

MULTIRACIALISM AND REPARATIONS: THE INTERSECTION OF THE MULTIRACIAL CATEGORY AND REPARATIONS MOVEMENTS

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INTRODUCTION

Current reparations discourse raises not only the age old question of “who is black?” but also the political and legal complexities of making this determination in light of the recent Multiracial Category Movement (MCM). This movement seeks to create a separate multiracial classification on all private and public data collection forms. This essay argues that while the MCM’s goals are not optimal for the Reparations Movement, it is becoming a formidable political force that must be considered by the Reparations Movement. This can be accomplished by using the concept of “political blackness”¹ to unify the legal and political goals of those with black ancestry who desire redress for slavery and Jim Crow.²

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1. This concept is a variation of the concept of “political blackness” that was later changed to “political race” by Lani Guinier and Gerald Torres, which transcends racial lines to coalesce social justice movements. See LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 13-14 (2002) (explaining the decision to abandon the concept of “political blackness” in favor of “political race” due to inquiries about the scope of “political blackness” and the discovery that many black Americans were offended by opening up the category “black” to all races because it negated the reality of their experience as black as well as their cultural community).

2. Throughout this article, a reference to multiracial individuals is to those black-other mixed individuals who define themselves as multiracial. The

In an effort to explore the complex intersection between the MCM and the Reparations Movement, this article is divided into four parts. Part I demonstrates why the MCM must be considered a formidable political force by the Reparations Movement. Part II gives an overview of the current state of the law regarding the MCM and Reparations Movement. Part III explores the intersection of the MCM and Reparations Movement along with the attendant impacts on both reparations strategy and form. This article concludes that although the MCM is not optimal for racial justice efforts such as the Reparations Movement, using the concept of “political blackness” could minimize its negative effects.

I. GROWING SUPPORT FOR A MULTIRACIAL CATEGORY NECESSITATES EXAMINING ITS IMPACT ON THE REPARATIONS MOVEMENT

The discourse supporting reparations to blacks in the United States sets forth numerous arguments regarding strategy and form, yet little mention of the impact of the MCM. The MCM, which seeks to include a multiracial category on all private and public data collection forms, presents significant implications for the Reparations Movement that warrant contemplation.

This “interracial tide”³ has gained national attention and shows no signs of waning.⁴ Since 1967, when the United States Supreme Court ruled in *Loving v. Virginia* that state laws prohibiting miscegenation were unconstitutional,⁵ our nation has

‘other’ in black-other refers to races other than black. Because the scope of this essay includes those black-other individuals who choose to classify themselves as multiracial, it does not include those black-other mixed individuals who classify themselves as black.

3. David Peterson, Ely Portillo, & Frank Greve, *Shades of Change: The Ripple Effects of a More Diverse Society Are Touching More Americans Than Ever*, STAR TRIBUNE, July 27, 2006, at A1.

4. Mackenzie Carpenter, *Are You Melungeon, Nuyorican or What? Racial Identities Spawn New Tags*, PITTSBURGH POST-GAZETTE, Mar. 8, 2006, at A1; Sharon Jayson, *Color Blind: A New Generation Doesn’t Blink an Eye at Interracial Relationships*, USA TODAY, Feb. 8, 2006, at A1; Katie Soe, *Cultural Divide: Multiethnic Teens Struggle With Self-identity, Others’ Perceptions*, HERALD NEWS, June 1, 2006, at B07.

5. See generally *Loving v. Virginia*, 388 U.S. 1 (1967) (holding Virginia’s anti-miscegenation laws, and similar statutes in fifteen other states, in violation of the Fourteenth Amendment).

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seen a significant increase in the number of interracial marriages and births. Between 1900 and 1960, the number of black interracial marriages was, at most, one percent of total marriages.⁶ In 1988, the black interracial marriage rate increased to three percent of total marriages and is projected to be 10 percent for the 2000-2010 decade.⁷ In addition to the increase of black interracial marriages, the number of individuals who identify themselves as more than one race has increased; 2.4% of Americans responding to the 2000 Census, which allowed people to pick more than one racial category, indicated mixed racial or ethnic heritage.⁸ A trend among those under the age of eighteen to identify as more than one race is noteworthy as this age group identified themselves as more than one race almost twice as often as those eighteen and over.⁹ Of the 36.4 million people who categorized themselves as black alone or in combination with another race, 4.8%, or 1.8 million, categorized themselves as black and at least one other race.¹⁰ While this essay refers to these individuals as multiracial, individuals identifying with more than one race have coined terms such as Asiatic,¹¹ Biracial,¹² Blasian,¹³ Cablinasian,¹⁴ Jamerican,¹⁵ and Melungeon¹⁶ to express

6. Barry Edmonston, Sharon M. Lee & Jeffrey S. Passel, *Recent Trends in Intermarriage and Immigration and Their Effects on the Future Racial Composition of the U.S. Population*, in THE NEW RACE QUESTION: HOW THE CENSUS COUNTS MULTIRACIAL INDIVIDUALS 227, 240-41, 248-51 (Joel Perlmann & Mary C. Waters eds., 2002). For a discussion of interracial marriage rates, see Rachel F. Moran, *The Mixed Promise of Multiracialism*, 17 HARV. BLACKLETTER L.J. 47, 49-55 (2001).

7. *Id.*

8. U.S. CENSUS BUREAU, THE TWO OR MORE RACES POPULATION: 2000 2 (2001) [hereinafter CENSUS, TWO OR MORE RACES] available at <http://www.census.gov/prod/2001pubs/c2kbr01-6.pdf>.

9. *Id.* at 9 (“Of the 6.8 million people in the “two or more races” population, forty-two percent were under 18. This is higher than the one race population. Of the 274.6 million people who reported only one race, 25 percent were under 18.” Thus, roughly 4% of respondents under eighteen categorized themselves as more than one race compared to roughly 1.9% of respondents eighteen or over). See also Sharon Jayson, *Outside the Race Box*, USA TODAY, Feb. 7, 2006, at 7D.

10. CENSUS, TWO OR MORE RACES, *supra* note 8, at 8.

11. Carpenter, *supra* note 4, at A1. “Asiatic” is a term used by some black Americans to describe their heritage and has been advocated by the Moorish Science Temple of America.

12. *Id.* “Biracial” has been defined as those with ancestors of two races.

13. *Id.* “Blasian” has been used by some individuals with black and Asian ancestry. The website Blasian.com caters to this group.

their racial identity.

One of the seminal reparations books by Boris Bittker, *The Case for Black Reparations*, includes a chapter concerning the identification of potential reparations beneficiaries.¹⁷ He raises the question “who is black?” for the purposes of reparations and wonders if reparations awards were to take into account an individual’s percentage of black blood, would fractional awards be made to individuals who can claim only a fraction of black blood?¹⁸ Although Mr. Bittker’s questions have been addressed to a certain extent in reparations scholarship,¹⁹ an issue yet to be addressed is: How should the Reparations Movement interface with individuals whose ancestors presumably suffered from slavery and/or Jim Crow, but consider themselves multiracial—not black?

