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Apology Lite: Truths, Doubts, and Reconciliations in the Senate's Guarded Apology for Slavery

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I. INTRODUCTION

The United States Senate formally apologized for slavery on June 18, 2009.¹ This followed an apology made nearly a year earlier, on July 29, 2008, by the House of Representatives.² Unlike the House apology, the Senate apology contains additional limiting language, specifically stating that it cannot be used as a ground for monetary compensation.³ The apology is nearly nine hundred words, with a preamble which goes into some detail about the wrongness of slavery, admitting that slaves were “brutalized, humiliated, [and] dehumanized.”⁴ It then states:

(1) APOLOGY FOR THE ENSLAVEMENT AND SEGREGATION OF AFRICAN-AMERICANS.—The Congress . . . apologizes to African-Americans on behalf of the people of the United States, for the wrongs committed against them and their ancestors who suffered under slavery and Jim Crow laws

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¹ Krissah Thompson, *Senate Backs Apology for Slavery; Resolution Specifies That It Cannot Be Used in Reparations Cases*, WASH. POST, June 19, 2009, at A05.

² *Id.*; Darryl Fears, *House Issues an Apology for Slavery*, WASH. POST, July 30, 2008, at A03.

³ See Thompson, *supra* note 1, at A05 (“One key difference is that the Senate version explicitly . . . say[s] that the resolution cannot be used in support for claims for restitution . . .”).

⁴ S. Con. Res. 26, 111th Cong. (as passed by Senate, June 18, 2009).

(2) DISCLAIMER.—Nothing in this resolution—

(A) authorizes or supports any claim against the United States; or

(B) serves as a settlement of any claim against the United States.⁵

The Senate’s “apology lite,” is likely to influence future reparations actions, as state and local apologies and truth commissions become increasingly common.⁶ This Essay will discuss the apology’s legal and moral effects. It will examine the role of apology generally in the slavery reparations debate, the question of whether a stand-alone apology can ever be a valid form of reparation, and whether the Senate apology in particular satisfies the legal and moral goals of reparations.⁷

II. THE ROLE OF APOLOGY IN REPARATIONS

Many scholars have suggested ways in which apology can play a significant role in reparations. Among the most vocal of these is Professor Roy Brooks, who has articulated a compelling moral theory of reparations relying on apology. Brooks argues that reparations are a step in the process of atonement, the moral healing process that helps a community rebuild in the wake of mass injustice.⁸ A government which has committed an atrocity takes on “a moral obligation to apologize and to make that apology believable by doing something tangible called a reparation.”⁹ This in turn leads to healing: “Atonement (apology plus reparations) and forgiveness are thus the key ingredients of racial reconciliation.”¹⁰

Others have articulated broader roles for apologies. Professor Alfred Brophy writes that “[s]ome injuries may be best repaired by study of the past injustice and by apology” and argues that apology can play a vital role in slavery reparations.¹¹ For instance, apologies can “serve as a basis for

⁵ *Id.*

⁶ See Kaimipono David Wenger, *Towards Microreparations* (2009) (draft, on file with author) (discussing the increase in state and local apologies and reparations programs). Throughout this short Essay, I will use the term “reparations” narrowly to mean compensation to Blacks or to slave descendants for the harms of slavery or Jim Crow. In addition, I will use the capitalized term “Black” rather than “black” or “African-American.” Cf. Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (discussing use of the word “Black”).

⁷ There are a number of other issues relating to the Senate’s apology outside the scope of this Essay, including whether institutions are capable of apology, and whether reparation has already been made (such as through affirmative action or the Civil War amendments).

⁸ See ROY L. BROOKS, *ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS* 142–43 (2004).

⁹ *Id.* at ix.

¹⁰ *Id.* at x.

