations, including the government (Kuo and Means 2021), businesses (Robinson 2002; Logan 2019), and reimagining the world (Táíwò 2022). Some recommendations seem impractical. The federal government has been unwilling to take accountability, and a worldmaking project would require a level of global cooperation yet unseen. The business projects are a good starting place, but they fail to offer comprehensive substantive repair to Black Americans.

While the existing practical models, proposals, and scholarship all serve as the basis for innovation in reparations thinking, there are opportunities for improvement in reparations theory. Overwhelmingly, actual reparations efforts and academic scholarship have looked to legal or political philosophical underpinning for Black reparations. Given the nature of the harms typically discussed, this makes sense. However, repair is a concept in both moral and political philosophy. Scholars would be wise to think of ethics and justice in tandem when it comes to racial justice. In business ethics, as an applied field, making use of political business ethics (Smith 2019) can help better capture the complexities of reparations between businesses and individuals, quasi-state actors and subjects. There are layers and fragmentations when it comes to culpability. Concepts like political corporate social responsibility (Scherer and Palazzo 2007; Scherer, Palazzo, and Baumann 2006) might be able to capture some nuance and overlap between ethical and political philosophical notions of corporate responsibility. In the case of corporate reparations, ethico-politico conceptions of justice seem best positioned to attend to morality of repair and our understanding of repair *qua* repair.

## 4. CORPORATE MORAL RESPONSIBILITY AND TORT AS A FRAMEWORK

Tort law provides a useful framework for understanding the relationship between moral and political responsibility. Tort law is the body of civil law that aims to redress—typically through monetary damages—wrongful actions that injure legal persons, and a tortfeasor is a legal person who intentionally or negligently commits a tort. Tort embodies the spirit of moral repair insofar as it mimics an apology. But it also maintains features of justice relevant to political philosophy. This section fuses two lines of philosophical thinking for a more holistic grasp of repair for racial injustice.

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Utilizing Lockean logic, business firms that participate in or benefit from the cultural dehumanization of Blackness are morally responsible for redressing ongoing harm to Black Americans despite any favorable actions taken by other parties. As established earlier, firms, as a class, benefit from and advance the cultural dehumanization of Blackness. Those firms must provide direct redress to morally absolve themselves of their wrongdoing. It would be insufficient to end only the practices that further a culture of racialized inferiority because material inequality would persist. Redress is better suited to address the practical impacts of cultural dehumanization because 1) firms then have a stake in the cessation of harmful practices (i.e., there is a cost to racism), 2) redress expresses acknowledgment of harm, and 3) reparation creates a pathway to measurable equality that cessation alone does not.

Tort law provides a useful analogy for thinking about corporate moral responsibility. One philosophical approach to tort law is corrective justice, which requires repair and recompense (Coleman 2001). This interpretation of corrective justice recognizes the nature of the harm as stemming from a transactional relationship between parties, meaning the wrong of one party is related to the harm experienced by the other party (Aristotle 1926, 267–81). The legal principles derived from the corrective justice framework are necessarily attentive to the impact of wrongdoing on the harmed party as much as the transgressor's responsibility for the outcome. Corrective justice, therefore, provides moral grounding for tort theory. Then tort law has the resources necessary to support an account that can attribute moral responsibility for wrongdoing in interactions between individuals and business persons.

The moral basis for tort law provides a useful framing for ethically harmful business conduct such as racism. That is, the moral foundations of tort law and the ideals of corrective justice in the law are relevant to the moral grounds of the duty firms bear to repair the cultural dehumanization of Blackness. Tort law has ethical principles that could be used to address Black dehumanization. One could interpret the harm done to Black people as akin to the knowing and purposeful conduct tort law characterizes as compensable intentional wrongdoing that merits financial damages. While the inability to identify and hold precise wrongdoers accountable may seem insuperable, courts have been sufficiently sophisticated in dealing with similar challenges in tort cases. In those instances, plaintiffs have been injured yet cannot pinpoint the firm that caused the specific harm for which they need remedy.[28] Courts, therefore, relied on different standards of causation to impose liability on tortfeasors through market share liability and alternative liability schemes. Those schemes, or at least the moral impetus behind them, ought to be applied in the case of firm responsibility for Black dehumanization.