II. A BRIEF BACKGROUND OF THE MODERN MULTIRACIAL CATEGORY MOVEMENT AND REPARATIONS MOVEMENT

To examine the potential impact of the MCM on reparations efforts, it is first necessary to outline the current state of the two movements and the applicable law. Part A of this section provides an overview of the MCM. Likewise, Part B of this section provides an overview of the Reparations Movement.

14. *Id.* “Cablinasian” is a term created by professional golfer Tiger Woods to describe his black, white, Native American and Asian ancestry.

15. *Id.* “Jamerican” is used to describe an individual born in the United States whose parents were born in Jamaica.

16. *Id.* “Melungeon” is a term used to describe populations in the eastern United States of European, African, and Native American ancestry.

17. BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* 91-104 (2d ed. 2003).

18. *Id.* at 100.

19. Current reparations literature does deal with the issue of determining who is black for purposes of reparations. However, it does not directly address the issue of those descendants of slavery and Jim Crow who identify themselves as multiracial. For one example of how the reparations movement should deal with individuals who do not identify themselves as black, see ROY L. BROOKS, *ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS* 197 (2004) (addressing the question of whether a white person, who thinks there may be some black blood in his or her family, is entitled to reparations).

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A. The Multiracial Category Movement

Over the past few decades, groups comprising primarily parents of black and white mixed-race children, and first generation mixed-race individuals,²⁰ gradually formed the MCM. Initially intended to address the identification of mixed-race children in public schools,²¹ many of these groups evolved and joined forces to advocate that the current racial categories provided on public and private data collection forms do not adequately recognize the ancestry of mixed-race individuals.²² The groups now seek to include a multiracial category on the United States Census and other public and private data collection materials.²³ To date, the movement has enjoyed only marginal success.²⁴

In the 1980s, the MCM, through a coalition of individuals and multiracial advocacy groups, petitioned the Office of Management and Budget (OMB) for the addition of a multiracial category on the federal census.²⁵ Their effort to have the multiracial category placed on the 1990 census did not succeed. They did however persuade the House subcommittee on Census, Statistics, and Postal Personnel to hold hearings in 1993 to explore the need for a multiracial category.²⁶ The next year, the OMB held its own hearings on the issue.²⁷ After the hearings, Representative Thomas Petri (R.-Wis.) sponsored an

20. Tanya Katerí Hernández, *"Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. 97, 106-07 (1998); Carrie Lynn H. Okizaki, *"What Are You?": Hapa-Girl and Multiracial Identity*, 71 U. COLO. L. REV. 463, 491-92 (2000).

21. JON MICHAEL SPENCER, *THE NEW COLORED PEOPLE: THE MIXED-RACE MOVEMENT IN AMERICA* 18 (1997).

22. *Id.* at 4; *see generally* Hernández, *supra* note 20, at 98-99.

23. Tanya K. Hernández, *The Interests and Rights of the Interracial Family in a "Multiracial" Racial Classification*, 36 BRANDEIS J. FAM. L. 29 n.2 (1998) (citing Linda Jones, *Mixed Race and Proud of It*, GANNETT NEWS SERV., Nov. 20, 1990).

24. Some of the most well known organizations advocating for recognition of multiracial ancestry on census forms include AMEA (Association of MultiEthnic Americans) *available at* <http://www.ameasite.org>, Project RACE (Re-classify All Children Equally) *available at* <http://www.projectrace.com>, and the MAVIN Foundation (mavin is yiddish for "one who understands") *available at* <http://www.mavinfoundation.org>.

25. KERRY ANN ROCKQUEMORE & DAVID L. BRUNSMAN, *BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA* 1 (2002); Hernández, *supra* note 20, at 98 n.2.

26. Hernández, *supra* note 20, at 98 n.2.

27. *Id.*

unsuccessful bill to include a multiracial and multiethnic category on all federal data collection forms.²⁸ In 1996, the OMB refused to add a multiracial category to the census and instead decided to allow individuals to select multiple boxes on the 2000 Census.²⁹ Despite the refusal of the OMB to add a multiracial category, the MCM continues to advocate for the inclusion of such a category on the 2010 census.³⁰

Those advocating for a multiracial category want it to be defined in at least one of two ways.³¹ The first would define the multiracial category to include a “person whose parents have origins in two or more of the above [American Indian or Alaskan Native, Asian or Pacific Islander, Black, Hispanic, or White] racial and ethnic categories.”³² This definition is problematic for the reparations movement because estimates indicate that between seventy-five and ninety percent of the black community has mixed-race ancestry,³³ and thus almost all black Americans would fall into this category.³⁴ An alternate, and more restrictive, definition would limit the multiracial category “to those whose parents identify with different races.”³⁵ One advocate for this form of classification argued that “[r]equiring parental racial identification would mitigate any incidents of ‘defection’ from monoracial categories based on remote mixed ancestry, while not denying the opportunity for such persons to assert their self-identity.”³⁶ Under either

28. *Id.*

29. Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487, 1522 n.157 (2000).

30. Hernández, *supra* note 20, at 101.

31. John A. Powell, *The Colorblind Multiracial Dilemma: Racial Categories Reconsidered*, 31 U.S.F. L. REV. 789, 797 (1997).

32. Kenneth E. Payson, *Check One Box: Reconsidering Directive No. 15 and the Classification of Mixed-Race People*, 84 CAL. L. REV. 1233, 1279-80 (1996).

33. There are various estimates regarding the number of black Americans with mixed-race ancestry. Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161, 1204 (1997) (estimating that between three-quarters and four-fifths of blacks in America have white ancestors); *see also* F. JAMES DAVIS, WHO IS BLACK?: ONE NATION’S DEFINITION 21 (1991) (“At least three-fourths of all people defined as American blacks have some white ancestry, and some estimates run well above 90 percent.”).

34. Payson, *supra* note 32, at 1279-80.

35. *Id.* at 1280.

36. *Id.*

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scenario any mixed-race individual would be categorized as multiracial.³⁷ This amorphous category would include all permutations of racial mixture.

Some in the MCM also argue that the multiracial category should be used to eliminate all racial categorizations.³⁸ They argue race has become too fluid to monitor, and that creation of a multiracial category will slowly efface all racial distinctions and, ultimately, eliminate racism.³⁹ This position has generated support from right-wing conservatives, such as Newt Gingrich,⁴⁰ and has become an avenue to promote the color-blind agenda.⁴¹

Indeed the policy to differentially classify blacks has proved ineffective in the past. Census enumerations of black Americans have undergone numerous permutations from 1840 to the present. The 1840, 1850, and 1860 censuses provided the undefined racial classification of mulatto.⁴² The 1870 and 1880 censuses defined mulattoes to include those with any perceptible trace of African blood.⁴³ In 1890, census takers were instructed to record the exact proportion of visible African blood;⁴⁴ the census itself included the categories of Mulatto, Quadroon, and Octoroon, and counted those with three-fourths or more black blood as black.⁴⁵ In 1900, the census counted blacks and mulattoes separately.⁴⁶ The current category, which formally

37. *See generally id.*

38. Hernández, *supra* note 20, at 107-09; Powell, *supra* note 31, at 799 (“While the new right claims that the elimination of racial categories will end racism, multiracial advocates assert that an increase in the number of racial categories will soften, if not completely destabilize, the existing racial hierarchy.”); Hickman, *supra* note 33, at 1202.