¹¹ ALFRED L. BROPHY, *REPARATIONS: PRO & CON* 11 (2006).

subsequent arguments about equality and reparations,” acting as a foundation for a broader program of reparations.¹² Professor Martha Minow writes that apologies can “promote reconciliation and healing” in cases of mass injustice; they can be a “restorative step[] toward justice.”¹³ And Congressman John Conyers, the principal reparations advocate in Congress, sees apology and truth commissions as a way of opening the dialogue towards restitution.¹⁴ Not all reparationists are apology advocates;¹⁵ but for many, apology plays an important role.

Apology advocates build toward a goal of reconciliation, or restorative justice. Restorative justice, a concept drawn from the international human rights context, is not focused on punishment or on the redistribution of wealth; rather, restorative justice seeks to repair society through reconciliation, ultimately healing both victims and society itself.¹⁶ “[R]estorative justice seeks to repair the injustice, to make up for it, and to effect corrective changes in the record”¹⁷

It is not surprising that some advocates see apology as playing a role in the slavery reparations arena. Apology has played a role in other highly visible cases of restitution for mass harm, in particular the cases of Holocaust victims and Japanese-American internees. In each case, victims

¹² *Id.* at 13–14.

¹³ MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS* 114 (1998).

¹⁴ See John Conyers, *Reparations: The Legislative Agenda*, 29 T. JEFFERSON L. REV. 151, 153 (2007) (describing apology as an incomplete forerunner of reparations and restitution); see ELAZAR BARKAN, *THE GUILT OF NATIONS* 291 (2000) (noting that Conyers seeks “an official public apology for the brutality of slavery” as “fundamental for restitution”). Other scholars, such as Elazar Barkan, Mari Matsuda, and Eric Yamamoto, have also discussed ways in which apology can play a role in healing after mass injustice, including slavery. See BARKAN, *supra*, at 287–92, 323–24; Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 395–96 (1987); Eric K. Yamamoto et al., *American Racial Justice on Trial—Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269, 1335–36 (2003).

¹⁵ Some important reparations advocates have spent little time on the idea of apology. Notably, Randall Robinson’s book *The Debt*, probably the most influential recent book on reparations, mentions the idea of apology only peripherally. See RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000). Robert Westley’s influential law review article also focuses elsewhere. See Robert Westley, *Many Billions Gone, Is it Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429, 433–34 (1998) (discussing reparations as a “critical legalism”); see also BROPHY, *supra* note 11, at 67–69 (discussing the importance of Robinson’s and Westley’s work). A variety of other important sources similarly omit the idea. Radical activist James Forman’s *Black Manifesto* contains detailed demands for compensation, education, and political change, but no discussion of apology. See James Forman, *The Black Manifesto*, in *BLACK MANIFESTO: RELIGION, RACISM, AND REPARATIONS* 114 (Robert S. Lecky & H. Elliott Wright eds., 1969). Nor does law professor Boris Bittker’s legal analysis in *The Case for Black Reparations*. See BORIS BITTKER, *THE CASE FOR BLACK REPARATIONS* 5–7 (1973). In general, many advocates prefer a tort model which “seek[s] nonapologetic redress through litigation.” BROOKS, *supra* note 8, at 3.

¹⁶ See MINOW, *supra* note 13, at 91; Linda M. Keller, *Seeking Justice at the International Criminal Court: Victims’ Reparations*, 29 T. JEFFERSON L. REV. 189, 190–91 (2007) (describing restorative justice).

¹⁷ MINOW, *supra* note 13, at 91. Part of the restitution is recognition that slavery involved a serious breakdown of the rule of law. See, e.g., Kaimipono David Wenger, *Reparations Within the Rule of Law*, 19 T. JEFFERSON L. REV. 231, 231–32 (2007).

ultimately received a variety of reparations including apology; and of course, these cases are frequently cited as models for slavery reparations.¹⁸