Market share liability, as first established in *Sindell v. Abbott Laboratories*,[29] is a legal doctrine in products liability cases that allows a plaintiff to establish a claim against a group of product manufacturers for an injury absent the plaintiff's ability to

[28] See e.g., Hall v. E.I. Du Pont De Nemours & Co., Inc., 345 F. Supp. 353 (E.D.N.Y. 1972); Sindell v. Abbott Laboratories, 26 Cal. 3d 588, 163 Cal. Rptr. 132, 607 P.2d 924 (1980); Hymowitz v. Eli Lilly & Co., 73 N.Y.2d 487, 541 N.Y.S.2d 941, 539 N.E.2d 1069 (1989).

[29] 26 Cal. 3d 588, 163 Cal. Rptr. 132, 607 P.2d 924 (1980).

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prove which specific defendant in the group produced the product causing their injury. The doctrine apportions liability among manufacturers who cannot disprove their product caused the plaintiff's injury based on their share of the relevant market.[30] Application of market share liability has been somewhat controversial in the courts, with many proponents arguing that the doctrine is rooted in principles of alternative liability based on causation or protection from physical harm and opponents insisting that it diverges significantly from the common law tort principle of causation (Geistfeld 2006, 451–52).

Nonetheless, market share liability cases shed light on how the doctrine helps conceptualize how to apportion responsibility among firms for harm to Black Americans. For example, in *Sindell v. Abbott Laboratories*,[31] the plaintiff represented a class of young women who developed or were disproportionately likely to develop cancer due to their mother's use of diethylstilbestrol (DES) to prevent miscarriage during pregnancy. The complaint alleged that DES manufacturers acted negligently in promoting the experimental drug without adequate testing and warnings of potential side effects, and the plaintiffs sought damages as a result. Many companies manufactured DES during the period their mothers used the drug. Additionally, since many years had passed since the drugs were used, it was nearly impossible to identify the specific manufacturer that produced the DES drugs their mothers consumed. Yet the named defendants included a substantial share of potential manufacturers. So, the Supreme Court of California established market share liability as a new type of liability for complex tort cases like *Sindell.* Meeting the requirements—meaning the named defendants are potential tortfeasors, the product is fungible, the inability to identify which defendant produced the product is not the plaintiff's fault, and a substantial share of manufacturers operating at the time of the injury are named defendants—along with the ability to prove an actual injury, a court may rule in favor of the plaintiff. Defendants who were unable to prove they could not have injured the plaintiff were required to pay damages equal to their market share at the time of the product's use.

The New York Court of Appeals also used market share liability in *Hymowitz v. Eli Lilly & Co.*[32] Like in *Sindell*, the cases before the Court were brought by plaintiffs whose mothers had used DES. However, the defendants moved for summary judgment because direct causation would be difficult to prove. Their motions were denied, and the higher court affirmed the ruling in the plaintiffs' favor. The Court adopted a national market share theory to apportion a defendant's liability based on their total culpability for their respective portion of the risk of injury to the general public. Under *Hymowitz v. Eli Lilly & Co.*,[33] manufacturers who marketed DES for something other than pregnancy were not liable. Additionally, the Court held constitutional the extension of the statute of limitations by the state legislature for DES cases.

[30] Sindell v. Abbott Laboratories, 26 Cal. 3d 588, 163 Cal. Rptr. 132, 607 P.2d 924 (1980).
[31] 26 Cal. 3d 588, 163 Cal. Rptr. 132, 607 P.2d 924 (1980).
[32] 73 N.Y.2d 487, 541 N.Y.S.2d 941, 539 N.E.2d 1069 (1989).
[33] 73 N.Y.2d 487, 541 N.Y.S.2d 941, 539 N.E.2d 1069 (1989).

