# Rehearsals for Reparations

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*This article considers a subset of lawsuits in which emancipated people sued to have their enslavers' bequests to them honored. It contends that we should see these suits as contests over reparations. By exploring this unappreciated history, this article argues that enslavers themselves believed reparations were due and were willing to pay them, that there was a general agreement between enslaved and enslaver about the form reparations should take, and that there was a similar understanding that reparations should be generational. The article further suggests the promise of additional inquiry into historical testamentary records. Such a novel archive would add to contemporary arguments in favor of reparations by identifying an unacknowledged effort to provide compensation to formerly enslaved people.*

**Keywords:** freedpeople, citizenship, bequest, justice, willingness to pay

On June 13, 1864, Holiday Hayley of Northampton County, North Carolina, died. In his 1857 will, he provided for the manumission of some of his enslaved people and bequeathed "half of the tract of land I now live on to them and their heirs forever, including the buildings," and "the sum of seven hundred dollars."[1] When the persons who were named in the will—Alfred, Octavius, Jackson, Louisa, and Paul—requested their legacies from the estate's executor William Hayley, he refused to grant them. As Holiday's next of kin, William sought to keep the estate intact for the benefit of the late man's White relatives. The petitioners were not "persons *in esse*," the younger Hayley insisted, meaning they did not exist as legal persons (see figure 1).

Despite William Hayley's entreaties, the North Carolina Supreme Court decided the case in 1867 in favor of the Black legatees. According to Chief Justice Richmond Pearson, "the paramount intention to make ample pro-

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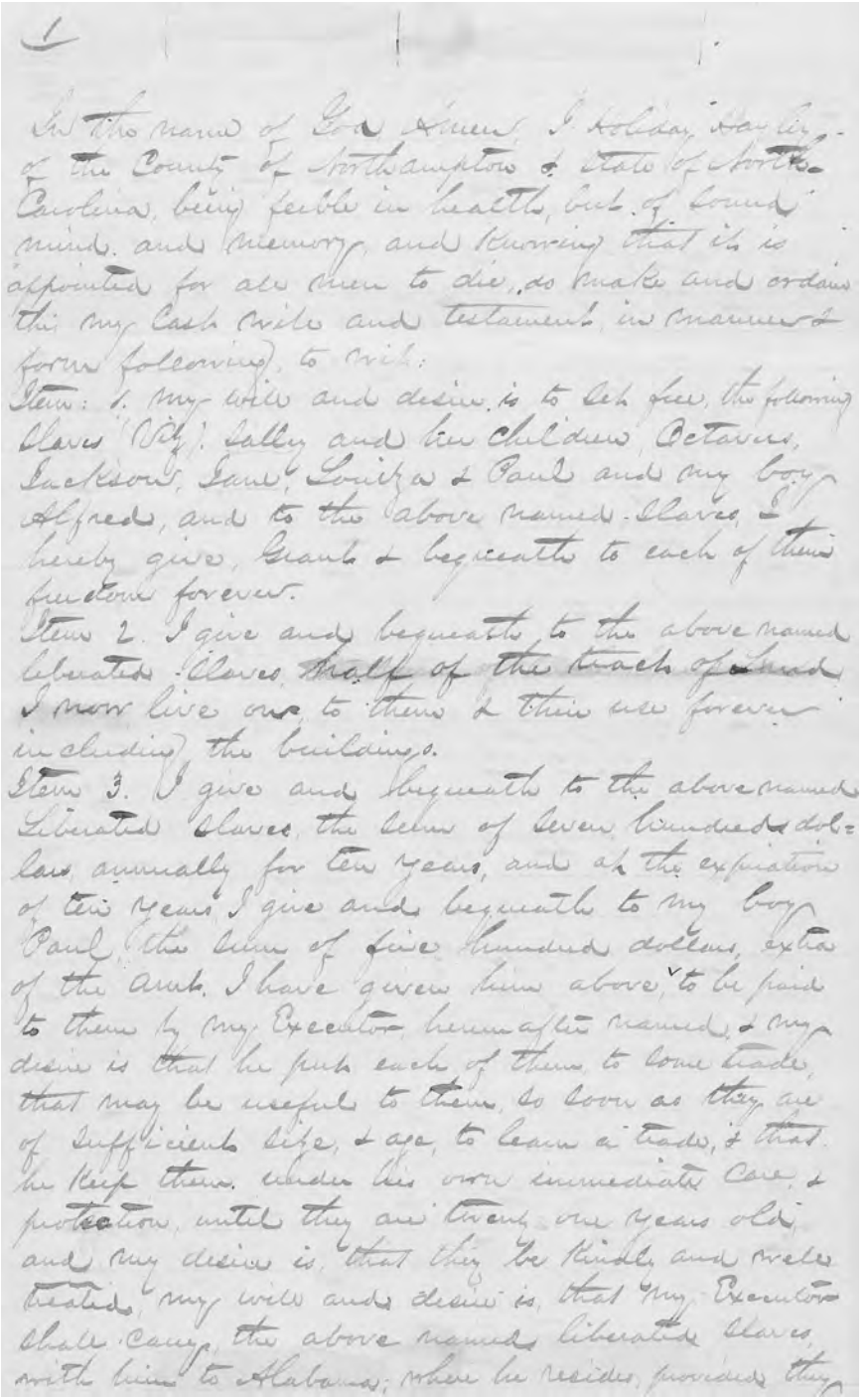
1. *Hayley v. Hayley,* 62 N.C. 180 (1867).

**Figure 1.** Holiday Hayley's Will



1

In the name of God Amen I Holiday Hayley of the County of Northampton & State of North Carolina, being feeble in health, but of sound mind, and memory, and knowing that it is appointed for all men to die, do make and ordain this my last will and testament in manner & form following, to wit:

Item: 1. My will and desire is to set free, the following slaves (viz): Sally and her children, Octavus, Jackson, Jane, Louisa & Paul and my boy Alfred, and to the above named slaves I hereby give, grant & bequeath to each of them freedom forever.

Item 2. I give and bequeath to the above named liberated slaves, half of the track of land I now live on to them & their use forever including the buildings.

Item 3. I give and bequeath to the above named liberated slaves, the sum of seven hundred dollars annually for ten years, and at the expiration of ten years I give and bequeath to my boy Paul, the sum of five hundred dollars, extra of the amt. I have given him above, to be paid to them by my Executor hereinafter named & my desire is that he put each of them to some trade, that may be useful to them, so soon as they are of sufficient size & age to learn a trade, & that he keep them under his own immediate care & protection, until they are twenty one years old, and my desire is that they be kindly and well treated, my will and desire is, that my Executor shall carry the above named liberated slaves, with him to Alabama, where he resides, provided they

*Source:* "North Carolina, State Supreme Court Case Files, 1800–1909," n.d.

vision for these slaves if liberated, no matter how, and to give them a fair start in the world, is clear." For the majority of the court, the intent of Holiday Hayley was of greater importance than any technical legal argument the administrator could make, for there was "nothing to show that the legacies were at all to depend on the manner in which their emancipation was effected."[2] With the end of slavery, no barrier existed that prevented the bequests from being dispersed to the freedpeople.

