

PART IV/Chapter 17: Final Recommendations of Task Force Regarding Calculations of Losses to African American Descendants of a Chattel Enslaved Person, or Descendants of a Free Black Person Living in the United States Prior to the End of the 19th Century, and Forms of Compensation and Restitution

“There are those who still feel that if the Negro is to rise out of poverty, if the Negro is to rise out of slum conditions, if he is to rise out of discrimination and segregation, he must do it all by himself.... [b]ut ... they never stop to realize the debt that they owe a people who were kept in slavery 244 years.

In 1863 the Negro was told that he was free as a result of the Emancipation Proclamation being signed by Abraham Lincoln. But he was not given any land to make that freedom meaningful. It was something like keeping a person in prison for a number of years and suddenly, suddenly discovering that that person is not guilty of the crime for which he was convicted. And ... you don't give him any money to get some clothes to put on his back or to get on his feet again in life.”

– Dr. Martin Luther King, Jr.¹

I. Introduction

AB 3121 charges the Reparations Task Force with calculating “any form of compensation to African Americans, with a special consideration for African Americans who are descendants of persons enslaved in the United States.”² As demonstrated in Chapters 2 through 13 of this report, the breadth and depth of the historical and ongoing harm done to this group of people makes clear that the relevant question is not whether compensation should be given, but rather, how much is necessary and how the Legislature should go about enacting a statewide compensation scheme, specific measures, and individualized restitution for the extensive harms done. To this end, the Task Force consulted with a team of economic and policy experts—Dr. Kaycea Campbell, Dr. Thomas Craemer, Dr. William Darity, Kirsten Mullen, and Dr. William Spriggs—to develop a methodology for analyzing and calculating losses to African American descendants of a Chattel enslaved person, or descendants of a free Black person living in the United States prior to the end of the 19th Century, to establish the amount of compensation due. In rendering its recommendations to the Legislature in this chapter, the Task Force defines compensation to include two different forms, as directed by AB 3121:³ cumulative compensation for the eligible class and particular compensation for individual, provable harms.

¹ Mieder, “Making a Way Out of No Way”: Martin Luther King’s Sermonic Proverbial Rhetoric 92 (2010) (quoting Dr. King’s speech, *Remaining Awake Through a Great Revolution*).

² Gov’t Code section 8301.1, subd. (b)(3)(E).

³ Gov’t Code section 8301.1, subd. (b)(3)(E), (F) & (G) (directing the Task Force to identify the “form” of compensation, how compensation should be awarded, and the methodology for awarding restitution).

II. Particular Reparations Compensation and Restitution

This report details the array of harms visited upon African Americans broadly, and more specifically, African Americans living in California since the state’s founding. While below, the Task Force delineates methods for awarding cumulative compensation to the whole of the class of eligibility, many African Americans in California have suffered particular injuries that can and must be addressed through restitution or particular compensation.

As discussed in Chapter 14, under international law, restitution refers to a remedy given to a person to undo a particular loss or injury.⁴ An example of partial restitution is the State of California’s return of Bruce’s Beach to descendants of the African American family who owned the property when the state seized the beach, in 1924, due to their race.⁵ No effort was made to compensate for the years in which the family was deprived of access to the property. Not all specific harms perpetrated against the state’s African American residents involve land—or other property that can be easily returned. In those cases, those individual harms must be remedied with monetary compensation.⁶

Therefore, the Task Force recommends that the Legislature create a method for any individual to submit claims and receive compensation or restitution for those particular harms California inflicted upon the claimant or their family. The Task Force recommends a specific entity (potentially the recommended California American Freedman Affairs Agency) be charged with processing these claims and rendering payment in an efficient and timely manner. Once the Legislature defines the scope of eligibility for the payment of claims, the entity’s responsibilities should include: (1) supporting claimants in obtaining evidence to substantiate qualifying claims; (2) providing advocates to assist applicants with claims (3) reviewing and determining the sufficiency of the claims and amount of restitution required to make the individual whole; and (4) ensuring that direct payments are timely remitted to eligible applicants. Such a process could follow existing models, such as the California Victim Compensation Board, which provides monetary compensation to the victims of certain crimes.⁷

⁴ See *Restitution*, Cornell Law School: Legal Information Institute (as of Mar. 22, 2023).

⁵ Chappell, *The Black Family who Won the Return of Bruce’s Beach Will Sell it Back to LA County*, NPR (Jan. 4, 2023) (as of Mar. 22, 2023).

⁶ International law appears to treat restitution as distinct from monetary payments, which it categorizes solely as compensation. See International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide* (Revised Edition, 2018), at pp. 55, 173 (noting that restitution, “in practice,” is “the least frequent, because it is mostly impossible to completely return” a victim to their situation before the harm—in those cases, the responsible state must “provide compensation covering the damage”); see also Gov’t Code section 8301.1, subd. (b)(3)(E), (F) & (G) (directing the Task Force to provide recommendations for both compensation and restitution). This meaning of restitution appears to differ slightly from American law—in both American criminal and civil law, restitution can at times include monetary payment. See *Restitution*, Cornell Law School: Legal Information Institute (as of Mar. 22, 2023). Regardless, under either framework, the Task Force recommends the Legislature create a claims-processing entity to provide both compensation and restitution, where appropriate, to remedy particular, individual harms.

⁷ See [Cal. Victims Compensation Board](#) (as of Mar. 22, 2023).

In the manner described above, the recommended program would ensure that monetary compensation and restitution are made to individuals or their survivors for the wrongs committed against them that the Legislature and the designated entity determines to merit an award. Compensation and restitution for particular injuries is a necessary step toward comporting with international standards for reparations, but it is not enough. Compensation or restitution for particular injuries, alone, would not provide a sufficient remedy for the many other longstanding laws and policies, and the scope of harm caused by them, detailed in Chapters 2 through 13 of this report against the whole class of people impacted by those atrocities. For these harms established by the detailed factual record recounted in Chapters 2 through 13, cumulative monetary payments must be made.

III. Cumulative Compensation

The Task Force defines cumulative compensation as the monetary payment owed to African American descendants of a Chattel enslaved person, or descendants of a free Black person living in the United States prior to the end of the 19th Century—members of the eligible class, as defined by the Task Force⁸—to remedy the full history of harm documented in Chapters 2 through 13 of this report. Unlike particular compensation or restitution, cumulative compensation would not require any member of the eligible class to provide evidence documenting their harm. Rather, as detailed in Chapters 2 through 13 of this report, the historical record demonstrates that all members of the eligible class have been affected and must receive indemnification to undo the harm done. The rest of this chapter addresses potential methods for calculating cumulative compensation.

A. Key Questions for the Calculation of Cumulative Compensation

To develop a model for calculating collective compensation, the Task Force’s economic experts posed four main questions before calculating the amount of the losses to African Americans caused by California state policies for which relevant data is held by the state.⁹

First, what is the time frame for measurement of the harm? After consulting with the Task Force’s economic experts, the Task Force recommends that the Legislature apply a different timeframe for calculating damages depending upon the category of harm, since different laws and policies inflicted measurable injury across different periods of time. For example, the State’s participation in the discriminatory denial of equal healthcare, unjust property takings, and devaluation of African American businesses began with the founding of the State in 1850 and has continued to this day. After consultations with its economic experts, the Task Force recommends that the Legislature measure the period of harm for the specific harms considered in this Chapter as follows:

⁸ California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2022) [Meeting Minutes](#) (as of Apr. 20, 2023).

⁹ The Task Force’s economic experts originally posed five questions, which the Task Force consolidates into four in this report.

Health Harms: 1850 – present¹⁰
Housing Discrimination: 1933-1977 or 1850 – present
Mass Incarceration & Over-policing: 1971 – present
Unjust Property Takings: 1850 – present
Devaluation of African American Businesses: 1850 – present

Second, will there be a California residency requirement? If yes, how will it be determined? The Task Force recommends that, for cumulative reparations compensation, the Legislature require eligible recipients to establish, using a low threshold of proof, their residence in California during the relevant periods of harm listed above for a minimum of six months (or any shorter minimum length of residency defined in existing California code or regulation) for each year in which the eligible recipient might be entitled to cumulative reparations compensation. The six-month length of this requirement is consistent with existing California law that recognizes a presumption of residency after presence in the state for six months.¹¹ To illustrate this requirement in effect: if an eligible Californian has lived in the state for five years of a relevant period of harm—but had to travel out of state for work for three months in each of those years—that Californian would be entitled to cumulative reparations worth five years of residency in the state. For particular reparations compensation or restitution, the Task Force recommends that there be no separate residency requirement, as the individual would already need to separately prove that the individual was harmed by California’s actions.¹²

Third, will only direct victims or all members of the eligible class receive remuneration? The Task Force recommends that all members of the eligible class be compensated for all five calculable areas of harm discussed in this chapter. The State of California created laws and policies discriminating against and subjugating free and enslaved African Americans and their descendants. In doing so, these discriminatory policies made no distinctions between these individuals; the compensatory remedy must do the same.

Fourth, how will cumulative reparations compensation be paid and measured to ensure the form of payment aligns with the estimate of damages? The bulk of this chapter addresses this last question: how to quantify the wounds caused by the long and ongoing damage of slavery and discrimination. Ultimately, the Task Force recommends that any reparations program include the payment of cash or its equivalent to members of the eligible class. Given that the process of calculating the amount of some of the losses and determining the methods and structure for issuing payments could involve a lengthy process, the Task Force further recommends that the

¹⁰ For the purposes of this component, the “present” is defined as September 30, 2020, due to data availability. When it ultimately calculates reparations amounts, the Legislature should extend the “present” to capture additional data available at that time.

¹¹ See Vehicle Code § 516 (“Presence in the state for six months or more in any 12-month period gives rise to a rebuttable presumption of residency.”); California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2023) Meeting Minutes (as of Apr. 20, 2023) (voting on recommendation to the Legislature to provide for the “most liberal,” i.e. shortest residency requirement in existing California code or regulation).

¹² See California Task Force to Study and Develop Reparation Proposals for African Americans (Mar. 29, 2023) [Meeting Minutes](#) (as of Apr. 20, 2023).

Legislature make a “down payment” with an immediate disbursement of a meaningful amount of funds to each member of the eligible class, as discussed below.

B. Model for Calculating the Costs of Harms and Atrocities

As documented throughout Chapters 2 through 13 of this report, the state of California holds at least partial responsibility for a wide-ranging set of harms and atrocities inflicted upon African Americans, especially descendants of persons enslaved in the United States.

The task of calculating the cost of tears and blood and human rights violations is a challenge. While no amount can encompass the full scope of damage done by the institution of slavery and ongoing discrimination, the Task Force has consulted with a group of experts who have identified five key categories of ongoing harm for which there may be sufficient data and methods to estimate monetary losses experienced by African Americans in California:

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

Based on available data, the Task Force and its economic experts have calculated preliminary estimates of monetary losses to African Americans across the first three categories: Health Disparities, African American Mass Incarceration and Over-Policing, and Housing Discrimination. Further, the Task Force and its experts have identified a method for calculating losses for Unjust Property Takings by Eminent Domain and Devaluation of African American Businesses, though the data necessary to allow the Task Force’s experts to conduct that calculation in time for the publication of this report was not readily available from the respective state agencies. The Task Force recommends that when the Legislature engages in its eventual determination, it releases to the public the data underpinning this calculation to allow scholars and experts to have access to this information and to better understand the process by which the costs were calculated.

The list of harms and atrocities included in this chapter’s calculations is not exhaustive. The Task Force and its economic experts focused on these five categories for two main reasons: they reflect areas where there is sufficient historical data to quantify the harm done, and they represent discriminatory policies directly attributable to the state of California, rather than to federal, local, or private actors. These five categories may not reflect all important harms and atrocities inflicted upon African Americans in California, nor their full quantitative impact. In many instances, there may be harms or atrocities that cannot be quantified because California has not collected the required data (e.g., due to Proposition 209) or the data is not readily available (e.g., on occupational-, pay-, and employment discrimination) to make that calculation. The Task Force anticipates that the Legislature will be able to add additional harms and atrocities to this

list, using calculation methods similar to the ones outlined below, with access to more data than was available to the Task Force.