For many reparations advocates, apology is clearly viewed as a sort of *conversation starter*¹⁹—it is a stepping stone which allows the debate to move on to further reparative acts such as monetary compensation. Importantly, advocates generally do not suggest that apology creates a legal obligation for further payment. The existence of numerous official apologies which give no legal right to compensation (most recently, to Native Hawaiians) show that apology does not automatically grant a right to compensation.²⁰ Advocates do suggest, however, that an apology may create impetus, and build a moral foundation, for further reparations. (Reparations opponents and many members of the public more generally often agree that apology could lead to further steps, but view this possible eventuality as a negative development.)²¹

But what if apology does not lead to further action? What if the apology is instead a *conversation stopper*, intended to foreclose rather than foster further remedies? Can a stand-alone apology ever be an effective reparative act?

III. THE EFFECTIVENESS OF A STAND-ALONE APOLOGY

The legal literature does not often address the value of stand-alone apologies; rather, discussions have tended to analyze the value of apologies within a context of broader reparations goals. Those discussions are invaluable starting points for analyzing the stand-alone apology. A threshold question is why apology should ever matter. Are not *all* apologies simply words? Why should they ever carry any weight?

Apologies are merely words, but that description is incomplete. Apologies are a unique type of symbolic words that carry special weight and moral power. Thus, Martha Minow writes that “[t]he mystery of apology depends upon the social relationships it summons and strengthens;

¹⁸ For instance, Brophy notes that one “factor leading to the reinvigoration of talk about reparations for slavery and Jim Crow are the models of reparations that other groups—Native Americans, Holocaust victims, Japanese Americans interned during World War II, South Africans—have obtained.” Alfred L. Brophy, *Some Conceptual and Legal Problems in Reparations for Slavery*, 58 N.Y.U. ANN. SURV. AM. L. 497, 499 (2003).

¹⁹ I am indebted to my colleague Rebecca Lee for this useful terminology.

²⁰ See BROPHY, *supra* note 11, at 30–33 (listing reparations programs and proposals); see also Ashby Jones, ‘*Much Is Owed*’; *Slavery Apology Vote Rekindling Talk of Reparations*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2009/06/19/much-is-owed-slavery-apology-vote-rekindling-talk-of-reparations/> (June 19, 2009, 9:28 EST) (discussing potential concerns over the Hawaiian case).

²¹ Barkan notes: “[T]he public associates apology with potential restitution and payments. Indeed, the opposition to apology is often presented as a rejection of restitution.” BARKAN, *supra* note 14, at 288. See Derek Kravitz, *State Debates Slavery Apology*, ST. LOUIS POST-DISPATCH, Apr. 13, 2007, at C7 (discussing concerns about whether a proposed Missouri apology would lead to liability).

the apology is not merely words.”²² And as Al Brophy wryly notes, “[o]ne can gauge the power of truth commissions, as well as apologies, by how difficult it is to obtain them.”²³ The symbolic power of apologies—the moral statement that they make as deliberate and symbolic statements of regret and mourning—means that they can be quite valuable.

Apologies offer accountability, a “reality check” allowing society to admit the harm and set the record straight. Victims’ desire for official accountability and recognition of wrongdoing is a powerful one. The moral value of this admission may be more important to victims than monetary compensation. As one reparations advocate said, “*I don’t want a check. I just want fairness.*”²⁴

Apologies can be particularly valuable when they address previously unrecognized harms. In fact, a failure to apologize can, after injustice, constitute a new continuing source of offense. We see this idea in the outraged title of Roy Brooks’s essay, entitled “Not Even an Apology?” (in his also-tellingly-named volume *When Sorry Isn’t Enough*).²⁵ Unapologized-for offenses can be open wounds, a “continuing violation,” and silence about a harm can become a type of complicity.²⁶ An apology—even one which does not appear to lead to further restitution—can thus be a way to at least stop the bleeding, precisely because it marks an end to the prior silence and inaction.²⁷

Apologies can also open the door to healing through storytelling. Victims often place particular value on the opportunity to tell their stories, and they may derive practical and therapeutic benefits from doing so.²⁸ Apologies can also lead to much-needed dialogue between victim and perpetrator groups, leading to greater understanding between groups, and potentially transforming perceptions.²⁹

The mere words of an apology may seem inadequate as a response to

²² MINOW, *supra* note 13, at 114.