*Hayley v. Hayley* is just one in a collection of lawsuits in which Black Americans successfully sued the families of their former enslavers for a variety of things, including land, money, or even control of entire estates—whatever they knew had been promised to them. Traditionally, historians have discussed the bequests from enslavers to enslaved as an extension of paternalism; such largesse demonstrated a gentleman's skilled mastery. After all, only those who could afford to part with valuable human property would do so. To be sure, the paternalism inherent to antebellum slavery was certainly at play, but it does not alone explain enslavers' actions.

This article contends that we should think about cases like *Hayley* differently: as early iterations of reparations in which enslavers themselves made the case for restitution.[3] Of course, neither enslavers nor freedpeople conceived of reparations according to present-day standards. Nevertheless, archival material contains important elements of reparations discourse that mirror current debates. By building on and qualifying legal scholar Alfred Brophy's definition of reparations as "*programs that are justified on the basis of past harm and that are also designed to assess and correct that harm and/or improve the lives of victims into the future*," those common features become visible (Brophy 2006, 9, emphasis in the original). Even though testamentary forms of reparations were not programmatic in the conventional sense—they were not responding to any policy, statute, or concerted public pressure—there was nevertheless a steady tradition of providing them and an indication that some testators acted out of a sense of moral duty to provide for the bondspeople they predeceased. Some enslavers, in other words, expressed a willingness to pay at least a partial debt for slavery, even at the expense of other White heirs. More important, those who received this form of restitution, like Alfred, Octavius, Jackson, Louisa, and Paul Hayley, almost certainly lived materially better lives as a consequence of their inheritance than they would have without, and, because their fortune could be passed down to future generations, so would their descendants.[4]

Specifically, this article examines a subset of nineteen appellate cases from eight former slave states that were decided in the years immediately following the Civil War, from 1866 through 1874.[5] On the surface, these suits may appear exceptional. For one, we do not know exactly how many enslavers provided for manumission and other bequests in their wills. We do know, though, that it was enough to garner attention from state legislatures, given that statutes limiting the practice became prevalent in slave states. For another, most Black Americans, enslaved or freed, did not have the resources required to bring suit, let alone appeal to the highest courts in their states. But many more disputes over bequests were decided by

2. *Hayley v. Hayley*, 182–83.

3. Some activists construe cases like these as examples of reparations, but I have not found scholarship that treats them in this way. Brittni Chicuata, director of economic rights at the San Francisco Human Rights Commission, recently spoke about ex-slaves suing enslavers as reparatory (*Panel: Reparations Now!* 2023).

4. Probate records indicate that Alfred Hayley retained real property in Northampton County at the time of his death in 1887 and that he wrote a will leaving his estate to his wife Ella. It is unclear whether this was the property bequeathed to him by his father or whether other members of the family remained in possession of any real estate (Wills and Estate Papers, Northampton County, North Carolina, 1663–1978).

5. The cases come from the author's database of suits related to slavery that were decided in appellate courts after the ratification of the 13th Amendment. I define former slave states as any state in which slavery was legal at the outbreak of the Civil War.

lower courts, settled out of court altogether, or were decided prior to emancipation. The wills that were carried out according to their terms produced no legal conflict at all. Crucially, however, the very existence of these suits identifies an understudied phenomenon: even when the support for and practice of slavery was at its peak, some enslavers sought to provide recompense for bondspeople through their last wills and testaments.

Indeed, the findings of this study suggest that a deeper exploration of testamentary records should be pursued. That lesson derives in part from the unique circumstances of the Reconstruction era. Free from enslavement, Black Americans could more easily demand the transfer of promised resources from the estates of White former enslavers to their newly established households. In so doing, they exposed important, if nascent, conversations about redress for slavery and helped give the wills reparatory meaning. Black Americans marshaled their collective knowledge of the American legal system, exercised their new legal rights, and fought against recalcitrant White southerners to demand what was owed to them (on enslaved people's legal knowledge, see Edwards 2009; Kennington 2017; Morris 1996; Penningroth 2003; Schweninger 2018; Twitty 2016; Welch 2018). More often than not, freedpeople won their suits. In victory, they acquired their proverbial (and similarly promised) forty acres not from the federal government, but from the enslavers who once owned them.[6]

The collection of cases reviewed here also identifies a set of mutually agreed-upon forms of reparations that were generational in their intent. One of the biggest controversies among proponents of reparations today has been what form they should take. In the nineteenth century, however, there was agreement between testators and Black Americans about what reparations should be, all of which considered the future needs and enrichment of freed individuals. Across the cases in this sample, we see, in addition to manumission, the same four provisions made: land, money, transportation costs for those who had to relocate, and education. Indeed, access to wealth, property, and educational opportunities were central to the demands of freedpeople during Reconstruction (land and education especially). They have remained core elements of calls for reparations ever since.

By expanding the rubric of what we consider to be reparations, this article begins an exploration into how enslavers framed their choices to provide restitution and how some formerly enslaved people sought and received it. It further exposes an unappreciated site of negotiations for reparations between enslavers and Black Americans they once claimed as property. This not only pushes the chronology of reparations into a deeper past, it also uncovers voices not traditionally credited in these conversations.[7] This study considers how these episodes align with present-day efforts to secure reparations and ultimately illustrates why this type of historical exploration is vital. Taken together, these cases speak directly to what forms reparations should take and to whom they should be provided. They make a potent but unexpected case for reparations for slavery made by those who participated directly in the institution. In so doing, they provide essential context for ongoing claims for reparative justice.

## TESTAMENTARY PRACTICE IN THE ANTEBELLUM ERA

Throughout the antebellum decades, the wills of slaveholders regularly included provisions for manumission. Some testators confessed their ambivalence about slavery, revealing discomfort with the institution's foundational premise that a human being could be defined as property. For some, religious belief provoked this apprehension. In 1791, for instance, well-known Virginia planter and Baptist convert

6. Section 4 of the Freedmen's Bureau Act codified General Sherman's Special Field Order 15 (the origin of the forty acres and a mule promise) by permitting the lease of forty-acre plots of land in the former Confederacy to freedpeople (Brooks 2004, 6).

7. Scholars have cited a lawsuit from 1916 (*Johnson v. McAdoo*) as the first reparations case heard in federal court, even though they acknowledge that other efforts to seek restitution through litigation occurred as early as the eighteenth century in local jurisdictions (Tillet 2012, 141; Brooks 2004, 4–9).

Robert Carter III initiated the emancipation of more than five hundred enslaved people that he had inherited. Complicated by Virginia's regulation of manumission, the process of liberating them dragged on well into the 1800s (Barden 2021).

