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## The Color of Justice

### Transitional Justice and the Legacy of Slavery and Racism in the United States

The murders of George Floyd and Breonna Taylor in the spring of 2020 at the hands of police have set off a wave of national and international protests demanding that the United States (US) confront its unaddressed legacy of slavery and racial discrimination, manifest in persistent social and economic inequality.<sup>1</sup> Compared with previous protest movements in the US, this time, it seems more attention is being paid to the historical roots of the grievances being voiced. Only a few years ago, following the killing of Michael Brown in Ferguson, Missouri, protests broke out calling for an array of reforms, such as body cameras and greater accountability for individual police officers. However, across the country, the continued violence against Black people by police highlights that this is not a problem of individuals. It is rather a pervasive and systemic problem that began before the nation’s founding and has been a constant through line in US history from the early colonial period to the present. This history includes the genocide of Native Americans, the enslavement of African Americans, and the internment of Japanese Americans during World War II. Putting an end to this continuing legacy requires an equally systemic response.

To understand what conditions led to the murder of George Floyd, and so many others before him and since, it is important to analyze the past and put current grievances in historical perspective. To that end, transitional justice can guide the discussion to focus on root causes of violence and racial injustice and provide ideas for what steps can be taken to undo systemic abuses and redress harms linked to the legacy of slavery. Historian John Hope Franklin urges citizens, “To confront our past and see it for what it is... It is a past that is filled with some of the ugliest possible examples of racial brutality and degradation in human history. We need to recognize it for what it was and is and not explain it away, excuse it, or justify it. Having done that, we should then make a good-faith effort to turn our history around.” As part of that good-faith effort, the US should look to and learn from other countries that have undertaken efforts to address systemic human rights violations, provide reparations, and advance reforms.

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<sup>1</sup> While many international protest events were held in solidarity with the US-based Black Lives Matter movement and to honor the life of George Floyd, protestors around the globe also used the opportunity to call out their own countries’ racist histories. *Washington Post*, “How George Floyd’s Death Sparked Protests Around the World,” June 10, 2020.

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**A Time for Global Inspiration**

As is the case in many other countries, there has been a long and ongoing struggle in the US to achieve equal rights and representation for all citizens.<sup>2</sup> Yet, for much of US history, most citizens rested easy in the belief that the nation would uphold the founding principle of equality and any violation of it could be addressed through the fair administration of the justice system. But in reality, rather than protecting the rights of all US citizens, the justice system, including criminal prosecutions, has been used to discriminate against and infringe upon the rights of people belonging to communities of color. In particular, over the course of US history, the justice system has suppressed the rights of Black people.<sup>3</sup> Furthermore, laws intended to prosecute wrongdoing have often been applied discriminatorily based on the color of one's skin, further entrenching systemic racism and notions of white supremacy.<sup>4</sup>

Transitional justice encompasses a variety of approaches developed precisely to address structural and systematic abuses. With an emphasis on truth, justice, reparations, and reform, these approaches have helped countries emerging from periods of conflict and repression deal with large-scale or systematic human rights violations and take steps to prevent their recurrence. A common misconception is that transitional justice can only be applied in a society that is undergoing a significant transition, either at the end of a conflict or during a transfer of power. However, while such a transition does facilitate efforts to reform institutions and redress past atrocities, what is needed are a political, social, and cultural opening and a public demand for change. Moreover, over the past decade, the general understanding of transitional justice has evolved; initially conceived as a set of approaches to achieve justice and redress in the aftermath of war or authoritarian regimes, it is now seen as relevant to established democracies and has been increasingly applied in them to address legacies of abuse and historical injustices. For instance, Canada and Australia have undertaken transitional justice processes to deal with past violations against Indigenous populations, and in Belgium and the United Kingdom there has been growing recognition of the need to confront their colonial past and their role in slavery.<sup>5</sup> Arguably, the US now finds itself in such a moment of reckoning, as protests and citizen demands crack open the door to broader discussions on how to unravel the legacy of

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2 See, for example, Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury Publishing, 2018); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: HarperCollins Publishers, 2002); Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Harvard University Press, 2003); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2009); Richard Hasen, *Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy* (New Haven, CT: Yale University Press, 2020); Bernard Manin, *The Principles of Representative Government (Themes in the Social Sciences)* (Cambridge, UK: Cambridge University Press, 1997), pp. i-vi; Blanca Rodríguez Ruiz and Ruth Rubio-Marín, "The Gender of Representation: On Democracy, Equality, and Parity," *International Journal of Constitutional Law* 6, 2, (2008): 287-316; Adrienne LaFrance, "The 'Undesirable Militants' Behind the Nineteenth Amendment," *The Atlantic*, June 4, 2019, [www.theatlantic.com/politics/archive/2019/06/most-dangerous-women-american-politics/590959/](http://www.theatlantic.com/politics/archive/2019/06/most-dangerous-women-american-politics/590959/)

3 See, for example, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing Corporation, 2017); Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: HarperCollins Publishers, 2002).

4 For an analysis of the criminalization of young African-Americans during the 1970s and 1980s, see Bernard E. Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* (Chicago: University of Chicago Press, 2007).

5 Morgan Hollie, Human Rights Watch, "Emancipation Day – A Reminder That Caribbean Still Needs Justice, Repair," August 3, 2020, [www.hrw.org/news/2020/08/03/emancipation-day-reminder-caribbean-still-needs-justice-repair#](http://www.hrw.org/news/2020/08/03/emancipation-day-reminder-caribbean-still-needs-justice-repair#); BBC, "Belgian King Expresses 'Deepest Regrets' for DR Congo Colonial Abuses," June 30, 2020, [www.bbc.com/news/world-europe-53232105](http://www.bbc.com/news/world-europe-53232105)

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slavery and white supremacy in the US and reform institutions such the police and the criminal justice system.

The International Center for Transitional Justice (ICTJ) has accompanied victims, survivors,<sup>6</sup> and activists in their quest for justice and has advised and assisted policymakers and governments in their efforts to effectively deal with past human rights abuses and lay the foundation for a more just and inclusive future. Although every context is unique and requires a tailored response, experiences from transitional justice processes in places such as South Africa, Colombia, Tunisia, and Canada, along with lessons from ongoing work in the US, can offer inspiration and ideas for what can be done in the US to respond to current calls for broader and more comprehensive reforms.

### Acknowledgment and Truth Seeking

“Say their names” has become a common refrain at recent protests and on social media. It is a call to acknowledge individual victims and overcome the inhumanity by which their lives were taken. Even well-written laws and comprehensive reforms are not enough on their own to get to the root causes of the racial injustice plaguing the US. Real change requires a transformation in the nation’s narrative, beginning with how US history is taught and learned, particularly as it relates to race and how it was constructed to serve as a caste system that marginalizes people of color.<sup>7</sup> As James Baldwin writes, “[White people] are...still trapped in a history which they do not understand; and until they understand it, they cannot be released from it.”<sup>8</sup>

Central to all efforts to acknowledge victims and the violations they suffered, challenge the dominant historical narrative, repair harms, and reform broken systems, are the need to connect the dots between past and present abuses and affirm the humanity and dignity of Black people. Slavery is far from a sin of the past. As historian Edward Baptist notes, “slavery’s expansion shaped every crucial aspect of the economy and politics of the new nation...the commodification and suffering and forced labor of African Americans [are] what made the US powerful and rich.”<sup>9</sup> While the Emancipation Proclamation may have formally ended the system of slavery as it then existed,<sup>10</sup> it did nothing to reverse the economic gains made by whites or to stop its mutation into other forms of systemic racism.<sup>11</sup> African Americans enjoyed a brief period of liberty during Reconstruction when the federal government took over governance of the South and attempted to enforce civil rights. The Thirteenth, Fourteenth, and Fifteenth Constitutional Amendments, passed between 1868 and 1870, were intended to protect African Americans from discrimination

6 ICTJ generally uses the term “victims” rather than “survivors” to indicate individuals who suffered human right violations because “victim” is the term under international law which defines a person whose rights have been violated. However, in certain specific contexts, such as the US, when the violations of fundamental rights have caused intergenerational harm, ICTJ uses the term “survivors.”

7 Isabel Wilkerson, “America’s Enduring Caste System,” *New York Times*, July 1, 2020, [www.nytimes.com/2020/07/01/magazine/isabel-wilkerson-caste.html](https://www.nytimes.com/2020/07/01/magazine/isabel-wilkerson-caste.html)

8 James Baldwin, *The Fire next Time* (New York: Dial Press, 1963).

9 Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014).

10 The documentary film *13TH* explains how slavery was never fully abolished but rather transformed into more covert but equally destructive policies see the documentary. Ava Duvernay and Jason Moran, *13TH*, United States, 2016.

