

Race, Memory, and Historical Responsibility

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Newly emerging, transitional societies — that is, societies that traded dictatorial or authoritarian rule for some form of open or liberal polity — face at least three interdependent problems of what is called in legal scholarship and social science “transitional justice.” The first is how, if at all, to hold the old regime’s autocratic, often violence-laden leadership responsible for its wrongdoings while in power. The second is what, if anything, to do with thousands upon thousands of ordinary folk whose participation in, or compliance with, the old regime helped legitimate and thus perpetuate the wrongdoing. The third task is how, if at all, to deal with the victims of the old regime. By situating the American South in the global context of the need of newly democratizing societies for transitional justice, we explore how the South’s similarities with and differences from other such societies have shaped the timing and character of its people’s post-Jim Crow era restorative justice and racial reconciliation projects, paying particular attention to criminal trials for perpetrators of past crimes, apology, truth and reconciliation-type commissions, and memorialization. We then document the extent of racial inequalities in employment, income, poverty status, and morbidity and mortality, arguing both that past racial injustices result in contemporary racial inequalities and that restorative justice points forward in time as well as backward.

The “Long Shadow” of the Past

In his novel *Requiem for a Nun*, William Faulkner (1951) used one of his characters, Gavin Stevens, to observe that “the past is never dead, it is not even past.” The force of that observation has contrary implications for the present. Often, for example, the past is coated with nostalgia’s soothing patina — Jimmy Carter’s touching memoir of growing up in Depression-era Georgia, *An Hour Before Daybreak* (2001) is a case in point — and thus help us cope with, or escape from, the burdens of the present. On the other hand, some recollections, those of past historical injustices, in particular, are anything but soothing, and they are especially likely, in the words of the philosopher Janna Thompson (2004, p. vii), to “cast a long shadow.” This shadow is one imbued with memories of pain, loss, criminality and victimhood, a shadow signifying how that “difficult” past, which stretches back decades or even centuries, persists into the present. Just as those long shadows of the past may today license evil,

such as in the genocidal “ethnic cleansing” in what was then Yugoslavia in the 1990s, so too may they occasion agonizing, but productive, collective and personal reflection about what happened “back then;” they push people to reflect on the morality or immorality of those times and those actions. Such “long shadows” permeate the American South today.

The Question of Transitional Justice

Newly democratizing, transitional societies, like those in Argentina, Chile, Spain, South Africa, Portugal, Africa, and just about all of the former Soviet-bloc nations, traded dictatorial or authoritarian rule for some form of liberal democracy, however weakly democratic practice may have been institutionalized. In the mid-to-late 1960s, when the American South was finally forced to relinquish its long Jim Crow nightmare of white-on-black racial violence and state-mandated segregation, which for too long had been tolerated, perhaps even encouraged by the federal government and whites in the North, the region resembled a newly democratizing, transitional society in several important ways.

New regimes in such emerging democracies must confront difficult, sometimes exceedingly painful pasts — pasts which, metaphorically at least, cry out for justice and redress, even vengeance and retribution. All such transitional societies — and here we include the American South — face at least three interdependent problems of what is called in legal scholarship and social science “transitional justice” or, less frequently, “retrospective” and “retroactive” justice: the first is how (if at all) to hold the old regime’s autocratic, often violence-laden leadership responsible for its wrongdoings while in power; the second is what (if anything) to do with

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thousands upon thousands of ordinary folk whose participation in, or compliance with, the old regime helped legitimate and thus perpetuate the wrongdoing; and the third task is how (if at all) to deal with the victims of the old regime. Transitional societies have attempted to solve these challenges in a variety of ways, but the restorative mechanisms they have used to deal with both wrongdoers and victims can be grouped into four broad and non-exclusive types.¹

First are the criminal trials of those who, by the standards of the new regime, committed crimes against persons. Criminal trials contain elements of both retributive justice (i.e., punishment) and restorative justice (i.e., restoration or renewal of the moral order by addressing the losses of the victims or their families of crimes). Retrospective justice here thus takes the form of criminal justice, literally bringing the wrongdoers, who are usually agents of the now discredited, criminalized regime, to the halls of justice. Dozens of nations, from Greece, Germany, and Estonia to Bolivia, Cambodia, and Iraq, have resorted to criminal prosecutions.²

Second are Truth and Reconciliation-type Commissions (TRCs) in which the victims of oppressive regimes tell their stories in public and wrongdoers confess their crimes, also in public and often in return for amnesty. Post-transitional leaders in 60 or so countries across the globe have implemented some form of TRC. The truth and reconciliation commission established in post-apartheid South Africa by President Nelson Mandela, Anglican Archbishop Desmond Tutu, and others is the most famous and certainly one of the most effective (if controversial) TRCs ever implemented (Gibson 2004; Rothberg and Thompson, 2000).

The third form of restorative justice is reparations of some form, reparations being, literally, acts designed to “repair” the original, undamaged relationship between individuals and collectivities. Reparations run the gamut from apologies to the injured parties to monetary payments, health, education, and other social services to memorials and other symbolic forms of historical reckoning and restoration. Both apologies and material reparations have been used by dozens of countries from Albania to Zimbabwe. The U.S., for example, has issued cash payments to Japanese Americans for their internment in “relocation centers” during World War II and has offered apologies for (a) violating Hawaiian sovereignty, (b) its role in the African slave trade, and (c) the infamous Tuskegee experiment, in which poor, syphilitic African American men in Alabama were deliberately left untreated by the U.S. Public Health Service so that researchers could chart the “natural” course of the disease.