Those who lived through the revolutionary and early republican eras struggled to reconcile newly articulated notions of liberty, equality, and happiness with the subjugation, rightlessness, and abjection of slavery. Freedom, in this articulation, was a natural right, which rendered slavery incompatible with the ideals on which the new nation had been established.[8] Of the so-called founding fathers, however, few actually manumitted their enslaved people. Among those who did were Benjamin Franklin, John Jay, Alexander Hamilton, and George Washington (Sinha 2016, 41). Of particular note, Washington's will stipulated that his bondspeople should be freed after the death of his wife Martha, provided funds for the support of those who were elderly, and required the apprenticeship of children without parents, or without parents who could pay for their education, until they reached the age of twenty five (Washington 1799). Abolitionists, including Black minister Richard Allen, construed Washington's wishes as proof of the president's wish to see the end of slavery. That mythology has persisted. But, as Manisha Sinha has written, "Allen sought to appropriate Washington's legacy for abolition" and to inspire others to follow suit; he did not consider the act in any broader context or identify apprenticeship as another form of bondage (Sinha 2016, 149). Although Washington's will did not include such language, wills written in the three decades following the Revolution regularly justified manumission by appealing to natural rights and the "rhetoric of the republic" promoted during the era (Schweninger 2018, 81). Even after the Civil War, judges remarked that such bequests regularly arose "from strong motives and earnest feelings of justice."[9]

Often, enslavers who used their wills to manumit followed Washington's lead; they did not frame their decisions in this high-minded language. They might single out individual bondspeople for freedom, perhaps as a reward for faithful service, but did not necessarily manumit all the people they owned. For this reason, scholars regularly see such acts as evidence of paternalism—the benevolence of a social and racial superior toward an inferior that shored up his reputation and honor within the larger slaveholding society (Genovese 1976; Wyatt-Brown 1982; Patterson 1982, chap. 8). Conventional depictions of manumission as paternalistic evoke the parasitic, mutually dependent relationship between master and slave described by Orlando Patterson and others, whereby the enslaver depends on the ownership of and ability to liberate bondspeople to establish reputation, standing, and social power (Patterson 1982, chap. 12; Hegel 1977; for discussions of mutual dependence in antebellum southern slavery, see Gross 2006; Johnson 2001). Complete mastery, that is, depended on the ability to enslave and liberate. In this rendering, manumission can be understood as an integral phase of slavery, not necessarily as its opposite.[10]

Testamentary manumission communicated other aspects of an individual testator's reputation. As legal historian Ariela Gross (2006, 48) reminds us, "appearances were what mattered" in southern slave societies, and notions of honor and proper mastery were essential to establishing one's reputation and making one's character publicly visible to the broader community. Even in death, that reputation counted, especially if it could be mobilized by future

8. This idea formed the basis for the infamous ruling in *Somerset v. Stewart* 98 ER 499 (1772), and for the suits that led to the end of slavery in Massachusetts (see *Brom and Bett v. Ashley* (1781) and the so-called Quok Walker Cases (1781–83) *Jennison v. Caldwell*, *Quok Walker v. Jennison*, and *Commonwealth v. Jamison*; see also Sinha 2016, 68–69).

9. *Armstrong v. Pearre* 47 Tenn. 171 (1869), 179.

10. Crucially, Patterson views manumission as an element of slavery. "Enslavement, slavery, and manumission are . . . one and the same process in different phases" (Patterson 1982, 296; see also Davis 1984, 17; on the post-emancipation connection between reparations and paternalism, see Araujo 2017, 96).

generations of legitimate heirs as an intangible legacy of social capital. Testamentary manumission, then, may very well have bolstered one's social standing by demonstrating financial capacity to part with valuable human property, gracious benevolence, and perhaps even the chivalry of a true gentleman to care for his social inferiors. But it could also have revealed the inverse by exposing taboo, especially if the persons to be manumitted were the illegitimate offspring of the testator. As a minority of the cases examined here demonstrate, some enslavers sought to free the children they had with enslaved women. The persons who sued for Holiday Hayley's estate, for instance, claimed they were "begotten upon the bodies of his female slaves . . . that said testator never named."[11] Although fathering children with enslaved women was common, liberating them violated the socioracial order of the antebellum South by imbuing them with legal standing (Davis 1999). Specifically, such an action removed them from under the legal and social proscriptions of slavery, leaving them entitled perhaps not to complete legitimacy or social equality, but to personhood and the rights pertaining to it—including the ability to inherit a White man's estate, should it be bequeathed to them.[12]

Still, in choosing to manumit, enslavers admitted that they believed at least some of their bondspeople should enjoy the rights of freedom and, potentially, ought to have the chance to live a decent life. The choice was all the more notable when those freed were young and would have been worth a great deal at sale, signaling that enslavers could not only appreciate, but value humanity over profit (on the value of enslaved people by life stage, see Berry 2017). In theory, manumission absolved the dishonor of enslavement (though perhaps not race), by recognizing and correcting its artificial suspension during the period of bondage (on slavery as artificially rendering rights dormant or suspended during the period of enslavement, see Perrone 2019; on dishonor as a constituent element of slavery, see Patterson 1982, 10–11). As scholars have shown, the enslaved "*themselves* understood . . . interactions with whites in terms of honor and dishonor," and understood that as bondspeople, they lacked these crucial attributes of freedom (Gross 2006, 51). Manumission and provision, then, could serve as a way to enrich the reputation of the enslaver, but it also dignified the humanity of those formerly enslaved. It should itself be understood as a form of reparation—repayment of what journalist Christopher Hitchens (2003, 172) has called a "debt of honor."

Testamentary manumission can also be understood as an aspect of the complex relationships that sometimes formed between enslaver and enslaved (see Genovese 1976; Berlin 2000). Absolute dominion was always more myth than reality; after all, enslavers depended on the human capacity of enslaved people to perform complex labor, and they knew that brute force alone would not always ensure cooperation or compliance (on the significance of enslaved humanity and the problematic construction of slavery as dehumanizing, see Johnson 2018). More important, the institutional structure of slavery never prevented personal relationships from forming, as complicated and complex as they may have been. This helps explain many of the so-called customary rights enslaved people expected their enslavers to recognize, but also the mutual affection sometimes expressed by enslaved and enslavers alike.[13] Bequests became one way to manifest that affection. Similarly, the promise of freedom could be used advantageously. As historian Loren Schweninger

11. *Hayley v. Hayley*.

12. Most of the suits being considered here involve the wills of White men. This accounts for the gendered language I use. I do not, however, wish to imply that White women did not participate fully in slavery, as mistresses or enslavers in their own right; instead, they simply do not appear frequently in the records I have found (on women enslavers, see Jones-Rogers 2019).

13. The customary rights of slaves often included having garden plots, selling wares, time to see loved ones on other plantations, and so on. Such incentives were negotiated between enslaved and enslaver. I use the phrase mutual affection to grant that enslaved people were complex people who possessed a full range of human emo-

concludes, "most slaves were aware of their owners' intentions to set them free. Indeed, it behooved the master class to reveal such intent to their human chattel so as to ensure their loyalty and good behavior." Though some enslavers feared the promise of freedom might have the opposite effect, it remains the case that bondspeople often "sensed the inclinations of the masters they daily served" (Schweninger 2018, 74). Some planters got around this worry by stipulating that any provision made for enslaved people would be forfeited by any "malconduct."[14]

Black people's knowledge of their enslavers' intent produced clashes with the executors of estates—usually other heirs—when bequests were not honored. Throughout the antebellum period, enslaved people able to obtain counsel (a major hurdle) sued for freedom based on the knowledge that their enslaver had provided for their freedom in a will. They quickly discovered, however, that litigation did not guarantee success. For instance, estates in debt sometimes required the sale of enslaved property to cover liabilities; other heirs or administrators might change the terms of deeds of manumission or refuse to file them appropriately; in some instances (in Louisiana especially), wills could be nuncupative (oral) and easily disputed; and, because enslaved people could not testify, trials relied on supportive White people to speak on their behalf. Typically, success in these types of suits depended on the ability to produce written records, ideally certified copies of wills or deeds (Schweninger 2018, 87–89). Enslaved litigants risked a great deal by going to court because reprisals surely awaited those who lost.