11 See, for example, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012); Carol Anderson, *White Rage: the Unspoken Truth of Our Racial Divide* (New York: Bloomsbury, 2016); Nikole Hannah-Jones, “The 1619 Project,” *New York Times Magazine*, August 14, 2019, [nyti.ms/2LuLU8j](https://www.nytimes.com/2019/08/14/magazine/1619-project.html); Manisha Sinha, *The Slave’s Cause: A History of Abolition* (New Haven, CT: Yale University Press, 2016).

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and uphold their basic freedoms including the rights to vote and to equal protection under the law.

These gains, however, were short lived. Following a political compromise in 1877, Reconstruction ended and the federal government withdrew from the South.<sup>12</sup> A coordinated campaign spread across the South to disenfranchise Black voters through intimidation and by barring them from the polls.<sup>13</sup> State legislatures, filled with white supremacists, passed new laws in the 1890s to enforce segregation. Known as “Jim Crow” laws,<sup>14</sup> they represented a formal, codified system of racial apartheid that dominated the American South until the mid-1960s. For example, it was not until 1965, with the passage of the Voting Rights Acts, that racial discrimination was prohibited in voting, and 1967 that inter-racial marriage was legalized at the federal level. This system of segregation marginalized Black communities and entrenched a racial hierarchy into the social, political, and economic fabric of the United States, which remains painfully obvious today when comparing indicators of well-being among different racial groups in the United States.<sup>15</sup>

From about 1916 to 1970, an estimated 6 million Blacks migrated from the South to the North, fleeing racially motivated violence and discrimination and in search of better job opportunities. While housing discrimination was outlawed in 1917, white communities found ways to use restrictive covenants to prevent African Americans from buying houses in their neighborhoods.<sup>16</sup> Railroads, highways, and walls were also used to segregate residential areas.<sup>17</sup> As a result of this housing discrimination, Blacks created their own cities and districts within larger urban areas. A vibrant urban Black culture resulted, blossoming in the Harlem Renaissance and later inspiring the civil rights movement of the 1960s. At the same time, however, these dense urban areas were home to a disproportionate number of people who lacked adequate housing, schooling, health care, and employment. Fearing infringement on their neighborhoods and resources, white citizens, abetted by local police, sought to deny them access to these basic rights. This in turn enflamed tensions between law enforcement and communities of color.

In *The Condemnation of Blackness*, Khalil Muhammed describes black criminality as a process by which “people are assigned the label of criminal, whether they are guilty or not.”<sup>18</sup> He further argues that this cycle—whereby black people were arrested to

12 Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: HarperCollins Publishers, 2002), 586-587.

13 Jim Rutenberg, “A Dream Undone: Inside the 50-year Campaign to Roll Back the Voting Rights Act,” *New York Times Magazine*, July 29, 2015, [nyti.ms/2n1DLOD](https://www.nytimes.com/2015/07/29/magazine/a-dream-undone.html); Gregory Downs, “Today’s Voter Suppression Tactics Have A 150 Year History,” *Talking Points Memo*, July 26, 2018, <http://bit.ly/2QyQZQg>

14 In 1883, the US Supreme Court found unconstitutional the Civil Rights Act of 1875, which Congress had passed to protect African Americans from discrimination in public accommodations such as hotels, theaters, and railroads. The Civil Rights Cases, 109 U.S. 3 (1883), opened the door to discrimination based on what became known as “separate but equal” policies.

15 One recent example is the differentiated impact of the coronavirus pandemic. Across the US, African Americans, Latinx, and other communities of color have been disproportionately affected by the disease at alarming rates. This, too, is a result of historically rooted socioeconomic inequalities, including unequal access to quality health care. Centers for Disease Control and Prevention, “Coronavirus Disease 2019 (COVID-19): Health Equity Considerations and Racial and Ethnic Minority Groups,” updated June 25, 2020, [www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html](https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html); Maria Godoy and Daniel Wood, “What Do Coronavirus Racial Disparities Look Like State by State?” *National Public Radio*, May 30, 2020.

16 Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (Chapel Hill, NC: University of North Carolina Press, 2019).

17 Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985).

18 Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, MA: Harvard University Press, 2019).

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prevent them from exercising their rights and then deemed dangerous because of their high arrest rates, which deprived them of their rights even further—has been repeated throughout US history.<sup>19</sup> In response to this repression, race riots broke out across the US in 1919, in what came to be known as the Red Summer of 1919. As an example, the race riot in Chicago that year lasted 13 days and left 38 people dead, 537 injured, and 1,000 black families without homes. In response, the governor of Illinois established the Chicago Commission on Race relations. Its 1922 report found there to be systematic participation of police in mob violence against Blacks and made a series of strong targeted recommendations.<sup>20</sup> The report, however, was shelved and the recommendations were never implemented.

In parallel to discriminatory laws, policies, and policing, has been consistent social acceptance of racist ideas and the “othering” of people of color throughout US history. Postcards from the early 1900s feature photographs of lynchings attended by families dressed in their Sunday best.<sup>21</sup> This type of behavior was not isolated to a small subset of racist individuals such as members of the notorious Ku Klux Klan; rather, broad sectors of society considered it acceptable. Furthermore, as mentioned above, this blatant racism and these coordinated acts of racial terror contributed to the migration of thousands of Blacks from the South to the North.<sup>22</sup> Often forced to flee overnight, families had to leave behind property and any wealth they had started to accumulate, only to face harsh conditions and discrimination in the North. An example of this discrimination is captured in this photograph from 1963, in which young boys are shown taunting and waving a belt at the Horace Baker family, the first African American family to buy a home in the all-white neighborhood of Folcroft, Pennsylvania. Overcoming the dehumanization associated with persistent racial and socioeconomic subjugation requires a conscious and explicit government effort to denounce it and inform all citizens about how it occurred throughout US history.



The caption reads: “Youngsters jeer as moving men tote possessions of the Horace Baker family up the steps of their new home in the formerly all-white Delmar Village development here 8/30. The Negro family finally gained entrance to their new home after two days of demonstrations by whites.” (Library of Congress)

An essential element of any comprehensive transitional justice process, truth seeking brings to light past crimes, how they were committed and by whom, and the direct harms and repercussions experienced by victims and their families. Truth seeking goes

19 Anna North, “How Racist Policing Took Over American Cities, Explained by a Historian,” June 2020, Vox, [www.vox.com/2020/6/6/21280643/police-brutality-violence-protests-racism-khalil-muhammad](https://www.vox.com/2020/6/6/21280643/police-brutality-violence-protests-racism-khalil-muhammad)

20 Chicago Commission on Race Relations, *The Negro in Chicago: a Study of Race Relations and a Race Riot* (Chicago: University of Chicago Press, 1922), <https://archive.org/stream/negroinchicagostoochic#page/n31/mode/2up>

21 A particularly disturbing image is the postcard of 18-year-old Jesse Washington From Waco, Texas, after being burned alive. The message on the back reads, “This is the barbeque we had last night. My picture is to the left with a cross over it. Your son, Joe.” The postcard was mailed in 1916. Karen E Quinones Miller, “Mr. Jesse Washington— Say His Name,” *Medium*, October 25, 2019, <https://medium.com/@authorkeqm/mr-jesse-washington-say-his-name-8f98a24fb130>

22 Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America’s Great Migration* (New York: Vintage Books, 2011).

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far beyond traditional fact-finding or clarifying individual cases; it is “an undertaking to understand comprehensively root causes, circumstances, factors, context and motives of countrywide situations of repression and/or violence.”<sup>23</sup> By publicly calling attention to previously suppressed or marginalized narratives and piecing together past incidents in a way that explains the roots of current injustices, truth-seeking endeavors serve to “narrow the range of permissible lies” about the past and help provide a roadmap for achieving a just and inclusive society.<sup>24</sup> Crucially important, truth seeking also helps create the political will and public support for reparations and institutional reform.

With over 40 truth commissions worldwide,<sup>25</sup> there is a vast array of examples from which to take inspiration. Depending on the context and nature of violations, truth-seeking processes have varied in form and scope. For example, Tunisia’s Truth and Dignity Commission focused on affirming human dignity in the wake of repression and marginalization of certain people and regions.<sup>26</sup> In Guatemala, the Historical Clarification Commission (CEH) mainly sought to reveal the systematic nature of the massive attacks on the Indigenous population. It situated what happened across thousands of villages within the broader historical context of the Guatemalan military’s counter-insurgency campaign. In doing so, it dispelled popular misconceptions that those whom the military killed were criminals or merely victims of a neighborly feud and helped to clear the name of many victims. The commission’s final report also revealed systemic repression against Indigenous Guatemalans within several state institutions, in particular the judiciary.