²³ BROPHY, *supra* note 11, at 12–13.

²⁴ BROOKS, *supra* note 8, at 141; *see* BROPHY, *supra* note 11, at 11 (noting that “a sincere apology may be more valuable and meaningful to some victims than money”).

²⁵ Roy L. Brooks, *Not Even an Apology?*, in *WHEN SORRY ISN’T ENOUGH* 309, 309 (Roy L. Brooks ed., 1999); *see also* BROOKS, *supra* note 8, at ix (noting that government has “not even tendered an apology” for either Jim Crow or slavery).

²⁶ *See* BARKAN, *supra* note 14, at 284 (discussing the idea of continuing violation); MINOW, *supra* note 13, at 94–96, 102–03 (discussing inaction as harm and the particular harm of silence after the Japanese-American internment). Matsuda notes: “Lack of legal redress for racist acts is an injury often more serious than the acts themselves, because it signifies the political non-personhood of victims.” Matsuda, *supra* note 14, at 390.

²⁷ Elazar Barkan notes that “slavery has remained the most glaring example of an unaddressed historical injustice in the United States.” BARKAN, *supra* note 14, at 284.

²⁸ *See* MINOW, *supra* note 13, at 103 (discussing storytelling as a means of healing trauma). Minow explains that “storytelling and public memory” and “reparation through memory” were used as forms of reparations in the case of women kidnapped and abused during war. *Id.* at 103–05.

²⁹ *See* BARKAN, *supra* note 14, at 288 (arguing that understandings “may be transformed if the debate receives more public attention”).

harm; but in some sense, the inadequacy of apology is no different from the general futility of any compensatory reparation. Reparations are always dealing in the realm of fundamentally inadequate responses because money cannot truly compensate victims: “[T]here never has been ‘adequate’ compensation for nontangible . . . losses.”³⁰ Rather, reparations for mass harm will almost always be limited to ultimately symbolic gestures of acknowledgement and regret. Because society can offer only symbolic responses in any event, the mere symbolic value of apology may not be seen as a problem. The model of justice is restorative, not corrective, and apology can be a very effective restorative tool.

Indeed, because of the inadequacy of all responses, apologies (with their unique moral heft and show of accountability) may be particularly efficacious. Brooks argues that redress without apology would be insufficient to satisfy the moral burden of slavery, and “[o]nly apology is sufficiently endowed to perform such heavy moral lifting.”³¹ Because of this, he suggests that “redress should be about apology *first and foremost*.”³² Indeed, in the instance of the “comfort women,” victims rejected money payments which were not accompanied by an official apology.³³

Overall, then, apologies can be surprisingly effective. By admitting the inadequacy of all responses, and focusing on the strengths of apology—the moral force of voluntary acceptance of responsibility—society can turn the weakness of apology into a strength. And indeed, apologies are increasingly common. They are a low-cost way to heal societal breaches and can therefore be extremely valuable.³⁴ Apologies for mass wrongs have proliferated in recent years, prompting Roy Brooks to characterize the era as an “[a]ge of [a]pology.”³⁵

However, apologies are vulnerable to criticism. Because of the ease with which apologies can be given, there is a risk that they will be given carelessly or cynically, without sincerity, thus becoming mere “hollow” or “empty gestures,” or attempts to secure “cheap grace.”³⁶ An insincere

³⁰ *Id.* at 290; *see also* MINOW, *supra* note 13, at 100 (“The point of these payments was not to make up for the loss of home, business, opportunity, and standing in the community which these people suffered”); Matsuda, *supra* note 14, at 395 (“Monetary grants will not compensate for the terrible losses sustained.”).