A common feature of wills further complicated matters. Many required the named legatees to relocate, either to a free state or to Liberia, often with the assistance of the American Colonization Society. For example, Georgia planter Augustus H. Anderson stipulated, "I desire and direct that my executors cause to be removed to a free State and there emancipated, John, son of my negro woman slave, Louisa; that they pay the expenses for such removal and for the reasonable support and schooling of said John."[15] Jesse Alsop of Mississippi stipulated that his plantation should be sold and the proceeds used to purchase property in Ohio for the benefit of the enslaved people he freed.[16] These stipulations responded to the state laws that required the relocation of persons manumitted by will, which were designed to prevent a free Black population from forming or growing within state lines, and to discourage the formation of racially heterodox families by precluding enslavers from liberating the women with whom they had sexual relationships (Bardaglio 1995, 57). This type of regulation became more common and more strict as southerners perceived an increasing threat of internal rebellion.[17] Some statutes went so far as to permit the seizure and sale back into slavery of any manumitted person who was not transported out of state (Sinha 2016, 94). Despite

tions, and to suggest that even within the violence and subjugation of slavery, enslaved and enslavers could and did have meaningful relationships (see Johnson 2003; Stevenson 2013).

14. *Estill v. Deckerd*, 63 Tenn. 497 (1874).

15. *Green v. Anderson*, 38 Ga. 655 (1869).

16. *Berry v. Alsop*, 45 Miss. 1 (1871).

17. Alabama, Kentucky, North Carolina, Tennessee, and Virginia all came to require relocation as a condition of testamentary manumission (Morris 1996, 372, 380). On laws restricting manumission, see Klebaner 1955, 443: "Louisiana and Mississippi enacted a blanket ban on further manumissions in 1857, followed by Arkansas (1859), Alabama (1860), and Maryland (1860). At a much earlier date, a slave could be freed only by special act of the legislature in Georgia (1801–1865), Alabama (1805–1834), Mississippi (1805–1865), and South Carolina (1820–1865); the laws of Alabama and Mississippi specified that the owner had to cite some meritorious service by the slave as the ground for his petition. The latter qualification was the sole ground for freeing a slave in Virginia (1723–1782); the governor and council passed on such cases. North Carolina (1715–1741; 1777–1831) had also limited emancipation to cases of meritorious conduct, but left the county courts to pass on them." Such laws might have overridden testamentary manumission (Jones 2009, 16–17).

these restrictions, which functionally increased the cost of manumission, enslavers nevertheless continued to use their wills to liberate and compensate their former property.

## A WILLINGNESS TO PAY

Despite the proscriptions meant to stymie testamentary manumission, testators were explicit in their desire to provide payment for their enslaved people's service and often justified their actions as an obligation to provide recompense. North Carolinian James Whedbee, for instance, provided for the freedom and compensation for every one of the people he claimed as property. He established a fund "to be divided among them having due regard to merit, old age, and infirmity," that would be paid to them after they had "reach[ed] their place of destination." Making further provision and speaking to his purpose for manumission, Whedbee directed that a guardian be appointed "who [would] be certain to do them *justice*" by "managing their fund in a provident, wise and safe manner." "And" the will continued, "I especially desire the American Colonization Society to have an eye to this bequest so that my negroes may in no wise be defrauded out of the bounty intended for them."[18] Despite the continued claim over the enslaved persons ("*my* negroes"), Whedbee nevertheless went to great lengths to ensure that his exact wishes were carried out, perhaps anticipating attempts to prevent the payment of the bequests. More important, he conveyed a willingness to pay and a sense of moral responsibility to manumit and provide for the persons he named in his will.

Typically, willingness to pay is a concept used to determine prices that customers will pay for commodities or services. This may capture one aspect of what we find in the wills of some enslavers—compensation for labor faithfully performed. But provisions in wills like James Whedbee's also suggest that at least some acted out of a concern for the "justice" of the enslaved, and that their "merit" warranted the concern and the compensation. Judges specifically recognized testators' desire to provide remuneration—their willingness to pay—regardless of what informed it. An assessment of the wills included in this study reveals that enslavers were willing to bequeath four key things: property, money, education, and when needed, costs for transport to free territories (see table 1).

Embedded in every will was a calculation—a valuation—of what a testator believed an enslaved person should receive on the enslaver's demise. The precise terms of wills indicates that some enslavers left a great deal to their bondspeople, far more than mere trinkets or tokens of appreciation. They were, in short, willing to pay a lot. To recall, Holiday Hayley's 1857 will bequeathed "half the tract I now live on, to them and to their heirs forever, including buildings." In addition, it directed the estate's administrator to pay the "liberated slaves the sum of seven hundred dollars annually for ten years."[19] Kentucky woman Lucy Fine directed her brother to take her bondspeople to Cincinnati, Ohio, or another free state and liberate them there. "She also made some specific bequest to each of them, and directed her residence to be sold, and its proceeds to be divided among them or their descendants."[20] Jesse Alsop liquidated his entire estate for the benefit of the Black persons named, "as it is the great desire of my heart."[21]

Direct ownership of a person need not have been a prerequisite for a bequest. For example, Louisiana resident William Porter provided for an enslaved boy he did not personally own. His will instructed his executors to "purchase . . . a certain child, the son of a girl they call Meme." The will further directed that the boy, named Victorin, should be manumitted, educated, and

18. *Whedbee v. Shannonhouse*, 62 N.C. 283 (1868). Emphasis added.

19. *Hayley v. Hayley*.

20. *Monohon v. Caroline*, 65 Ky. 410 (1867): "to the slaves herein and hereby emancipated my executors shall pay all the money realized by the sale of the house and lot in which I reside, share and share alike; and if any of said negroes die before said division, his or her share is to be equally divided amongst the survivors."

21. *Berry v. Alsop*, 45 Miss. 1 (1871).