39. *Id.*

40. Letter from Newt Gingrich, Speaker, U.S. House of Representatives, to Franklin Raines, Director, Office of Management and Budget (July 1, 1997) (*available at* <http://www.projectrace.com/hotnews/archive/hotnews-070197.php>).

41. Peter Skerry, *Multiracialism and the Administrative State*, in *THE NEW RACE QUESTION: HOW THE CENSUS COUNTS MULTIRACIAL INDIVIDUALS* 327, 329 (Joel Perlmann & Mary C. Waters eds., 2002).

42. DAVIS, *supra* note 33, at 11-13.

43. *Id.*

44. *Id.*

45. Powell, *supra* note 31, at 800 n.63 (“Mulatto describes persons having from three-eighths to five-eighths black blood; Quadroon refers to those persons having one fourth black blood; and Octoroon defines those persons having one eighth or any trace of black blood.”).

46. DAVIS, *supra* note 33, at 12.

incorporates the “one-drop” rule,⁴⁷ was adopted in 1920 when the mulatto category was dropped and black “was defined to mean any person with any black ancestry.”⁴⁸

These gradated racial categories did little, if anything, to destabilize racial categorizations.⁴⁹ Perhaps the greatest support for this proposition is the famous case of *Plessy v. Ferguson*.⁵⁰ According to the 1890 Census, the plaintiff Homer Plessy was an Octoroon, and appeared white.⁵¹ Based upon his appearance and percentage of black blood he argued that he should be treated as if he were white.⁵² His argument failed, and the United States Supreme Court took judicial notice that a black person is one with any black ancestry.⁵³ Although the United States Supreme Court invalidated *Plessy*’s “separate but equal” doctrine in *Brown v. Board of Education*,⁵⁴ the Court’s definition of blacks as all persons having origins in any of the black racial groups of Africa persists today in the Census’s definition of black.⁵⁵

Most alarming is that the MCM’s focus on the biological aspect of race—looking to the race of the parents or ancestors—

47. The “one-drop” rule has historically been used to categorize black Americans and means those who have even a single drop of black blood are considered black. It is also referred to as the hypodescent rule meaning that “racially mixed persons are assigned the status of the subordinate group.” See DAVIS, *supra* note 33, at 4-5.

48. DAVIS, *supra* note 33, at 12. To my amusement, an example of the current use of the one-drop rule came to my attention while writing this piece when my brother, an employee of a Fortune 500 Corporation, forwarded me an email in which his employer required him to racially categorize himself so his company, a federal contractor, could submit a report to the Department of Labor regarding the racial composition of its employees in the United States. Because he chose to categorize himself as multiracial on his personnel forms he received an email from the company’s compliance manager indicating that he had to classify himself under one racial category for purposes of federal reporting. He chose to identify himself as black. When I asked my brother why he classified himself as multiracial and later black, he indicated that he was aware of my research and “just wanted to see how they would respond.”

49. Powell, *supra* note 31, at 800 (discussing *Plessy v. Ferguson*, 163 U.S. 537, 538 (1896)).

50. *Plessy v. Ferguson*, 163 U.S. 537, 538 (1896).

51. *Id.*

52. *Id.*

53. *Id.* at 543.

54. See generally *Brown v. Board of Education*, 347 U.S. 483 (1954).

55. U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2000 2 (2001) available at <http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf>.

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negates the sociopolitical nature of race.⁵⁶ There is a consensus among scholars that race is a social, not a biological, construct.⁵⁷ Race is sociopolitical because it is an “unstable and ‘decentered’ complex of social meanings, constantly being transformed by political struggle.”⁵⁸ Thus, the “rebiologization of race”⁵⁹ by the MCM has caused legitimate concern that a multiracial category will interfere with the ability to accurately assess civil rights compliance.⁶⁰ Professor Tanya Hernandez aptly criticized the MCM’s negation of the sociopolitical import of race: “Multiracial discourse misconstrues the meaning of race used in the group measurement of racial disparity, with an individual-focused assessment of fluid cultural identity. Such a view of race negates its sociopolitical meaning and thereby undermines effective legal mechanisms to ameliorate racial discrimination.”⁶¹ She warns of the MCM’s ability to further the “color-blind jurisprudential dismantling of civil rights.”⁶²

Moreover, this biological parsing of the black race fails to recognize that black Americans have never been a “pure” race, but rather a race of people joined together by their “political blackness”—a shared history and common bond of being black in America pursuant to the one-drop rule. “Over the generations, [the one-drop] rule has not only shaped countless lives, it has created the African-American race as we know it today, and it has defined not just the history of this race but a large part of the history of America.”⁶³ Dorothy E. Roberts aptly described the phenotypical variations within the black community:

56. Hickman, *supra* note 33, at 1202.

57. *Id.* at 1203; see also Michael Omi, *Rethinking the Language of Race and Racism*, 8 *ASIAN L.J.* 161, 162 (2001).

58. Jagdish J. Bijlani, *Neither Here Nor There: Creating a Legally and Politically Distinct South Asian Racial Identity*, 16 *BERKELEY LA RAZA L.J.* 53, 56 (2005).

59. Hickman, *supra* note 33, at 1202.

60. Hernández, *supra* note 20, at 162-63; RAINIER SPENCER, *SPURIOUS ISSUES: RACE AND MULTIRACIAL IDENTITY POLITICS IN THE UNITED STATES* 143-49 (1999) (analyzing impact of proposed multiracial category on civil rights compliance efforts).

61. Hernández, *supra* note 20, at 102-03.

62. *Id.* at 172.

63. Hickman, *supra* note 33, at 1163.

Sharing genetic traits seems less critical to Black identity than to white identity. The notion of racial purity is foreign to Black folk. Our communities, neighborhoods, and families are a rich mixture of languages, accents, and traditions, as well as features, colors, and textures. . . . There is often a melange of physical features—skin and eye color, hair texture, sizes and shapes—within a single family. We are used to “throwbacks”—a pale, blond child born into a dark-skinned family, who inherited stray genes from a distant white ancestor. My children play with a set of twins who look very different from each other. The boy has light skin, green eyes, and “kinky” sandy-colored hair; the girl has dark skin, brown eyes, and long, black, wavy hair.⁶⁴

This wide variation of skin tone, hair texture, and facial features within the black community is widely recognized and accepted. Such variations are evident in my own family and in almost every black family I know in the United States. For this reason, the effort to reclassify a large segment of black Americans as multiracial must be closely examined to determine its impact on black racial justice efforts such as the Reparations Movement.