Since this list of harms and atrocities is not exhaustive, the total of the estimated losses to African Americans is not a final estimate of all losses. Rather, it is a very cautious initial assessment for what cost, at a minimum, the State of California is responsible. Further data collection and research would be required to augment these initial estimates.

Additionally, since the Task Force and its economic experts' estimates for cost are intentionally conservative, the Legislature may need to provide compensation in sums greater than the amount calculated. Further, since the estimates are not exhaustive, the Legislature may want to consider how to provide compensation for difficult-to-estimate losses. For example, pain and suffering from generations of discrimination represent real losses for which the Task Force's experts cannot provide an estimate, because they depend on the subjective experience of those harmed and on their current needs. Finally, since the estimates are preliminary and more research is required, the Legislature may want to consider enacting a substantial initial down-payment, to be followed with additional payments as new evidence becomes available.

If the Legislature enacts such a payment process, the Task Force recommends that the Legislature communicate to the public that the initial down-payment is the beginning of a process of addressing historical injustices, not the end of it. The Task Force recommends the down payment as an essential first step to avoid paralysis due to the need for further research and analysis. To delay is an injustice that causes more suffering and may ultimately deny justice, especially to the elderly among the harmed. The Task Force also recommends the Legislature consider *prioritizing elderly recipients* in the roll-out of a compensation program.

Informed by the economic experts, the Task Force recommends that the Legislature establish an agency (potentially the California American Freedman Affairs Agency discussed in Chapter 18) to make direct payments to eligible recipients and aid recipients with establishing eligibility. This is preferable to an indirect approach where the agency oversees the distribution of resources through non-profit community organizations. These recommendations are reflected in Chapters 18 through 30 of this report, where the Task Force offers policy recommendations for the Legislature to remedy injuries to California's African American population.

Further, the Task Force recommends that compensation for community harms be provided as *uniform payments* based on an eligible recipient's duration of residence in California during the defined period of harm (e.g., residence in an over-policed community during the "War on Drugs" from 1971 to 2020). In addition, as discussed above, the Task Force recommends that the Legislature enact an individual claims process to compensate individuals who can prove particular injuries, for example, an individual who was arrested or incarcerated for a drug charge during the war on drugs, especially if the drug is now considered legal.

Finally, the Task Force recommends that there should be no time limit on when a harmed individual or their heirs can submit claims for compensation.

IV. Collective Compensation: Calculations for Specific Atrocities

Atrocity 1: Health Harms

As documented in Chapter 12, Mental and Physical Harm and Neglect, discriminatory policies have led to devastating health consequences for African Americans in California.¹³ One clear way to measure the impact of these discriminatory health harms is through the difference in life expectancy between Black non-Hispanics¹⁴ and white non-Hispanics in California. This reduction in life expectancy is the cumulative result of discrimination, including state-sanctioned medical experimentation and sterilization, segregation of healthcare facilities and the denial of funds to facilities or doctors that treated African Americans in California, unequal access to health insurance and health care based on occupational discrimination, discriminatory local zoning that exposes African American neighborhoods to greater environmental harm (e.g., placement of toxic industries in residential neighborhoods, creation of food deserts, etc.), and explicit and implicitly discriminatory behavior of medical personnel from which the state should shield its residents.¹⁵ These discriminatory practices were compounded by the State of California's willing complicity in federal redlining policies that created *de jure* racially segregated living arrangements in California,¹⁶ and its unwillingness to address occupational discrimination, as documented by its ban on affirmative action in public education and employment.¹⁷ The Task Force's experts estimated the cost of health differences between Black non-Hispanic and white non-Hispanic Californians as follows:

- (1) Take an individual's value of statistical life (roughly \$10,000,000) and divide it by the white non-Hispanic life expectancy in California (78.6 years in 2021) to obtain the value for each year of life absent racial discrimination (\$127,226).
- (2) The experts then calculated the difference in average life expectancy in years between Black non-Hispanic and white non-Hispanic Californians (7.6 years in 2021).
- (3) The experts then multiplied the two to arrive at an average total loss in value of life due to racial discrimination experienced by a Black non-Hispanic Californian who spends their entire life in California and lives until the average life expectancy (71 years of age) of a Black non-Hispanic Californian (\$966,921).
- (4) The annual value for the time an eligible individual resides in California is thus:
 $\$966,921 / 71 = \$13,619$.

¹³ Chapter 12, Mental and Physical Harm and Neglect, *supra* at pp. XX-XX.

¹⁴ Among Black non-Hispanic Californians, there may be some who do not trace their ancestry to any enslaved person in the United State, and among Black Hispanics, there may be some that do. Since neither the U.S. Census nor the State of California provide separate counts of African American descendants of those enslaved in the United States, the Task Force's experts had to rely on this estimate.

¹⁵ Chapter 12, Mental and Physical Harm and Neglect, *supra* at pp. XX-XX.

¹⁶ See generally Rothstein, *The Color of Law* (2017).

¹⁷ Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California's Proposition 209*, Center for Studies in Higher Education, U.C. Berkeley (Aug. 2020) (as of June 22, 2021).

Some economists estimate the value of a statistical life in the United States to fall between \$9,000,000 and \$11,000,000 in 2020 dollars.¹⁸ Taking the midpoint between these amounts, this report divides \$10,000,000 by the white non-Hispanic life expectancy in California (78.6 years in 2021)¹⁹ to obtain the value for each year of life absent racial discrimination (\$127,226). The experts then multiplied the value of each year of life absent discrimination with the average difference in life expectancy between Black non-Hispanic Californians and white non-Hispanic Californians.

Based on 2021 figures, white non-Hispanic Californians live on average 7.6 years longer than Black non-Hispanic Californians (78.6 years, compared to 71 years).²⁰ The total value of 7.6 years difference in life expectancy would be (7.6 years) x (\$127,226) = \$966,921, providing the average total loss in value of life, over a lifetime, due to racial discrimination in California. But since not every member of the eligible class will have spent the entirety of their life in California, this report calculates each African American's individual health harm by taking the average total loss in value in life due to racial discrimination in California and dividing it by the average Black non-Hispanic Californian life expectancy: \$966,921 / 71 years = \$13,619. This would be the estimated value of health harm to each year of life an African American individual has spent in California, to which an eligible Descendant would be entitled.

Atrocity 2: Mass Incarceration and Over-Policing of African Americans

Though federal and state governments have long targeted African Americans for discriminatory arrest and incarceration, the scope of such unjust policing leapt exponentially when the “War on Drugs” began in 1971. Survey research reveals that “People of all races use and sell illegal drugs at remarkably similar rates.”²¹ To measure racial mass incarceration disparities in the 50 years of the war on drugs from 1970 to 2020, the Task Force's experts estimate the disproportionate number of years spent behind bars for African American non-Hispanic drug offenders, compared to white non-Hispanic drug offenders, and multiplies those years with what a California State employee would have earned in an average year. In doing so, the experts used the average salary for a California State employee because, as described in Chapter 11, *Stolen Labor*, incarcerated individuals were also forced to provide unpaid labor for the state. The experts also added compensation for loss of freedom, comparable to the reparation payments provided to Japanese Americans incarcerated in World War II. Through these methods, the Task Force's experts calculated **\$159,792** per year (in 2020 dollars) lost due to the disproportionate mass incarceration and over-policing of African Americans during the war on drugs.

¹⁸ Rogers, [How Much is a Human Life Actually Worth?](#), Wired (May 11, 2020) (as of Apr. 18, 2023).

¹⁹ Kuang, [COVID Pulls Down Latino, Black, Asian Life Expectancy More than Whites, Study Says](#), Cal Matters (July 7, 2022) (as of Apr. 18, 2023). Dividing the value of a statistical life by the Black non-Hispanic life expectancy would yield a greater estimated life value per year because Black non-Hispanic life expectancy is shorter; but this report offers a conservative calculation of the average value of a year of life by using the white non-Hispanic life expectancy.

²⁰ *Ibid.*

²¹ Alexander, *The New Jim Crow* (2010), p. 99.

To estimate the number of disproportionately incarcerated African American non-Hispanic individuals,

- (1) The Task Force’s expert team used total California arrest figures for felony drug offenses and African American non-Hispanic drug felony arrests for each year from 1971 to 2020, to compute the annual percentage of overall felony drug arrests involving African American non-Hispanic Californians.
- (2) The experts then computed the difference between the percentage of African American non-Hispanic Californians arrested for drug felonies and the estimated percentage of African American non-Hispanic Californians in the population for each year. The difference between the two provides an estimate of the percentage of disproportionate African American non-Hispanic drug felony arrests.
- (3) The experts obtained the estimated number of African American non-Hispanic Californians disproportionately arrested for drug felonies by multiplying the percentage of excess African American non-Hispanic drug felony arrests times the total number of drug felony arrests.
- (4) The experts then multiplied the number of African American non-Hispanic Californians disproportionately arrested for drug felonies by the average drug-possession related prison term of 1.48 years²² and the annual compensation amount for loss of freedom (\$20,000, see above) and add the annual amounts up over the entire time period from 1970 to 2020 to arrive at a total sum of \$227,858,891,023 in 2020 dollars.

Disproportionate law enforcement reduced the quality of life for *all* African Americans who lived in the state during the war on drugs. In rendering their calculations, the experts therefore divided the total sum of harm among the estimated 1,976,911 African American non-Hispanic California residents who lived in the state in 2020, for an amount per person of \$115,260 in 2020 dollars, or \$2,352 for each year of residency in California during the 49-year period between 1971 and 2020. African American residents in California who were incarcerated for the possession or distribution of substances now legal, such as cannabis, should additionally be able to seek particular compensation for their period of incarceration, as discussed above.

While discriminatory arrest and sentencing 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 war on drugs. The term was popularized in 1971 after President Nixon declared drug abuse “public enemy number one” in a press conference that year.²³

An explosion of the prison population in the United States was driven by convictions for drug offenses in the war on drugs. Yet scholars have observed that, “patterns of drug crime do not explain the glaring racial disparities in our criminal justice system. People of all races use and

²² Ehlers and Ziedenberg, [Proposition 36: Five Years Later](#) (Apr. 1, 2006) p. 24 (as of Apr. 18, 2023).

²³ Encyclopaedia Britannica, [War on Drugs](#) (2023) (as of Apr. 18, 2023).

sell illegal drugs at remarkably similar rates.”²⁴ For example, the 2000 National Household Survey on Drug Abuse, revealed that 6.4 percent of white Americans, 6.4 percent of African Americans, were current illegal drug users in 2000.²⁵ Results from the 2002 National Survey on Drug Use and Health by the U.S. Department of Health and Human Services, revealed nearly identical rates of illegal drug use among white Americans and African Americans, with only a single percentage point between them.²⁶ And the 2007 version of the survey showed essentially the same results.²⁷ Scholar Michelle Alexander observes,

If there are significant differences in the surveys to be found, they frequently suggest that whites, particularly white youth, are more likely to engage in illegal drug dealing than people of color. One study, for example, published in 2000 by the National Institute on Drug Abuse reported that white students use cocaine at seven times the rate of [B]lack students, use crack cocaine at eight times the rate of [B]lack students, and use heroin at seven times the rate of [B]lack students. That same survey revealed that nearly identical percentages of white and [B]lack high school seniors use marijuana. The National Household Survey on Drug Abuse reported in 2000 that white youth aged 12-17 are more than a third more likely to have sold illegal drugs than African American youth. ... white youth have about three times the number of drug-related emergency room visits as their African American counterparts.²⁸

More recent numbers from the 2019 version of the survey suggest that 13.6 percent of white non-Hispanic Americans and only a single percentage point more, 14.6 percent, of non-Hispanic African Americans admitted to illicit drug use.²⁹

This evidence is important, as it speaks directly to the fairness or lack thereof of racial arrest and imprisonment disparities. According to the National Research Council, “If racial disparities in imprisonment perfectly mirrored racial patterns of criminality, then an argument could be made that the disparities in imprisonment were appropriate.”³⁰ They continue that, “Black people are, however, arrested for drug offenses at much higher rates than whites because of police decisions to emphasize arrests of street-level dealers” in disproportionately Black neighborhoods, despite abundant data that white individuals use or sell equivalent or even higher amounts of illicit substances.³¹ As discussed in Chapter 11, An Unjust Legal System, federal laws also imposed

²⁴ Alexander, *The New Jim Crow* (2010), p. 99.