³¹ BROOKS, *supra* note 8, at 142.

³² *Id.*

³³ BARKAN, *supra* note 14, at 324.

³⁴ *See* Editorial, ‘Sorry’ Says Something, L.A. TIMES, July 25, 2009, at A28 (discussing state-level apology for discrimination against Chinese immigrants and concluding that “[i]f an apology can bind up intangible hurts that have endured for decades, then yes, it’s worth something”).

³⁵ Brooks, *Not Even an Apology?*, *supra* note 25, at 3.

³⁶ BROOKS, *supra* note 8, at 143–48; BROPHY, *supra* note 11, at 48–49; Haunani-Kay Trask, *Restitution as a Precondition of Reconciliation: Native Hawaiians and Indigenous Human Rights*, in *SHOULD AMERICA PAY?, SLAVERY AND THE RAGING DEBATE ON REPARATIONS* 32, 44 (Raymond A. Winbush ed., 2003).

apology may show neither real commitment to change nor acceptance of blame for wrongdoing.³⁷ Because the apology's only power is its moral heft, insincerity potentially strips apologies of *all* value—and can even make them into an insult or further injury. Apologies may be valuable if sincere, but completely worthless if insincere.

How does one demonstrate the sincerity of an apology? One way is for the apologizer to take full acceptance of responsibility rather than offering excuses or justifications or otherwise attempting to minimize the gravity of the harm.³⁸ An effective apology contains a straightforward admission of wrongdoing. For instance, when apologizing to Japanese-Americans, President Reagan said outright that “here we admit wrong.”³⁹ Minow describes a sincere apology as one where “the apologizer assumes a position of vulnerability before not only the victims but also the larger community.”⁴⁰ This may be difficult for state actors, where personal indicators of sincerity are not available.

A second way to demonstrate sincerity is through further reparative action. Thus, Brooks writes that “[r]eparations are essential to . . . mak[ing] apologies believable.”⁴¹ These reparations are not intended to compensate for the harm, but to demonstrate the sincerity of the apology, which is the more important moral act. Without this kind of proof, victims cannot be certain of the apology's sincerity—“[s]imply saying ‘I’m sorry’ is never enough when righting an atrocity.”⁴² This kind of demonstration is particularly important in the context of state apologies: “If unaccompanied by direct and immediate action, such as monetary reparations, official apologies risk seeming meaningless.”⁴³

A sincere apology does not necessarily mean cash payments. One common objection to reparations is that slave descendants are simply seeking large personal payouts. In fact, many advocates favor other plans.⁴⁴ Brooks states explicitly that individual checks would make poor reparations for slavery; he instead favors responses which help tell the

³⁷ See MINOW, *supra* note 13, at 112; BROPHY, *supra* note 11, at 48.

³⁸ See Posting of Annika Mengisen to New York Times Freakonomics Blog, <http://freakonomics.blogs.nytimes.com/2009/01/16/whats-the-point-of-saying-youre-sorry/> (Jan. 16, 2009, 11:56 EST) (noting that “a first step in offering an apology is the acceptance of responsibility” while “an ineffective apology is one that is equivocal in acknowledging the wrongdoing and in accepting responsibility”).

³⁹ MINOW, *supra* note 13, at 112–13.

⁴⁰ *Id.* at 114. As Minow states, “[to] apologize is to declare voluntarily that one has *no* excuse, defense, justification, or explanation for an action Any diversion from accepting responsibility is not an apology. . . . Full acceptance of responsibility by the wrongdoer is the hallmark of an apology.” *Id.* at 114–15 (alterations in original).

⁴¹ BROOKS, *supra* note 8, at 142.

⁴² *Id.* at 155.

⁴³ MINOW, *supra* note 13, at 117.