B. The Reparations Movement

The modern Reparations Movement began⁶⁵ with the publication of Randall Robinson’s book *The Debt: What America Owes to Blacks*⁶⁶ and Representative John Conyers’ (D.-Mich.) introduction of H.R. 40, a bill to redress slavery.⁶⁷ Robinson’s compelling indictment of America’s failure to recognize the consequences of slavery reenergized reparations activism and discourse. Rep. Conyers first introduced H.R. 40 one year after President Reagan signed the Civil Liberties Act of

64. *Id.* at 1202 (quoting Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 237 (1995)).

65. Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279, 288-90 (2003); BROOKS, *supra* note 19, at 12.

66. *See generally* RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000).

67. Commission to Study Reparations Proposals, H.R. 40, 101st Cong. (Sess. 1989). Representative Conyers has introduced this bill during each subsequent Congress. It is called H.R. 40 to signify “forty acres and a mule.” Though Conyers’ bill has received national attention, it has never been passed by Congress. *See* http://www.house.gov/conyers/news_reparations.htm.

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1988 into law.⁶⁸ The Civil Liberties Act provided a formal apology and reparations in the amount of \$20,000 for each Japanese American interned during WWII and still living when the bill became law.⁶⁹ Since 1989 a few states have passed reparations legislation.⁷⁰ In addition, a plethora of scholars and popular media outlets have written about the movement.⁷¹ Although there has been much recent attention given to the increasing momentum of the Reparations Movement,⁷² it is by no means a new movement as the first recorded effort to seek reparations was in 1759.⁷³ The modern movement, however, advocates both a different strategy and form for reparations.

1. *Reparations Strategies*

The most prominent reparations strategies are the atonement and tort models.⁷⁴ The atonement model, recently propounded by Professor Roy L. Brooks, seeks racial reconciliation through apology and reparations.⁷⁵ In contrast, the tort model, which receives the most attention in the reparations discourse, seeks reparations through the legal system and does not necessarily include the reconciliation component of the atonement model. I explain the atonement and tort models in the sections that follow.

68. Civil Liberties Act of 1988, 50 U.S.C. App. §§ 1989b–1989b-9 (2007).

69. *Id.*; For an in-depth background and examination of the Japanese American internment during WWII and the subsequent reparations movement see ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG, & FRANK H. WU, RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT (2001).

70. Ogletree, *supra* note 65, at 307-08 (discussing how, in 1994, Florida allocated \$2 million to nine black survivors of the 1923 Rosewood race riot; how Oklahoma formed a Commission to Study the Tulsa Race Riot of 1921 that recommended survivors of the riot and their descendents receive reparations; and that California, in 2002, enacted a law that requires all companies doing business within the state to disclose any insurance policies issued on the lives of slaves).

71. See, e.g., BROOKS, *supra* note 19, at 1.

72. Erin Teixeira, *Slavery Reparations Gaining Momentum but Overall Issue Hardly Settled*, ABC NEWS, July 9, 2006, available at <http://abcnews.go.com/US/wireStory?id=2170610&CMP=OTC-RSSFeeds0312>.

73. BROOKS, *supra* note 19, at 1-19 (providing a comprehensive historical background of the black redress movement).

74. See *generally id.* (coining the terms atonement model and tort model to frame the primary strategies within the reparations debate).

75. *Id.* at 141-43.

a. The Atonement Model

Brooks' atonement model looks toward the future and seeks, first and foremost, racial reconciliation for the harms inflicted upon the black community through slavery and Jim Crow.⁷⁶ Reflecting upon redress movements in the international context,⁷⁷ Brooks' atonement model submits as a prerequisite to racial reconciliation in the United States an apology by the federal government for the atrocities it committed against black Americans. Under the atonement model, the government's actions necessitate an apology to respect and honor those black Americans and their ancestors whose forced and uncompensated labor built our nation.⁷⁸ In addition, an apology is necessary to repair the federal government's lack of credibility with the black community on racial matters.⁷⁹ According to the atonement model, it is only after such an apology is rendered that restitution—in the form of reparations—should be given to demonstrate the genuineness of the apology.⁸⁰ The atonement model, therefore, is “apology *plus* reparations.”⁸¹ First, however, Brooks emphasizes that the focus should be on an apology because “it is cleaner both conceptually and factually to consider the perpetrator's moral obligation to atone without regard to the specific manner in which the perpetrator chooses to concretize its remorse.”⁸²

b. The Tort Model

The tort model is the most well known of the black redress models.⁸³ In contrast to the atonement model that seeks an apology first, this model seeks to force the nation to address racism in America through litigation or legislation.⁸⁴ As the name suggests, the tort model's focus is on seeking

76. *Id.*

77. *Id.* at xiii-xvii.

78. *Id.* at 141-43.

79. *Id.*

80. *Id.*

81. *Id.* at 143.

82. Roy L. Brooks, *Getting Reparations for Slavery Right—A Response to Posner and Vermeule*, 80 NOTRE DAME L. REV. 251, 287 (2004).

83. See BROOKS, *supra* note 19, at 98-140 (providing a comprehensive overview of the tort model).

84. Ogletree, *supra* note 65, at 213-14.

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compensatory justice for the atrocities inflicted upon black Americans through slavery and Jim Crow. The goal is to repair injustices and the damage that continues to impact the black community through an acknowledgement of America's past.⁸⁵ Professor Charles J. Ogletree, one of the most prominent supporters of the tort model, noted that "[a] central goal of the Reparations Movement is to repair the damage that still afflicts the black community by targeting the most needy within that community."⁸⁶

Although slavery redress lawsuits have faced formidable barriers to date, the activists who favor the tort model of reparations have garnered significant public attention and continue to explore and implement new legal strategies.⁸⁷ Organizations such as the National Coalition of Blacks for Reparations in America (N'COBRA), the Reparations Coordinating Committee (RCC) and the Corporate Restitution Team (CRT) have joined forces to mount a national and international effort to secure reparations.⁸⁸ Such lawsuits are not a new phenomenon; indeed the first reparations lawsuit was filed in 1915.⁸⁹ One of the most well known lawsuits against a government entity in recent years, *Alexander v. Oklahoma*,⁹⁰ sought redress for the 1921 Tulsa Race Riot.⁹¹ The plaintiff sought reparations for the damage inflicted by a white mob that burned black homes and business, killed approximately three hundred blacks, and left thousands of blacks homeless.⁹² The defendants included the state of Oklahoma, the Tulsa police, the

85. *Id.* at 283-85.

86. *Id.* at 284.

87. *Id.* at 298-307.