Finally, there are purges, whereby members of the old regime are fired from positions of authority and barred from further employment in certain jobs. Similarly, their government pensions are voided, or, as was done in Brazil, they are subject to informal social ostracism after having been identified in a TRC-type setting or even formally banned (e.g., Turkey, Sri Lanka). Some form of purge, also known as “lustration,” was especially prevalent in the 1990s in the former Soviet-bloc nations of Eastern Europe, such as (what was then) Czechoslovakia, Poland, and Hungary. Like accountability trails, purges combine aspects of both retributive jus-

tice and restorative justice and can be easily abused.

Now, with this in mind, we return to the American South, and especially to how it has or has not confronted its own “difficult” past. We stated earlier that the region, after 1965 or so, was akin to those newly democratizing, transitional societies about which we’ve been speaking. How so?

Similarities Between the American South and Other Transnational Societies

The first point of similarity is that until the mid-to-late 1960s, when the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were passed and implemented, the region, like the former autocratic or dictatorial states in Africa, Latin America, Eastern Europe and elsewhere, was not constituted to be, nor did it function as, a small “d” democracy. The evidence for this judgment is overwhelming. First, save for the Mountain South, where the Republican Party was often politically viable, the region was more-or-less a one-party state, with the party of white supremacy, the big “D” Democratic Party, generally (and firmly) ensconced in power. Second, easily more than half of its African American citizens were not permitted to register to vote. Indeed, in March, 1965, just months before the passage of the Voting Rights Act, fewer than seven percent of Mississippi’s black citi-

¹ For discussions of transitional societies and transitional justice, see, among many others, Elster (2004), Minow (1998), Thompson (2004), Teitel (2000), and Van Der Merwe, Baxter, and Chapman (2009). Much of what we express here about transitional societies and transitional justice is indebted to these and other scholars we cite, especially Elster and Minow. For systematic comparative data on transitional justice efforts, see, especially, Elster (2004) and Van Der Merwe, Baxter, and Chapman (2009).

² The precise meaning and place of criminal trials in transitional justice projects is contested in scholarship and in justice practice. On the one hand, trials can easily be abused, may be politically destabilizing in fragile democracies, and may represent little more than a legal avenue for unfettered vengeance. Moreover, punishment may stymie the search for truth about the crimes in question and may impede genuine reconciliation between victims (or their families) and offenders (Zehr, 1990, 2002). This broad understanding partially underpinned the intent and functioning of South Africa’s Truth and Reconciliation Commission in the 1990s. On the other hand, scholars such as Kiss (2000), McAdams (1997) and Méndez (1997), argue that “accountability trials” rooted in the rule of law, and so more than a merely vehicle for retribution, are important avenues to particular forms of restorative justice.

Additionally, criminal trials are also argued to be one way to prevent future criminality by entire collectivities of peoples. This was the reasoning used by Secretary of War Henry Stimson in his defense of legal trails of Nazi leaders. “We should always have in mind,” he said, “the necessity of punishing effectively enough to bring home to the German people the wrongdoing done in their name, and thus prevent similar conduct in the future . . . Remember this punishment is for the purpose of prevention and not for vengeance” (quoted in Elster, 2004, p. 203). We thank an anonymous reviewer for pressing us to think more deeply about the relationship between retributive justice and restorative justice and how criminal trials are configured into that relationship.

zens had been able to register to vote, and only a fraction of those felt safe enough to actually vote. Less than twenty percent of Alabama's African Americans were registered at the time, as were less than a third of those in Georgia (27%) and Louisiana (32%). Fewer than half of eligible African Americans in the less reactionary states of North Carolina (47%) and Virginia (38%) were registered.³ The third profoundly undemocratic element in the political and racial cultures of the South was that at least part of the region, particularly in the Deep South, permitted neither genuine freedom of assembly nor freedom of speech. Political repression was a fact of life. Segregation was the law of the land, and most southern whites, politicians and ordinary citizens resisted, too often with retaliation and violence, any challenge to it. Each of these three conditions, and most perniciously of course their confluence, severely weakened the representativeness of government and the machinery of democracy (Black and Black 1988; Key 1949).

The second point of similarity between the South and other transitional societies was the widespread, quite deliberate civil and human rights abuses, mainly but not exclusively against the region's African Americans. We need only allude to the systematic, soul-numbing exclusions; the hint, or more than the hint, that violence could be unleashed at any time, for any reason, or for no reason at all. Unfortunately, death came all too frequently to the South: more than 3000 black southerners, likely many more, were lynched by white mobs during the time of Jim Crow (Tolnay and Beck 1995).⁴

Finally, as was most pointedly the case in apartheid-era South Africa and in part a consequence of the undemocratic and abusive nature of the Jim Crow regimes, the region was what restorative justice scholars (e.g., Chapman, 2009) call a "deeply divided society." We in the region were very much a people separated by law and custom, divided by race, with a quarter to a third of the South's population without much in the way of cultural legitimacy, physical security, or political voice (McMillen 1989; Woodward, 1974; Sitkoff 2008).

One can see, then, why the American South in the years immediately after 1965 might well be considered (along with, say, Spain after Franco, Poland after Communist rule, South Africa after apartheid, Chile after Pinochet) a transitional society sorely in need of transitional justice (see, e.g., Martin and Yaquinto, 2007; Yamamoto, 1998; Wilson 2009).

Differences Between the American South and Other Transitional Societies

In ways crucial to restorative and transitional justice, however, the South was and remains unlike other newly democratizing, transitional nations. First, and most obvious, though housing a distinctive culture organized by its own racial norms, the South was not a sovereign nation during the Jim Crow era. As a loose aggregation of a dozen or so states admittedly sharing common political practices and broadly similar economic patterns, the region was not a unified legal or administrative entity. Both the lack of sovereignty and the lack of political unity imposed real limits on the character

and trajectory of what would happen after freedom came in the 1960s. Paradoxically, they also gave the region, and the nation, opportunities for democratic change and, later, for transitional justice.