**Table 1.** Specifications of Enslavers' Wills

| Case | State | Year | Provision 1 | Provision 2 | Value | Value Today | Provision 3 | Provision 4 | Generational Intent | All Emancipated | Related |
|---|---|---|---|---|---|---|---|---|---|---|---|
| *Berry v. Hamilton* | KY | 1866 | transport | money | $100 each | $1,971.17 | | | no | | no |
| *Parish v. Hill* | KY | 1866 | transport | money | $200 each | $3,942.34 | | | no | yes | no |
| *Hayley v. Hayley* | NC | 1867 | | money | $700 each | $14,808.51 | | property | yes | | yes |
| *Monohon v. Caroline* | KY | 1867 | transport | money | | | | | yes | | no |
| *Whedbee v. Shannon-house* | NC | 1868 | transport | money | | | | | no | all but three | no |
| *Porter v. Brown* | LA | 1869 | | money | $1,000.00 | $22,964.65 | education | | no | no | possibly |
| *Green v. Anderson* | GA | 1869 | transport | money | | | education | | no | | no |
| *Milly v. Harrison* | TN | 1869 | transport | money | | | | | yes | yes | no |
| *Armstrong v. Pearre* | TN | 1869 | | money | $3,107.43 (wages) | $71,361.04 | | | no | no | no |
| *Todd v. Trott* | NC | 1870 | transport | money | $800.00 | $19,185.01 | | | no | yes | no |
| *Berry v. Alsop* | MS | 1871 | | | | | | property | yes | | |
| *Matthews v. Springer* | MS | 1871 | | money | | | | | no | | yes |
| *Cowan v. Stamps* | MS | 1872 | transport | money | | | | | no | yes | no |
| *Bonds v. Foster* | TX | 1872 | | | | | | property | yes | yes | yes |
| *Johns v. Scott* | VA | 1873 | | money | $3,000 plus interest | $64,300 plus interest | | | yes | yes | no |
| *Thweatt v. Redd* | GA | 1873 | transport | money | | | | | yes | no | no |
| *Raines v. Raines's Executors* | AL | 1874 | | money | | | education | property | no | | no |
| *Heirs of Johnson v. Johnson* | LA | 1874 | transport | | $50 each | $1,230.00 | | | no | yes | no |
| *Estill v. Deckerd* | TN | 1874 | | | | | | property | no | yes | no |

*Source:* Author's tabulation.

*Note:* MeasuringWorth, "Purchasing Power Today of a US Dollar Transaction in the Past," www.measuringworth.com/ppowerus.

paid $1,000.[22] (The executor paid the legacy, but because he did so in Confederate currency and while Victorin was still a minor, he was ordered to pay the young man again—this time in legal tender.) Though possible, even probable, it is not clear whether William Porter was the father of young Victorin, whether he had a fondness for Meme, or whether he simply wished to change the course of Victorin's life. Regardless of the motivation, Porter's intent to provide for the young man was never disputed.

Though it does not appear as commonly as the distribution of money or property, testamentary provisions for education, like the one made to young Victorin, are noteworthy. Some who favor reparations today identify education as a crucial site of attention (see Nzingha 2003; Brooks 2004). The historical desire to overcome educational deprivation, and particularly the effects of statutory bans on teaching enslaved people to read, is well known. Narratives written by enslaved people, such as Frederick Douglass, Harriet Jacobs, and many others, convey their fundamental belief in the value of literacy and enlightenment. Such narratives describe imposed ignorance as theft; it stole a person's potential and possibility for self-reliance and intellectual growth. As Lynda Morgan (2016, 46) has written, "Few of the many robberies laid at slavery's feet brought more lasting pain than the proscriptions against literacy, whose effects were irremediable." It is hardly surprising then, that after emancipation, freedpeople demonstrated an "unquenchable thirst for education," not just so they could read the Bible, though that was certainly a motivator, but also so they could read the labor and sharecropping contracts they were being forced to sign and keep their own accounts to prevent the theft of their earnings (Foner 1988, 96–100).

Land and money were bequeathed more often than funds for education, and tended to have the greatest effect on freedpeople's lives. As freedman and Baptist minister Garrison Frazier famously described to General Sherman in their January 1865 meeting, "Slavery is, receiving by *irresistible power* the work of another man, and not by his *consent*" (*New-York Daily Tribune* 1865). Here, slavery was construed not only as theft of enlightenment, but also of the product and value of one's labor (Morgan 2016, 23–27; Brooks 2004, 2). Some enslavers agreed, and determined that financial restitution for that robbery could be made through a will's provision. Some, including Eliza Ann Hamilton, specifically set aside wages collected for her bondspeople, which would be given to them upon their manumission. "These earnings [were] alleged to be at that time thirty thousand dollars," which amounts to approximately $528,000.00 today.[23] Within the free labor paradigm of the mid- to late nineteenth century (espoused by abolitionists, Free Soilers, and Republicans of all stripes), liberty mandated ownership of one's self and one's labor (see Foner 1995). In modern parlance, the right to earn was understood as an "extralegal marker" of a "multidimensional American citizenship"—an indication of one's civic embodiment as opposed to one's civil death (Tillet 2012, 6; on civil death, see Dayan 2011; Perrone 2023, chap. 5).

For many free labor adherents, liberty and wage labor went hand in hand as essential features of the modern age. Liberal economics, they posited, ensured that workers and employers would, as ostensible free equals, reach mutually satisfactory labor contracts. "In postbellum America," Amy Dru Stanley (1998, 2) reminds us, "contract was above all a metaphor of freedom." As Frazier's comments illustrate, however, many freedpeople adamantly disagreed. They idealized liberty as ensuring the independent means of production, and thus

22. *Porter v. Brown*, 21 La. Ann. 532 (1869). The will stated, "With the sum of one thousand dollars, which is to be put on interest . . . the proceeds of which are to go to the support and schooling of the child, and when the boy arrives at the age of eighteen years of age, it is my will that the above amount of one thousand dollars be paid over to him."

23. *Berry v. Hamilton*, 64 Ky. 1866 (1866). Hamilton's will was ultimately judged invalid because other heirs had a stake in the ownership of the enslaved people. She did not have the exclusive right to manumit them. Monetary value was calculated using MeasuringWorth, "Purchasing Power Today of a US Dollar Transaction in the Past," https://www.measuringworth.com/ppowerus (accessed January 18, 2024).

survival, free from oversight and dominion of others. Freedom required *land*. As Frazier told Sherman, "The way we can best take care of ourselves is to have land, and turn it and till it by our own labor—that is, by the labor of the women and children and old men; and we can soon maintain ourselves and have something to spare" (*New-York Daily Tribune* 1865). Land would provide the security necessary to maintain one's liberty by ensuring that freedpeople would not depend on another for the basic necessities of life. The formerly enslaved quickly learned how wages could be manipulated by White planters, and they knew that property would provide the means to live lives that reflected their own hopes and dreams, and would permit a fuller measure of independence. Provisions of land or money that could be used to buy it, then, were prized as reparations because they held the greatest potential for true liberation. Many continue to share this view.

Before and after emancipation, Black Americans recognized these reparations as essential to supporting independent, self-sustaining, free lives. They further understood that these forms of enrichment would establish the foundation for their children's success. Bequests became the nest eggs that would support future generations. Some testators agreed. They explicitly provided for subsequent generations, further suggesting that their sense of obligation transcended any single term of enslavement.[24] Joseph Glasgow's 1856 will manumitted all his bondspeople and "all their future increase."[25] Lucy Fine stipulated that the bequest made should go to specific bondspeople, "or their descendants," if named parties were no longer living.[26] Likewise, Owen Thomas made sure to include not only his enslaved people, but also any children "they may hereafter have."[27] Holiday Hayley's legacy was meant for the named persons and "their heirs forever."[28] Enslavers appeared to recognize that for a bequest to have its intended compensatory meaning, it had to be given without restriction. Certainly, as deft and able navigators of the American economy, planters understood the value of appreciable property and accrued wealth. Provisions were knowingly made even to those who had yet to be born, who had not been enslaved by or even known to the testator. Of particular note for today's reparations debates, one need not have been enslaved directly to receive compensation.