88. See generally Adjoa A. Aiyetoro, *Formulating Reparations Litigation Through the Eyes of the Movement*, 58 N.Y.U. ANN. SURV. AM. L. 457, 458-59 (2003); Ogletree, *supra* note 65, at 287-88 (crediting the efforts of N'COBRA with keeping reparations activism alive).

89. Ogletree, *supra* note 65, at 294 (discussing *Johnson v. MacAdoo*, 45 App. D.C. 440, 441 (D.C. Cir. 1916), *aff'd*, 244 U.S. 643 (1917), in which the plaintiff sued the United States Department of Treasury on the basis that taxation by the government of cotton produced by slave labor constituted unjust enrichment. Plaintiff was denied relief based on sovereign immunity).

90. *Alexander v. Oklahoma*, 382 F.3d 1206 (2004).

91. See generally *id.* For an historical account of the Tulsa Riot and background surrounding this lawsuit, see ALFRED L. BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921* (2002).

92. *Alexander*, 382 F.3d at 1211.

City of Tulsa, and other unnamed individuals who acted under local or state authority. The suit was dismissed on statute of limitations grounds.⁹³ In 1997, the Oklahoma state legislature formed a commission to study the impact of the riot and subsequently passed legislation recognizing the culpability of government actors who failed to take action to calm the riot.⁹⁴ Other lawsuits seek reparations from private entities that profited from slavery.⁹⁵ Such litigation continues in both state and federal courts.

Although the tort model's primary focus is litigation, legislative strategies are used as well. These efforts focus on both government and corporate responsibility. Congressman Conyers continues to introduce H.R. 40—hoping it will succeed. And, to date, legislative efforts have seen success in Florida, Oklahoma, and California.⁹⁶

2. *Forms of Reparation*

The discourse surrounding an award of reparations focuses on either individual or group reparations. Though separate, these two concepts are intertwined to the extent that individual group membership would have to be deciphered if group reparations are awarded.

a. Individual Reparations

Initial scholarship focused on the concept of individual (or compensatory) payments of reparations to victims or their families.⁹⁷ Much scholarship has been devoted to the questions of how much should be awarded, and to whom. One of the first scholars in the current movement, Boris Bittker, proposed a method to calculate reparations through multiplying the difference between black and white per capita incomes by the number of blacks.⁹⁸ This sum would be calculated on an annual basis to determine the amount Congress would fund each year until the income gap narrowed.⁹⁹ Recent scholarship, however,

93. *Id.*

94. *Id.* at 1212.

95. Ogletree, *supra* note 65, at 295, 298-99.

96. *Id.* at 307-08.

97. BROOKS, *supra* note 19, at 156.

98. BITTKER, *supra* note 17, at 131.

99. *Id.*

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focuses for the most part on group, or rehabilitative,¹⁰⁰ reparations.¹⁰¹

b. Group Reparations

The arguments for group reparations vary widely. Professor Ogletree argues for a Reparations Trust Fund that would “administer money received through claims and an independent commission to distribute those funds to the poorest members of the black community.”¹⁰² The fund would address hunger, health care, housing, education and employment issues impacting black Americans, thereby benefiting America as a whole.¹⁰³ Professor Brooks advocates for a museum of slavery and an Atonement Trust Fund.¹⁰⁴ The Atonement Trust Fund, funded by the federal government, would “only be spent for education or to start or invest in a business.”¹⁰⁵ Methods to calculate the amount for these funds could be based upon figures designed to close the gap between blacks and whites in either income or wealth.¹⁰⁶

The current discourse surrounding reparations makes minimal reference to the impact of the MCM on both the strategy and form of the Reparations Movement. Whether reparations are given to individuals or the group, the question of whether black-other individuals who consider themselves multiracial should be eligible still remains. Ultimately the question of who comprises black America will have to be addressed. Accordingly, the next section examines the implications of the inevitable intersection of these movements.

100. BROOKS, *supra* note 19, at 156.

101. Jeffery M. Brown, *Deconstructing Babel: Toward a Theory of Structural Reparations*, 56 RUTGERS L. REV. 463, 470-71 (2004) (using the term “structural reparations” and urging scholars to look not only at the moral and jurisprudential reparations arguments, but also at the economic and institutional imperatives necessary to transform the black community).

102. Charles J. Ogletree, Jr., *The Current Reparations Debate*, 36 U.C. DAVIS L. REV. 1051, 1071 (2003).

103. *Id.*

104. BROOKS, *supra* note 19, at 157.

105. *Id.* at 161-62.

106. *Id.* at 162-63; see generally Robert S. Browne, *The Economic Basis for Reparations to Black America*, REV. OF BLACK POL. ECON., Winter 1993, at 99.

III. THE INEVITABLE INTERSECTION OF THE MCM AND REPARATIONS MOVEMENT

The MCM has the potential to frustrate the goals of the Reparations Movement because it obviates the sociopolitical nature of being black in America.¹⁰⁷ Mixed ancestry within the black community is not a new phenomenon. Race mixing has occurred since the time blacks were forced to come to America. And, due to the “one-drop” or hypodescent rule, any individual with identifiable black ancestry is considered black.¹⁰⁸ Indeed, the majority of black individuals in the United States can recite some form of mixed ancestry and many black historical figures such as W.E.B. DuBois, Frederick Douglass, and Langston Hughes had black and white ancestry.

If the MCM were successful, some would seek to rewrite history in light of this racial category and others fear it would become a racial buffer class. Some scholars, such as Naomi Zack, would rewrite history to redefine many black historical figures as mixed race rather than “black.”¹⁰⁹ Such attempts to gradate or eliminate racial classifications risk the potential for “multiracials” to become a racial “buffer class”¹¹⁰ as has happened in both South Africa¹¹¹ and Brazil¹¹² where a comparatively small number of whites have maintained their supremacy by dividing those with mixed black ancestry into intermediate racial groups considered superior to full blacks, but lesser than whites. Thus, the Reparations Movement should focus on the concept of political blackness to unify those with black ancestry who desire racial justice for black Americans.

My analysis of the intersection between these two movements begins in Part III(A) with an examination of black-other identity formation and whether those with black ancestry who define themselves as multiracial fail to recognize their black

107. Powell, *supra* note 31, at 794.

108. See DAVIS, *supra* note 33, at 21 (“At least three-fourths of all people defined as American blacks have some white ancestry, and some estimates run well above 90 percent.”).

109. See NAOMI ZACK, RACE AND MIXED RACE 95-111 (1993).

110. Hernández, *supra* note 20, at 122-39.

111. Hickman, *supra* note 33, at 1197-1202.

112. Powell, *supra* note 31, at 801; Tanya K. Hernández, *The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws*, 76 OR. L. REV. 731, 733-35, 762-64 (1997).

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ancestry. Part III(B) discusses the potential impact of the MCM on reparations strategy. Finally, Part III(C) examines the potential impact of the MCM on the form of reparations.