²⁵ *Id.* at pp. 276-275; U.S. Department of Health and Human Services, *Summary of Findings from the 2000 National Household Survey on Drug Abuse* (2001), Substance Abuse and Mental Health Services Administration NHSDA series H-13, DHHS pub. No. SMA 01-3549.

²⁶ Alexander, *The New Jim Crow* (2010), pp. 276-276; U.S. Department of Health and Human Services, *Results from the 2002 National Survey on Drug Use and Health: National Findings* (2003) Substance Abuse and Mental Health Services Administration NSDUH series H-22, DHHS pub. No. SMA 03-3836.

²⁷ U.S. Department of Health and Human Services, *Results from the 2007 National Survey on Drug Use and Health: National Findings* (2007) Substance Abuse and Mental Health Services Administration NSDUH series H-34, DHHS pub. No. SMA 08-4343.

²⁸ Alexander, *The New Jim Crow* (2010), p. 98.

²⁹ Centers for Disease Control and Prevention, [National Survey on Drug Use and Health](#) (2021) (as of Apr. 18, 2023).

³⁰ Travis et al., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014) p. 61.

³¹ *Id.* at p. 97.

the longest sentences for crack cocaine offenses, for which African Americans are arrested much more often than white Americans (including a 100 to 1 disparity in the punishment for crack cocaine, versus powdered cocaine, disproportionately consumed by white users).³²

Given the similarity between African Americans and white Americans in the number of drug offenses they actually participate in (drug possession and drug selling), racial disparities in drug enforcement should be non-existent. However, Figure 3 paints a shockingly different picture. It suggests that the massive increase in incarceration for drug offenses may be due to disproportionate arrests of African Americans.

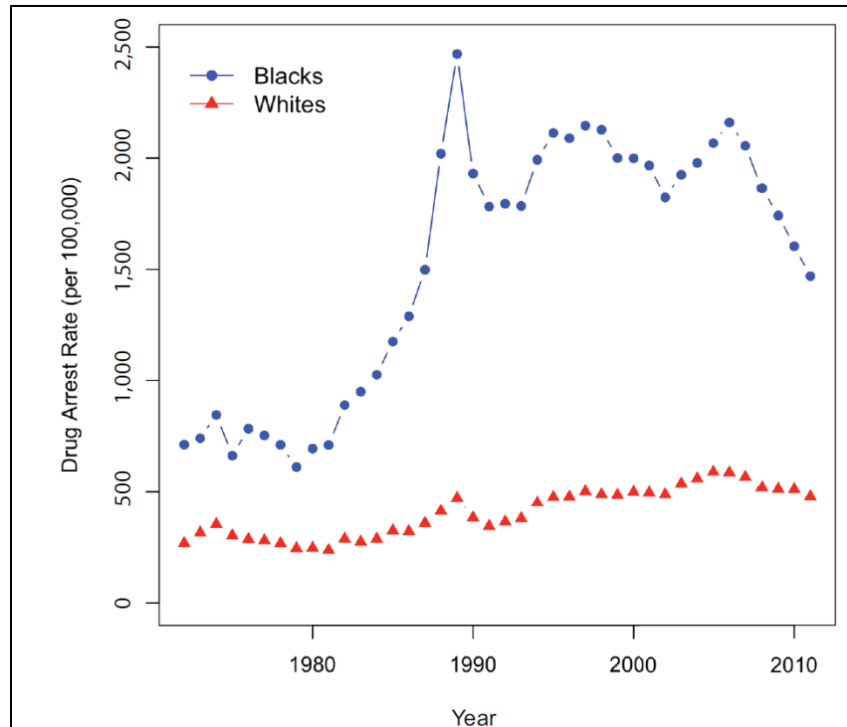


Figure 3: Drug arrest rates for African Americans and white Americans per 100,000 population, 1972 to 2011.³³

As a result of these discriminatory practices, it is not surprising that non-Hispanic Black Americans were by far the most over-represented group in the US prison population. While they represented 13 percent of the US population in 2010, they represented 40 percent of the prison population, an over-representation of 27 percentage points.³⁴ In contrast, Hispanics (of any race) were overrepresented by only 3 percentage points (16 percent of the US population and 19 percent of the prison population).³⁵ Asian Americans were *under*represented by 4.1 percentage points (5.6 percent of the US population and 1.5 percent of the prison population), and white

³² *Ibid.*; Chapter 11, Unjust Legal System, *supra* at pp. XX-XX.

³³ Travis et al., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014) p. 61.

³⁴ Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity* (May 28, 2014) Prison Policy Initiative (as of Apr. 18, 2023).

³⁵ *Ibid.*

non-Hispanics underrepresented by 25 percentage points (64 percent of the US population and 39 percent of the prison population).³⁶

To measure racial mass incarceration disparities in the 49 years of the war on drugs from 1971 to 2020, the Task Force’s experts estimated the disproportionate years spent behind bars for African American non-Hispanic Californian drug offenders compared to white non-Hispanic drug offenders. Since these disparities are measurable in years, the experts attached a monetary value to these disproportionate years spent in prison by calculating what an average California State employee would have earned in a year. The experts used California state employees as a baseline of comparison since, as described in Chapter 11, imprisoned individuals are frequently forced to provide unpaid labor for the State. While many incarcerated people may have otherwise worked in lower-paid positions with fewer benefits, this trend would also be due to past occupational, pay-, and employment discrimination and would therefore taint this report’s calculations.

In 2019, full time state workers earned on average \$143,000 annually, with benefits.³⁷ Adjusting for inflation, this would be \$145,002 in 2020.³⁸ In addition to lost wages, the experts include compensation for loss of freedom, comparable to the amount paid to Japanese American incarcerated in World War II, who received \$20,000 in 1988 dollars for three years of incarceration from 1942 to 1945.³⁹ This would amount to \$6,667 per year in 1988 dollars, or \$14,790 in 2020 dollars.⁴⁰ The total average compensation would therefore be \$145,002 + \$14,790 = \$159,792 per year of disproportionate incarceration in 2020 dollars.

To estimate the number of disproportionately incarcerated Black non-Hispanic Californians, Table 1 provides observed incarcerations, estimated incarcerations, and derived incarcerations. The first column gives the year (1971-2020), and the second column provides the California population total for each decennial U.S. Census (bold: U.S. Census Bureau, 2021) with the population in each year in between decennial censuses estimated by linear interpolation (italics). The third column gives the number of Black non-Hispanic Americans based on the population figures from the U.S. Census Bureau (2021) and the percentages of the Black non-Hispanic population from Johnson, McGhee, & Cuellar Mejia (2022) for each decennial census (bold print). Again, the figures between decennial censuses are estimated using linear interpolation (italics).

The next columns estimate the number of Black non-Hispanic Californians arrested for drug offenses. The fourth column in Table 1 provides the total number of arrests in California as recorded by the California Department of Justice (2000, p. 112, for the years 1971-1979; and 2022 for the years 1980-2020). The fifth column provides the total number of felony drug arrests—because the California Department of Justice recorded drug felony arrests in California only for the years 1980-2020 (2022), the numbers for 1971-1979 were estimated using the 1980 drug felony arrests to calculate what percentage of all arrests in that year were drug felony arrests

³⁶ *Ibid.*

³⁷ Ring, [How Much Do California’s State Workers Make?](#) (Nov. 5, 2020) Cal. Policy Center (as of Apr. 18, 2023).

³⁸ See Friedman, [The Inflation Calculator](#) (as of Apr. 18, 2023).

³⁹ Craemer et al., *Wealth Implications of Slavery and Racial Discrimination for African American Descendants of the Enslaved* (2020) 47 *Rev. of Black Political Economy* 218, 236.

⁴⁰ See Friedman, [The Inflation Calculator](#) (as of Apr. 18, 2023).

(4.2195 percent), and applying that same ratio of drug arrests to total arrests between 1971-1979. Drug felony arrests of Black non-Hispanic Californians are listed in the sixth column, again estimated figures for 1971-1979 based upon the percentage of Black non-Hispanic drug felony arrests out of all drug felony arrests conducted in 1980 (28.8767 percent).

Columns 7 through 10 then compare the percentage of felony drug arrests of Black non-Hispanic Californians with the percentage of Black non-Hispanic Californians in the overall population to reflect the disproportionate rates of arrest. Column 7 presents the Black non-Hispanic population percentage (bold print observed by Johnson, McGhee, & Cuellar Mejia, 2022, italics estimated by linear interpolation). Column 8 provides the Black non-Hispanic percentage of all drug felony arrests (regular print) and is estimated for the years 1971-1979 based on the 1980 percentage (italics). Column 9 provides the percentage of excess Black non-Hispanic drug felony arrests and represents the difference between column 8 (Black non-Hispanic drug felony arrests as a percentage of all drug felony arrests) and column 7 (Black non-Hispanic percentage of the overall California population). The calculations reflect a significant disproportionate arrest rate for Black non-Hispanic Californians for the entire observed time period, and ranges from a minimum of 8.25 percentage points in 2013 to a maximum of 29.58 percentage points in 1988. Column 10 translates this percentage into the total number of Black non-Hispanic Californians disproportionately arrested for drug felonies by multiplying the excess percentage in column 9 with the number of all drug felony arrests in column 5.

Finally, the last column (11) multiplies Black non-Hispanic excess drug felony arrests by the average drug-related prison term of 1.48 years (Ehlers & Ziedenberg, 2006, p. 24)⁴¹ and the annual reparations amount of \$159,792 calculated above. The annual amounts are added up and yield the sum of \$227,858,891,023 or \$ 228 billion in 2020 dollars.

⁴¹ Ehlers and Ziedenberg, *supra*, at p. 24 (“[T]he average prison sentence for drug possession ... was 1.48 years in 2004.”).