Early truth commissions largely gathered testimonies and documentation behind closed doors and presented their analysis in a written report. The South African Truth and Reconciliation Commission, established to examine the crimes of apartheid, was the first of its kind to emphasize public education and incorporate it in its work. All of its hearings were broadcast live on national radio and television stations. These hearings triggered a national conversation about the brutal realities of South Africa’s apartheid regime, forcing some citizens who had looked the other way to finally acknowledge the inhumanity of the system. Since then, most subsequent truth commissions have held public hearings.

As different options are considered in the US, it is important that the truth-seeking process that is ultimately devised be feasible, examine the full range of atrocities perpetrated, and use multiple approaches to reach a diverse audience. Given the wealth of existing initiatives, along with the ongoing work of Black historians, authors, sociologists, artists, musicians, and filmmakers, steps should also be taken to collect, curate, and amplify this already impressive body of truth-seeking work.<sup>27</sup>

While the truth of the United States’ legacy of slavery and racism and its connections to present-day injustices are well documented in scholarly materials, it has not been acknowledged by the government or adequately integrated into the country’s collective

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23 Human Rights Council, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Pablo de Greiff, September 7, 2015 (A/HRC/30/42), § 23, pp. 8, 40, available at <https://undocs.org/A/HRC/30/42>

24 Michael Ignatieff, “Articles of Faith,” *Index on Censorship* 25, 5 (1996): 113.

25 Countries as diverse as Argentina, Colombia, East Timor, Morocco, Nepal, Peru, Sierra Leone, South Korea, and the Gambia, to name only a few, have set up truth commissions.

26 Instance Verité et Dignité (Tunisia), [www.ivd.tn/?lang=en](http://www.ivd.tn/?lang=en); for analysis of the process, see ICTJ, “Public Hearings Continue: Tunisians Testify to Violence, Corruption, and Marginalization,” December 21, 2016, [www.ictj.org/news/tdc-tunisia-violence-corruption-marginalization](http://www.ictj.org/news/tdc-tunisia-violence-corruption-marginalization)

27 See, for example, the proposal put forward by Dr. Marcus Anthony Hunter for the sustainable national, local, and regional Archives for Racial and Cultural Healing. Marcus Anthony, “Radical Reparations,” *Global Dialogues* 11, 1 (2021), <https://globaldialogue.isa-sociology.org/radical-reparations/>

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narrative. Instead, it is often overlooked or, in some circles, actively denied. As Carol Anderson writes, a belief in “racial innocence” dominates political structures and obfuscates the systemic racism that underpins US institutions and policies.<sup>28</sup> A public school textbook in Texas, for example, referred to enslaved people as “workers” who were transported to the US, effectively erasing the word “slavery” from the version of history it tells.<sup>29</sup> Calls for national truth seeking continue to face strong resistance from certain groups.<sup>30</sup> As Hannah-Jones aptly points out, “there is too much to know, and yet we aggressively choose not to know it.”<sup>31</sup>

A truth-seeking process in the US could help debunk false or whitewashed historical accounts and set the record straight once and for all, as well as shed light on the causes and consequences of the continuous violence and racism that have persisted for over 400 years. At the federal level, there have been a number of investigations into and reports on institutional racism in the country, such as the report of the National Advisory Commission on Civil Disorders (known as the Kerner Commission) of 1968,<sup>32</sup> but they were all largely ignored, shelved, or blocked from proceeding. Most recently, Representative Barbara Lee sponsored a resolution calling for the establishment of a “Truth, Racial Healing, and Transformation Commission,” to “properly acknowledge, memorialize, and be a catalyst for progress, including toward permanently eliminating persistent racial inequities.”<sup>33</sup> The purpose of the proposed commission is to hold the US federal government accountable and advance necessary reforms to dismantle systemic racism.<sup>34</sup>

In the absence of a national process, several local truth-seeking processes have been launched at both the city and state level. A few examples include The Truth Telling

28 Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide*, (New York: Bloomsbury Publishing, 2016).

29 Laura Isensee, “Why Calling Slaves ‘Workers’ Is More Than an Editing Error,” *National Public Radio*, October 23, 2015, [www.npr.org/sections/ed/2015/10/23/450826208/why-calling-slaves-workers-is-more-than-an-editing-error](http://www.npr.org/sections/ed/2015/10/23/450826208/why-calling-slaves-workers-is-more-than-an-editing-error). More recently, a group of high school students started a petition asking the Texas Board of Education demanding an anti-racist curriculum. The petition states, “The current TEKS [Texas Education Knowledge and Skills] standards ignore our nation’s racist history as well as the present-day consequences of a past steeped in racial violence, slavery, and Jim Crow... Additionally, by refusing to acknowledge our long history and existing prevalence of redlining, racially motivated gerrymandering, and race-based voter suppression, we are failing to teach our high school students the long-lasting consequences of our history and how these continue to pose a threat to our society today.” See, change.org, “The Texas State Board of Education Must Implement an Anti-Racist History Curriculum,” [www.change.org/p/the-texas-state-board-of-education-the-texas-state-board-of-education-must-implement-an-anti-racist-history-curriculum?original\\_footer\\_petition\\_id=&grid\\_position=&pt=](http://www.change.org/p/the-texas-state-board-of-education-the-texas-state-board-of-education-must-implement-an-anti-racist-history-curriculum?original_footer_petition_id=&grid_position=&pt=)

30 As just one example, Senator Tom Cotton has sought to block the teaching of the “1619 Project” in schools. Teo Armus, “Tom Cotton Tries to Ban Schools from Teaching ‘1619 Project’ out of the Classroom. His Efforts Have Kept It in the Spotlight,” *Washington Post*, July 27, 2020, [www.washingtonpost.com/nation/2020/07/27/tom-cotton-1619-project-slavery/](http://www.washingtonpost.com/nation/2020/07/27/tom-cotton-1619-project-slavery/)

31 Nikole Hannah-Jones, “What is Owed,” *New York Times*, June 30, 2020, [www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html](http://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html)

32 Alice George, “The 1968 Kerner Commission Got It Right, But Nobody Listened,” *Smithsonian Magazine*, March 1, 2018, [www.smithsonianmag.com/smithsonian-institution/1968-kerner-commission-got-it-right-nobody-listened-180968318/](http://www.smithsonianmag.com/smithsonian-institution/1968-kerner-commission-got-it-right-nobody-listened-180968318/)

33 US H.Con.Res.100 — Urging the Establishment of a United States Commission on Truth, Racial Healing, and Transformation, 117th Congress (2021-2022), [www.congress.gov/bill/117th-congress/house-concurrent-resolution/19](http://www.congress.gov/bill/117th-congress/house-concurrent-resolution/19), and S.Con.Res.6 — A concurrent resolution urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation, 117th Congress (2021-2022), [www.congress.gov/bill/117th-congress/senate-concurrent-resolution/6](http://www.congress.gov/bill/117th-congress/senate-concurrent-resolution/6)

34 This resolution is the result of a multiyear consultative process to develop the Truth, Racial Healing, and Transformation framework for the United States. For more information, see the Truth, Racial Healing, and Transformation website: <https://healourcommunities.org/>

Project in Ferguson, Missouri,<sup>35</sup> the Greensboro Truth and Reconciliation Commission in North Carolina,<sup>36</sup> and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission.<sup>37</sup> More recently, in April 2019, the governor of Maryland, with unanimous bi-partisan support from the state legislature, signed into law House Bill 307, establishing the Maryland Lynching Truth and Reconciliation Commission (ML TRC).<sup>38</sup> Mandated to address the legacy of racial-terror lynchings, the ML TRC is scheduled to begin holding public hearings in late 2021.

Whether local or national, truth-seeking initiatives must strike a balance between raising broad public awareness and providing a space for survivors and those most affected by systemic injustice to heal. Both objectives are important but require different approaches that in some cases may contradict each other. For example, the Truth and Reconciliation Commission of Canada was survivor centered and survivor led in many respects, and provided meaningful acknowledgment and potential personal healing for survivors of Indian Residential Schools.<sup>39</sup> Yet while the commission operated for over five years across Canada, the average non-Indigenous Canadian is unaware of it. It is therefore important for stakeholders in current or future truth-seeking initiatives in the US to think carefully about how to best reach out to those members of society who most need to engage in and learn from these initiatives, while still respecting the needs and dignity of survivors. This will likely involve a diverse set of activities, some targeting harmed communities and others the general public to educate them on the full scope of past violations and their enduring consequences. These activities could include closed-door sessions, public hearings, and other forms of outreach and awareness-raising campaigns.

A truth-seeking process closely examines and analyses past violations, why and how they were committed, and their enduring impact. It can also present opportunities for recommendations for the way forward, to ensure harms are repaired, to end ongoing violations, and to prevent their recurrence.