The second difference, resulting from the constraints and opportunities inherent in the region's lack of sovereignty, was that unlike the transformations that were experienced by most transitional societies, those that swept the South after 1965 were largely forced on the region from outside, in this case from the U.S. government. African Americans in the region, though undoubtedly victimized by the old racist regime, were hardly "just" victims. Once organized and acting in concert, they finally forced the Kennedy, Johnson, and Nixon administrations, none of which were eager to impose racial restructuring on the region, to bring legal equality and some measure of racial justice to the South. That said, however, it was ultimately Washington — more precisely, whites in Washington, not indigenous insurgents — that called the shots and compelled regional change.⁵

Consequently, those persons who had once been powerless, namely black southerners, gained political voice and genuine, if limited, electoral leverage after 1965, but they *did not* assume formal positions of authority and power, certainly not at the state level and not immediately. Those positions remained in the hands of white southerners. This relationship to political hegemony differentiated African Americans in the South from the Solidarity dissidents in Poland and blacks in South Africa, who did in fact govern in the new regime. Black southerners also had little economic clout, were too often dependent for work on whites, and, as a statistical minority in most regions of the South, could not generally wield the ballot to displace the very whites who had, just a few years previously, tormented them. But newly enfranchised African Americans nonetheless altered the dynamics and semantics of politics in the region. Outright race-baiting and the language of overt racism and white supremacy in political contests which still characterized much of the lower South as late as the mid-1960s fairly quickly went by the wayside in what

³ For voter registration rates, see http://epic.org/privacy/voting/register/intro_c.html (accessed 9 January 2012).

⁴ For lynching statistics, see <http://law2.umkc.edu/faculty/projects/ftrials/shipp/lynchingsstate.html> (accessed 9 January 2012).

⁵ Elster (2004, p. 74) differentiates "endogenous" from "exogenous" transitional justice. The former refers to regime change induced by forces situated within the old regime (e.g., South Africa, Spain after Franco); the latter, to regime change coerced by outside actors (e.g., Germany and Japan in 1945). A hybrid of sorts, the American South fits neither category easily. The greatest pressure for democratization was not external but internal, of course — the black freedom struggle in the region — but regime change, to the extent that it occurred, was, as we noted, externally imposed on the South by a U.S. government prodded, pushed, and pulled by the direct actions of civil rights workers, elected black politicians, and African American voters in the North and Border and Upper South. White public opinion in the North, which was generally sympathetic to the Movement in its fight against white racism in the South, also played a supporting role. For more on these and similar arguments, see McAdam (1982), Sitkoff (2008), and Woodward (1974).

historian Hugh Graham (1995) called the “detoxification of southern politics.”⁶

In a sense then, the South functioned after 1965 as a newly democratizing, transitional society. Still, the premise and promise of newness was distorted and partially defanged by continuation in the power of whites from the old regime with every reason to avoid restorative justice and criminal prosecutions. African Americans and their white allies simply had too little power in any of its many guises to implement projects of repair and restoration. Forty or so years ago these three factors — the South’s lack of sovereignty/unity, the imposition of racial change from outside, and the continuation of white rule — coalesced to stifle any move toward transitional justice of the sort thus far discussed. The American South failed to move toward finding some way to address and redress the suffering of the victims of Jim Crow or find some way to hold those who were *historically* responsible for that suffering *morally*, even *legally*, responsible for that suffering.

So it was that southern blacks and southern whites remained divided after 1965, unreconciled, each, for the most part, tensely tolerating the other, most having acute autobiographical knowledge of a dark past, and each knowing, too, that that past — that very potent racial past — was, to again quote Faulkner, not dead, not even past.

Some might wish to qualify this assessment, arguing that the South since the years of Jim Crow has changed a great deal. And so it has. Today, the South, without doubt, is a more equitable, more humane, more just, and more tolerant place than it was in 1965. This must never be forgotten. However, transformation of this magnitude should not license us to forget the past. Indeed, on occasion, and we think this is one of those times, change only throws the past into sharper relief. And, the southern past, in fact, lives in many ways:

- it resides in the hearts and minds of those of us, black and white, who lived through those tumultuous times (Bindas 2010; Chafe, Gavins, and Korstad 2001; Griffin 2004b; Griffin and Hargis 2008b);
- it is reflected in newspapers, which continue to evoke the region’s brutal racial history (Griffin 2000);
- it is embodied in federal and state law and in governmental mandates, policies, and resolutions (Graham 1990);
- it is vicariously experienced in “heritage” tourist sites, and expressed in public art, films, novels, autobiographies, textbooks, research monographs, and classroom curricula (Carrier 2004; Levinson 1998; Nasstrom 2008);
- it is memorialized and commemorated in a whole host of ways. Some of the more prominent instances of this include streets named for the Reverend Martin Luther King, Jr. (Alderman 2008); Civil Rights museums in Memphis, Atlanta, Birmingham, Richmond, Savannah, and elsewhere in the region; and memorials of one sort or another, such as Maya Lin’s astonishingly moving fountain at the Southern Poverty Law Center in Mont-

gomery, which lists the names of those killed for reasons of race. A memorial in Tulsa, Oklahoma, commemorates the racial violence in that city, where, in 1921, white mobs burned a thirty-five block black business district and killed upward of 250 African Americans;⁷

- and, finally, it permeates the everyday lives and deaths of southerners today.