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Many questions that arose in notable market share liability cases are relevant for apportioning corporate moral responsibility for the cultural dehumanization of Blackness. For this reason, market share liability provides a pretty good analogy for firm moral responsibility for Black dehumanization. All firms have the potential to produce the cultural dehumanization of Blackness, just as defendants in market share liability suits must be potential tortfeasors. At any given period in US history, implicating most businesses would represent a substantial share of firms that have contributed to anti-Blackness. On the requirement of fungibility, Black people were, at one point, considered fungible in the literal sense. More contemporarily, Black dehumanization is fungible insofar as one form of anti-Blackness can be exchanged for another. These are the many iterations of cultural dehumanization—from slavery to mass incarceration, lynchings to police brutality, literacy tests to voter suppression. Similarly to the legal doctrine, it is difficult to account for each firm's specific role in Black dehumanization. However, we have substantial information that implicates firms in the cultural dehumanization of Blackness. Based on strong intuitions from tort theory about responsibility schemes that provide a conceptual map for how to apportion responsibility for collective wrongs, we have reason to think firms ought to be held accountable for their market share of anti-Black racism.

Additionally, tort theory provides a helpful framework for how we might think about business firms that have the moral responsibility to make repair for the cultural dehumanization of Blackness. Under modern tort law, a party is liable when their intentional action or negligence causes injury or harm to another. The scope of conduct typically covered under intentional tort liability includes wrongs like assault, battery, conversion, defamation, false imprisonment, fraud, infliction of emotional distress, invasion of privacy, misrepresentation, and trespass to land. It seems uncontroversial to suggest that some firms likely committed many intentional torts during slavery and Jim Crow through assault, battery, false imprisonment, and infliction of emotional distress. Instead, let us focus on the more contemporary harms rooted in slavery and segregation-era practices. Firms routinely invest in prisons that disproportionately incarcerate Black Americans and simultaneously divest from that population through insufficient investment in internal racially just policies and practices. Under tort law, a person is liable for negligence when their action breaches a legally recognized duty of care and causes an injury. At the very least, given the country's history of racial injustice and present racial disparities in nearly every area of life, it is foreseeable that continuing down the same path without any corrective measures is likely to yield similar results. A decision not to account for persistent Black dehumanization is a failure to exercise a reasonable duty of care. This negligence is plausibly attributable to Black Americans' loss of present and future earnings and pain and suffering that might be expected to coincide with dehumanization. Firm investment and divestment, coupled with other harmful practices, help sustain the cultural dehumanization of Blackness. As outlined earlier in this article, this instantiation of status inequality corresponds with material losses, but anti-Blackness has other effects. Racism negatively impacts mental (and physical) health (Bailey et al. 2017;

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Williams, Lawrence, and Davis 2019), which one could construe as an infliction of emotional distress. In general, tort law provides a remedy for physical and emotional injuries through narrowly circumscribed rights to recover purely economic injuries. Despite the legalese, these torts correspond with moral wrongs. By analogy, tort law explains why holding firms partially or even fully responsible for moral injuries to Black Americans is permissible.

Further, business firms might seek to evade responsibility by focusing on their intentions rather than the impacts of their actions. Firms might claim that they could not have known that racialized slavery, exploiting and devaluing Black labor, associating Blackness with lesser status, and failing to recognize Black humanity, would cause the cultural dehumanization of Blackness. However, consider the "eggshell plaintiff" rule in tort law, which holds tortfeasors liable for all the consequences of their actions—foreseeable or not.[34] On something like the eggshell plaintiff rule, firms are responsible for their negligent *or* intentional acts of anti-Blackness and for the foreseeable *and* unforeseeable circumstance of the diminished status of Black Americans.

Again, this appeal only points to the conceptual usefulness of a tort-like framework; it is not an argument for the use of tort to make reparations claims against firms. However, this does not intend to suggest Black Americans are not additionally due damages in tort, including non-economic or punitive damages for pain and suffering, or to discourage further harmful behavior. The argument contends that restoring some linked material and status injuries associated with anti-Blackness vis-à-vis compensatory damages would allow Black Americans to be financially "made whole" for a specific set of compensable harms. One further point is that while this argument uses valuable features from tort, this is in no way a suggestion that reparations from business firms should perfectly counterbalance the harms associated with the cultural dehumanization of Blackness. Some aspects of this harm are non-compensable; therefore, no form of compensatory justice is likely to repair the vast scope of harms experienced by Black Americans.