Table 1: Reparations for Disproportionate Black non-Hispanic Drug Felony Arrests (DFA) During the ‘War on Drugs’ in California (1970-2020)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	CA Population ¹	Black non-Hispanics ²	Total Arrests ³	Drug Felony Arrests ⁴	Black DFA ⁵	Black Pop % ⁶	Black DFA %	Excess Black DFA%	Excess Black DFA Arrests	Reparations Amount ⁷
1970	19,953,134	1,396,719	1,340,072	-	-	7.00	-	-	-	-
1971	20,324,611	1,446,391	1,347,479	56,857	16,418	7.12	28.88	21.76	12,372	\$2,925,943,745
1972	20,696,088	1,496,062	1,340,438	56,560	16,333	7.23	28.88	21.65	12,244	\$2,895,637,612
1973	21,067,564	1,545,733	1,383,234	58,366	16,854	7.34	28.88	21.54	12,572	\$2,973,136,160
1974	21,439,041	1,595,404	1,488,102	62,791	18,132	7.44	28.88	21.44	13,459	\$3,183,014,246
1975	21,810,518	1,645,076	1,439,857	60,755	17,544	7.54	28.88	21.33	12,962	\$3,065,308,280
1976	22,181,995	1,694,747	1,395,447	58,881	17,003	7.64	28.88	21.24	12,504	\$2,957,171,463
1977	22,553,472	1,744,418	1,402,930	59,197	17,094	7.73	28.88	21.14	12,515	\$2,959,813,921
1978	22,924,948	1,794,090	1,382,805	58,348	16,849	7.83	28.88	21.05	12,283	\$2,904,751,967
1979	23,296,425	1,843,761	1,442,037	60,847	17,571	7.91	28.88	20.96	12,755	\$3,016,451,872
1980	23,667,902	1,893,432	1,542,850	65,101	18,799	8.00	28.88	20.88	13,591	\$3,214,146,027
1981	24,277,114	1,912,409	1,632,351	67,384	18,591	7.88	27.59	19.71	13,283	\$3,141,297,563
1982	24,886,326	1,931,386	1,621,944	68,616	18,453	7.76	26.89	19.13	13,128	\$3,104,628,229
1983	25,495,538	1,950,363	1,653,914	79,422	22,477	7.65	28.30	20.65	16,401	\$3,878,792,888
1984	26,104,750	1,969,340	1,680,721	93,124	27,801	7.54	29.85	22.31	20,776	\$4,913,298,231
1985	26,713,962	1,988,317	1,716,040	108,729	34,147	7.44	31.41	23.96	26,054	\$6,161,641,024
1986	27,323,173	2,007,294	1,794,481	131,672	45,037	7.35	34.20	26.86	35,364	\$8,363,245,339
1987	27,932,385	2,026,271	1,859,342	146,588	50,558	7.25	34.49	27.24	39,924	\$9,441,763,959
1988	28,541,597	2,045,248	1,903,067	170,156	62,529	7.17	36.75	29.58	50,336	\$11,904,040,719
1989	29,150,809	2,064,225	1,969,168	174,779	61,933	7.08	35.44	28.35	49,557	\$11,719,739,045
1990	29,760,021	2,083,201	1,979,355	145,551	45,570	7.00	31.31	24.31	35,381	\$8,367,430,805
1991	30,171,184	2,078,111	1,791,312	125,241	38,095	6.89	30.42	23.53	29,469	\$6,969,124,007
1992	30,582,346	2,073,021	1,718,254	135,448	36,645	6.78	27.05	20.28	27,464	\$6,494,943,201
1993	30,993,509	2,067,931	1,667,522	136,943	32,024	6.67	23.38	16.71	22,887	\$5,412,588,891
1994	31,404,672	2,062,840	1,652,723	155,175	34,408	6.57	22.17	15.61	24,215	\$5,726,707,019
1995	31,815,835	2,057,750	1,608,147	141,394	26,986	6.47	19.09	12.62	17,841	\$4,219,273,561
1996	32,226,997	2,052,660	1,622,535	139,772	32,103	6.37	22.97	16.60	23,200	\$5,486,710,386
1997	32,638,160	2,047,570	1,620,381	153,099	33,299	6.27	21.75	15.48	23,694	\$5,603,507,981
1998	33,049,323	2,042,479	1,571,724	141,766	34,640	6.18	24.43	18.25	25,879	\$6,120,116,071
1999	33,460,485	2,037,389	1,496,459	133,437	32,983	6.09	24.72	18.63	24,858	\$5,878,745,780
2000	33,871,648	2,032,299	1,424,893	128,142	29,803	6.00	23.26	17.26	22,114	\$5,229,901,142
2001	34,209,879	2,052,593	1,420,680	124,726	27,895	6.00	22.37	16.37	20,411	\$4,827,145,534
2002	34,548,110	2,072,887	1,426,233	131,306	29,669	6.00	22.60	16.60	21,791	\$5,153,315,521
2003	34,886,340	2,093,180	1,471,083	140,744	31,321	6.00	22.25	16.25	22,876	\$5,410,079,789
2004	35,224,571	2,113,474	1,499,083	150,305	34,097	6.00	22.69	16.69	25,079	\$5,930,915,933
2005	35,562,802	2,133,768	1,508,210	159,944	35,389	6.00	22.13	16.13	25,792	\$6,099,690,928
2006	35,901,033	2,154,062	1,539,364	154,468	36,338	6.00	23.52	17.52	27,070	\$6,401,823,852
2007	36,239,264	2,174,356	1,551,900	143,692	34,987	6.00	24.35	18.35	26,365	\$6,235,229,315
2008	36,577,494	2,194,650	1,543,665	129,080	32,885	6.00	25.48	19.48	25,140	\$5,945,460,201
2009	36,915,725	2,214,944	1,466,852	118,684	26,156	6.00	22.04	16.04	19,035	\$4,501,618,806
2010	37,253,956	2,235,237	1,394,425	121,286	21,813	6.00	17.98	11.98	14,536	\$3,437,612,199
2011	37,482,383	2,209,405	1,267,196	115,332	18,519	5.89	16.06	10.16	11,721	\$2,771,862,587
2012	37,710,809	2,183,572	1,238,496	120,995	18,083	5.79	14.95	9.15	11,077	\$2,619,627,559

2013	<i>37,939,236</i>	<i>2,157,739</i>	1,205,536	137,125	19,116	<i>5.69</i>	13.94	8.25	11,317	\$2,676,432,102
2014	<i>38,167,663</i>	<i>2,131,907</i>	1,212,845	137,054	19,708	<i>5.59</i>	14.38	8.79	12,053	\$2,850,360,036
2015	<i>38,396,090</i>	<i>2,106,074</i>	1,158,812	44,629	7,564	<i>5.49</i>	16.95	11.46	5,116	\$1,209,903,987
2016	<i>38,624,516</i>	<i>2,080,242</i>	1,120,759	38,988	6,442	<i>5.39</i>	16.52	11.14	4,342	\$1,026,891,961
2017	<i>38,852,943</i>	<i>2,054,409</i>	1,097,083	29,955	4,739	<i>5.29</i>	15.82	10.53	3,155	\$746,152,484
2018	<i>39,081,370</i>	<i>2,028,576</i>	1,091,694	28,376	4,355	<i>5.19</i>	15.35	10.16	2,882	\$681,594,451
2019	<i>39,309,796</i>	<i>2,002,744</i>	1,055,622	27,280	3,906	<i>5.09</i>	14.32	9.22	2,516	\$595,048,968
2020	39,538,223	1,976,911	853,576	25,771	3,425	5.00	13.29	8.29	2,136	\$505,253,675
									Total:	\$227,858,891,023

Numbers in bold print are observed, numbers in italics are estimated;

¹ Bold: U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023). Italics: Linear Interpolation.

² Bold: U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023), and Johnson et al., [California's Population](#) (2022) Public Policy Institute of Cal. (as of Apr. 18, 2023) for Black population percentages. Italics: Linear Interpolation.

³ For 1970-1979, Lockyer, [Crime & Delinquency in California](#) (2000) Cal. Dept. of Justice, p. 112 (as of Apr. 18, 2023); for 1980-2020: Cal. Dept. of Justice, [Open Justice Data](#) (as of Apr. 18, 2023).

⁴ Bold: 1980-2020: Cal. Dept. of Justice, [Open Justice Data](#) (as of Apr. 18, 2023). Italics: 1970-1979 estimated based on 1980 percentage 4.2195 percent drug felony arrests.

⁵ Bold: 1980-2020: Cal. Dept. of Justice, [Open Justice Data](#) (as of Apr. 18, 2023). Italics: 1970-1979 estimated based on 1980 percentage of 28.8767 percent.

⁶ Bold: Johnson et al., *supra*. Italics: linear interpolation.

⁷ Black non-Hispanic excess drug felony arrests times 1.48 year average prison term for drug related offenses, Ehlers and Ziedenberg, [Proposition 36: Five Years Later](#) (Apr. 1, 2006) p. 24 (as of Apr. 18, 2023), times \$159,792 average annual losses (which includes both lost wages and an estimated value of lost freedom, based on the reparations for Japanese internment).

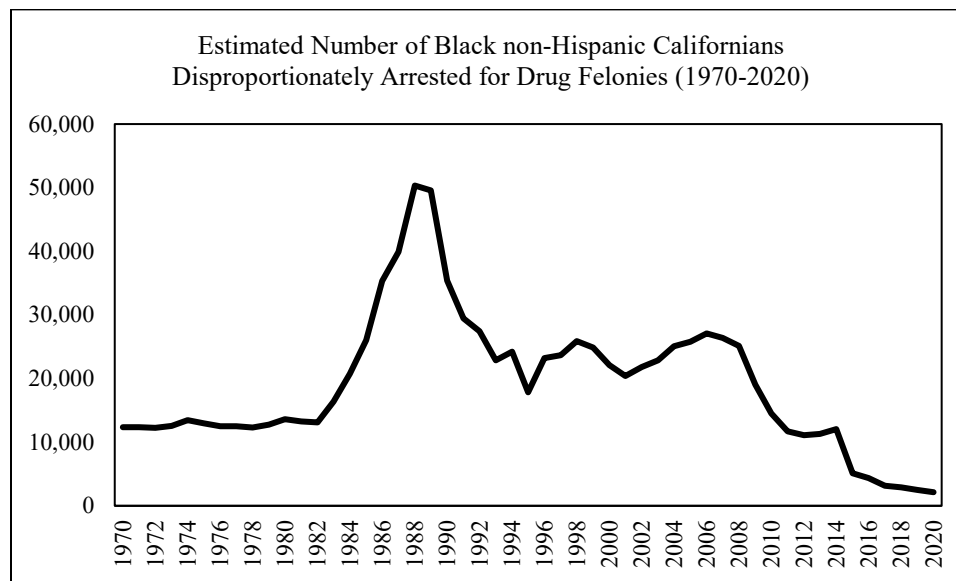


Figure 4: Estimated number of Black non-Hispanic Californians Disproportionately Arrested for Drug Felonies (1970-2020).

Though the figures above measure the harm perpetuated by over-incarceration through the number of Black Californians disproportionately arrested for drug felonies, this system of discriminatory arrests was ultimately directed at the entire African American community, and affects all Descendants who lived in the State during the war on drugs from 1971 to 2020. For

example, people in neighborhoods targeted for the war on drugs may avoid encounters with the police lest they be treated as suspects and potentially be subject to police violence.⁴² This may interfere with legitimate law enforcement investigations and may lead to elevated levels of unresolved crime.⁴³ This in turn would reduce the quality of life, and depress property values, which in turn would lead to underfunded schools in the neighborhood, and so on. The whole neighborhood and community may suffer from disproportionate policing as a consequence of the war on drugs.⁴⁴ Thus, all those who are eligible should be compensated for lost quality of life due to racial profiling and biased law enforcement. To apportion the overall monetary losses resulting from the war on drugs in California, the Task Force’s experts divided the sum of \$227,858,891,023 among the estimated 1,976,911 non-Hispanic African American residents who lived in the state in 2020,⁴⁵ for an estimated loss per recipient totaling \$115,260 in 2020 dollars—or \$2,352 for each year of residency in California during the 49-year-period (1971-2020).

Atrocity 3: Housing Discrimination

As detailed in Chapter 5, Housing Segregation, federal, state, and local government officials discriminated against and segregated African American residents throughout California, from the beginnings of the state’s founding.⁴⁶ Individual participants in the housing market discriminated against African American buyers or renters, local zoning rules enforced segregation, and the state allowed this discrimination to occur even though the Supreme Court ruled it unconstitutional in *Buchanan v. Warley* (1917) 245 U.S. 60.⁴⁷ As a result, in 2019, a year before the Reparations Task Force was established, African American Californians controlled far less of the state’s average per-capita housing wealth than did white Californians.⁴⁸

The Task Force presents two potential methods to calculate the losses due to housing discrimination. The first calculates all monetary losses due to racial housing discrimination by calculating the average per capita white to African American homeownership wealth gap in 2019, and compounding interest on that gap until 2022. However, critics may object that by sweeping in all forms of housing discrimination, this method does not focus on discrete forms of housing discrimination by state actors.

The second method offered here calculates monetary losses specifically due to redlining. As discussed in Chapter 5, Housing Segregation, redlining is a clear case of state-sanctioned housing discrimination beginning with the New Deal in 1933, and lasting for 44 years until the Community

⁴² See, e.g., Brunson and Wade, “*Oh Hell No, We Don’t Talk to Police*”: *Insights on the Lack of Cooperation in Police Investigations of Urban Gun Violence* (2019) 18 *Criminology & Public Policy* 623, 623-648.