Some wills were generational in an additional sense. Perhaps more than any other, suits involving bequests to the testator's illegitimate children born to enslaved mothers further complicate traditional understandings of testamentary manumission. In some ways, they are outliers; they include a clear component of domesticity that the other suits do not share. Yet the intent of the testator in such cases was crystal clear. For instance, many enslavers took the bondspeople they considered family to free states—often to Ohio—in order to liberate them. They then used their wills to cement their domestic ties by naming their illegitimate children as the rightful inheritors of their estates. Indeed, some court records even describe fathers' anxiety about the future their children would face without the necessary steps to liberate and provide for them, knowing full well that White society would not accept them as equals (Perrone 2023, 210–18; see also Pascoe 2009).[29] Alfred H. Foster, for instance, bequeathed most of his property to the enslaved woman Leah Foster and their children—Fields, George, Isaac, Margaret, and Monroe. Prior to the Civil War, Alfred had taken his family to Ohio in order to execute their lawful manumission. "According to the testimony of Fields

24. Scholars of reparations regularly address "harms to descendants" as the basis for reparations (see Brooks 2004, chap. 3).

25. *Johns v. Scott*, 64 Va. 704 (1873).

26. *Monohon v. Caroline*, 65 Ky. 410 (1867).

27. *Thweatt v. Redd*, 50 Ga. 181 (1873), 183.

28. *Hayley v. Hayley*.

29. *Mathews v. Springer*, 16 F. Cas. 1096 (1871).

Foster, the eldest son, he spent his nights and frequently took his meals with the family." After four years in free territory, "Foster brought this family away from Cincinnati, and with them removed to the State of Texas."[30] After he died, the executor of Foster's estate refused to transfer ownership of his homestead to Leah and her children. Leah Foster went to court to defend her family and won her case.

Suits like this one opened up a pandora's box of issues related to so-called "miscegenation," mixed-race children, and the legitimacy of households that may have been acknowledged in a particular community, but had never been lawfully recognized (Hodes 1997, 3). The prospect of post-emancipation legitimation of such households—and the people who made them up—garnered near universal condemnation by Whites and Blacks alike.[31] These circumstances make the outcome in *Bonds*—ruling in favor of a racially heterodox family—all the more remarkable. To be sure, we should appreciate that such rulings may have had more to do with deferring to the intent of a White man's will than they did with any sense of justice for the formerly enslaved. In some instances, that is a fair assessment. In *Bonds*, however, we see more clearly that part of what motivated rulings was the changed status of the legatees. Judge Moses B. Walker wrote in the opinion for the court, "The parties continued to live together, habitating themselves as man and wife, until after the law prohibiting such a marriage had been abrogated by the 14th Amendment to the Constitution of the United States. A marriage might then be presumed in the State of Texas upon the same state of facts, which would raise a similar presumption in Indiana or Ohio."[32] As the opinion noted, not only were testators lawfully able to bequeath their assets to people they once claimed as property, the changed status of the freedpeople—specifically, their citizenship—entitled them to receive remuneration in any form, in any place, and without any limiting conditions.

The motivations of those who provided for illegitimate family members are perhaps easiest to discern; these bequests suggest that kinship mattered over other considerations. Perhaps surprisingly, however, most wills did not involve direct familial ties (see table 1). Instead, wills that bequeathed valuables to unrelated kin were more common and regularly suggested a sense of moral duty and, in some instances, accountability for the effects of enslavement. To be sure, none of this absolves any enslaver of their sins; they were participants in slavery who held persons as property, and their wills did nothing to bring about the end of the peculiar institution, or even necessarily liberate all their bondspeople. Still, attributing testamentary sentiments paternalism alone obscures their complexity, and, more important, prevents us from recognizing that some enslavers assumed a need for—and actually provided—reparations that offered both financial restitution and, in some instances, recognition of the harms of slavery. They were enslavers and also believed in compensation. Their actions can be read as paternalistic and reparatory. Collectively, contested wills reveal that a small but steady stream of enslavers chose to manumit and provide for enslaved people, and that some of them articulated that they did so out of a sense of justice, even over the desires of other claimants or descendants. If nothing else, testamentary sources divulge the intent to liberate, itself a confession that reparation was due, even though it may—and often did—deprive other heirs of financial benefit. In the words of one judge, "The bequest of freedom is of a higher nature than a pecuniary legacy."[33] Enslavers openly recognized that freedom itself was worth something, perhaps more than anything else.

30. *Bonds v. Foster,* 36 Tex. 68 (1872), 68–69.

31. Generally, Whites abhorred the notion of racial mixing outside of slavery, and Black leaders claimed that freedpeople had no interest in such unions (see Perrone 2023, chap. 7; Pascoe 2009; Bardaglio 1995; Kennedy 2003; Davis 1999).

32. *Bonds v. Foster*, 68–70.

33. *Armstrong v. Pearre*, 47 Tenn. 171 (1869), 178.

## AFTER EMANCIPATION

During the antebellum era, cases regarding inheritance were freedom suits first and foremost. Liberation from bondage was a prerequisite for receiving secondary bequests. Postbellum, such cases lost this primal urgency and became exclusively demands for redress. Under these circumstances, the suits studied here amounted to claims made by empowered persons, "invested with civil existence," who insisted on receiving what had been promised to them.[34]

Freedom, and ultimately citizenship, meant that Black people had equal access to the law's authority to right wrongs and, as scholar Lynda Morgan notes, even "reset damaged moral compasses" for a new age (Morgan 2016, 15–16). Perhaps more important, the courtroom provided Black Americans with a site in which to perform their own liberation, to, as Ralph Ellison (2021, 357) terms it, "free themselves by becoming their idea of what a free people should be." Every Black litigant—win or lose—who sued to have bequests honored engaged in the "ritual of legal redress" (Tillet 2012, 142).

Placing their suits in a broader continuum of reparations litigation reveals that such rituals became time honored, regularized, and pointed in their purpose. As Salamishah Tillet writes about present-day litigants in reparations suits, "the plaintiffs not only participate in the long history of Black reparations activism, but also embody one of the most popular and public of American democratic performances: lobbying in court." In so doing, litigants attempt to "safeguard future black citizens from the harms of an inherited economic and civic injustice" (Tillet 2012, 143). Even though the scope of the harm was restricted to slavery alone (as opposed to all subsequent harm that would follow), the same can be said of litigants in the Reconstruction era. The very act of litigation countered civic injustice by allowing the assertion of personhood, while the inheritance they secured addressed economic injustice by providing financial restitution.

The relationship between civic and economic injustice is clearly observable in postbellum litigation. For instance, the formerly enslaved people of Thomas Todd sued the estate's administrator for the money that had been bequeathed to them in Todd's will. July Todd, Thomas Henderson, Lunnon Henderson, Eliza Henderson, Caesar Robertson, and Rachel Robertson stood to inherit $800 each. We can imagine what such a sum would mean for freedpeople. Adjusted for inflation, $800 would be worth approximately $19,185.01 today. Most likely, the funds would have been used to purchase land and establish self-sufficiency, as was most desired by the formerly enslaved. It could also have been used to pay for education, transportation overseas, or just the basic necessities of life—clothing, food, medical care. No matter how the freedpeople intended to use the money, the bequests would certainly have provided a significant leg up in the world relative to those who entered freedom with no provision at all. The plaintiffs sought that advantage knowing what it would mean for their futures; it aligned with the general view that economic independence was an essential element for achieving liberation.