A. Black-Other Identity Formation

The concept of political blackness is premised on the notion that an individual's desire to classify themselves as multiracial does not mean they dissociate, or renounce, their black ancestry. A study of black-white individuals with one black and one white parent by Kerry Ann Rockquemore and David L. Brunson examined how these individuals perceive their racial identity and the social factors that influence them.¹¹³ They define identity as a "validated self-understanding that places and defines the individual; it establishes what and where an actor is socially."¹¹⁴ Thus, an individual cannot have a realized identity without validation by others.¹¹⁵ The study classified the subjects into four groups based upon their method of self-identification.

The first group, referred to as "border identity," included individuals whose identity was "between predefined social categories."¹¹⁶ These individuals do not consider themselves black or white, but instead incorporate both into their framework for self-reference. This was the most common category selected in the study: 58% of those surveyed defined their racial identity as separate from the traditional categories of black and white.¹¹⁷ Of this group, 20% indicated that others validated their biracial identity.¹¹⁸ The other 38% of this group indicated that they considered themselves multiracial, but they experienced the world as black.¹¹⁹ In addition, more than 60% of the individuals whose identity was validated and 62.5% of those whose identity was not validated described their appearance as "ambiguous but people assume I am black."¹²⁰ These responses indicate the impact of racial identity validation

113. ROCKQUEMORE, *supra* note 25, at vii-xi.

114. *Id.* at 40.

115. *Id.* at 41.

116. *Id.* at 42.

117. *Id.* at 43.

118. *Id.* at 44 (a validated racial identity is when an individual's racial identity is confirmed by the reactions of others).

119. *Id.*

120. *Id.* at 94.

on the identity formation of biracial individuals.¹²¹ The individuals who fall into the validated border identity group represent the MCM's goal to include a separate multiracial category as they identify themselves solely as biracial.¹²²

The second group, those with "singular identity," comprised only about 13% of the individuals studied.¹²³ This identity included those individuals who classify themselves solely as black or white.¹²⁴ Of this group 4% consider themselves exclusively white, whereas the other 9% define themselves as exclusively black.¹²⁵ Of the individuals from this group who consider themselves black, 95.5% indicate that others assume they are black.¹²⁶ Although a number of these black-white, light-skinned individuals had a singular identity as black, none of these individuals considered themselves able to pass as white.¹²⁷ These individuals would continue to classify themselves with a singular racial identity and need not be included in this analysis as they refuse to categorize themselves as multiracial.

A "protean identity" was the third group in the study and included individuals whose racial identity shifts according to social context.¹²⁸ These individuals adjust their identity based on the expectations of others and the circumstances in which they find themselves.¹²⁹ Only 4% of the individuals in the study selected this identity,¹³⁰ and they were the individuals most likely to use a variety of self-labels.¹³¹ Most individuals in the study reported their appearance as "ambiguous, but assumed black."¹³²

Rockquomore and Brunsma labeled the fourth group "transcendent identity." This group included individuals who choose to entirely opt out of racial categorization;¹³³ 13.8% of

121. *Id.* at 44.

122. *Id.* at 115.

123. *Id.* at 47.

124. *Id.* at 46.

125. *Id.* at 46-47.

126. *Id.* at 96.

127. *Id.*

128. *Id.* at 47.

129. *Id.*

130. *Id.* at 47-49.

131. *Id.* at 97.

132. *Id.* at 98.

133. *Id.* at 49-50.

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the individuals in the study classified themselves as transcendentals.¹³⁴ These individuals perceive themselves as detached outsiders, or strangers, considering themselves able to “objectively articulate the social meaning placed on race and discount it as a ‘master status’ altogether.”¹³⁵ For these individuals, choosing a racial identity on a form has no bearing upon their self-identification.¹³⁶ This identity was most common among those who appeared white.¹³⁷ And, for the most part, they accepted categorization as black due to the persistence of the one-drop rule, but this categorization did not impact their self-identification.¹³⁸ Though these individuals would probably not select the multiracial category, if they were to comprise a viable portion of the MCM their goal would be to utilize the multiracial category to dismantle racial classifications altogether.¹³⁹

This racial identification study found a strong correlation between the socially validated appearance of black-white individuals and their choice of racial self-identification.¹⁴⁰ It appeared that almost all of those in the study recognized their black ancestry, but did so in a variety of ways. The study confirmed the idea that race is socially constructed and that this construction changes over time.¹⁴¹ It also demonstrated that despite the persistence of the one-drop rule, only a small percentage of the black-white individuals studied categorized themselves as exclusively black. This finding, in particular, supports the premise of political blackness that a black-other individual who chooses to identify as multiracial does not necessarily renounce his or her black ancestry.

B. Potential Impact of the MCM on the Reparations Movement

The reparations component of both the atonement and tort models could be significantly impacted by the MCM. The apology component of the atonement model would not,

134. *Id.* at 99.

135. *Id.* at 51.

136. *Id.* at 52.

137. *Id.* at 99.

138. *Id.* at 100.

139. *Id.* at 117.

140. *Id.* at 101.

141. *Id.* at 115.

however, be impacted by the MCM's call for a multiracial classification. An apology would not require classification of the multiracial descendent as black or, indeed, any racial categorization requirement on the part of the multiracial descendent. Opponents of reparations have raised the difficulty of determining eligibility to further their opposition to the movement. And although these are legitimate questions, they are by no means insurmountable. For those who advocate for individual or compensatory rewards, the question remains whether or not a multiracial descendent would be eligible; and, for those who advocate for group reparations, would a multiracial descendent be part of the group?

1. The MCM's Impact on Individual Reparations

Some of the proposed methods for determining individual eligibility for reparations include self-identification, proof of black ancestry, or a sociological test. All people should be allowed to self-identify for the purpose of self expression. Yet, would those black-other descendents of slaves who choose to identify as multiracial be automatically eligible for reparations through self-identification alone? A self-identification option that did not require affirmative proof of entitlement would most certainly engender the problem of opportunistic individuals attempting to make false claims for reparations.¹⁴² Thus, self-identification without affirmative proof of entitlement would not be an appropriate way to determine eligibility for reparations.

The second eligibility option would be for a multiracial descendent to prove his or her black ancestry.¹⁴³ Although reparations opponents have questioned multiracial individuals' ability to adequately do so, the reality is that America was able to determine who had black ancestry during slavery and Jim Crow and can do so now. Proof of black ancestry could be proven through various legal methods.