⁴³ See Brunson, [Protests Focus on Over-Policing, But Under-Policing is also Deadly](#), Wash. Post (June 12, 2020) (as of Apr. 18, 2023).

⁴⁴ See generally Cohen et al., *How the War on Drugs Impacts Social Determinants of Health Beyond the Criminal Legal System* (2022) 54 *Ann. Med.* 2024.

⁴⁵ U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023).

⁴⁶ Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

⁴⁷ Rothstein, *The Color of Law* (W. W. Norton & Company 2017) p. 45.

⁴⁸ See *infra* at pp. XX-XX.

Reinvestment Act of 1977 formally (although not effectively) sought to combat the persisting effects of redlining.⁴⁹ While redlining denied federally insured, affordable mortgages to those in African American neighborhoods based on federal law, California could have insured redlined homes in place of the federal government to address this injustice in a timely fashion. But not only did California not engage in any policies to ameliorate the effect of federal redlining, it embraced redlining policies and other policies discriminating against African Americans Californians.⁵⁰

Local zoning laws discriminated against African Americans in every corner of the United States, including California, with “zoning rules decreeing separate living areas for [B]lack and white families ... prohibiting African Americans from buying homes on blocks where whites were a majority and vice versa.”⁵¹ The U.S. Supreme Court eventually ruled these expressly discriminatory zoning laws unconstitutional in 1917,⁵² but this ruling was often ignored by government entities as well as individuals.⁵³

In addition, as discussed in Chapter 5, Housing Segregation, the discriminatory government policy of redlining has created devastating and persisting consequences for African American communities.⁵⁴ Though redlining was instituted through federal law, that policy shaped home ownership through bank financing—and banks in this country have long been subject to a “dual banking system,” subject to parallel state and federal regulation.⁵⁵ Thus, California’s parallel duty to regulate banks gave it the authority to treat African Americans equitably, encourage residential integration, and to provide state-level insurance for mortgages purchased by residents in redlined areas ineligible for federally insured mortgages. Instead, California failed to act until decades later,⁵⁶ sanctioning or maintaining redlining discrimination against its African American residents, giving the state a responsibility to redress intergenerational wealth harms resulting from housing discrimination in California.

Before the federal government began insuring mortgages in 1933, “Homeownership remained prohibitively expensive for working- and middle-class families: bank mortgages typically required 50 percent down, interest-only payments, and repayment in full after five to seven years, at which point the borrower would have to refinance or find another bank to issue a new mortgage with similar terms.”⁵⁷ These remained the conditions for African American borrowers even after 1933, while for white borrowers, the HOLC not only subsidized the mortgages with much lower interest rates, the HOLC also rescued and refinanced white families’ existing mortgages subject to imminent foreclosures, issuing them new mortgages with repayment schedules of up to 15 years (later extended to 25 years).⁵⁸ In addition, HOLC mortgages were

⁴⁹ See Chapter 5, Housing Segregation, *supra* at pp. XX-XX; 12 U.S.C. 2901 et seq.

⁵⁰ See Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

⁵¹ Rothstein, *The Color of Law* (W. W. Norton & Company 2017) p. 44.

⁵² *Buchanan V. Warley* (1917) 245 U.S. 60.

⁵³ Rothstein, *The Color of Law* (W. W. Norton & Company 2017) p. 45.

⁵⁴ Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

⁵⁵ Comptroller of the Currency, *National Banks and the Dual Banking System* (2003) p. 1 (as of Apr. 19, 2023); Jennings, *Preemption and State Anti-Redlining Regulations* (1983) 11 Fordham Urban Law J. 225, 229 fn. 12.

⁵⁶ See Cal. Health & Safety Code § 35830; Cal. Code Regs. Tit. 21, § 7114.

⁵⁷ Rothstein, *The Color of Law* (W. W. Norton & Company 2017) p. 63.

⁵⁸ *Ibid.*

amortized, meaning that when the loan was paid off, white borrowers would own the home.⁵⁹ Since African American home buyers were excluded from government insured mortgages, they depended on traditional financing models with much more expensive or risky conditions⁶⁰—to the extent that they could even attempt to afford a home that would otherwise have been heavily subsidized for a white home buyer. The result was a growing racial homeownership gap.⁶¹

Given the financial consequences of redlining, two scholars have proposed the following loss-estimation procedure: “the differences in mean household wealth attributable to home ownership, multiplied by the number of African American” households in California.⁶² The Task Force’s experts agree that this formula “provides a reasonable estimate of the aggregate debt resulting from housing and lending discrimination.”⁶³

This report offers two potential ways to perform that calculation here: (1) using 2019 data, to estimate losses due primarily to all forms of housing discrimination until the present; or (2) using 1930 and 1980 data, to estimate losses due primarily to redlining.

Method 1: Estimating Financial Losses Due to All Forms of Housing Discrimination Until the Present

In 2019, one year before the Legislature enacted AB 3121, and one year before the COVID-19 pandemic, the average African American non-Hispanic home in California had a value of \$435,300, and the average white non-Hispanic home had a value of \$773,400.⁶⁴ At the time, about 36.8 percent of Black Californian households owned their own home, while 63.2 percent of white Californian households did, reflecting a homeownership gap of 26.4 percentage points.⁶⁵ Using 2019 census figures for the average number of people living in African American and white California households, the experts estimated the total wealth in home values controlled collectively by African American and white Californians.

⁵⁹ Rothstein, *The Color of Law* (W. W. Norton & Company 2017) pp. 63-64.

⁶⁰ See Institute for Housing Studies at DePaul University, [Old Mortgage Alternative Makes a Controversial Resurgence](#) (Jan. 17, 2017) (as of Apr. 19, 2023).

⁶¹ Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

⁶² Kaplan and Valls, *Housing Discrimination as a Basis for Black Reparations* (2007) 21 *Public Affairs Quarterly* 255, 255, 268.

⁶³ *Ibid.* Ideally, the Task Force experts would have performed that calculation using each household’s estimated wealth due to homeownership—that is, the value of the house minus the outstanding mortgage. However, due to data limitations, the experts instead used the estimated value of a house that the homeowner’s household controls.

⁶⁴ U.S. Census Bureau, [2019 California — Value, Purchase Price, and Source of Down Payment — Owner-occupied Units](#), American Housing Survey (as of Apr. 19, 2023) (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

⁶⁵ Cal. Assn. of Realtors, [Housing Affordability for Black California Households is Half that of Whites, Illustrating Persistent Wide Homeownership Gap and Wealth Disparities](#), *C.A.R. Reports*, P.R. Newswire (Feb. 17, 2021) (as of Apr. 19, 2023).

[2,213,986 African Americans living in California in 2019⁶⁶ / 2.44 average number of African Americans per household in 2019⁶⁷ = 907,371 African American households in California]

[14,364,928 white Americans living in California⁶⁸ / 2.36 average number of white Americans per household in 2019⁶⁹ = 6,086,834 white households in California]

The experts then estimated the total wealth in homes controlled in 2019 collectively by all African American non-Hispanic Californian households, and the total wealth in homes controlled in 2019 collectively by all white Californian households.

[($\$435,300$)⁷⁰ (907,371 African American households in California) (0.368)⁷¹ = $\$145,352,123,438$ in homeownership wealth owned by African American Californians in 2019]

[($\$773,400$)⁷² (6,086,834 white households in California) (0.632)⁷³ = $\$2,975,176,286,659$ in homeownership wealth owned by white Californians in 2019]

After calculating the total housing wealth controlled by each of the two racial groups, the experts computed the estimated per-capita amount in each group—including those who do not own houses, due to housing discrimination.

[\$145,352,123,438 / 2,213,986 African Americans in California = \$65,652 per capita African American Californian homeownership wealth]

⁶⁶ USA Facts, [Our Changing Population: California](#) (as of Apr. 19, 2023) (measuring data between 2019 and 2021).

⁶⁷ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]). This 2019 Census survey defined households as “a house hold maintained” by “a group of two persons or more residing together and related by birth, marriage, or adoption,” and “may include among the household members any unrelated persons . . . who may be residing there.” U.S. Census Bureau, [Current Population Survey: 2019 Annual Social and Economic \(ASEC\) Supplement](#) (as of Apr. 25, 2023) pp. 7-1, 7-2.

⁶⁸ USA Facts, [Our Changing Population: California](#) (as of Apr. 19, 2023) (measuring data between 2019 and 2021).

⁶⁹ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

⁷⁰ U.S. Census Bureau, [2019 California — Value, Purchase Price, and Source of Down Payment — Owner-occupied Units](#), American Housing Survey (as of Apr. 19, 2023) (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

⁷¹ Reflecting the 36.8 percent of Black Californian households who owned their own home. Cal. Assn. of Realtors, [Housing Affordability for Black California Households is Half that of Whites, Illustrating Persistent Wide Homeownership Gap and Wealth Disparities](#), C.A.R. Reports, P.R. Newswire (Feb. 17, 2021) (as of Apr. 19, 2023).

⁷² U.S. Census Bureau, [2019 California — Value, Purchase Price, and Source of Down Payment — Owner-occupied Units](#), American Housing Survey (as of Apr. 19, 2023) (Variable 1: Race of Householder, Variable 2: Hispanic Origin of Householder).

⁷³ Reflecting the 63.2 percent of white Californian households who owned their own home. Cal. Assn. of Realtors, [Housing Affordability for Black California Households is Half that of Whites, Illustrating Persistent Wide Homeownership Gap and Wealth Disparities](#), C.A.R. Reports, P.R. Newswire (Feb. 17, 2021) (as of Apr. 19, 2023).

[\$2,975,176,286,659 / 14,364,928 white Californians = \$207,114 per capita white Californian homeownership wealth]

Comparing the two shows an estimated per capita home ownership wealth gap of \$141,462 in 2019. Adding a compounded, annual 30-year mortgage interest rate (3.10 percent in 2020; see Table 1 below),⁷⁴ the African American and white homeownership gap in California, in 2020, is approximately \$145,847 in 2020 dollars.

[\$141,462 + \$141,462 (0.031) = \$145,847 in 2020 dollars (rounded to the nearest dollar in each step)]

While this figure represents the cumulative effect of all sources of discrimination, individual level (home owners, real estate agents), corporate (banks and local zoning boards) as well as state and federal level (redlining), it represents a cautious estimate because it assumes that reparations for de jure discrimination (i.e., redlining) should not have been paid earlier (i.e., after 1977 when the federal government passed a law attempting to counteract the persisting effects of redlining).

Method 2: Estimating Financial Losses Due Primarily to Redlining

Alternatively, the Legislature could estimate the financial losses due to housing discrimination by calculating losses due primarily to redlining. This process follows a similar method to the one used above but uses data instead from 1930 (three years before the start of federal redlining in 1933) and 1980 (three years after the Community Reinvestment Act of 1977 formally sought to end private lending practices that reproduced redlining). While the Task Force would ideally use data from 1933 and 1977 to perform this calculation, at the time of this report, relevant data from those years is unavailable, and the Task Force relies instead on data from the nearest decennial censuses (1930 and 1980).

In 1930, African American homes in California had a mean value of \$4,535, and white homes in California had a mean value of \$6,067,⁷⁵ reflecting a \$1,532 difference. That year, there were 22,595 African American households and 1,482,203 white households in California.⁷⁶ At the time, in California, about 37.6 percent of African Americans owned their own home, versus 48.2

⁷⁴ Miller, [Mortgage Rates Chart: Historical and Current Rate Trends](#) (Apr. 3, 2023) The Mortgage Reports (as of Apr. 19, 2023).

⁷⁵ The mean home values of white and African American homes in California in 1930 was provided by the California Department of Housing and Community Development, through its analysis of 1930 decennial census microdata.