⁴⁴ Brophy defines reparations as including all “legislative and court action designed to address historic injustices” and clearly states that “reparations do not *necessarily* have to include payments.” BROPHY, *supra* note 11, at xiii, 11.

stories of slaves, preserve their memory, and strengthen the community. These include a national slavery museum, as well as trust funds to help Blacks establish businesses and receive an education.⁴⁵

IV. THE SENATE APOLOGY

Thus, stand-alone apologies can have value; however, they raise real concerns about their sincerity. How does this analysis apply to the Senate apology?

Like the House resolution, the Senate apology contains very harsh words for slavery,⁴⁶ and also like the House resolution, the Senate apology does not provide any monetary reparations.⁴⁷ However, the Senate's explicit disclaimer creates some very different effects.

The disclaimer has both legal and symbolic importance. Its legal effect is as it states—simply that it cannot be used to support reparations. There is nothing in the Senate apology that outright blocks any future reparations. Further reparations legislation is still possible, but would require separate legislation which could not use the apology as legal support. Nor could a court use the apology as a legal ground for finding liability.⁴⁸ This is a relatively minor consequence, because as noted earlier, there is no direct legal link between apology and payment. Federal and state governments have apologized for a number of past events, without creating legal liability.

The symbolic effects of the disclaimer are much broader. The disclaimer is a preemptive, symbolic rejection of compensation, and alters the symbolic content of the apology in significant ways.

First, it shows doubt for the apology recipients, casting them as greedy overreachers who must be forestalled in advance. Other official apologies have not included disclaimer language, and its inclusion here implies that slave descendants may be particularly untrustworthy. In the same way that a lack of apology can keep wounds unhealed, this mistrusting apology potentially opens new wounds by casting aspersions on the very people to whom it purports to apologize.

Second, the disclaimer is inconsistent with the acceptance of responsibility that is the hallmark of sincere apology. A sincere apology accepts responsibility for wrongdoing and accepts appropriate consequences, wherever they may lead. But this disclaimer makes clear that the apology extends only to a certain (limited and painless) point.

⁴⁵ BROOKS, *supra* note 8, at 157.

⁴⁶ See S. Con. Res. 26, *supra* note 4 (noting prolonged and various forms of suffering).

⁴⁷ *Id.* § 2 (stating that nothing in the resolution serves as a settlement).

⁴⁸ This has not prevented some reparations opponents from characterizing it as “a slick way to get the camel’s nose into the tent for future reparations.” See Walter Williams, *Senate Slavery Apology*, HUMAN EVENTS, July 8, 2009, <http://www.humanevents.com/article.php?id=32596>.

In fact, the disclaimer undercuts both ways that scholars have suggested for showing sincerity. Minow suggests apology as full accountability and vulnerability. However, the Senate's deliberate action to block future steps is a refusal to fully take responsibility or to create the voluntary vulnerability which makes apology effective.

The disclaimer also blocks the possibility of showing sincerity through further reparative action, as suggested by Brooks. The apology takes the first step towards an atonement as Brooks articulates, but then blocks the second, equally necessary step. The atonement process is incomplete without the second step, and the attitude evinced by the disclaimer creates some doubt as to whether the second step will ever happen. To be fair, other apologies that have not been followed by reparations (such as the House apology) have been equally incomplete. But the Senate apology is deliberately and consciously incomplete in a new way.

Because of these problems, one might expect the Senate apology to fail at creating the healing sought by restorative justice. Apologies are already stripped-down remedies, offering only symbolic content, and most powerful when they set the record straight, show commitment to change, and encourage reconciliation and healing. This apology, framed as "I'm sorry, but—", seems unlikely to have that power.