### Steps Toward Repair

Reparations provide a direct symbolic or material benefit to survivors. Considered a fundamental right under international law,<sup>40</sup> they embody a society's recognition of and remorse and atonement for the harms suffered by victims of human rights violations. There is a significant body of research and practical guidance on reparations, as well as numerous reparations programs around the world, from which stakeholders can

35 For more information, see the Truth Telling Project website: <https://thetruthtellingproject.org/>

36 For more information and the commission's final report, see the Greensboro Truth and Reconciliation Commission, <https://greensborotrc.org/>. See also ICTJ, *Lessons in Truth-Seeking: International Experiences Informing United States Initiatives* (2006).

37 For more information and the commission's final report, see the Maine-Wabanaki REACH, [www.mainewabanakireach.org](http://www.mainewabanakireach.org). See also ICTJ, "Maine Truth Commission to Tell Story of Forced Assimilation of Wabanaki Children," February 19, 2013, [www.ictj.org/news/maine-truth-commission-tell-story-forced-assimilation-wabanaki-children](http://www.ictj.org/news/maine-truth-commission-tell-story-forced-assimilation-wabanaki-children), and ICTJ, "Maine's indigenous Truth Commission Marks First Year," February 28, 2014, [www.ictj.org/news/maines-indigenous-truth-commission-marks-first-year](http://www.ictj.org/news/maines-indigenous-truth-commission-marks-first-year)

38 For more information, see the Maryland Lynching Truth and Reconciliation Commission website: <https://msa.maryland.gov/lynching-truth-reconciliation/>

39 Indian Residential Schools were a network of schools for Indigenous Canadians, established by the Canadian government and run by Christian churches. The objective of this policy was to remove Indigenous children from their families and assimilate them into "Canadian" culture. For more information, see the Truth and Reconciliation Commission of Canada, [www.trc.ca/index.html](http://www.trc.ca/index.html)

40 UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (New York: Official record A/RES/60/147, 2006).



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draw when deciding how to provide redress for the wrongs committed against people and communities of color in the US.<sup>41</sup>

First, it is important to recognize the inherent paradox of reparations, namely that it is impossible to fully repair all past harms. Reparations are most commonly understood as payments of money to victims for the harm they suffered. However, monetary compensation is but one form of reparations. As laid out in the UN basic principles and guidelines on reparations, other forms may include restitution, rehabilitation, satisfaction (e.g., the full and public disclosure of the truth, an official apology, and commemorative activities), and guarantees of non-repetition (e.g., reviewing and reforming laws). Reparations can encompass material compensation, symbolic measures, individual and collective benefits, urgent and long-term programs, and comprehensive and targeted benefits.<sup>42</sup> In the US, because the injustices perpetrated against people of color have spanned generations and have taken many forms, a comprehensive approach is needed to address institutionalized wrongs such as slavery, Jim Crow, and the widespread and systematic oppression and discrimination that followed.

Other countries' experiences with administrative reparations programs can serve as examples for the US; the scope, size, and diversity of approaches of a number of them are even on par with what should be considered in the US.<sup>43</sup> In Colombia, for instance, the Victims' Land and Restitution Law, passed in 2011, consolidated previous reparative measures into a broad policy that provides comprehensive reparations to victims of the 50-yearlong internal armed conflict. With an estimated eight million victims,<sup>44</sup> the scale of the program is enormous and includes monetary compensation, comprehensive psychosocial and health care services, housing and land restitution for qualifying individuals, debt forgiveness, and access to educational training and employment. It also provides collective reparations to communities for infrastructural reforms and to help guarantee non-repetition.

Before defining specific reparative measures in the US, or even considering those that have already been floated (tax credits, targeted development funds, baby bonds, or cash payments), it will be important to establish the general parameters of the policy including the scope of what should and can be done and qualifying criteria. Communities of color and individual victims must play an active role in defining these parameters through an extensive consultation process. Peru, for example took this approach, implementing a comprehensive reparations plan based on the recommendations of the Truth and Reconciliation Commission, which had consulted with victims of the 20-year internal conflict about their concerns and expectations for redress and reparations.<sup>45</sup> Aspects of this work are already underway in the United States. For instance, the Center for Civil Rights and Restorative Justice at Northeastern University has tracked down descendants

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41 Pablo de Greiff (ed.), *The Handbook of Reparations* (New York: Oxford University Press, 2006).

42 Lisa Magarrell, ICTJ, *Reparations in Theory and Practice* (2006). Cristián Correa, Julie Guillerot, and Lisa Magarrell, "Reparations and Victim Participation: Experiences with the Design and Implementation of Domestic Reparations Programmes," in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making, Second Revised Edition*, eds. Carla Ferstman, Mariana Goetz, and Alan Stephens (Leiden, the Netherlands: Brill Nijhoff Publishers, 2020), 240-270.

43 Administrative reparations programs are created by legislation and often provide redress, through a variety of measures, for specific types of violations and various classes of victims. See ICTJ, *Reparations in Theory and Practice* (2007).

44 ICTJ, "Colombia: Background: After Decades of Conflict, Cementing Peace and Securing Justice for Victims in Colombia," [www.ictj.org/our-work/regions-and-countries/colombia](http://www.ictj.org/our-work/regions-and-countries/colombia)

45 Cristián Correa, ICTJ, *Reparations in Peru: From Recommendations to Implementation* (2013), [www.ictj.org/publication/reparations-peru-recommendations-implementation](http://www.ictj.org/publication/reparations-peru-recommendations-implementation)

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of victims of lynchings, and helped them articulate their demands for reparations through a participatory process.<sup>46</sup>

Within the US, there is ample work that has already been done on the subject of reparations, and what it could and should look like for Black communities, from which to draw. The Movement for Black Lives (M4BL), for example, has made a clear demand for reparations for past and ongoing harms and who should provide them.<sup>47</sup> In its reparations toolkit, M4BL lays out a wide-ranging policy platform, noting that reparations “require a systematic accounting, acknowledgment, and repair of past and ongoing harms, monetary compensation to individuals and institutions led by and accountable to Black communities, and an end to present day policies and practices that perpetuate harms rooted in a history of anti-Black racism, along with a guarantee that they will not be repeated.”<sup>48</sup>

In addition, M4BL calls for reparations for “African descended people in the United States and beyond.” It goes on to say, “While we prioritize the demand for reparations for slavery, we do not limit our demand for reparations to slavery. We believe demanding reparations only for slavery erases the reality that the United States has continued to exploit and harm Black people through convict leasing, sharecropping, Jim Crow, redlining, and other policies of structural discrimination and exclusion, and mass criminalization and incarceration through policies such as the ‘war on drugs.’”<sup>49</sup>

Critics may argue that if the category of victims is too broad, reparations become impossible. However, there are programs on a similar scale, such as the various post-World War II reparations programs. For example, the German government alone has paid out over \$80 billion since 1952 in pensions and social welfare payments to some 800,000 Holocaust survivors through the Conference on Jewish Material Claims Against Germany.<sup>50</sup> This sum is in addition to other reparations payments made directly by the German government.<sup>51</sup>

Payments for individual reparations are also not without precedent in US history. In 1988, Congress allocated \$1.25 billion for individual reparations, after President Ronald Reagan signed a bill providing \$20,000 to each of the approximately 65,000 living Japanese Americans who had been interned during World War II.

Admittedly, most programs in the US have been much smaller in size and scope. The State of Florida approved \$2.1 million for the living survivors of a 1923 racial pogrom that decimated the Black community in the town of Rosewood and resulted in multiple deaths. In 2014, the State of North Carolina, one of more than 30 other states

46 Center for Civil Rights and Restorative Justice at Northeastern University School of Law, “Restorative Justice,” <https://crrj.northeastern.edu/home/restorative-justice>

47 “The government, responsible corporations, and other institutions that have profited off of the harm they have inflicted on Black people — from colonialism to slavery through food and housing redlining, mass incarceration, and surveillance — must repair the harm done.” The Movement for Black Lives (M4BL), “Reparations,” <https://m4bl.org/policy-platforms/reparations>

48 M4BL, “Reparations Now Toolkit,” <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf>

49 Ibid. p 35.

50 Conference on Jewish Material Claims Against Germany, “Learn More About Compensation Programs,” [www.claimscon.org/what-we-do/compensation/background/](http://www.claimscon.org/what-we-do/compensation/background/)

51 For payments made directly, see, for example Conference on Jewish Material Claims Against Germany, “Programs Administered by the German Government,” <http://www.claimscon.org/what-we-do/compensation/germany-payments/>

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that practiced forced sterilizations, set aside \$10 million for reparations payments to living survivors of the state's eugenics program, which forcibly sterilized approximately 7,600 people. In 2015, the State of Virginia, followed North Carolina's lead and passed legislation granting \$25,000 to each survivor.