Choosing to bring a suit also reveals a great deal about Black mindsets in the decades following the Civil War. By taking up the call of Daina Ramey Berry (2017, 5) to move beyond "what enslaved people *experienced*" and grapple with "their engaged understanding" of themselves, litigation acquires additional salience (emphasis in the original). Freedpeople used their suits to demand not just what had been promised to them, but also to express newly acquired political power and to articulate that they believed they were worthy of inheriting it. In short, through their legal demand, freedpeople imbued the bequests with reparatory meaning. Their claims were not without risk. Freedpeople sued White members of their own community already stinging from the loss of slavery and defeat in the Civil War. Violence remained an ongoing part of social interactions between Black and White southerners, and retaliation for a perceived social transgression was always a possibility (on violence, see Emberton 2013; Rable 2007; Williams 2012). Yet Black litigants were not deterred.

Suits, then, provide us with a metric for rep-

34. *Johns v. Scott.*

arations defined by freedpeople themselves: they were early expressions of freedpeople's legal standing and self-worth that courts and the public had to recognize. Consider the arguments made against the children of Holiday Hayley: They could not be legatees because they were not "persons *in esse*."[35] That is, the law did not recognize them as legal persons. In rejecting such a claim, the North Carolina court tacitly acknowledged the previous denial of the slave's legal personhood and upheld that the litigants' new status removed the incapacities under which they had previously lived. In this respect, suits brought by freedpeople carried the potential for removing one of the badges and incidents of slavery: that bondspeople, as property themselves, were incapable of inheriting anything.[36] Litigants demanded and received judicial appreciation of their unencumbered personhood, divested from the disabilities of slavery, which is itself a fundamental requirement of obviating the subjection of slavery and repairing its harm.

Despite the fact that formerly enslaved people had acquired the standing to sue, the right to testify on their own behalf, and the right to live where they chose, southerners continued to challenge the propriety and even the possibility that Black people could inherit from the estates of their former enslavers. Those looking to block bequests developed a set of common arguments to frustrate the exercise of these rights. First, they claimed that because the persons in question had not been freed by the terms of the will itself, but rather by federal action and constitutional change, they were no longer eligible to receive the bequests. As the family members of John Glasgow argued, "when free, otherwise than by the will, they are not those for whom it was created."[37] Likewise, the executor of Thomas Todd claimed, "that the emancipation of plaintiffs was the paramount object of the testator" and that "object having been effected through other agencies, this fund can not be claimed by plaintiff, but falls back into the estate of the testator."[38] Second, and often related, White litigants argued that the legatees named would have to relocate to places stipulated in the will (such as Liberia, or a free state) if they wished to collect. Simply put, the exact conditions of the will had not been met, and could not ever be met by virtue of federally mandated emancipation.

Judges rejected these arguments. The Kentucky Court of Appeals, for instance, determined that "the amendment of the Constitution of the United States abolishing slavery has made them free and legally capable of taking and enjoying their legacies. And the fact that they became free, not by the will, but by law, . . . is not material." The freedpeople could "enjoy their freedom as fully and securely as elsewhere."[39] The judge further stipulated that "they will be entitled to interest" on the amount bequeathed because of the delay in its payment.[40] Similarly, the Supreme Court of North Carolina consistently maintained the position they established in 1867 in *Hayley v. Hayley.* A year later, the court noted that emancipation was a "collateral advantage caused by what . . . was a mere accident." It should be viewed as a "'windfall' or piece of good luck to the freedmen."[41] In 1870, they again insisted that "It is immaterial how [the enslaved persons] obtained freedom. Although it was accomplished in a manner not contemplated by the testator, when he published his will, . . . the plaintiffs are entitled to recover *something* in this suit."[42]

35. *Hayley v. Hayley*, 181.

36. Despite formal legal rules, enslaved people not only acquired and possessed property, they bequeathed it (see Penningroth 2003).

37. *Johns v. Scott.*

38. *July Todd v. Trott*, 64 N.C. 280 (1870), case record number 9565, "Answer of Defendant."

39. *Parish v. Hill*, 63 Ky. 396 (1866), 398.

40. *Parish v. Hill.*

41. *Whedbee v. Shannonhouse*, 287.

42. *July Todd v. Trott*, 282.

In cases when testators set aside funds for transport to Liberia, postbellum rulings often awarded them what would have been spent on travel to Africa in addition to other legacies.[43] A windfall, indeed.

In cases concerning wills that required transportation to free territories or to Liberia, the rights of freedom acquired by Black Americans trumped other considerations. As the Louisiana Supreme Court put it, "The first privilege of freedom is the right to choose a home from out [in] the world." Further recognizing that the harms of slavery could no longer be inflicted after emancipation, the court continued, "it might have been worse than slavery to . . . force them from the place of their birth, to break up their associations and to sunder even such weak ties as were socially know to them, and to drive them across the seas, among strangers, and in a distant land."[44] Here, Black litigants and White judges agreed with many of today's activists: the desires and choices of the recipients of reparations must be considered and prioritized. During Reconstruction, the heirs contesting freedpeople's right to inherit based on relocation stipulations were not rewarded. Quite simply, emancipation meant they no longer had any say in the matter.

Black litigants, on the other hand, had plenty to say, including that they knew that the estates in question had the funds to pay their legacies, despite arguments to the contrary. Led by July Todd, the lawyer's brief for the plaintiffs in *Todd v. Trott* claimed, "The defendant has possessed himself of sufficient estate to pay all the debts and the legacies of the said estate, and that plaintiffs have demanded their legacy, that the said estate is wholly free from debt, and ready for a settlement, but the defendant refuses to pay under the pretense that the defendants have been freed by the results of war."[45] The argument is clear enough. If the estate had the funds to pay the legacies, then they had to be honored. How the plaintiffs reached freedom made no difference. How they ascertained the status of the estate's finances, however, is less obvious. Very likely, freedpeople mobilized the same tactics and skills that they had used while enslaved to acquire knowledge; they almost certainly tapped into long-standing communication networks—the "grapevine telegraph"—that included Black and White members of the broader community (Lussana 2016, chap. 5; Hahn 2005, chap. 3).

Embedded in claims like these are the outlines of the new relationships freedpeople attempted to forge with former enslavers and their descendants. To be sure, the language used in the briefs—"demanded their legacies," "applied to and requested" the estate's administrator "to come to a fair and just account"—reflects a standard legal formulation. Nevertheless, the very possibility of freedpeople asserting such prerogatives not only signaled the promise of equal citizenship but also was its tangible expression. Rather than being silenced in a courtroom proceeding, and contrary to the expected deference and supplication historically demanded by the master class, freedpeople insisted they be shown the same respect owed to any other rights-bearing subject, regardless of race. Litigation and the receipt of significant bequests, then, held out the potential to correct and repair the social and legal subjugation experienced by bondspeople. Even though it may not have involved any explicit atonement for slavery, victorious litigants forced members of the White community to recognize their elevated status, and perhaps even the diminished standing of the fallen planter class. The message conveyed by Black litigants was unequivocal: freedpeople knew they had a legal right to inherit what had been promised to them without any encumbrance, and they rejected White resistance to their restitution.