⁶ This is not to say that white supremacist actions and attitudes, or even “old fashioned” prejudice, are a thing of the past in the 21st-century South. They are not: for instance, white southerners, compared to white northerners, a) appear to be more invested in their whiteness, b) more frequently express openly prejudiced racial sentiments, c) more frequently point to African’s Americans’ cultural deficiencies (e.g., insufficient will power and motivation) as the explanation for racial inequalities in education, income, housing and the like, and d) are less supportive of racially remedial government programs such as affirmative action and minority set-asides. Too many white southerners, both citizens and elected officials continue to support the public or private display of the irredeemably racialized Confederate battle flag and other Confederate and segregation-era symbols. See, for example, Griffin (2004a), Griffin and Hargis (2008a) and Reingold and Wike (1998). Some of these dynamics are all too visible in the 2012 Republican presidential nomination process, especially in South Carolina. See, for example, Charles M. Blow, “Newt’s Southern Strategy” (www.nytimes.com/2012/01/21/opinion/blow-newts-southern-strategy.html?hp) (New York Times 21 January 2012, accessed 21 January 2012). Graham’s (1995) point is simply that by the late 1960s and early 1970s white politicians long associated with the old racist regime — such as George Wallace, Strom Thurmond, and James O. Eastland — could no longer afford needlessly to offend a newly enfranchised, mobilized, and strategically-savvy black electorate by continuing to use language of white supremacy.

⁷ For information on civil rights tours, see <http://www.virginia.edu/uvatoday/newsRelease.php?id=1695>, <http://www.visitmississippi.org/poi-details.aspx?point=472>, and <http://www.visitjackson.com/Tour-Professionals/Jackson-Tour-Treasures/A-Place-In-History> (all accessed 9 January 2012).

On civil rights-themed public art and the SPLC Civil Rights Memorial, see <http://www.accessatlanta.com/atlanta-events/atlanta-artist-paints-mural-276093.html> and <http://www.splcenter.org/civil-rights-memorial>, respectively (both accessed 9 January 2012).

For the Tulsa memorial to the race riot October 2010, named after Oklahoma-born African-American historian John Hope Franklin, see <http://www.jhfcenter.org/2010/10/tulsa-world-fostering-hope/> and “Franklin Park status pushed: State leaders want the John Hope Franklin Park to be affiliated with the National Park, (Tulsa World 2 October 2010; http://www.tulsaworld.com/news/article.aspx?subjectid=16&articleid=20100924_16_A15_Tulsas170884, both accessed 9 January 2012).

On the proposed National Museum of African American History and Culture, to open in 2015 at the Smithsonian, see http://nmaahc.si.edu/section/about_us and Roger Cohen’s insightful op-ed “Race and American Memory,” New York Times, 17 April 2008 (see <http://www.nytimes.com/2008/04/17/opinion/17cohen.html>, both accessed 9 January 2012).

Recent Retribution, Restoration, and Reconciliation Projects

That past has spurred southerners to undertake a range of restorative justice projects in the last two decades. In keeping with the demographic composition and political contours of the region – it is, as we have noted, home to a large number of politically empowered African Americans, but is neither a sovereign nor a unified political entity – these restorative projects have been of varying intensity and longevity, often small-scale and almost inevitably piecemeal and decentralized. Alabama and Mississippi, for example, have thus far focused much of their energies on the pursuit of criminal justice by bringing a handful of the most notorious civil rights-era racially-motivated killings into the present and prosecuting, convicting, and incarcerating those judged responsible for those murders.

Eleven such murderers have been brought to justice, and while this may seem like a small number (Maya Lin's Montgomery monument names forty individuals who were killed during this period), those eleven are precisely eleven more than many would have thought possible a generation ago, showing real, if belated and still woefully incomplete, progress in coming to grips with a murderous past. Since 1989, state and federal authorities have made about 30 arrests for civil-rights era crimes, leading to at least 23 convictions.⁸ Byron de la Beckwith's 1994 trial and conviction for the murder of civil rights activist Medgar Evers in 1963 is especially important because it established the precedent that crimes committed decades earlier were not subject to a time-bound statute of limitation, meaning that killers with blood on their hands were fair game for prosecution (Vollers 1995). Beckwith's conviction also served notice of the Movement-induced empowerment of African Americans: all-white juries failed twice to convict him in 1964, while the jury that did convict Beckwith in 1994 included eight black jurors.

Belated Justice, But Justice Nonetheless

- **Robert Edward Chambliss:** Convicted in 1977 of the 1963 16th Street Baptist Church bombing that killed four children (Denise McNair, Cynthia Wesley, Carole Robertson, and Addie Mae Collins) in Birmingham.
- **Byron De La Beckwith:** Convicted in 1994 of the 1963 murder of civil rights leader Medgar Evers in Jackson, Mississippi.
- **Samuel Bowers:** Convicted in 1998 for ordering the 1966 firebombing that killed civil rights leader Vernon Dahmer in Hattiesburg, Mississippi.
- **Hal Crimm, James Caston, and Charles Caston:** Convicted in 1999 for the 1970 murder of Rainey Pool in Humphrey County, Mississippi.
- **Thomas Blanton:** Convicted in 2001 of the 1963 16th Street Baptist Church bombing that killed four children (Denise McNair, Cynthia Wesley, Carole Robertson, and Addie Mae Collins) in Birmingham.