Not surprisingly, reactions to the apology have been mixed. A significant number of critics have articulated these concerns. For instance, Representative Bennie Thompson said that "[p]utting in a disclaimer takes away from the meaning of an apology."⁴⁹ Randall Robinson warned that without further reparation, "we haven't accomplished anything."⁵⁰

But the apology has been welcomed by many other commentators. The NAACP is among the most prominent supporters, calling the apology "the first step toward healing the wounds of African-American men and women throughout this country."⁵¹ Similarly, entertainer Russell Simmons wrote on *The Huffington Post* that "the healing has begun."⁵² Writer Terence Samuel offered a more mixed endorsement on *The Root* website, criticizing the disclaimer and characterizing the apology as "shockingly late," but ultimately concluding, "apology accepted."⁵³ Another editorial,

⁴⁹ William Douglas, *Slavery Apology Has Disclaimer*, DENVER POST, June 19, 2009, http://www.denverpost.com/election08/ci_12625083.

⁵⁰ Thompson, *supra* note 1. Another editorial argued that the apology would be ineffective without additional steps to "go beyond symbolism" and help remedy racial gaps in education. See Glenda Overstreet, *Apology Can't Stand Alone*, TOPEKA CAPITAL J., June 28, 2009, at 2.

⁵¹ Press Release, NAACP, NAACP Applauds U.S. Senate for Passing Bipartisan Resolution Apologizing for the Enslavement and Racial Segregation of African-Americans (June 19, 2009), available at <http://www.naacp.org/news/press/2009-06-19/index.htm>.

⁵² Russell Simmons, *The Healing Has Begun: U.S. Senate Apologizes for Slavery*, HUFFINGTON POST, June 19, 2009, http://www.huffingtonpost.com/russell-simmons/the-healing-has-begun-us_b_217901.html.

⁵³ Terence Samuel, *Senate Apologizes for Slavery*, THE ROOT, June 18, 2008, <http://www.theroot.com/views/senate-apologizes-slavery>.

while calling the apology “long overdue,” also concluded that “it’s never too late for a needed apology.”⁵⁴ And President Barack Obama praised the historic nature of the apology in remarks a few days later commemorating Juneteenth, the anniversary of slave freedom.⁵⁵

The positive reactions to the apology illustrate a key factor too often ignored in the reparations debate—that many Blacks desperately *want* to accept an apology, even a flawed one. Blacks are deeply interested in healing the community, and are willing to accept gestures that seem capable of aiding reconciliation.

And it is clear that, despite its flaws, the apology has indeed created benefits. It placed the topic into the Congressional Record;⁵⁶ it sparked national dialog about slavery, reparations, and race issues (the month following the apology saw 172 news stories on the topic);⁵⁷ and it opened the door to further storytelling and advocacy.⁵⁸ These opportunities are invaluable, since storytelling can be a powerful tool to explode myths like the popular idea that slavery was limited to the South.⁵⁹

In raising consciousness about slavery (with a damning description of the institution), the apology builds on and combines with earlier actions, such as the House apology and President Clinton’s remarks on racism, which may not have not fully permeated societal consciousness.⁶⁰ A critical mass of public discussion is necessary to change perceptions; this apology is one step in that process.⁶¹

⁵⁴ Editorial, *Our Turn: Slavery Apology is Long Overdue*, SAN ANTONIO EXPRESS-NEWS, July 7, 2009, at 8A.

⁵⁵ See AFP News, *Obama Praises ‘Historic’ Senate Slavery Apology*, June 18, 2009, available at <http://www.google.com/hostednews/afp/article/ALeqM5iyMeHvk7WYJys7iAychSzik11Yqg>.

⁵⁶ See *id.* (discussing the resolution passed by the Senate which apologized for slavery).

⁵⁷ A Westlaw Search in ALLNEWS for <“slavery & apology & da(aft 6/17/2009 & bef 7/18/2009)”>, conducted on August 10, 2009, yielded 172 news stories on the topic. See also Mengisen, *supra* note 38 (characterizing effective apologies as those which “raise public knowledge and political concern”).

⁵⁸ See Katrina Browne, *Commentary: Slavery Needs More Than an Apology*, CNN, Aug. 19, 2009, <http://edition.cnn.com/2009/POLITICS/08/19/browne.slavery/> (noting some of slavery’s history and its impact on current society).