The same year, the Chicago City Council passed the Reparations for Burge Torture Victims Ordinance along with a concurrent apology from the city.<sup>52</sup> The ordinance officially acknowledged the torture that occurred in the city during the tenure of Jon Graham Burge, an American police detective and commander in the Chicago Police Department. Burge stands accused of torturing more than 200 innocent Black men over a period of decades. In addition, the city established a \$5.5 million Reparations Fund for Burge Torture Victims that provided \$100,000 in financial compensation to each eligible living victim of Burge's torture. The reparations package included a formal apology from former Chicago Mayor Rahm Emanuel and tuition waivers to city colleges. It also required Chicago Public Schools to educate students about police torture under Burge as part its curriculum and created a permanent, public memorial.

As reflected in Chicago's reparations program, symbolic measures are also important to repair past harms, in addition to financial compensation. These measures include building memorials to honor victims and removing others that glorify a racist history, among others. Across the US, local and state governments are beginning to take such measures. For example, in June, Mississippi lawmakers voted to remove the confederate battle flag from the state flag.<sup>53</sup> Elsewhere in the US and around the world, municipalities are pulling down statues and other monuments to colonialist or racist leaders and removing their names from streets and other public property.<sup>54</sup>

Some activists and leaders, however, reject these symbolic measures and consider them to be a distraction from meaningful and much needed institutional reforms. But while it is true that the immediate impact of these measures on the lives of victims and communities of color more generally may appear limited, they signal an official acknowledgment of and respect for narratives of the past that have been dismissed or actively repressed, and to that extent they represent a first step toward justice. A truth-seeking process, as mentioned earlier, can further reinforce this acknowledgment. From a transitional justice perspective, the social pressure on those with power to reexamine the life and legacy of these controversial historic figures represents an opening to push for a more sweeping public acknowledgment of past and ongoing violations. From that point, action can be taken to reform or dismantle the systems that perpetuate racial injustice.

An official apology can similarly bolster symbolic reparative measures and acknowledgment. To be meaningful, an apology should reflect a societal reckoning with past and present crimes and help unite the public behind common goals for moving

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52 Chicago City Council, Reparations for Burge Torture Victims Ordinance, May 2016, [www.chicago.gov/content/dam/city/depts/dol/supp\\_info/Burge-Reparations-Information-Center/ORDINANCE.pdf](http://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/ORDINANCE.pdf)

53 Derrick Johnson, President of the National Association for the Advancement of Colored People stated, "This is a long time coming. Finally, Mississippi decided to be one of the 50 states, and not the one state standing alone still bearing the emblem of a segregated society." Paul LeBlanc, "Mississippi State Legislature Passes Bill to Remove Confederate Symbol from State Flag in Historic Vote," *CNN*, June 29, 2020, [www.cnn.com/2020/06/28/politics/mississippi-flag-confederate-emblem/index.html](http://www.cnn.com/2020/06/28/politics/mississippi-flag-confederate-emblem/index.html)

54 Bukola Adebayo and Samson Ntale, "From Uganda to Nigeria, Activists Are Calling on Their Governments to Remove Colonialists' Names from Streets," *CNN*, July 3, 2020, [www.cnn.com/2020/07/03/africa/africa-campaign-rename-streets-intl/index.html](http://www.cnn.com/2020/07/03/africa/africa-campaign-rename-streets-intl/index.html); Santa Falasca, "Who Is Worth A Statue?" ICTJ, July 1, 2020, [www.ictj.org/news/who-worth-statue](http://www.ictj.org/news/who-worth-statue)

forward. In this way, an apology can mark a turning point and a commitment to deal with past wrongs. As ICTJ notes in its report, *More Than Words: Apologies as a Form of Reparation*, “an apology should signal the intention of a state and/or liable parties to recognize their obligations to victims and encourage citizens and society at-large to take steps toward addressing the root causes of conflict, violence, repression, or exclusion that have made massive and systematic human rights violations possible.”<sup>55</sup>

There are precedents both in the US and around the world of leaders offering a meaningful apology. In Sierra Leone, for example, President Ernest Bai Koroma apologized to the women victims of the country’s armed conflict for the brutalities they suffered. In a statement on International Women’s Day in 2010, he said, “We will never as a nation move forward if we do not apologize to the women of this country for letting them down during the war; we will never as a nation know better days if we do not ask for the forgiveness of our mothers, sisters, partners, and female compatriots for what we let them go through during the war. It is almost a decade now since the war ended, but we must apologize for the wrongs of the war.”<sup>56</sup>

In Australia, the government first acknowledged that its policies of forcibly removing Indigenous children and placing them in white families was a “mistake” in a statement to the UN Human Rights Committee in 1988.<sup>57</sup> It was not until 2008, however, that then Prime Minister Kevin Rudd publicly apologized to the Indigenous people of Australia in a speech delivered in Parliament.<sup>58</sup> The speech was part of a formal motion that the Parliament then adopted. It was simultaneously broadcast on national television, as well as on large screens outside the Parliament building, reaching a significant audience.

Leaders and officials can meaningfully apologize in many ways, and there are numerous examples of what might be said and what perhaps should not be.<sup>59</sup> An expression of “regret,” however, is not sufficient.<sup>60</sup> Furthermore, the most effective apologies also consider the victims’ present and future well-being.<sup>61</sup> For example, following the 1988 Civil Liberties Act,<sup>62</sup> Japanese Americans who had been interned received a formal letter of apology from President Reagan along with a check for individual reparations.<sup>63</sup>

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55 Ruben Carranza, Cristian Correa, Elena Naughton, ICTJ, *More Than Words: Apologies as a Form of Reparation* (2015), p. 5, [www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf](https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf)

56 Sierra Leone President Ernest Bai Koroma, “Statement on International Women’s Day,” March 27, 2010.

57 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, *Bringing Them Home* (1997), p. 248.

58 Australian Government, “Apology to Australia’s Indigenous Peoples,” <https://info.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples>

59 For more information about official public apologies as an element of a transitional justice policy, see Ruben Carranza, Cristian Correa, Elena Naughton, ICTJ, *More Than Words: Apologies as a Form of Reparation* (2015), <https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf>

60 For example, on June 30, 2020, Belgian King Philippe wrote a letter to Congolese President Felix Tshisekedi, expressing his “deepest regrets” for the “acts of violence and cruelty” and the “suffering and humiliation” inflicted on Belgian Congo. This initial statement was welcomed by many, but also met by calls for a full apology along with a commitment to reparations. See Samuel Petrequin, “Belgium Takes Down Statue, King Regrets Colonial Violence,” *Associated Press*, June 30, 2020, <https://apnews.com/article/europe-belgium-virus-outbreak-ap-top-news-international-news-f55831878a4f94691f1b3451a818fddf>

61 The case of the so-called comfort women provides an example of when mere rhetoric falls short. For these women, who were forced into sexual slavery during World War II, Japan’s refusal to offer material reparations made the apologies of its leaders ring hollow.

62 US Civil Liberties Act of 1988, Public Law 100-383, [www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf](https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf)

63 President William J. Clinton, “Presidential Letter of Apology,” October 1 1993, available at [www.pbs.org/childofcamp/history/clinton.html](https://www.pbs.org/childofcamp/history/clinton.html); and President George H.W. Bush, “Presidential Letter of Apology,” October 1990, available at <https://americanhistory.si.edu/righting-wrong-japanese-americans-and-world-war-ii/redress-payments>

Another example, Congress formally apologized to Native Americans in a joint resolution that it signed into law as part of the 2010 US Defense Appropriations Bill.<sup>64</sup> Though, the resolution included a caveat that the apology did not support or ground any legal claim against the United States. The apology was also criticized for not being delivered in a public manner; the resolution was signed into law without a public ceremony, and the apology was only publicly read aloud months later by a US Senator.<sup>65</sup>

To date, the US government has yet to apologize to African Americans for the profound harm they suffered as a result of slavery, centuries of systemic racism and discrimination, and other grave injustices. Although both the House of Representatives and the Senate have issued apologies in separate resolutions, neither have ever been signed by a president.<sup>66</sup> Legislatures in a number of states, including Virginia, Alabama, Maryland, North Carolina, Florida, and New Jersey, have passed similar resolutions.<sup>67</sup> Yet while significant, these apologies do not represent the overall US population and fall short of a national political commitment to policy that would meaningfully redress past and ongoing injustices.