- **Bobby Frank Cherry:** Convicted in 2002 of the 1963 16th Street Baptist Church bombing that killed four children (Denise McNair, Cynthia Wesley, Carole Robertson, and Addie Mae Collins) in Birmingham.
- **Ernest Avants:** Convicted in 2003 for the 1966 murder of Ben Chester White in Natchez, Mississippi.
- **Edgar Ray Killen:** Convicted in 2005 for the 1964 murders of three civil rights workers (Michael Schwerner, Andrew Goodman and James Chaney) in Philadelphia, Mississippi.
- **James Ford Seale:** Convicted in 2007 for the 1964 kidnapping and killing of two Mississippi teenagers, Charles Eddie Moore and Henry Hezekiah Dee, in the Homochitto National Forest.

We are apt to see still more efforts at restorative justice as criminal justice. The Southern Poverty Law Center (SPLC), for example, has identified an additional 74 persons whom it calls "The Forgotten." These people were killed between 1952 and 1968 in circumstances that suggest they were the victims of racially motivated violence. We very well may see these names, and others as yet unearthed, in tomorrow's newspapers if authorities, or more often journalists, investigate or reinvestigate their deaths. Such an outcome is hardly farfetched: investigations are ongoing by the FBI, via its "Civil Rights Cold Case Initiative," and by journalists, such as the Jackson, Mississippi *Clarion-Ledger's* Jerry Mitchell and those in such organizations as the Civil Rights Cold Case Project.⁹

Members of Congress have followed the logic of these "atonement" or "accountability" trials, as they have been called, and cold cases to the point of passing the "Emmett Till Unsolved Civil Rights Crime Act of 2007," a bill signed into law by President George Bush in October 2008. Emmett Till

⁸ *The Philadelphia Inquirer*, 8 October, 2008.

⁹ See, for example, <http://www.fbi.gov/wanted/seeking-info/cold-case-initiative>, and National Public Radio, "Civil Rights Cold Cases Coming To A Close" (<http://www.npr.org/templates/story/story.php?storyId=124667590>; both accessed 9 January 2012). More about the Civil Rights Cold Case Project may be found at <http://coldcases.org/> (accessed 9 January 2012).

Investigative journalists have been utterly instrumental in excavating the truth about civil rights-era crimes. Jerry Mitchell, who helped put Byron De La Beckwith, Sam Bowers, Bobby Cherry, and Edgar Ray Killen behind bars (see the "Belated Justice, But Justice Nonetheless" insert in the text), has been the most effective and is the most visible. See <http://www.clarionledger.com/article/99999999/SPECIAL17/60416008/Jerry-Mitchell-s-entry-and-biography> (accessed 9 January 2012).

Other journalists, however, are engaged in the same quest. Stanley Nelson, a writer for *The Concordia Sentinel* (Louisiana), for example, has labored intensively for four years to uncover the killers of Frank Morris, an African American businessman in Ferriday, La., who was fire-bombed in 1964 (see <http://www.nytimes.com/2011/01/13/us/13case.html?emc=eta1>, accessed 9 January 2012).

was an African American teenager from Chicago who was murdered in 1955 in Mississippi by at least two white men. His killers were tried, found innocent by an all-white jury, and then, a year later, sold their story in which they admitted their guilt to *Look* magazine for \$4000 (or about \$31,500 in today's currency). They were not tried a second time. The Till Bill was sponsored by Representative John Lewis (D, Ga), a certified civil rights hero, and authorized the appropriation of funds for the Justice Department to investigate and prosecute civil rights-related unsolved homicides committed before 1970. Whether the Civil Rights-Era Cold Case Initiative, as it is known, will actually lead to further prosecutions is, at the time of this writing, an open question for several reasons (e.g., death of witnesses and suspects, destruction of evidence, inadequate funding). But the Till bill establishes a vital legal precedent, that, in principle, can be used as a lever of restorative justice.¹⁰

Moving now to the realm of restorative justice as repair and reparation, several southern states (Alabama, Florida, Maryland, North Carolina, and Virginia), southern universities (e.g., the Universities of Alabama and North Carolina), and large corporations in the region (e.g., Wachovia [now Wells Fargo]) have in the past few years apologized or expressed regret for slavery, if not for Jim Crow per se. On the national level, in 2005 the U.S. Senate approved a resolution apologizing for its failure to enact federal anti-lynching legislation decades ago, legislation that was repeatedly blocked in committee by Senators from the South (Sitkoff, 1978; Zangrando, 1980). Fittingly enough, both Democratic and Republican southerners, followed by almost 90 of their colleagues from both parties, co-sponsored the resolution. (Mississippi was the only southern state that lacked at least one sponsor.) In 2008, the Senate passed a non-binding resolution (with an explicit reparations disclaimer) for "the fundamental injustice, cruelty, brutality and inhumanity" of both slavery and Jim Crow, an explicit admission that white supremacy knew no regional boundaries.¹¹

Southerners of both races have also established mini-truth and reconciliation commissions at the local level. Though none of these enjoy the stature, influence, or cultural resonance of many of TRCs in South Africa, the Philippines, Argentina, and elsewhere, several of the South's TRCs or their precursors have received a fair amount of press and public attention, and some appear to have made a genuine difference, at least in their own communities. One of these is the 1898 Centennial Foundation. Supported by both the city of Wilmington and the state of North Carolina, the foundation spearheaded a highly successful commemoration of the violent coup d'état instigated by whites in the Democratic party to remove Wilmington's bi-racial city government. The 1898 Wilmington Race Riot Commission was established in 2000 to investigate the events surrounding the "race riot," in which somewhere between nine and 25 (some say as many as 100) African Americans were killed. Scores more were run out of the city, some aided by sympathetic whites (McLaurin, 2000). One consequence of the Commission's 2006 Report was that in 2007 the North Carolina State Senate expressed "profound regret that violence, intimidation and force" were

used to overthrow a duly elected government.¹²

The staggering amount of anti-black violence in Rosewood, Florida, in 1922, was also rediscovered after 60 years of cultural amnesia. During almost a week of what can only be called a "white riot," at least six African Americans and two whites were killed, and virtually every black home in the town was reported to have been destroyed. First through the efforts of an investigative reporter in 1982, and then through CBS's TV program *60 Minutes* a year later, the story of Rosewood was resurrected. In the early 1990s, survivors of Rosewood filed suit against the state government for its failure to protect them and their families. The Florida legislature subsequently passed a bill calling for compensation to the survivors and their descendants, and in 1994 Florida Governor Lawton Chiles signed the Rosewood Compensation Bill, a \$2.1 million package to compensate for what Chiles termed