⁷⁶ U.S. Census, [United States Summary: Families](#) (1930) p. 33, table 40 (as of Apr. 24, 2023). The 1930 Census defines families as “a group of persons, related . . . who live together as one household.” *Id.* at p. 5. The Task Force thereby treats the Census’s figures for families as synonymous with the figures for households. The figure for white households includes both white native born and white foreign born households, combined. See *id.* at p. 33, table 40.

percent of white Americans, revealing a homeownership gap of 10.6 percent.⁷⁷ From this data, the Task Force's experts estimated the total wealth held in home values collectively by African Americans and white Californians.

The Task Force's expert team estimated the total wealth in homes held in each year. For 1930:

[((\$4,535 mean value of an African American home in California in 1930) (22,595 African American households in California in 1930) (0.376) = \$38,528,090 total African American wealth in California homes in 1930⁷⁸]

[((\$6,067 mean value of a white home in California in 1930) (1,482,203 white households in California in 1930) (0.482) = \$4,334,397,340 total white wealth in California homes in 1930⁷⁹]

Calculating the total wealth held by each of the two racial groups, they then computed the estimated wealth per-capita (i.e. per person) in each group (whether homeowner or not).

[\$38,528,090 total African American wealth in California homes in 1930 / 81,048 African Americans in California in 1930⁸⁰ = \$475 African American per capita wealth in California homes in 1930⁸¹]

[\$4,334,397,340 total white wealth in California homes in 1930 / 5,408,260 white Americans in California in 1930⁸² = \$801 white per capita wealth in California homes in 1930⁸³]

Taking the difference between the two (\$801 - \$ 475) results in an estimated per capita African American-white home value wealth gap of \$326 (in 1930 dollars), favoring white Californians. This gap represents the unequal starting positions for African American and white Californians even before the federal government massively subsidized white homeownership (while excluding African American applicants) through the New Deal and GI Bill.⁸⁴

⁷⁷ Collins and Margo, [Race and Home Ownership from the End of the Civil War to the Present](#) (2011) 101 American Economic Review 355 (Web Appendix Table 1) (as of Apr. 19, 2023).

⁷⁸ Rounded to the nearest dollar.

⁷⁹ Rounded to the nearest dollar.

⁸⁰ Gibson and Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States* (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19.

⁸¹ Rounded to the nearest dollar.

⁸² Gibson and Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States* (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19.

⁸³ Rounded to the nearest dollar.

⁸⁴ See generally Katznelson, *When Affirmative Action was White* (2005); California Task Force to Study and Develop Reparation Proposals for African Americans (Oct. 13, 2021) [Testimony of Jones](#) (as of Jan. 26, 2022).

The experts then repeated the calculation with data from 1980, three years after the federal government attempted to end the effects of redlining through the Community Reinvestment Act (CRA) of 1977.⁸⁵ Because the 1980 census did not provide a breakdown of white or African Americans per household in California, the experts calculated this figure by dividing the total number of white and African American Californians by the mean or average number of white Americans and African Americans per household that year:

[1,819,281 African Americans in California in 1980⁸⁶ / 3.67 average number of African Americans per household in 1980⁸⁷ = 495,717 African American California households⁸⁸]

[18,030,893 white Americans in California in 1980⁸⁹ / 3.22 average number of white Americans per household⁹⁰ = 5,599,656 white American California households⁹¹]

In 1980, the average African American non-Hispanic California home was worth \$66,670, and the average white non-Hispanic California home worth an estimated \$100,516 in 1980 dollars.⁹²

The California homeownership gap in 1980 amounted to 20.1 percentage points, with 40.6 percent of Black homes being owner-occupied, and 60.7 percent of white homes being owner occupied.⁹³

[((\$66,670 average value of an African American home in California in 1980) (495,717 African American households in California in 1980) (0.406) = \$13,418,077,670 total homeownership wealth of African Americans in California in 1980⁹⁴]

⁸⁵ See 12 U.S.C. 2901 et seq.

⁸⁶ Gibson and Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States* (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19.

⁸⁷ U.S. Census Bureau, [Household and Family Characteristics: March 1980](#) (as of Apr. 24, 2023). Because the 1980 census did not provide the mean or average number of African Americans or white Americans per household in California, this calculation had to rely on the average number of African Americans and white Americans per household, nationwide. The 1980 Census defined its size of household figures as “includ[ing] all persons occupying a housing unit.” *Id.* at p. 224.

⁸⁸ Rounded to the nearest whole number.

⁸⁹ Gibson and Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States* (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19.

⁹⁰ U.S. Census Bureau, [America's Families and Living Arrangements: 2019](#) (as of Apr. 19, 2023) (Table AVG1. Average Number of People per Household, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder: 2019 [Excel file]).

⁹¹ Rounded to the nearest whole number.

⁹² The mean home values of white and African American homes in California in 1980 was provided by the California Department of Housing and Community Development, through its analysis of 1980 decennial census microdata.

⁹³ Collins and Margo, [Race and Home Ownership from the End of the Civil War to the Present](#) (2011) 101 *American Economic Review* 355 (Web Appendix Table 1) (as of Apr. 19, 2023).

⁹⁴ Rounded to the nearest dollar.

[($\$100,516$ average value of a white home in California in 1980) ($5,599,656$ white American households in California in 1980) (0.607) = $\$341,652,998,655$ total homeownership wealth of white Americans in California in 1980⁹⁵]

Divided by the entire African American population in California in 1980, and the entire white population in California in 1980, respectively, each of these estimates yields the per-capita wealth in homes held by each group. The estimated average per capita African American wealth in California homes in 1980 amounted to $\$7,375$,⁹⁶ and the estimated per capita white homeownership wealth in California homes amounted to $\$18,948$.⁹⁷ In short, white Californians' per capita home wealth was $\$11,537$ (in 1980 dollars) greater than that of African American Californians.

To identify how much of the 1980 per-capita homeownership wealth gap was due to California's complicity in federal redlining discrimination, the 1930 per-capita homeownership wealth gap can be subtracted from the 1980 value. After adjusting the 1930 per-capita homeownership wealth gap into its equivalent purchasing power in 1980 dollars,⁹⁸ subtracting the 1930 per-capita homeownership wealth gap from the 1980 per-capita homeownership wealth gap ($\$11,537 - \$1,483$) results in a redlining per-capita wealth gap of $\$10,054$, quantifying how much Black Californians lost in homeownership wealth due to federal redlining discrimination and California's complicity in this policy. Compounding $\$10,054$ up to 2020 using the annual 30-year mortgage interest rate⁹⁹ yields a per-capita value of $\$160,931$ in 2020 dollars. In other words, the Task Force's expert team calculates that discriminatory redlining facilitated by the State of California caused the average African American in California to lose $\$160,931$ in homeownership wealth.

To estimate a hypothetical amount California might have to pay to make up only for redlining, the expert team multiplied the average loss to African American Californians due to redlining with the number of African Americans living in the State in 1980. While the Task Force recommends reparations payments to a defined eligible class, specifically, because the U.S. Census does not currently identify individuals in a manner that would allow them to be categorized in this way, this report uses the number of census respondents who identified as Black or African American alone as a rough estimate. Multiplying the average-per capita

⁹⁵ Rounded to the nearest dollar.

⁹⁶ Rounded to the nearest dollar.

⁹⁷ Rounded to the nearest dollar.

⁹⁸ U.S. Bureau of Labor Statistics, [CPI Inflation Calculator](#) (as of Apr. 24, 2023) (inputting the dates of January 1930 and January 1980 and rounding to the nearest dollar). If not kept in nominal dollars, not adjusted for inflation, the difference between the 1980 mean, per capita homeownership gap between African Americans and white Americans ($\$11,537$ in 1980 dollars) and the 1930 mean, per capita homeownership gap between African Americans and white Americans ($\$326$ in 1930 dollars) is $\$11,211$. Compounding $\$11,211$ up to 2020 using the annual 30-year mortgage interest rate yields a per-capita white-African American homeownership gap of $\$179,451.01$ —or $\$4,078$ for each year between 1933 and 1977 spent as a resident of the State of California (rounded to the nearest dollar).

⁹⁹ See Table 1 (citing Miller, [Mortgage Rates Chart: Historical and Current Rate Trends](#) (Apr. 3, 2023) The Mortgage Reports (as of Apr. 19, 2023)).

housing wealth gap in 2020 dollars (\$160,931) with the number of African American residents in California in 1980 (1,819,281)¹⁰⁰ yields \$292,778,710,611—or approximately \$293 billion (in 2020 dollars, rounded to the nearest dollar). If all 1,976,911 African American non-Hispanic California residents who lived in the State in 2020¹⁰¹ were eligible, each would receive housing reparations up to \$148,099—or \$3,366 for each year between 1933 and 1977 spent as a resident of the State of California.¹⁰²

A Note on Houselessness

Originally, the Task Force asked its economic experts to include housing discrimination calculations for the losses to African Americans in California from houselessness. This, however, proved difficult for both conceptual reasons and lack of data. While housing discrimination is one major factor causing disproportionate African American houselessness in California, there are other factors. For example, from the late 1950s to early 1980s, a movement for the deinstitutionalization and local care of the mentally ill coincided with the Reagan Administration's cuts to social services.¹⁰³ As a result, de-institutionalized individuals suffering from mental illness and other conditions swelled the rank of the homeless population, not only in California but nationwide.¹⁰⁴ Owning a larger share of the real estate, it was easier for white households to absorb the effects of de-institutionalization than it was for African Americans households.¹⁰⁵ Another factor is the war on drugs that caused not only a massively disproportionate incarceration of African Americans, but also unemployment and houselessness in many economically depressed African American communities once incarcerated African Americans were eventually released (see the discussion on Atrocity #2 above).¹⁰⁶

One approach to estimating reparations for African American houselessness caused by discrimination might be to establish the percentage of houseless African Americans in California disproportionate to the percentage of African Americans in the California population, and to multiply this number with the state average price of a one-bedroom apartment. This calculation would assume that the percent of African Americans in California who are houseless would have been equal to the percent of white people who are houseless if not for the various forms of discrimination documented in Chapters 2 through 18 of this report.

¹⁰⁰ Gibson and Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States* (2002) U.S. Census Bureau, Population Division, Working Paper No. 56, Table 19.

¹⁰¹ U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023)

¹⁰² Rounded to the nearest dollar.

¹⁰³ See Koyanagi, [Learning from History: Deinstitutionalization of People with Mental Illness as a Precursor to Long-Term Care Reform](#), Kaiser Com. on Medicaid and the Uninsured (2007) p. 1 (as of Apr. 20, 2023); Torrey, *Out of the Shadows: Confronting America's Mental Illness Crisis* (1997), ch. 1 (as excerpted by [PBS Frontline](#)).

¹⁰⁴ Streeter, [Homelessness in California: Causes and Policy Considerations](#), Stanford Institute for Econ. Policy Research (May 2022) (as of Apr. 20, 2023); Torrey, *supra*, at ch. 3.

¹⁰⁵ See Deas-Nesmith, *Psychiatric Deinstitutionalization and its Cultural Insensitivity: Consequences and Recommendations for the Future* (1992) 84 J. Nat. Med. Assn. 1036, 1037.

¹⁰⁶ Cohen et al., *How the War on Drugs Impacts Social Determinants of Health Beyond the Criminal Legal System* (2022) 54 Ann. Med. 2024, 2025-2028.