Two US presidents have spoken about the wrongful nature of slavery, but neither actually apologized.<sup>68</sup> In the private sector, some US companies have acknowledged their past ties to the slave trade and expressed regret for the profits they reaped from slave labor.<sup>69</sup> And some religious organizations, like the Southern Baptist Convention, have lamented and repudiated “historic acts of evil such as slavery” and apologized to all African Americans for individual and systemic racism.<sup>70</sup> There have also been personal statements of regret, including by some notorious segregationists.<sup>71</sup>

While these apologies may be meaningful for some groups, none of them in fact demonstrates a full understanding of the horrors and magnitude of the crimes and injustices that were committed or the enormity of the harms Black people suffered. Taken together, they still do not provide any consensus of what the next steps should be.

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64 US Department of Defense Appropriations Act, 2010, Public Law 111–118, December 19, 2009, 123 Stat. 3409.

65 *The San Diego Union Tribune*, “Kansas Senator Reads Apology to American Indians,” May 19, 2010, [www.sandiegouniontribune.com/sdut-kansas-senator-reads-apology-to-american-indians-2010may19-story.html](http://www.sandiegouniontribune.com/sdut-kansas-senator-reads-apology-to-american-indians-2010may19-story.html)

66 US House of Representatives, H. Res. 194 (2008), Apologizing for the Enslavement and Racial Segregation of African-Americans; US Senate, S. Con. Res. 26 (2009), A Concurrent Resolution Apologizing for the Enslavement and Racial Segregation of African Americans.

67 For an overview, see Angelique M. Davis, “Apologies, Reparations, and the Continuing Legacy of the European Slave Trade in the United States,” *Journal of Black Studies* 45, 4 (2014): 1-16.

68 President Bill Clinton in 1998 acknowledged that the United States was “wrong” to benefit “from the fruits of the slave trade” during a trip to Uganda. And a few years later in 2003, President George W. Bush spoke more strongly about the evils of slavery on a visit to Goree Island, Senegal, a former slave port, when he stated that “slavery was . . . one of the greatest crimes of history” and acknowledged that “The racial bigotry fed by slavery did not end with slavery or with segregation.” Some contend that Lincoln’s second inaugural address, in which he describes the civil war as God’s judgment on the United States for the evil of slavery, should be considered an apology for slavery; however, it fails to directly address formerly enslaved people. See, for example, Thomas Geoghegan, “Lincoln Apologizes,” *New York Times*, April 5, 1998, [www.nytimes.com/1998/04/05/opinion/lincoln-apologizes.html](http://www.nytimes.com/1998/04/05/opinion/lincoln-apologizes.html)

69 *The Hartford Courant*, a newspaper based in Connecticut, apologized for advertising the sale of slaves. See Paul Zielbauer, “A Newspaper Apologizes for Slave-Era Ads,” *New York Times*, July 6, 2000.

70 Southern Baptist Convention, Resolution on Racial Reconciliation on the 150th Anniversary of the Southern Baptist Convention (1995).

71 For instance, ardent segregationist, presidential candidate, and Governor of Alabama George Wallace has expressed regret. See Rick Bragg, “Emotional March Gains a Repentant Wallace,” *New York Times*, March 11, 1995. Sheriff of Montgomery County also apologized in March 1965 after brutally routing 600 demonstrators, including the Reverend Martin Luther King, Jr., with horses and clubs. See Roy Reed, “Accord Reached in Montgomery: Sheriff Gives Public Apology for Violence, Marchers Agree to Get Permits,” *New York Times*, March 18, 1965.

An adequate response to this moment of national protest and reckoning requires a formal, public, and nonpartisan apology by the federal government. This apology should not only reaffirm the founding principle that all people are created equal but articulate an unequivocal political commitment to make amends. In the end, what matters most is that the apology captures the essence of this particular moment in history and what it means not only for Blacks but also for a shared vision of a just American society, and sets in motion a transformational change in the country.

As an important first step, Congress should pass Bill HR40 into law, which would establish a “Commission to Study and Develop Reparation Proposals for African-Americans Act.”<sup>72</sup> Under the bill, the commission would “examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies. Among other requirements, the commission shall identify (1) the role of federal and state governments in supporting the institution of slavery, (2) forms of discrimination in the public and private sectors against freed slaves and their descendants, and (3) lingering negative effects of slavery on living African-Americans and society.” Congress should also pass H.Con.Res.19 calling for a US Commission on Truth, Racial Healing, and Transformation. These federal level initiatives should be complemented by state and city efforts, such as the California Task Force to Study and Develop Reparation Proposals for African Americans,<sup>73</sup> and the Reparations Program recently launched in Evanston, Illinois.<sup>74</sup>

Such truth-seeking and reparations processes could help map out necessary reforms by revealing the enduring impact of past violations on communities of color. Dismantling systemic racism will require reforms in virtually every sector of government and society, including the economy, elections, the health care system, housing, education, and the social safety net. One sector that merits particular attention in this process is law enforcement, which has been a flash point in discussions of race for decades. To describe the type of approach that is needed, the next section applies a transitional justice lens to this issue. It explores the history of racially biased policing practices and racially motivated police brutality and the need to reform the law enforcement and criminal justice sectors as part of any effort to repair past and ongoing harms.

### Police Reform

Discriminatory policing against people of color in the US has been a problem since the founding of this country and has affected generations. Fearful that their slaves would revolt or escape, slaveholders formed slave patrols “(1) to chase down, apprehend, and return to their owners, runaway slaves; (2) to provide a form of organized terror to deter slave revolts; and, (3) to maintain a form of discipline for slave-workers who were subject to summary justice, outside the law.” As one of the earliest and most widespread forms of policing in the South, these patrols focused on controlling—rather than protecting—a

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72 US H.R.40 — Commission to Study and Develop Reparation Proposals for African-Americans Act, 117th Congress (2021-2022), [www.congress.gov/bill/117th-congress/house-bill/40](http://www.congress.gov/bill/117th-congress/house-bill/40)

73 California Assembly Bill No.3121, signed into law by Governor Gavin Newsom in September of 2020, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB3121](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3121); and Taryn Luna, “California Task Force Will Consider Paying Reparations for Slavery,” *Los Angeles Times*, September 30, 2020, [www.latimes.com/california/story/2020-09-30/california-task-force-reparations-slavery-gavin-newsom-shirley-weber](http://www.latimes.com/california/story/2020-09-30/california-task-force-reparations-slavery-gavin-newsom-shirley-weber)

74 City of Evanston, “Evanston Local Reparations,” [www.cityofevanston.org/government/city-council/reparations](http://www.cityofevanston.org/government/city-council/reparations)

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subsection of the population.<sup>75</sup> Moreover, a clause in the US Constitution at the time and later the Fugitive Slave Act of 1850 legitimized these patrols and their brutal practices.<sup>76</sup>

In the more than 150 years since the end of the Civil War and the abolition of slavery, law enforcement and the criminal justice system have targeted Black people, particularly young Black men, at different times and in varying ways: for instance, the uneven application of mandatory minimum sentencing laws, particularly during the so-called war on drugs in the 1980s and 1990s, which has contributed to the mass incarceration of people of color.<sup>77</sup> As the prominent journalist Nikole Hannah-Jones writes, “[while] the names and mechanisms of social control have changed... the presumption that white patrolers have the legal right to kill black people deemed to have committed minor infractions or to have breached the social order has remained.”<sup>78</sup> George Floyd is only one in a long list of individuals whom police killed while under arrest, while in custody, or during police operations. Criminologists concur that race and gender remain determining factors in police violence in the US.<sup>79</sup> Recent data from the US Bureau of Justice Statistics on contact between police and the public confirm civilians’ race, age, and gender to be the most significant factors associated with the police’s use of force against them, with Black men representing the highest proportion of victims.<sup>80</sup>

Unsurprisingly, the public trust on which law enforcement depends to maintain law and order has eroded in recent decades, particularly in communities of color. Many in the Black community are skeptical that the police would implement in earnest whatever reform is adopted or have lost hope that any reform would produce real change.<sup>81</sup> This growing distrust is evident in the debates around “defunding” the

75 Gary Potter, *The History of Policing in the United States* (Richmond, KY: Eastern Kentucky University, School of Justice Studies, 2013), <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf>

76 US Constitution, Article IV, Section 2: “No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.” Fugitive Slave Act of 1850, September 18, 1850, Ch. 60, 9 Stat. 462.