¹⁰ On the paid confessions of Till's murders, Roy Bryant and J.W. Milam, see http://www.pbs.org/wgbh/amex/till/sfeature/sf_look_confession.html. For more on the Till Bill, see <http://www.govtrack.us/congress/bill.xpd?bill=h110-923>.

On the failure of the Cold Case Initiative (which began in February 2006) and the Till Bill to live up to their mandates, see Hank Klivanoff, "The glacial pace of Justice," *The Washington Post* (8 August 2010; <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/06/AR2010080605023.html>) and "Scant Progress in Effort to Solve Old Racial Killings," *New York Times* (23 August 2010; http://www.nytimes.com/2010/08/24/us/24rights.html?ref=hate_crimes, all accessed 9 January 2012).

¹¹ On Congressional apologies, see "A Senate Apology for History on Lynching: Vote Condemns Past Failure to Act," *Washington Post* (14 June 2005; <http://pqasb.pqarchiver.com/washingtonpost/access/853346841.html?FMT=ABS&FMTS=ABS:FT&date=Jun+14%2C+2005&author=Avis+Thomas-Lester&pub=The+Washington+Post&edition=&startpage=A.12&desc=A+Senate+Apology+for+History+on+Lynching%3B+Vote+Condemns+Past+Failure+to+Act>, accessed 9 January 2012).

Since 1989, U.S. Representative John Conyers of Michigan has introduced a House Resolution "to acknowledge the fundamental injustice, cruelty, brutality and inhumanity of slavery...and to establish a commission to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, to make recommendations to the Congress on appropriate remedies..." (see http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:sc26rfh.txt.pdf, accessed 9 January 2012).

For more on the University of Alabama apology, see Clarke and Fine (2010). Both Presidents Bill Clinton and George W. Bush have publicly condemned slavery — the latter quite strongly and using the language of "crime" — but the U.S. government had not apologized for either slavery or for Jim Crow-era practices and crimes (Craemer, 2009).

¹² On Wilmington, see <http://www.ah.dcr.state.nc.us/1898-wrrc/report/report.htm>, and <http://www.bluenc.com/party-switch> (both accessed 9 January 2012).

For more on violence and reconciliation in the South generally, see Cunningham (2008).

a “blind act of bigotry.”¹³

Still, we have yet to see any regional or state-level TRC-type hearings, or hear any official apologies for Jim Crow from any southern state. Nor have we witnessed Eastern European-like purges of any magnitude, and, other than the Rosewood Compensation Act, we have little evidence of any southern state or organization housed in the region, such as the Southern Baptist Convention (SBC), which did apologize for slavery in 1995, offering financial reparations to African Americans for abuses during Jim Crow.¹⁴

Should We Forget the Past?

Perhaps, some say, this is as it should be. White southerners, some might argue, have now repented for their past sins. They have atoned enough. The past, after all, is *THE PAST*, and nothing, not a single act of restorative justice, can ever change that fact. Why deal with the past then, especially when doing so is without doubt difficult, both emotionally and logistically, and costly. Dealing with the past may even be counter-productive, in that old wounds and old hostilities may be brought to the surface to be relived in pain yet again. There is also the issue of personal responsibility: why should those of us who were not moral agents in our own right try to repair the damages done by others? This is the reason Mississippi senator Thad Cochran gave for his unwillingness to co-sponsor the Senate resolution apologizing for not passing the anti-lynching legislation about which we referred earlier. “I’m not in the business,” Cochran said, “for apologizing for what someone else did or didn’t do.” Though he “deplored and regretted” both the lynchings and the fact that those who lynched went unpunished, he stated “I’m not culpable.”¹⁵

One may thus understand why many are reluctant to dig through the South’s Jim Crow past, especially because we might discover what people like our fathers and grandfathers did and did not do, what our friends or friends of our families did or did not do, and what we ourselves did and did not do. But one problem with this line of thought is that the past simply will not stay . . . in the past; the past, as we have seen, haunts repair and sabotages personal and collective amnesia.¹⁶

The Presence of the Past in the South of Today

Earlier we said that the past persists in the lives and deaths of those in today’s South. We see it in data gathered by the U.S. Bureau of Labor Statistics in 2010 indicating that African Americans in most southern states were unemployed at rates twice or more greater than whites: in Mississippi, for example, the rate for whites was 6.9 percent; for blacks it was 18.5 percent.

We see it in the stark wealth and income differentials between African American and white southerners. In our analysis of the 2010 American Community Survey, administered by the U.S. Census Bureau, for example, we found that the income of white families in Alabama averaged \$51,000; that of African American families, \$29,200, an average annual difference of almost \$22,000. In 2010, the racial disparity

in South Carolina averaged \$23,000, in Louisiana and Virginia, more than \$25,000. For the region as a whole, the cost of being black, at least in terms of family income, averaged \$17,000 in 2010 (\$52,000 for whites, \$35,000 for African Americans). In no southern state was the income gap less than \$12,000.