Table 1: Freddie Mac 30-Year Mortgage Rates for Compounding of Uncompensated per-Capita Wealth Gap due to Redlining

Year	Mortgage Interest Rate ¹⁰⁷	Uncompensated Per-Capita Wealth Gap due to Redlining ¹⁰⁸
1980	13.74%	\$10,054.00
1981	16.63%	\$11,725.98
1982	16.04%	\$13,606.83
1983	13.24%	\$15,408.37
1984	13.88%	\$17,547.05
1985	12.43%	\$19,728.15
1986	10.19%	\$21,738.45
1987	10.21%	\$23,957.95
1988	10.34%	\$26,435.20
1989	10.32%	\$29,163.31
1990	10.13%	\$32,117.55
1991	9.25%	\$35,088.43
1992	8.39%	\$38,032.35
1993	7.31%	\$40,812.51
1994	8.38%	\$44,232.60
1995	7.93%	\$47,740.25
1996	7.81%	\$51,468.76
1997	7.60%	\$55,380.38
1998	6.94%	\$59,223.78
1999	7.44%	\$63,630.03
2000	8.05%	\$68,752.25
2001	6.97%	\$73,544.28
2002	6.54%	\$78,354.08
2003	5.83%	\$82,922.12
2004	5.84%	\$87,764.77
2005	5.87%	\$92,916.56
2006	6.41%	\$98,872.52
2007	6.34%	\$105,141.03
2008	6.03%	\$111,481.04
2009	5.04%	\$117,099.68
2010	4.69%	\$122,591.66
2011	4.45%	\$128,046.99
2012	3.66%	\$132,733.51
2013	3.98%	\$138,016.30
2014	4.17%	\$143,771.58
2015	3.85%	\$10,054.00
2016	3.65%	\$11,725.98
2017	3.99%	\$13,606.83
2018	4.54%	\$149,306.78

¹⁰⁷ Miller, [Mortgage Rates Chart: Historical and Current Rate Trends](#) (Apr. 3, 2023) The Mortgage Reports (as of Apr. 19, 2023).

¹⁰⁸ Rounded to the nearest penny.

2019	3.94%	\$154,756.48
2020	3.10%	\$160,931.27

Atrocity 4: Unjust Property Takings

As documented in Chapter 5, Housing Segregation, California built its cities over the bones of the African American neighborhoods that it tore apart through eminent domain,¹⁰⁹ building the highways, cities, and parks that have enabled the State of California to become the fourth or fifth largest economy in the world.¹¹⁰ The unjust taking of land did more than just seize property—it destroyed communities and forced African Americans out of their historical neighborhoods. At its peak in 1980, 7.7 percent of the population in California was African American.¹¹¹ By 2020, that number dropped to about 6 percent.¹¹² In 2018 alone, 75,000 Black Americans left the state.¹¹³ The state’s more expensive coastal cities alone have shed 275,000 Black residents.¹¹⁴

Due to the voluminous records associated with the state’s many eminent domain actions throughout history, the Task Force and its experts did not have sufficient capacity, within the lifespan of the Task Force, to provide a calculation of the harm caused by unjust property takings throughout California. Nevertheless, the Task Force’s economic expert team explored two potential methods to quantify the damage caused by these actions, examining the displacement of Black Californians by the State and its local governments through eminent domain.

The Legislature could calculate the loss in property value experienced by displaced African Americans. This could be accomplished by examining the market value of the seized property at the time it was taken, subtracting the amount paid to the owner after eminent domain, and adding the increase in the property’s net value by adding in a fair measure of the estimated appreciation to the present day. A second method of estimating loss could measure the compensation due by using the current value of the property seized from African Americans. These methods for calculating harm are complicated if the property value has declined in value since it was seized, or if the seized property is now being used for infrastructure whose value is difficult to quantify. But, based on its experts’ recommendations, the Task Force suggests some strategies to assist the Legislature in overcoming that hurdle.

¹⁰⁹ Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

¹¹⁰ [ICYMI: California Poised to Become World’s 4th Biggest Economy](#), Office of Governor Newsom (Oct. 24, 2022) as of Mar. 23, 2023) citing Winkler, [California Poised to Overtake Germany as World’s No. 4 Economy](#), Bloomberg News (Oct. 24, 2022) (as of Mar. 23, 2023).

¹¹¹ Johnson et al., [California’s Population](#) (2022) Public Policy Institute of Cal. (as of Apr. 18, 2023).

¹¹² U.S.Census Bureau, [Quick Facts: California \(2020\)](#) U.S. Census Bureau (as of Apr.22, 2022).

¹¹³ Helper, [The Hidden Toll of California’s Black Exodus](#), Cal Matters (July 15, 2020) (as of Apr. 19, 2023).

¹¹⁴ *Ibid.*

The Task Force also recommends that the Legislature consider the factors below when calculating the harm caused by these unjust takings:



While the records of harm under this atrocity proved too voluminous to provide a calculation in this report, this report highlights several instances of eminent domain and unjust takings that the Legislature should examine, at minimum, when calculating the harm caused. As discussed in Chapter 5, Housing Segregation, in the 1940s and 1950s, African Americans lived San Francisco’s Fillmore District, forming a vibrant community known as the Harlem of the West.¹¹⁵ But the African American community there was destroyed by unjust takings and urban renewal projects during the 1960s and 1970s.¹¹⁶ Between 1970 and 2010, San Francisco’s Black population declined about seven percent, or about 96,000 people, despite the overall population growth of the city.¹¹⁷ Similarly, in Palm Springs, the city’s “redevelopment plan” in the 1960s destroyed an integrated neighborhood on part of the Agua Caliente Band of Cahuilla Indians’ Tribal Reservation, forcing out many of the African American residents that had resided in that neighborhood.¹¹⁸ And in Hayward, “redevelopment projects” in the 1960s likewise destroyed African American homes and businesses.¹¹⁹

¹¹⁵ Chapter 5, Housing Segregation, *supra* at pp. XX-XX.

¹¹⁶ *Id.* at pp. XX.

¹¹⁷ *Id.* at pp. XX.

¹¹⁸ Beason, [‘We’re Here to Stay.’ Despite Isolation and Racism, Black Americans Feel at Home in California’s Desert](#), LA Times (Aug. 15, 2021) (as of Mar. 20, 2023); Brown, [Section 14 Held Bittersweet Palm Springs History](#), Desert Sun (Dec. 12, 2015) (as of Mar. 20, 2023).

¹¹⁹ City of Hayward, [Russell City Reparative Justice Project](#) (as of Mar. 20, 2023).

These instances reflect just a few examples of state and local agencies’ active role in the destruction of African American homes to advance political ends. To investigate the degree to which the State has displaced African American families to pursue its projects, the Task Force recommends that the Legislature study—or elicit a further report from one or more state agencies with specific responsibility for this area, such as the California Department of Transportation, California Department of General Services, or the California Natural Resources Agency—the history of the State’s construction of its roads, railways, highways, bridges, water systems, dams, airports, and other major infrastructure, as these all reflect public projects that may have been built by displacing African American families from their land. For instance, when President Eisenhower created the Federal Interstate Highway System in 1956, developers tore through the nation’s cities and towns with freeways that carved up Black communities, including freeways in California.¹²⁰ The construction of Interstate 10 required the demolition of the Black neighborhood of Sugar Hill as well as the Pico neighborhood, forcing out many more Black families.¹²¹ The creation of Interstate 105—the Century Freeway—also threatened numerous African American communities, prompting legal challenges from the NAACP.¹²² These events, and the many more unjust takings throughout California history,¹²³ must be catalogued and studied by the Legislature to provide a full calculation of the harm caused by the State’s seizure or destruction of African American property.

Atrocity 5: Devaluation of African American Businesses

As detailed in Chapters 10 and 13, discriminatory policies resulted in the decimation and devaluation of African American businesses.¹²⁴ Business formation results from a combination of factors creating demand for businesses—including the public sector, households, business-to-business transactions, and the entrepreneurial environment—as well as existing rules, regulations, and taxes. But, as documented in Chapters 10 and 13, the doors to entrepreneurial opportunity have been much less available to the state’s African American residents than its white ones due to discrimination and its effects, including sharp differences in access to capital and equity.¹²⁵ While the lack of business data collected by the State of California limited the Task Force’s experts’ ability to quantify the harms caused by discrimination against African American businesses, other available data from the United States Census can be used to approximate some of those harms. Based on its experts’ analysis, the Task Force recommends a

¹²⁰ Dillon and Poston, [The Racist History of America’s Interstate Highway Boom](#), L.A. Times (Nov. 11, 2021) (as of Mar. 20, 2023).

¹²¹ *Ibid.*

¹²² See Richardson, [The Finding Aid of the Century Freeway Records](#), Online Archive of California (as of Mar. 20, 2023).

¹²³ See, e.g., Dillon and Poston, [Freeways Force Out Residents in Communities of Color—Again](#), L.A. Times (Nov. 11, 2021) (as of Mar. 20, 2023).

¹²⁴ See Chapter 10, Stolen Labor and Hindered Opportunity, *supra* at pp. XX-XX; Chapter 13, The Wealth Gap, *supra* at pp. XX-XX.

¹²⁵ See Chapter 10, Stolen Labor and Hindered Opportunity, *supra* at pp. XX-XX; Chapter 13, The Wealth Gap, *supra* at pp. XX-XX.

method for the Legislature to calculate the harms caused by discrimination against African American businesses based on the expected number of African American businesses that should exist in California, given the state's policies, aggregate household incomes, and demand for public investments, goods, and services.

The State of California does not collect information on business establishments by race, and does not maintain a database of contractors at the state or local level by race. Instead, the Task Force's experts reviewed the U.S. Census Bureau's Survey of Business Owners, which provides information about businesses, including information distinguished by race.¹²⁶ The most recent data from the Census's survey of business owners is from the 2012.¹²⁷ Though the Census only gives a snapshot of differences in business ownership in 2012, it displays the total wealth acquired by African American versus white businesses in California, reflecting the cumulative effects of racial inequalities resulting from actions by the State of California. As a result, it provides a guide for measuring the losses to business wealth caused by discrimination.

In 2012, the U.S. Census Bureau reported that there were 1,875,847 white non-Hispanic owned firms in California, compared to 166,553 African American non-Hispanic owned firms.¹²⁸ Given California's population in 2012,¹²⁹ the state had a business ownership rate of roughly 806.7 firms per 10,000 white residents and 738.9 per 10,000 African American residents. The white non-Hispanic owned firms had total sales, receipts or value of shipments totaling around \$1.14 trillion, while African American non-Hispanic owned firms had about \$14 billion.¹³⁰ In other words, white-owned firms had total sales, receipts, or value of shipments 80-times larger than that of black-owned firms.

Census data show that African American-owned businesses are not overrepresented in the type of ethnic enclave industries of accommodations and food services, or retail sales catering towards an African American market.¹³¹ So, if there were no discriminatory restrictions on access to capital or business equity—that is, if African American and white entrepreneurs competed on an equal playing field—the industry of African American and white businesses would be far more similar, reflecting the business opportunities that exist in California. For instance, the discrimination documented in this report explains why African American businesses lag behind white ones in the construction industry, a capital-intensive industry where

¹²⁶ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

¹²⁷ See *ibid.*

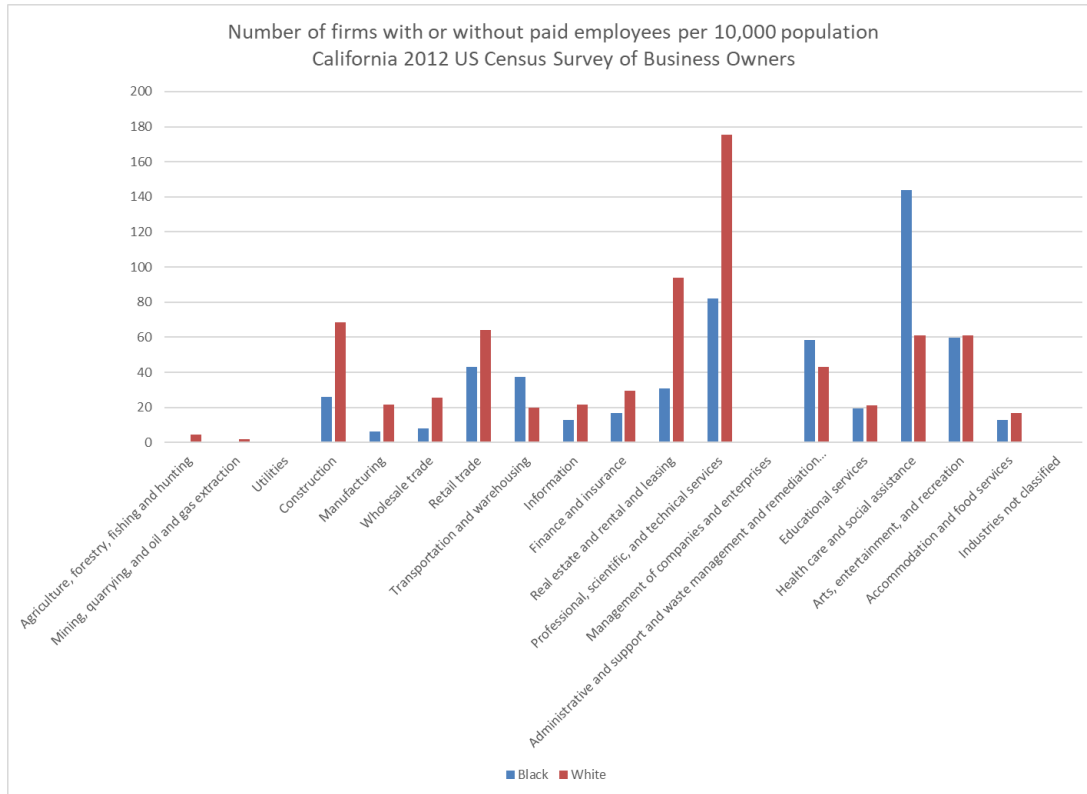
¹²⁸ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

¹²⁹ US Census Bureau, [American Community Survey, Selected Population Profile in the United States, 2012](#), SO201 (as of April 14, 2023).