Historical methods of proving black ancestry were used in cases that litigated the demarcation between black and white. Professor Christine Hickman notes that proponents of the MCM attempt to "draw a biological line" similar to those drawn during

142. BITTKER, *supra* note 17, at 96; BROOKS, *supra* note 19, at 197.

143. By "black ancestry" in this context I am referring to one whose ancestors were slaves or suffered from Jim Crow.

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slavery and Jim Crow.¹⁴⁴ She further states that, “[t]he advocates of the broad multiracial category thus stand not as a repudiation of the methodology of racial certification cases but as an extension of them.”¹⁴⁵ Despite the inherent hypocrisy of the multiracial category in drawing a “biological line” in contradiction of its professed goal of eliminating racial categories altogether, in the reparations context this method appears logical and poetically just in that it uses the same eligibility standards for reparations that were used to determine whether or not an individual was subjugated by slavery or Jim Crow. These standards included adjudicating blood quantum, testimony by relatives, expert testimony based upon phenotypical inspection or phenotypical observation by lay persons.¹⁴⁶ These represent just some of the methods used as there was no clear consensus regarding standards to determine blackness.¹⁴⁷ These biological methods could be used to determine eligibility for reparations; however, proof of ancestry or blood quantum through such means would be impossible for a number of individuals due to the incomplete or nonexistent records of blacks kept during slavery. Even more important, however, is that such archaic methods for determining race reinforces the biological definition of race proved insufficient in the past¹⁴⁸ and should be avoided as they negate the sociopolitical nature of race.

For those who have difficulty proving their ancestry, some argue that DNA testing could aid in a biological determination. These tests have become quite popular within the black community due to their ability to determine the source of identity eliminated by slavery.¹⁴⁹ “African-American Lives,” a public television documentary hosted by Henry Louis Gates, Jr. that premiered in February 2006, brought considerable attention to this type of testing. This documentary traced the ancestry of

144. Hickman, *supra* note 33, at 1224.

145. *Id.*

146. *Id.* at 1222-31; see also Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109 (1998) for an extensive examination of nineteenth century cases that litigated race.

147. Gross, *supra* note 146, at 123, 180-81.

148. *Id.* 182-85.

149. Kevin Hopkins, *Forgive U.S. Our Debts? Righting the Wrongs of Slavery?*, 89 GEO. L.J. 2531, 2546-47 (2001).

several prominent black Americans primarily through historical records, but utilized DNA tests to reconstruct missing portions of their lineage.¹⁵⁰

Although DNA testing is considered the most scientifically accurate way to determine eligibility for slavery reparations,¹⁵¹ Professor Kevin Hopkins identified four limitations of this method. First, DNA testing alone is insufficient to determine a definitive link to slavery because DNA cannot prove a decisive link to a homeland.¹⁵² Second, time is needed to develop extensive databanks of individuals with African ancestry before truly accurate results can be achieved.¹⁵³ Third, because of the intermixing between slaves and masters, these tests would probably point many black Americans toward their European rather than African ancestry.¹⁵⁴ Finally, even if there were sufficient databanks to determine African ancestry, there remains potential for DNA's improper use.¹⁵⁵ DNA testing is therefore unsuitable for demonstrating a multiracial person's eligibility for reparations because of the inherent limitations of the test, and because DNA testing provides a slippery slope to the "re-biologization"¹⁵⁶ of race—again threatening to negate its sociopolitical nature.

The third option, suggested by Professor Brooks, utilizes a sociological method of proof to "determine if a person . . . has always represented himself as a black person."¹⁵⁷ It is derived from a case that involved twin firefighters in Boston. In this civil service case, the twin brothers initially identified themselves as white when they applied for positions with the Boston Fire Department.¹⁵⁸ After rejection for hire, the twins' mother suddenly remembered that one of their ancestors was black. The twins subsequently reapplied to the fire department as black

150. *African-American Lives* (PBS television broadcast Feb. 2006), information regarding the four-hour documentary series tracing black history through geneology and DNA is available at <http://www.pbs.org/wnet/aalives/>.

151. Hopkins, *supra* note 149, at 2547.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. Hickman, *supra* note 33, at 1202.

157. BROOKS, *supra* note 19, at 197.

158. See *generally* *Malone v. Civ. Service Comm'n*, 646 N.E.2d 150 (Mass. App. Ct. 1995).

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and were hired. After several years of service with the department the brothers applied for promotion. During examination of their personnel materials for promotion, the discrepancy in their racial identification was discovered and they were terminated for lying on their applications.¹⁵⁹ During the hearing in which the twins challenged their termination, three criteria were utilized to determine whether or not they were black:

- (i) visual observation of physical features; (ii) documentary evidence establishing black ancestry, such as birth certificates; and (iii) evidence that the Malones or their families held themselves out to be black and are considered black in the community.¹⁶⁰

The hearing officer found that the twins met none of these criteria.¹⁶¹

The sociological test proffered by Professor Brooks, that would allow only those who have always held themselves out as black to be eligible for reparations, does not account for those black-other individuals who identify as multiracial, but publicly acknowledge their black ancestry. As the Rockquemore and Brunnsma study indicated, the majority of black-white mixed individuals publicly acknowledge their black ancestry—albeit to different degrees. Extrapolating this study and its categories of self-identification to multiracial individuals outside the black-white paradigm—to include all individuals with black-other race ancestry—would also show recognition of black ancestry. Thus, I propose modification of the sociological test to include all individuals who can prove public acknowledgment of their black ancestry. This type of test would include any multiracial descendants who would have been classified as black under the slavery and Jim Crow regimes that publicly recognize this aspect of their lineage. The recognition and freedom of these individuals to self-identify does not clearly presume their refusal

159. *Id.*; see also Luther Wright, Jr., *Who's Black, Who's White, and Who Cares: Reconceptualizing the United States's Definition of Race and Racial Classifications*, 48 VAND. L. REV. 513, 515-16 (1995) (citing Peggy Hernández, *Firemen Who Claimed to be Black Lose Appeal*, BOSTON GLOBE 13 (July 26, 1989) and Peggy Hernández and John Ellement, *Two Fight Firing Over Disputed Claim That They Are Black*, BOSTON GLOBE 29 (Sept. 29, 1988)).

160. Malone, 646 N.E.2d at 151 n.4.

161. *Id.*

to recognize or align themselves with black causes. Those multiracial individuals with border, protean, black singular and possibly transcendent identities could be eligible for reparations under this standard. Moreover, the revised sociological test is consistent with the concept of political blackness because it unifies those who publicly acknowledge their black ancestry.

Another consideration arises upon examination of the MCM's intersection with the Reparations Movement that impacts all of the models discussed above: to what extent should the impacts of colorism¹⁶² be included in the calculation of reparations awards? This question stems from the relative economic advantage of light versus dark-skinned blacks in the United States.¹⁶³ Studies have shown that those with lighter complexions account for most of the increase in the number of blacks in highly-regarded positions.¹⁶⁴ Social science research demonstrates that skin tone is the greatest determinant of socioeconomic status for blacks; that blacks with light skin have greater economic privilege than those with darker skin.¹⁶⁵ While some may attempt to minimize this difference in economic privilege, it is acknowledged by many within the black community and by social scientists.¹⁶⁶ With that in mind, to what extent should the calculation of reparations include the variations in economic privilege due to skin tone? This question is particularly relevant to the potential claims of multiracial individuals because they represent a full spectrum of

162. CEDRIC HERRING ET AL., *SKIN DEEP: HOW RACE AND COMPLEXION MATTER IN THE "COLOR-BLIND" ERA* 3 (2004) (defining colorism as "discriminatory treatment of individuals falling within the same 'racial' group on the basis of skin color").

163. Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 U.C.L.A. L. REV. 1705, 1717 (2000); Jones, *supra* note 29, at 1491 n.10, 1555-56.

164. Jones, *supra* note 29, at 1490-91, n.10; *see also* Banks, *supra* note 163, at 1716-24.

165. Banks, *supra* note 163, at 1719-22.

166. *Id.*; *see generally* Verna Keith & Cedric Herring, *Skin Tone and Stratification in the Black Community*, 97 AM. J. OF SOC. 760 (1991); Michael Hughes & Bradley R. Hertel, *The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness Among Black Americans*, 68 SOC. FORCES 1105 (1990); Richard Seltzer & Robert C. Smith, *Color Differences in the Afro-American Community and the Differences They Make*, 21 J. BLACK STUD. 279 (1991); Kendrick Brown, *Consequences of Skin Tone Bias for African Americans: Resource Attainment and Psychological and Social Functioning*, 4 AFR. AM. RES. PERSP. 1 (1998) available at <http://www.rcgd.isr.umich.edu/prba/perspectives/index.htm>.

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complexions. Should the calculation of the racial wealth gap proposed by Bittker¹⁶⁷ take into account the wealth gap between light-skinned black families and white families in addition to the calculation of the wealth gap endured by those with darker skin? Consideration of these questions regarding the impact of colorism on the reparations movement and an individual's eligibility for reparations deserves a nuanced analysis that is outside the scope of this article.

2. *The MCM's Impact on Group Reparations*

The arguments in favor of group reparations recognize the group nature of the harm from slavery and Jim Crow and, in turn, the need for a group remedy. Some of the remedies recently suggested include a national museum of slavery on the National Mall in Washington, D.C.¹⁶⁸ and various types of trust funds to ameliorate the impacts of slavery and Jim Crow on the black community.¹⁶⁹ Considering the MCM's impact on the argument for group reparations, the obvious question for black-other individuals who identify as multiracial is whether or not they are part of the group.

One option for group reparations, which seems the most straightforward when considering the ramifications of the intersection of the MCM and the Reparations Movement, is to create a national museum of slavery. The impact of the MCM on the proposal for a slavery museum appears relatively minute because its symbolic nature requires no determination of racial eligibility for its existence. Yet, even this option is not as straightforward as it seems if some of the more extreme members of the MCM, such as Naomi Zack, are successful in rewriting history to re-categorize many black historical figures with black-other ancestry as multiracial.¹⁷⁰ Such a rewriting of history would, as previously discussed, rebiologize race and solidify the creation of a multiracial buffer class. This possibility seems very remote, however, as this history has become an

167. *See generally* BITTKER, *supra* note 17.

168. BROOKS, *supra* note 19, at 157-59.

169. *Id.* at 159 (Atonement Trust Fund); Ogletree, *supra* note 102, at 1070-72 (education grants/trust). This list of proposed group reparations is by no means exhaustive, but attempts to provide an analysis of some of the most prominently known suggestions for group reparations.

170. *See* ZACK, *supra* note 109, at 95-111 (1993).

integral part of American culture and many of these historical figures, such as W.E.B. DuBois, are widely accepted by Americans as black.

The MCM would also impact the various trust fund proposals for group reparations. Eligibility to receive a trust fund distribution would require membership in the group designated as the beneficiary of the trust fund. Thus, the definition of the beneficiary group would have to either include or exclude multiracial descendents. This determination takes us back to the analysis of individual eligibility discussed above.

Those with black lineage who consider themselves multiracial, and hold themselves out as such, may have difficulty proving group membership under the sociological test set forth by Professor Brooks. Yet, as discussed previously, an individual's self-identification as multiracial does not necessarily imply they do not recognize their black lineage. Many black-other individuals choose to identify themselves as multiracial because they believe this recognizes the various facets of their diverse ancestry. Despite the limitations of this classification, it does not mean the categories 'multiracial' and 'black' must be mutually exclusive for purposes of determining eligibility or support for reparations. Thus, if an eligibility test were required, it should be the revised sociological test that requires proof of an individual's public acknowledgement of their black ancestry instead of the test proffered by Professor Brooks.

CONCLUSION

Should litigation or legislation seeking reparations succeed, the question of how to deal with the descendents of slaves who choose to identify themselves as multiracial will have to be addressed. Although the MCM is not optimal for racial justice efforts such as the Reparations Movement, the concept of political blackness could help to minimize the MCM's negative effects and strengthen black racial justice efforts.

The MCM poses significant political and legal complexities for the Reparations Movement, but their intersection presents an opportunity for mobilization of reparations supporters as the choice to identify as a multiracial individual does not necessarily equate to renunciation of black ancestry. Moreover, the existence of a multiracial category does not necessarily remove

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the possibility of mutual support for racial justice issues by black individuals mixed with other races who categorized themselves as multiracial from those who categorize themselves exclusively as black.¹⁷¹ Such a coalition is possible. For example, the 1960s Black Power Movement had an alliance of “mixed and unmixed” blacks.¹⁷² As Professor Trina Jones wrote, “The Black community must not overlook the fact that one of the things that binds Blacks together as a subordinated group is the thread of blackness. This thread results in the oppression of all who share it, regardless of the lightness or darkness of one’s skin tone.”¹⁷³

The strategy for reparations should include, as much as possible, the concept of political blackness to unify those within the MCM who have black ancestry¹⁷⁴ with those who identify only as black. Political blackness, coupled with the concept of “political race” advocated by Guinier and Torres,¹⁷⁵ has the potential to advance not only the Reparations Movement, but all black racial justice efforts through recognition and acceptance of the sociopolitical nature of blackness. Most importantly, the concept of political blackness does not allow those seeking to maintain white privilege to divide and conquer those with black ancestry who seek justice for the atrocities of slavery and Jim Crow.

171. See Maurice R. Dyson, *Multiracial Identity, Monoracial Authenticity & Racial Privacy: Towards an Adequate Theory of Multiracial Resistance*, 9 MICH. J. RACE & L. 387, 411-13 (2004) (“[A]lthough racial identity formation is typically a predicate to racial resistance, this should not mean that it can never be the inverse.”).

172. Jones, *supra* note 29, at 1518.

173. *Id.* at 1557.

174. Of course there are many in the MCM who do not have black ancestry, such as the singular race non-black parents of mixed-race children or those individuals whose mixed-race ancestry does not include black ancestors. These individuals may also wish to support the Reparations Movement, but such an analysis is outside the scope of this essay.

175. See generally GUINIER & TORRES, *supra* note 1.