We see the past’s continuing presence, too, in the poverty data collected in 2009-10 by the U.S. Census’s Current Population Survey. It showed that African Americans in the south were generally twice or more as likely as white southerners to be counted among the nation’s poor. Forty three percent of black Louisianans, compared to 15 percent of whites in the state, earned too little income to bring themselves out of poverty. More than a third of African Americans in the more affluent southern states of Florida, Georgia, and North Carolina were also labeled “officially poor” by this criterion.

We see the long shadow of the past, finally and unavoidably, in contemporary health, mortality and life expectancy statistics. In 2009-10, the percentage of African Americans without health insurance was greater than comparable figures for whites in every state in the South. Over a quarter of blacks in eight southern states were without health insurance. In only one southern state, Arkansas, were even 20 percent of whites uninsured. Financial distress and poor health care predictably lead to greater disease and death. In 2007 (the year for which the most systematic data are available),

¹³ On Rosewood, see <http://www.rosewoodflorida.com/> and http://dhis.dos.state.fl.us/fgils/rosewood_bib.html (both accessed 9 January 2012).

¹⁴ Historian Howard Ball proposed a TRC in a brief 2006 article in the History News Network, “It’s Time Mississippi Established a Truth and Reconciliation Commission” (<http://www.hnn.us/articles/29718.html>; accessed 9 January 2012). The idea has since gathered a bit of steam (see, e.g., <http://www.mississippitrueth.org/>; accessed 9 January 2012).

On the Southern Baptist Convention apology, see <http://www.sbc.net/resolutions/amResolution.asp?ID=899> (accessed 9 January 2012).

¹⁵ William Raspberry, “A ‘Sorry’ Excuse from Cochran,” Washington Post, 20 June 2005 (<http://www.washingtonpost.com/wp-dyn/content/article/2005/06/19/AR2005061900701.html>, accessed 9 January 2012). Raspberry noted in his column that Cochran did, however, co-sponsor bills apologizing for the government’s treatment of Native Americans and for the World War II internment of Japanese-Americans, acts for which Senator Cochran could not possibly have been personally culpable.

¹⁶ To his likely dismay, former Mississippi Governor Haley Barbour has well learned this lesson in the recent past, first, by saying he attended “integrated schools” in the mid-1960s in Mississippi (a statement which is, at best, factually ambiguous) and, later, praising the White Citizens’ Council, in actuality a racist organization headquartered in the Mississippi Delta, as a racially positive force during the Civil Rights era. On the earlier incident, see, especially, Eugene Robinson, “Gov. Barbour’s civil rights fairy tale,” Washington Post, 7 September 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/09/06/AR2010090602959.html>; on the later incident, see, among many others, “Discussing Civil Rights Era, a Governor Is Criticized,” New York Times, 20 December 2010 (<http://www.nytimes.com/2010/12/21/us/politics/21barbour.html>). Both websites accessed on 9 January 2012.

the number of deaths per 100,000 African Americans was higher than that of whites in every state in the South. The death rate for blacks was 29 percent greater in South Carolina, Florida, Texas, and Virginia. African Americans in the region were more than twice as likely to die from diabetes in every state in the South except Texas, and their likelihood of dying from cancer and heart and cerebrovascular diseases was much higher throughout the entire region. Overall, black southerners could, in 2007, expect to live about four fewer years than white southerners. Even more distressing, for the years 2005-07, the infant mortality rate for African Americans in the South was twice as great as that for whites in 10 southern states. Mississippi's infant mortality rate was one of the highest in the nation, and the racial differential there was huge. For whites, the rate was 6.9 deaths per 1000 births; for African Americans, the rate was greater than 15 deaths per 1000 births, up from a few years earlier and almost as high as it was 20 years previously.¹⁷

Moreover, the past itself may not be dead, but, quite clearly, it kills. None of these racial differences in life-chances and, indeed, in life and death itself, can possibly be explained without a deep understanding of both the region's Jim Crow past and how that past continues to be transmuted into the present. Simply put, today's inequalities are heavily fashioned from yesterday's injustices. A "long shadow" indeed.

Historical reckoning and racial reconciliation throughout the American South are most assuredly hindered by the economic disparities between the region's black and white citizens suggested by the economic and mortality data. That such large racial disparities exist in every state in the nation should be of no comfort whatsoever to southerners. South African Archbishop Desmond Tutu, who was a crucial architect of the South Africa's TRC, has noted that, "Unless the gap between rich and poor, which is very wide is narrowed, then you could just as well kiss reconciliation goodbye." Reckoning and repair are also slowed by other differences between the region's races, profound, schismatic, dissimilarities in cultural memory, in racial attitudes and attributions for racial stratification, in political partisanship and voting behavior, and in preferences for social policies designed to reduce racial inequalities.