¹³⁰ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

¹³¹ Aldrich et al., Ethnic Residential Concentration and the Protected Market Hypothesis (1985) 63 *Social Forces* 996, 996-1009.

access to government contracts matters greatly.¹³² The history and ongoing effects of residential segregation and redlining further limited opportunities for African American construction firms in the private sector,¹³³ highlighting again how discrimination has produced the African American and white business wealth gap in construction, a trend that reoccurs across nearly every other industry.¹³⁴



The Task Force recommends estimating the effect of discrimination against African American businesses by implementing an equation that calculates a figure for each state separately, based on the general demand environment of state and local government contracting and household income. Controlling for each state allows us to then control for differences in each state's business environment. Then estimates can incorporate the number of businesses formed, and sales and receipts generated on those factors. This is an approach used by many sociologists researching differences in business formation using the business environment.¹³⁵

¹³² U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

¹³³ See, e.g., Lippard, [Building Inequality: A Case Study of White, Black, and Latino Contractors in the Atlanta Construction Industry](#) (2006) Dissertation, Georgia State University, pp. 179-181 (as of Apr. 20, 2023).

¹³⁴ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

¹³⁵ Motoyama, Yasuyuki, and Emil Malizia. "Demand pull or supply push? Metro-level analysis of start-ups in the United States." *Regional Studies, Regional Science* 4, no. 1 (2017): 232-246. Is an example that highlights the importance of demand or pull factors in business formation compared to push factors (like unemployment that drives professionals to go into self-employment, or discrimination that create ethnic businesses as a source of self-employment to address discrimination in hiring.)

This method of calculation, however, relies only on the raw number of businesses and the gap in ownership numbers between African American and white residents. It does not estimate the loss in business wealth due to discrimination based on the volume of businesses that *would be expected* for a state with California’s public expenditures and household income.

To also account for the *expected* number of businesses absent discrimination when estimating business losses due to discrimination, the Task Force, based on its experts’ analysis, proposes the Legislature employ the following formula:

$$F_r = f(G_s, E_s) + \beta R + \gamma R_C + \Gamma_s \begin{pmatrix} 1 & & \\ & 1 & \\ & & 1_{51} \end{pmatrix} + \phi_r(P_T, P_B)$$

F is the number of businesses in in each state in 2012, for a given race (non-Hispanic African Americans and Total), and f(G, E) is a function of G, which represents the level of state and local government expenditures in each state (and the District of Columbia). E represents the level of personal income in in each state. β is a parameter estimating the effects of race (R=1 for African Americans) on the number on businesses in each state. And γ is a parameter to be estimated, where (R=1 for African Americans in California) on the effect of being African American in California compared to the average effect of being African American in the other states. And the parameter Γ is a vector of fixed effects estimated for each state (using a matrix of design variables for each state). And ϕ estimates the mean number of firms per person in Total and for the African American population, where P_T is the total population and P_B the African American population.

For G and E—the level of state and local government expenditures and personal income in each state—the Task Force’s experts used 2007 data from the US Bureau of Economic Analysis.¹³⁶ The Task Force’s experts recommend use of 2007 data to ensure that the effects of government expenditures and personal income in each are exogenous—that is, to isolate the effect of government expenditures and personal income, separate from the effect of the size of firms in 2012—and because 2007 represents the previous peak in economy.¹³⁷

The coefficient γ , enables this report to estimate how many fewer businesses African American Californians were able to create, considering the average number of firms that would ordinarily be created by African Americans, given California’s demand as estimated by the levels of state and local government expenditures and personal income. And, as stated above, because the average value of a business (outside of the financial industry) is generally 2.3 times the value of its total sales, the formula can calculate the financial losses in business value by multiplying 2.3 times the average values of sales by businesses in California with the number of African

¹³⁶ US Bureau of Economic Analysis, [Regional Data, GDP and Personal Income](#) (as of April 24, 2023).

¹³⁷ Because the lag in years is meant only to ensure that the data is exogenous, the particular year of data will not greatly affect the parameter γ .

American-owned firms that discrimination had prevented African American residents from creating. Once that amount of loss is determined, the Task Force recommends that the Legislature calculate the total value of that loss if compounded interest were added to that figure until the present. Finally, the resulting sum can be divided by the number of African American residents in California to reflect the business losses due to each resident because of the discrimination that produced these losses in African American business wealth.

The result of the estimation is $\gamma = -59950.91$. That is, though given fewer African American firms are created in each state than would be expected, given a state's leading demand, or pull, factors for business formation (0.09 per person, compared to 0.05—the models estimate of ϕ), African Americans in California were able to create 59,951 firms fewer than African Americans in other states, on average, under the same circumstances. This gap reflects something that is unique to California that speaks to disadvantages peculiar to this state.

The average sales of firms in California, according to the 2012 U.S. Census Survey, was \$1,103,966.¹³⁸ Because the average value of a non-financial business is generally 2.3 times its sales value¹³⁹ that would give these firms an average value of approximately \$2,539,122. Multiplying that value times the missing number of businesses yields \$152,222,903,022 in missing African American business wealth in California. On a per capita basis, using the African American population as of 2020,¹⁴⁰ that would amount to roughly \$77,000 per African American in California.¹⁴¹

Other Harms and Atrocities

Although the Task Force and its experts attempted to quantify five major categories of atrocities and harms, its focus on those five categories was due, in part, to the availability of data or the feasibility of creating a method for financially quantifying the harm caused. Other harms that should or may include compensation, reparations, and or redress by California include labor discrimination, segregated education, lack of representation in government, environmental harm, transgenerational harm, and other harms. Of these, only labor discrimination includes sufficient data for the Task Force to offer a recommendation as to calculation.

For New-Deal-based labor discrimination, the Task Force suggests that the Legislature quantify harm using historical data beginning in 1933, when farm laborers and domestic service laborers (industries in which African Americans were over-represented) were excluded from progressive labor legislation. This calculation could further use data up until when Congress enacted Title VII of the Civil Rights Act of 1964, prohibiting racial discrimination in businesses with over 25 employees. Of course, *de jure* labor discrimination in California likely goes back to the founding of the state, and *de facto*

¹³⁸ U.S. Census Bureau, [Survey of Business Owners \(SBO\) - Survey Results: 2012](#) (Feb. 23, 2016) (as of April 13, 2023).

¹³⁹ New York University, Stern School of Business, [Revenue Multiples by Sector \(US\)](#) (January 2023) (as of April 13, 2023).

¹⁴⁰ U.S. Census Bureau, [Quick Facts: California](#) (2021) (as of Apr. 18, 2023).

¹⁴¹ Rounded to the nearest dollar.

labor discrimination continues unabated to this day, meaning this formula would capture only a piece of the financial losses suffered due to racial discrimination.

Based on its experts' analysis, the Task Force recommends the Legislature calculate the loss to black Americans from discrimination in employment, rather than the gains to whites. This measurement consists of two major components: (1) a reduction in wages and (2) a greater likelihood of being unemployed. A suitable annual "loss function" could take the following form:

$$L = (D * W * H) + ((A * C) + (D * W * C))$$

Where:

L = the lost wages;

D = the average percentage reduction in wages due to discrimination or the discrimination coefficient;

W = the average white wage;

A = the average African American wage;

H = total hours African Americans worked for pay in a given year; and

C = the total hours of work African Americans were denied by discrimination.

For example, using national data from 2019, the method the Task Force recommends for estimating loss in earnings due to discrimination in employment might work as follows. First, the average wage gap can reflect the amount of wages lost due to pay discrimination. In 2019, the average wage for white workers was \$29.33 per hour and the average wage for African American workers was \$24.83 per hour.[1] Assuming, conservatively, that African Americans lost five percent of what white workers earn, on average, due to employment discrimination (as opposed to taking the full difference between average white and African American wages as wages lost due to employment discrimination) the hourly wage loss for each African American worker due to discrimination would be \$1.47.¹⁴² If the typical full-time worker was paid for 48 weeks, five days a week, for an eight hour workday, the typical full-time worker would have worked 1,920 total hours in a year. If there were about 20 million African American labor force participants and a 6.1 percent annual unemployment rate,¹⁴³ 18.6 million black Americans worked for pay for over 35.7 billion hours in the year—the value of H in the formula above. Multiplying H by \$1.47 leads to an estimated loss of approximately \$52.48 billion due to unequal pay from discrimination.¹⁴⁴

Second, the difference in the African American and white unemployment rates in 2019 can be used to calculate the amount of wages lost due to unemployment caused by discrimination. In 2019, the white rate of unemployment was 3.3 percent, compared to the African American rate of unemployment at 6.1 percent. Subtracting 3.3 percent from 6.1 percent results in an African American and white unemployment gap of 2.8 percent. Multiplying 20 million African American

¹⁴² Rounded to the nearest cent. See, e.g., Darrity, Mullen, and Slaughter, *The Cumulative Costs of Racism and the Bill for Black Reparations* (2022) 36 J. of Econ. Perspectives 99, 114 (performing a version of this formula using median wages).

¹⁴³ Darrity, Mullen, and Slaughter, *The Cumulative Costs of Racism and the Bill for Black Reparations* (2022) 36 J. of Econ. Perspectives 99, 114.

¹⁴⁴ Rounded to the nearest tenth million.

labor force participants by the 2.8 percent unemployment gap yields 360,000 African Americans subjected to *excess unemployment*. Then, multiplying 360,000 African Americans by 1920 annual hours leads to a total of 691.2 million hours of work lost due to discrimination, the value of C. Multiplying C by the average African American wage increased by the amount assumed to have been lost due to discrimination ($\$24.83 + \1.47) leads to an estimated loss of approximately \$18.18 billion due to the fully denied wages due to discrimination.¹⁴⁵

Adding together the estimated losses due to unequal pay (\$52.48 billion) and the estimated losses due to unequal unemployment (\$18.18 billion) amounts to an aggregate loss of approximately \$70.66 billion in 2019 for African American workers due to discrimination. Dividing that total amount by the number of African American labor force participants, this amounts to an average loss of about \$35,742 per African American labor force participant, nationwide, in 2019.

While the Task Force's experts provided a potential methodology to calculate labor harms, for the remaining harms and atrocities not addressed in this chapter, the Task Force had insufficient data to recommend further methodologies for calculating reparations. Accordingly, the Task Force recommends that the Legislature conduct a further analysis regarding the development of data and quantification of cumulative reparations. And, in the period following an appropriate "down payment" of an initial meaningful amount of reparations and the creation of appropriate claims and compensation programs, the Legislature should complete the California reparations program by quantifying and paying cumulative reparations for all of the atrocities and harms raised herein.

¹⁴⁵ Rounded to the nearest tenth million.