77 Mandatory minimum sentencing means a person convicted of a crime must be imprisoned for a minimum term, as opposed to leaving the length of punishment up to judges. Mandatory minimum sentencing provisions have been introduced in various jurisdictions as a deterrent for repeat offenders, particularly to prevent the commission of specific, violent crimes. In the US, they are aimed at mainly gun or drug related crimes. Mandatory minimum sentencing laws force judges to deliver fixed sentences to individuals convicted of the relevant crime, regardless of culpability or other mitigating factors. However, jurists and criminologists have raised doubts about the existence of a direct link between, for example, federal mandatory penalties and any declines in crime. Further, a broad range of research suggests that it is quite unlikely that these penalties would have such an impact. Studies, on the other hand, have highlighted the negative impact of mandatory minimum sentencing. Mandatory sentencing is now recognized to have contributed to prison overcrowding, the worsening of public health, and racial disparities in conviction rates. See Mark Mauer, The Sentencing Project, *The Impact of Mandatory Minimum Penalties in Federal Sentencing* (September 2010), [www.sentencingproject.org/publications/the-impact-of-mandatory-minimum-penalties-in-federal-sentencing](http://www.sentencingproject.org/publications/the-impact-of-mandatory-minimum-penalties-in-federal-sentencing). See also Cause of Action Institute, “The Unintended Consequences of Mandatory Minimum,” December 7, 2017, <https://causeofaction.org/unintended-consequences-mandatory-minimums>.

78 Nikole Hannah-Jones, “What is Owed,” *New York Times*, June 30, 2020, [www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html](http://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html)

79 Roberto Cornelli, “Note Sulla Police Brutality a Partire Dai Fatti di Minneapolis,” *Sistema Penale*, June 19, 2020, <https://sistemapenale.it/it/articolo/cornelli-police-brutality-morte-di-george-floyd-minneapolis>

80 The percentage of African Americans whom police threatened or used force against is twice as high as the percentage of whites (5.2 versus 2.4 percent) and slightly higher than the percentage of Latinos (5.1 percent). The same research reveals that young men are more exposed to violence than women (4.4 versus 1.8 percent). Bureau of Justice Statistics, “Contacts Between Police and the Public, 2015,” [www.bjs.gov/index.cfm?ty=pbdetail&iid=6406](http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6406)

81 For more on the movement to abolish the police, see Mariame Kaba, “Yes, We Mean Literally Abolish the Police,” *New York Times*, June 12, 2020, [www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html](http://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html); For additional resources on the abolitionist movement, see #8toAbolition, [www.8toabolition.com](http://www.8toabolition.com);

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police, with some of the more radical proposals going as far as abolishing the police all together.

Given this context, it will be challenging to bring about the fundamental changes needed to instill public trust in law enforcement. In South Africa, Kenya, and Northern Ireland, for example, the success of similar reform efforts “turned on whether the police would continue their past practices of treating the population as a threat to be managed through overwhelming force, or if they could become more responsive to civilians’ need for protection, eventually winning trust across society.”<sup>82</sup>

For government institutions such as law enforcement agencies to gain society’s confidence, they must demonstrate a commitment to a process of institutional reform at the local, state, and federal levels, as well as to measures that hold individual wrongdoers in their ranks accountable.

Current narratives of police brutality must also change. Research on police brutality tends to explain police officers’ excessive use of force as individual decisions made in particularly difficult situations and under institutional constraints (the “bad apples theory”). According to this theory, in using excessive force, the officers disregard clear limitations or



A protester holds a sign saying “Demilitarize the Police” at a Black Lives Matter demonstration in Washington, DC, on November 10, 2015. (Johnny Silvercloud/Flickr)

otherwise deviate from the official code of conduct. The concerned police officers are diagnosed as having a problematic personality, often resulting from the intense pressure and constant danger of their work.<sup>83</sup> However, instances of police brutality cannot always be explained away as the actions of few bad apples.<sup>84</sup> Doing so overlooks the role that the institutional culture can play in shaping how police officers interpret an unfolding scenario, define the level of risk, and decide on the appropriate course of action.<sup>85</sup>

In the field of transitional justice, the aim of institutional reforms is to establish and develop civic trust between citizens and state institutions by transforming institutions that are abusive, apply discriminatory policies, and defend partisan or elite interests into agencies that uphold and respect the rule of law, protect human rights, serve the

82 Amanda Taub, “Police the Public, or Protect It? For a U.S. in Crisis, Hard Lessons from Other Countries,” *New York Times*, June 11, 2020, [www.nytimes.com/2020/06/11/world/police-brutality-protests.html?campaign\\_id=57&emc=edit\\_ne\\_20200611&instance\\_id=19319&nl=evening-briefing&regi\\_id=61778017&segment\\_id=30707&te=1&user\\_id=cf80a98f79de2328f7b4f43900249c23](https://www.nytimes.com/2020/06/11/world/police-brutality-protests.html?campaign_id=57&emc=edit_ne_20200611&instance_id=19319&nl=evening-briefing&regi_id=61778017&segment_id=30707&te=1&user_id=cf80a98f79de2328f7b4f43900249c23)

83 J. J. Fyfe, “Split-second Syndrome and Other Determinants of Police Violence,” in *Critical Issues in Policing: Contemporary Readings, Second Edition*, eds. Roger G. Dunham and Geoffrey P. Alpert (Long Grove, Illinois: Waveland Press, Inc., 1997), pp. 531-546.

84 Petter Gottschalk, Geoff Dean, and Rune Glomseth “Police Misconduct and Crime: Bad Apples or Systems Failure?” *Journal of Money Laundering Control*, 15, 1 (2012): pp. 6-24. Todd May and George Yancy, “Policing Is Doing What It Was Meant to Do. That’s the Problem: Blaming Racist Violence on ‘Bad Apples’ Misses the Point,” *The New Yorker*, June 21, 2020.

85 Roberto Cornelli, “Note Sulla Police Brutality a Partire Dai Fatti di Minneapolis,” *Sistema Penale*, June 19, 2020, <https://sistemapenale.it/it/articolo/cornelli-police-brutality-morte-di-george-floyd-minneapolis>



public at large, and thereby safeguard democracy. These reforms should include measures for changing the underlying culture of law enforcement, while also addressing larger institutional failings. In the US, such reforms should both address systemic police brutality and seek to create a new relationship between law enforcement and citizens based on trust and shared responsibility that helps prevent violent interactions from occurring in the first place.<sup>86</sup>

True institutional transformation is a long-term process, and it requires that an institution's leaders become the first believers and implementers of the new values. In the case of law enforcement, transformation begins when its leadership and the majority of police officers come to recognize and perceive as unacceptable racially motivated decisions and behaviors in themselves and their fellow officers. This includes reacting to abuse by demonstrating solidarity with the victimized groups and promoting internal and external scrutiny of the force to ensure that incidents of police brutality are disciplined and prosecuted. After the murder of George Floyd, several individual police officers and police departments around the country showed precisely this sort of understanding and solidarity with victims of police violence and protesters. The number of these officers and departments must grow to create the institutional and national political will for transformational reform.

A society's mores and norms evolve over time, and practices once considered appropriate can gradually become objectionable or prohibited. Accordingly, law enforcement agencies must undergo periodic institutional changes to better reflect current social values. In many countries emerging from conflict or repression, a reimagining of the police is necessary to distance the institution from the legacy of past abuses and ensure that moving forward it upholds and protects human rights and serves all members of society. This is certainly not an easy process, as institutions tend to resist adapting to socio-cultural changes, but experience shows that it can be done.

For example, Italy finally demilitarized its police force in 1981, after four decades of debate and controversy.<sup>87</sup> Police became a civil division at the service of citizens rather than against them (or more accurately, against some of them). In Spain, the *Policía Armada* was one of the most feared agencies of the Franco regime and functioned almost as a secret service. During the 1980s, the entire police force was transformed to embrace the new democratic spirit, and in 1986 the *Policía Armada* was demilitarized and placed under civilian oversight.<sup>88</sup> In Kenya, the 2010 Constitution, which was

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86 In 2015, after several deaths at the hands of police officers reignited protests in the US, The Guardian monitored the number of the individuals killed in police operations for two years. The project revealed some gaps in the official statistics. According to the data recorded, 1,146 people died in 2015 and 1,093 in 2016. The data breakdown shows that while whites were still the majority of victims in absolute terms, when compared with the relative size of each racial group studied, Blacks, Native Americans, and Hispanics were killed at much higher rates. Blacks were 2 killed at 2.5 times the rate of whites in the first year and 2.6 in the second year. "The Counted: People Killed by police in the US," *The Guardian*, [www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database](http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database). For a recent comparison of the violence applied during police operations in the US and in Europe, see Rob Picheta and Henrik Petterson, "American Police Shoot, Kill and Imprison More People Than Other Developed Countries. Here's the Data," *CNN*, June 8, 2020, [www.cnn.com/2020/06/08/us/us-police-floyd-protests-country-comparisons-intl/index.html](http://www.cnn.com/2020/06/08/us/us-police-floyd-protests-country-comparisons-intl/index.html)

87 (Italy) Law no. 121 of April 1, 1981 "Nuovo ordinamento dell'Amministrazione della pubblica sicurezza" (GU Serie Generale n. 100 del 10-04-1981 - Suppl. Ordinario), [www.gazzettaufficiale.it/eli/id/1981/04/10/081U0121/sg](http://www.gazzettaufficiale.it/eli/id/1981/04/10/081U0121/sg). For a review of the implementation of the reforms, see Paolo Andruccioli, "20 anni che hanno cambiato la polizia", *Polizia e Democrazia*, July 9, 2020.