## CONCLUSION

The evidence analyzed in this article suggests that private understandings of the debts for slavery shared between enslaved and enslaver mirror the conclusions reached by many mod-

43. See *Milly v. Harrison,* 47 Tenn. 191 (1869).

44. *Heirs of Johnson v. Johnson,* 26 La Ann. 570 (1874).

45. *July Todd v. Trott*.

ern scholars of reparations. Above all, testators and legatees agreed that the goals of bequests were to eliminate dependency, provide sufficient resources for self-sustaining lives, and promote generational uplift. Four mutually accepted resources emerged to as central to achieving these goals: funded transport to free territory, real property (land), money, and education. Though provisions for transport were less important following emancipation, the other forms of reparations remained crucial for Black advancement. In significant ways, the distribution of assets from enslavers to formerly enslaved people achieved one of the core objectives of modern reparations schemes. It "spread the cost of slavery" directly to those "who benefitted the most from these prior systems of racial subordination" (Brooks 2004, 3).

Still, post-emancipation litigation was not collectively organized. It was not part of any broader endeavor to secure reparations for all who endured the horrors of slavery. It was not meant to articulate any specific policy goal. When freedpeople demanded to have bequests honored, they were not asking for back pay or stolen wages based on market calculations.[46] They were not claiming wrongful enslavement, as some successfully did, both before and after the Civil War (McDaniel 2019; Schweninger 2018). Nor were they asking the government for anything. Efforts to address these broader issues would emerge later, after Reconstruction collapsed without delivering programmatic land reform or the resources that would have been necessary to truly lift all freedpeople out of conditions of servitude and peonage (Foner 1995; Berry 2006b).

Instead, going to court to demand their due allowed some freedpeople the ability to perform and fully claim their citizenship for the first time, and not only articulate that they deserved to be free and compensated for their time in bondage, but also expose that their enslavers had *believed the same thing*. They asserted their legal personhood, revealed the intimate details of relationships between enslavers and enslaved, and forced others in their communities to confront their humanity—as they, not the slave market, defined it. And for the first time, they had to be heard.

The findings of this article do not suggest, however, that reparations today should be pursued through private litigation. As scholars have established, courts cannot offer the scale of relief demanded by slavery or the ongoing effects of its legacies; rulings would be limited to those able to bring suits, not the full population to whom redress is due; and no case could promote national atonement or promote reconciliation, especially for government complicity in slavery's existence (Darity and Mullen 2020; Brophy 2006; Tillet 2012). Procedural issues, especially statutes of limitations, further challenge the possibility of successful reparations litigation (Brophy 2006, 102–103). Nonetheless, a thorough exploration historical litigation offers important insights into potential bases for reparations from unlikely sources—enslavers themselves—and, isolates crucial claims for slavery's debts articulated by those who experienced bondage firsthand. Indeed, scholars have long recognized the important role that history must play in any quest for reparations, given that "reconstructions of the historical record . . . are implicit in national acknowledgments" (Tillet 2012, 145). They "provide the factual foundation for apology" (Brooks 2004, 148). Failure to grapple with this history—and to atone for the harm it has continued to produce—reifies and reproduces "the racial paradigm" engendered by generations of slavery, segregation, and subjugation (Tillet 2012, 145). This article contends that this history—the "factual foundation"—should include not only the harms of slavery, but also the unexpected attempts to redress it made by those who experienced and participated in it.

Similarly, the suits explored here do not consider the searing racism, horrific violence, and pervasive inequality that has continued to circumscribe Black lives long after emancipation, as modern reparation schemes attempt to do. All were decided before the onset of Jim Crow, the rise of mass incarceration, housing discrimination, or the development of myriad other forms of disfranchisement. They never-

46. As I note elsewhere, postbellum courts recoiled at the possibility of back pay, and quickly shut the door to the possibility (Perrone 2023, 134).

theless constitute an archive, or perhaps more aptly, a "counterarchive," of voices who do not typically appear in any official record (Tillet 2012, 158). In this way, the evidence presented here follows the lead of Mary Frances Berry, who, in her own study of Callie House and the Ex-Slave Pension Movement, attempted to resuscitate the lives and works of those who continued to agitate for reparations after the collapse of Reconstruction. The litigants who sued to have the families of their former enslavers make good on their promises of restitution should remind us that when it comes to conceiving, conceptualizing, and considering the history of reparations, "scholars may think the contours of the larger story have been fully described, [but] there is another story. There must be many other stories that need rescuing from obscurity. This is the work that must be done" (Berry 2006a, 327).

The potential of building a capacious database of historical reparations claims like these—of constructing a complete "counterarchive"—is significant. Such an effort would begin a process of identifying the persons to whom testamentary reparations were promised by enslavers and verify if the bequests were honored. The nineteen-case data set used here is a small subsection of this litigation. All were settled by the highest appeals courts of their states; countless others were settled at lower-level tribunals. Many similar suits were decided before Reconstruction. Some disputes never made it to court at all, but many enslavers' wills still remain in archives across the country.

Although legal limitations will certainly prevent claims from being made by descendants of those cheated of their bequests, this kind of accounting adds further force to arguments in favor of reparations in the present. That is, many Americans have already been denied specific restitution that had been promised to them. Data collection and analysis may be able to say how much of this type of debt remains outstanding and account for the value of appreciation lost to legatees and their families. It might even help us identify property that may have ultimately been stolen from the Black individuals or their descendants who received it, opening the possibility to trace something unusual and perhaps unconsidered: reparations that were granted but subsequently stolen through fraud, violence, or other malfeasance.

Most important, a study of historical reparations, broadly construed, would add a measure of heft to existing conversations about their necessity and help counter arguments against providing them. Even some who perpetrated the ultimate sin—enslavers themselves—believed that bondspeople were owed "justice," as North Carolinian James Whedbee called it. There is, in other words, an unappreciated historical basis for delivering reparations that was made while slavery remained legal by those who held others in bondage. This unexpected source of historical justification for restitution can and should be added to discussions and defenses of present-day reparations efforts.

The children of Holiday Hayley could never have imagined that their legal fight to secure their inheritance would be interpreted as a reparations suit. The notion of collective action and careful planning to secure reparations for everyone harmed by slavery would have been similarly incomprehensible to them. To the contrary, Alfred, Octavius, Jackson, Louisa, and Paul Hayley probably never contemplated that their case would have much of a public effect at all. Instead, they knew only that their father intended them to have his property; that even if he did not say it publicly, the bequest cemented a kin relationship shaped by slavery; and that freedom entitled them to the full enjoyment of their legacy. We do not know how long or even if the Hayley family lived on their property, or how they used the additional monies they inherited. Perhaps they sold the land and moved somewhere they found more hospitable. Maybe their descendants still own it. Whatever the circumstances, their suit and others like it illustrates that freedpeople understood the requisites for successful lives after slavery, that receiving reparations warranted litigation, and above all, that they themselves were worth the fight and value of the redress. They still are.

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