Public opinion about racial reparations is especially contentious. An assessment of the relevant polling data by John Torpey and Maxine Burkett concluded that "whereas substantial percentages of blacks endorse some sort of remedy for the injustices of the past, large percentages of whites... oppose the idea of reparations, or indeed even an apology, for slavery or Jim Crow" (2010, p. 456). A 2002 USA Today/CNN poll, for example, found that 55 percent of African Americans said they believed the U.S. government should pay reparations to blacks for slavery and past discrimination, while 90 percent of whites said the government should *not* pay reparations. Only 6 percent of whites supported the payment of reparations.¹⁸ Using data collected in 2006-07, Craemer (2009) continued to find very large racial differences in support for U.S. government payment of reparations.¹⁹

Facing History: Cultural Amnesia is Not an Option²⁰

Despite all of these and other differences, some southerners of both races are increasingly, if painfully, confronting their very difficult and very much shared past. As we have seen, southerners have explored a variety of avenues of reconciliation and retrospective/restorative justice – criminal trials, TRCs, apologies, reparations, memorials; that they have done so with such respect for both the past and for due process is itself a considerable achievement. The ultimate success of these projects has been, and is likely to remain, highly variable. Some have had modest potency at the state and local levels; others have or will fail; still others are virtual non-starters. Even successful restorative strategies, are plagued by their own seemingly intractable limitations. Moreover, TRCs, as we noted, may permit perpetrators to walk away from legal responsibility from their crimes and so fail to foster forgiveness by victims. Apology, memorialization and commemoration can amount to little more than cynical tokenism and, in any case, do not equalize access to quality schooling, decent work or health care; criminal trials cannot restore the dead to grieving families and may lead to greater social fragmentation. There is no formula for true reconciliation: each state, each locality, and each generation in the South will have to hew its own path toward redress and restitution, toward repair and redemption.

Granted that all efforts at transitional and restorative justice are limited, possibly even inadequate to their broader purposes, every trial, every memorial, every apology, and every truth commission nonetheless remind *each of us* that as a people whose political identity is premised on equality — an identity for which southerners have for centuries fought and sacrificed — we have a responsibility to exact elemental justice for *all of us*, including our brothers and sisters across the color line. Because memory underpins the trans-generational

¹⁷ Statistics on unemployment are found at <http://www.bls.gov/lau/table14full10.pdf>. For information on the 2010 American Community Survey (ACS), see <http://www.census.gov/acs/www/>. The ACS data have been collected and made freely available in machine-readable form by the Integrated Public Use Microdata Series at the University of Minnesota. See Ruggles, et al. (2010). Poverty statistics are found at <http://www.statehealthfacts.org/comparebar.jsp?ind=14&cat=1>. For various aspects of health and mortality, see <http://www.statehealthfacts.org/comparetable.jsp?ind=60&cat=2>. See also "In Turnabout, Infant Deaths Climb in South," New York Times, 22 April 2007 (<http://www.nytimes.com/2007/04/22/health/22infant.html?scp=1&sq=infant%20mortality%20in%20south&st=cse>). All websites accessed 9 January 2012.

¹⁸ On the 2002 reparation polls, see Michelson (2002).

¹⁹ Tutu, quoted in Ball, "It's Time Mississippi Established a Truth and Reconciliation Commission." On the deep racial differences in cultural memory, Griffin and Hargis (2008b), and Griffin and Bollen (2009). On differences in racial attitudes and policy preferences, see Griffin and Hargis (2008a).

²⁰ The phrase "facing history" is from Minow (1998, especially pps. 118-148).

continuity of both community and the political identity of equal citizenship (Booth 2006), we sense, too, that we have a debt to those no longer with us, a debt to, among others, the 74 “forgotten” catalogued by the Southern Poverty Law Center. It is a debt to understand and remember their travails, their hopes, their essential, unalterable humanness. To do less is to disrespect their courage and sacrifices. To do nothing because we are unable fully to repair and restore, unable fully to compensate and commemorate, is effectively to forget the past and its obligations, forget the crimes committed and to pretend that that “dark journey” never happened and that all the suffering and loss and pain of so many for so long is of no communal import. That, to us, is unacceptable.²¹

On that note, we conclude with quotations from two southerners, one black and one white. The first is from Elizabeth Eckford, who was one of the “Little Rock 9,” African American high school students who desegregated Little Rock, Arkansas’s Central High School in September 1957. At the fiftieth anniversary of that event, in 2007, she said, “There can never be true reconciliation until we acknowledge our painful and shared past.” The second is from William Winter, the governor of Mississippi from 1980 to 1984, and the person for whom the University of Mississippi’s William Winter Institute of Racial Reconciliation is aptly named. “In light of that haunting question” [i.e., why did not white southerners after 1954 accept desegregation with “dignity and goodwill?”], Winter urges, “let us hope that the next generation of southerners will not have to ask the same thing about us as we confront the new challenge of an increasingly multiracial society. Let us be reminded, therefore, that there is still much for us to do to complete the task of racial reconciliation” (2005, p. 92).²² Reconciliation is hardly *sufficient* for substantive racial parity in wealth, income, employment, or life chances, more generally, but it may very well be *necessary* for genuine equality between and among the region’s races. Perhaps, then, it is time to move, emotionally as well as cognitively, from “memory-as-possibility” to “memory-as-necessity” (Irwin-Zarecka, 1994, p. 37). We may not be responsible for our region’s past, but we are responsible for a present impregnated by the past. Transitional justice, after all, calls us to look not only to yesterday but also to today and to tomorrow.²³

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²¹ See McMillen (1989) on the “dark journey” of African Americans in the South. On the SPLC’s “Forgotten,” see <http://www.splcenter.org/get-informed/news/splc-provides-list-of-unresolved-civil-rights-era-deaths-to-fbi/the-forgotten> (accessed 9 January 2012).

²² Eckford, quoted in “Little Rock celebrates civil rights pioneers; Others privately relive their roles in one of the ugliest episodes in modern U.S. history,” *Toronto Star*, 26 September 2007 (<http://www.thestar.com/News/article/260619>, accessed 9 January 2012).

²³ For those interested in grass-roots restorative justice projects currently underway, see the very useful website of the University of Mississippi’s William Winter Institute for Racial Reconciliation (<http://www.olemiss.edu/winterinstitute>; accessed 9 January 2012).

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