88 The reformed police supported the democratically elected government during an attempted coup in 1981, and in 1985 the police union protested against the far-right militants within their ranks and participated actively in attempts to discipline and prosecute officers who committed human rights violations. See Cuerpo Nacional de Policía, [www.policia.es](http://www.policia.es)

adopted after the devastating electoral violence in 2007, provided for the establishment of a National Police Service to protect Kenyans' fundamental rights and freedoms and to replace the previous police force whose structure and culture traced back to the colonial regime.<sup>89</sup> Following the collapse of the Soviet Union, countries in Central and Eastern Europe subjected their security and police forces to broad and deep lustration processes as part of their democratic transitions.<sup>90</sup> By and large, these efforts were all aimed at establishing democratic policing, i.e., policing in the service of the public, not the Communist party or the state.

In each of these contexts, the reforms sought to change law enforcement's purpose, not only its organizational structures and operating procedures. Similarly, reforms in the US should aim to redefine the mission and scope of the police. Because of the country's federal system of government, most of these efforts will need to happen at the state and local levels.<sup>91</sup> That said, the federal government and Congress have important roles to play, for instance, by allocating federal funding to state-level policy initiatives, adopting standards on the use of force, and undertaking federal criminal investigations into cases of excessive use of force by police.

State-level measures could include improving and providing more resources to law enforcement training programs, reviewing applicable law and expunging any provisions that are discriminatory or legitimize abuse, and revising existing disciplinary mechanisms and procedures to give a plurality of civil society actors a role in monitoring the law enforcement agency. Other proposals have more recently gained traction since mass protests began in May, such as reducing police budgets and redirecting the money to social services that help prevent or reduce criminal behavior and crime, abolishing the use of military grade weapons by civilian police, banning chokeholds, and focusing more on community safety. If implemented, these measures could go a long way in ending discriminatory policing practices, preventing police brutality, reducing crime, and establishing public trust in law enforcement.<sup>92</sup>

Consideration should also be given to reforming state district attorney's offices to ensure that prosecutors exercise sound and independent discretion when making decisions. Their decisions should not markedly differ depending on the racial background of the plaintiffs or defendants, as appeared to be the case with the initial charges that prosecutors

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89 Articles 243 and 244 of the 2010 Kenya Constitution. Article 244 stipulates "The National Police Service shall— (a) strive for the highest standards of professionalism and discipline among its members; (b) prevent corruption and promote and practice transparency and accountability; (c) comply with constitutional standards of human rights and fundamental freedoms; (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and (e) foster and promote relationships with the broader society."

90 For a comprehensive review of the police reform in Central and Eastern Europe, see DCAF, *Transforming Police in Central and Eastern Europe* (2004), [www.dcaf.ch/transforming-police-central-and-eastern-europe](http://www.dcaf.ch/transforming-police-central-and-eastern-europe)

91 Almost all policing in the US is undertaken at the local and state, not federal, levels: Out of the nearly 18,000 law enforcement agencies, only a dozen or so are federal. German Lopez, "How to Reform American Police According to Experts," *Vox*, June 1, 2020, [www.vox.com/2020/6/1/21277013/police-reform-policies-systemic-racism-george-floyd](https://www.vox.com/2020/6/1/21277013/police-reform-policies-systemic-racism-george-floyd)

92 For a review of the many different policing reforms in the US and their results, see Kenny Lo, "Assessing the State of Police Reforms," Center for American Progress, July 16, 2020, [www.americanprogress.org/issues/criminal-justice/news/2020/07/16/487721/assessing-state-police-reform/](https://www.americanprogress.org/issues/criminal-justice/news/2020/07/16/487721/assessing-state-police-reform/). See also Seth W. Stoughton, Jeffrey J. Noble, Geoffrey P. Alpert, "How to Actually Fix America's Police," *The Atlantic*, June 3, 2020, [www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/](https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/)

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filed in connection to the George Floyd’s killing.<sup>93</sup> Prosecutorial strategy can either help perpetuate police brutality, entrench racism, and fuel unrest, or if employed sensibly can uphold the rule of law, reduce social tensions, and ultimately guarantee non-recurrence.

When structural abuse is suspected in a law enforcement agency, it may be recommended to undertake a wide-reaching, time-limited investigation of all personnel to identify officers who may be responsible for past misconduct and abuses or who actively supported the abusive culture within the institution.<sup>94</sup> This practice, known as vetting, aims to remove individuals—at all levels of the hierarchy—who are not fit to perform the relevant duties in accordance with those social or ethical values with which the reform process intends to align the institution.

From ICTJ’s experience working in countries around world that have pursued police reform, even the best disciplinary measures depend on a combination of improved police officer training and greater cultural awareness among officers to succeed.<sup>95</sup> Disciplinary measures must therefore be accompanied by tailored awareness-raising and professional development programs that help officers enforce the law and avoid engaging in abusive or criminal conduct, while upholding the rights of all members of society as the absolute and foremost imperative.

### Conclusion

Laws and policies continue to discriminate against people of color in the United States, both directly and indirectly. Reforms are desperately needed in the criminal justice system, voting, housing, education, and health care. However, as experiences in the US and other countries where ICTJ works have shown, any meaningful changes to laws and policies or institutional reforms must be grounded in a recognition and understanding of the society’s past atrocities and its connection to present-day injustices, grievances, and violence. Countries grappling with historical or ongoing injustices should consider applying transitional justice principles and approaches to help identify and address the

93 The original prosecutorial strategy employed by the Hennepin County prosecutor in the Floyd case was wholly inappropriate and gave rise to suspicions that the prosecutor improperly pursued comparatively light charges against Derek Chauvin, one of the police officers accused of killing Mr. Floyd, and no charges against the officers who stood by and allowed the brutality to proceed uninterrupted, when they were clearly under a legal duty to protect persons in their custody from harm. It also went against the new US Justice Department prosecutorial policy that says prosecutors should pursue the most serious readily provable offense. See US Department of Justice, Principles of Federal Prosecution (9-27-300), [www.justice.gov/jm/jm-9-27000-principles-federal-prosecution](http://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution). That policy change was criticized at the time for reversing an Obama-era policy designed to soften sentences for low-level drug offenders and encouraged the restoration of the types of mandatory minimum sentences that had led to a vast rise in incarcerations across the US. The blatant hypocrisy of applying one rule to Black Americans for low-level offenses but not to the police for killing someone would unsurprisingly appear incendiary.

94 Vetting refers to the process of examining backgrounds of individual personnel and assessing their integrity—including adherence to relevant human rights standards—to determine their suitability for public employment and to eliminate or otherwise sanction abusive and corrupt officials. ICTJ, “Vetting,” [www.ictj.org/our-work/research/vetting](http://www.ictj.org/our-work/research/vetting). Lustration, on the other hand, is a government-sanctioned policy of “mass disqualification of those associated with the abuses under a prior regime.” Ina Vukic, “What Is Lustration?” *Croatia, the War, and the Future*, November 10, 2018, <https://inavukic.com/2018/11/10/what-is-lustration>. For a comprehensive review of different models, see Alexander Mayer-Rieckh and Pablo de Greiff, eds., *Justice as Prevention: Vetting Public Employees in Transitional Societies* (Brooklyn, NY: Social Science Research Council, 2007).

95 “Police departments spend an average of 58 hours on gun training, 49 hours on defensive tactics, and eight hours on de-escalation, crisis intervention, and electronic control weapons like Tasers.” Police Executive Research Forum, *Guiding Principles on Use of Force* (2016), [www.policeforum.org/assets/guidingprinciples1.pdf](http://www.policeforum.org/assets/guidingprinciples1.pdf). Texts used law by enforcement and criminal justice agencies largely lack any reference to the legacy of slavery and racial injustice. For a critical analysis of these texts, see K. B. Turner, David Giacomassi, and Margaret Van-diver, “Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts,” *Journal of Criminal Justice Education* 17, 1 (2006): 181-195. For information on police academy curricula, see Bureau of Justice Statistics, “Law Enforcement Training Academies,” [www.bjs.gov/index.cfm?ty=tp&tid=77](http://www.bjs.gov/index.cfm?ty=tp&tid=77)

root causes, acknowledge and redress the harms caused to victims, reform institutions, and prevent future recurrences. The US and other advanced democracies advocate for and support these principles as part of their foreign and international development policies. It is now time for the US to apply them domestically to at last reckon with its legacy of slavery and racism and build a more just future for the country and all its citizens.

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