⁵⁹ See *id.* (discussing slave trading in Rhode Island). For other powerful examples of storytelling see, e.g., Alfred L. Brophy, *Considering William and Mary’s History with Slavery: The Case of President Thomas Roderick Dew*, 16 WM. & MARY BILL RTS. J. 1091, 1106–07 (2008) (discussing relatively little-known aspects of slave history at William and Mary); Gabriel J. Chin & Randy Wagner, *The Tyranny of the Minority: Jim Crow and the Counter-Majoritarian Difficulty*, 43 HARV. C.R.-C.L. L. REV. 65, 87–94 (2008) (recounting the little-known history of how Black voters in majority areas in the South were disenfranchised); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412 (1989) (discussing the power of narratives).

⁶⁰ See BARKAN, *supra* note 14, at 287 (describing President Clinton’s “‘unplanned’ semiapology” on his African tour in 1998); BROPHY, *supra* note 11, at 13 (“His remarks represented condemnation and contrition, even though he never apologized.”).

⁶¹ Public perception of reparations remains intensely fractured. See Alfred Brophy, *The Cultural War over Reparations for Slavery*, 53 DEPAUL L. REV. 1181, 1182–84 (2004) (noting different positions on reparations); see also Kaimipono David Wenger, *Causation and Attenuation in the Slavery Reparations Debate*, 40 U.S.F. L. REV. 279, 280–82 (2006) (discussing different views on reparations).

Apology without action is meaningless; but in this case, the state has (slowly) taken prior actions to remedy the worst of slavery's inequalities. Slavery ended with the Thirteenth Amendment. Legislative and court action eventually ended Jim Crow and other *de jure* segregation, and extended the vote and other civil rights to Blacks. The order of events here is backwards—usually apology comes first, then substantive change—but many important substantive changes have already occurred, and now the apology can reinforce those changes.

On balance, the apology looks like a moderate success. The disclaimer is unsavory but may have been a political necessity. Meanwhile, the benefits of the apology—the official expression of regret, the resulting dialog, and the Black eagerness to accept the gesture—suggest that the flawed apology was better than no apology at all.

Could it also be a stepping stone toward something more? Surprisingly, the answer may be yes. It is too late to try to remove the bad feelings caused by the disclaimer, but it may not be too late to take additional steps to show good faith. The Senate apology blocks monetary claims, but, as noted earlier, not all reparations need be monetary.

The Senate should follow the apology with bold symbolic gestures that show its seriousness and sincerity. Roy Brooks has suggested building a national slavery museum as one such gesture.⁶² A semiprivate museum was started but has stalled.⁶³ The Senate should take charge of funding and completing this museum, creating a focal point to raise consciousness about slavery and tell slaves' stories. At the same time, the Senate should make Juneteenth into a new national holiday, which will further reinforce and annually renew the discussions generated by the apology.

Senate action to fund a serious national museum on slavery and to formally commemorate Juneteenth would help show the sincerity of the apology. These measures would not satisfy all activists, but they would imbue the Senate's apology with more than mere words. The apology would then more effectively further the restorative justice goals of reparations, and would serve as a helpful model for the future.⁶⁴

⁶² See BROOKS, *supra* note 8, at 157.

⁶³ See Pamela Gould, *Slavery Museum's Future in Doubt*, FREDERICKSBURG.COM, Feb. 21, 2009, <http://fredericksburg.com/News/FLS/2009/022009/02212009/446477> (discussing the announcement of a museum and the lack of construction of said museum); see also Dionne Walker, *National Slavery Museum Project Stalls*, USA TODAY, Mar. 18, 2008, http://www.usatoday.com/travel/news/2008-03-18-national-slavery-museum_N.htm (mentioning the cloudy future of the planned museum).

⁶⁴ See Wenger, *supra* note 6 (suggesting that state and local apologies have become increasingly important and will only continue to grow in importance).