Moreover, just as persons have been held liable in the market share liability cases discussed above, firms could be held responsible for the cultural dehumanization of Blackness. Courts, legislatures, and legal parties have willed justice into existence in creative schemes rooted in tort theory and moral philosophy. This just goes to show where there is indeed a will, there is a way toward racial justice.

## 5. CONTRIBUTIONS

While I have sought to argue that business firms owe reparations for perpetuating and profiting from anti-Blackness, one could argue that my account does not go far enough. That is, if legal, political, and economic structures have merely adapted to cement new ways of Black dehumanization into American culture, there is no reason

[34] Vosburg v. Putney, 80 Wis. 523, 50 N.W. 403 (1891). The holding marks defendants as liable for all present and future injuries, even those typically unexpected or unforeseen, when the plaintiff is particularly vulnerable. The vulnerability of the plaintiff is not a viable defense for the defendant.

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to think firm reparations alone will mitigate the harm. Perhaps nothing short of abolition or dismantling the entire sociopolitical and economic system will bring about justice. However, firm reparations are one mitigation strategy for the near term.

Establishing a moral ground for holding business firms responsible for the cultural dehumanization of Blackness suggests a need for additional research on business reparations. This article does not offer a mechanism through which business firms can fulfill their reparatory duties to Black Americans. In an effort to develop a model, many questions need answers: Which businesses owe reparations? And should some firms be exempt? Who is eligible to receive reparations? How should reparations be distributed? What harms are compensable via reparations? Scholars from a wide range of disciplines can help address these difficult business ethics questions by sharing their own insights and disciplinary tools.

More narrowly, there are significant implications for the field of business ethics. As much as we might want to maintain a post-racial analysis, the article highlights the need for business ethics to pay greater attention to the micro-, meso-, and macro-impacts of race. It suggests that operating as though scholarship is race-neutral lacks academic rigor and might be better understood as overrepresentation of a particular ideological perspective. Yet the field's growing adoption of more nuanced and critical race-conscious frameworks (e.g., intersectionality) shows great promise.

Additionally, the pervasive impacts of race highlighted in this article point to the potential value of reflexivity in business ethics. That is, it implies a need to evaluate and remedy any racialized histories, norms, and practices that have created imbalances in knowledge production, membership and leadership demographics, and research themes selected for publication. Moreover, the field must contemplate who and what has historically mattered in business ethics in order to determine how repair can facilitate moving forward in a more inclusive and equitable way.

This article also demonstrates how history makes the present. Additional scholarship is needed to investigate the ethical implications of historical injustice as they relate to contemporary concerns in business. For example, what would it mean to expand the discussion of noxious markets to include agriculture, real estate, and other sectors that likely have been impacted by the legacy of slavery and other historical injustices across the globe? Or might a historical lens lend itself to exploring calls for equal pay as a demand for repair for enduring gender injustice? Business ethics should consider what corrective measures for past injustices or phenomena are integral to present-day ethical prescriptions in order to ensure their efficacy.

Finally, this article demonstrates how indispensable business firms are in structuring US society by focusing on harm to a specific group. The argument that firms are instrumental in perpetuating anti-Blackness and ordering race relations implies that they can influence the arrangement of structures along the lines of ethnicity, gender, religion, sexuality, and other sociological dimensions. In line with some of the research streams taken up by political business ethicists, this implication suggests that deeply interrogating business influence on national democracy and the global order may be worthwhile.

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## 6. CONCLUSION

This article argued that business firms are responsible for the cultural dehumanization of Blackness, which has harmed Black people in the US from slavery to present. The article provided evidence of wrongdoing and related harm in many areas of Black life. It was argued that firms have perpetuated this harm in distinct ways, including investment in practices harmful to Black Americans and divesting from practices that could benefit Blacks, such that businesses have a responsibility for repair. Current attempts at repair, the law as a tool for reparations, and scholarly accounts of reparation were considered, in an effort to identify potential knowledge to build upon. Tort law was explored as a framework that blends moral and political philosophy toward corporate responsibility for Black dehumanization. The contributions of the article were reviewed before identifying questions for future research on corporate reparations.

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