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Reparations Litigation: What About Unjust Enrichment?

In *Cato v. United States*, the Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of a suit seeking damages and an apology for the enslavement of African Americans.[1] The court held:

> Discrimination and bigotry of any type is intolerable, and the enslavement of Africans by this Country is inexcusable. *This Court, however, is unable to identify any legally cognizable basis upon which plaintiff's claims may proceed against the United States.* While plaintiff may be justified in seeking redress for past and present injustices, it is not within the jurisdiction of this Court to grant the requested relief. The legislature, rather than the judiciary, is the appropriate forum for plaintiff's grievances.[2]

Despite this bleak proclamation about the lack of judicial recourse for the harms of slavery and ensuing *de jure* and *de facto* racism, new lawsuits seeking reparations and redress for these injuries have recently been filed or are currently in the planning stages.[3] This litigation should respond to the *Cato* court's inabil-

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[1] Cato v. United States, 70 F.3d 1103 (9th Cir. 1995). The dismissal was upheld because the plaintiff could not show that the government had waived sovereign immunity. *Id.* at 1107. The court also cited lack of subject matter jurisdiction and justiciabilty limitations: "Without a concrete, personal injury that is not abstract and that is fairly traceable to the government conduct that she challenges as unconstitutional, Cato lacks standing." *Id.* at 1103.

[2] *Id.* at 1105 (quoting Judge Saundra Brown Armstrong in the dismissal of the case from the District Court for the Northern District of California) (emphasis added).

[3] *See generally* Duncan Campbell, *Descendants of U.S. Slaves Sue Firms for Unpaid Work*, THE GUARDIAN, Sept. 5, 2002, *available at* http://www.guardian.co.uk/international/story/0,3604,786122,00; Jason B. Johnson, *A Slave's Legacy: His 2 Sons File Lawsuit for Reparations*, SAN FRANCISCO CHRONICLE, Oct. 21, 2002, at A13; Julie Foster, *Slavery Reparations Lawsuit Brewing: Legal Dream Team for Gargantuan Case Led by Johnnie Cochran*, WORLDNETDAILY, Jan. 31, 2001, *at* http://www.

ity to see a legal basis for slavery claims with the question, *"What about unjust enrichment?"* Unjust enrichment is a cause of action in restitution, applied to avoid unjust results in specific cases. "Restitution arose . . . as a series of innovations to fill gaps in the rest of the law."[4]

This Article examines the role of unjust enrichment in substantive and remedial restitution as one option available to the movement that seeks to secure reparations for the descendants of the millions who were enslaved, transported from the African continent, and dispersed throughout the Americas and Europe.[5] The reparations movement also seeks fitting remedies for the continuing depredations imposed upon people of African descent in the years that have followed the abolition of slavery.[6] The substantive and remedial law of restitution, particularly the concepts of unjust enrichment and the remedy of constructive trust, provide particularly apt vehicles for reparations claims.

After exploring the role of reparations litigation in the ongoing international effort to redress the continuing inequality generated by the transatlantic slave trade, this Article presents the unjust enrichment claims raised in a reparations lawsuit typical of those currently underway in United States courts. An overview of unjust enrichment and its legal lineage follows. The Article then concludes after a brief examination of unjust enrichment remedies.

Reparations litigation is but one tool[7] available to the ongoing effort to dismantle structural inequality and promote substantive

worldnetdaily.com/news/article.asp?ARTICLE_ID=21534 (last visited Feb. 23, 2003).

[4] Douglas Laycock, *The Scope and Significance of Restitution*, 67 TEX. L. REV. 1277, 1278 (1989).

[5] The legal and moral argument for reparations have been eloquently and elaborately presented elsewhere. *See*, *e.g.*, BORIS I. BITTKER, THE CASE FOR BLACK REPARATIONS (1973); RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS (2000); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429 (1998). An excellent resource listing a number of law review articles on the topics of slavery and reparations can be found on Professor Vernellia Randall's website at http://academic.udayton.edu/lreviews/03Jan.htm (last visited Feb. 23, 2003).

[6] *See* BITTKER, *supra* note 5.

[7] *See* Rhonda V. Magee, *The Master's Tools, From the Bottom Up: Responses to African American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993).

social transformation.[8] Clearly, even unjust enrichment lawsuits face an uphill battle to survive the gate-keeping mechanisms that have been invoked in previous lawsuits to insulate the federal government from liability for slavery and other discrimination.[9] However, even if there are insurmountable barriers to actual recovery, articulation of the restitutionary claims arising from slavery and the subsequent history of racial wrongdoing can serve important functions. Complaints and other legal documents filed in these cases will serve to illuminate the fallacy that most persons of African descent in the United States have access to equal opportunity, or to any kind of level playing field in our society as it is currently constructed. The hope is that by fully exposing the pretense of meritocracy, this nation will be compelled to engage in the process of actually providing equality.

It is also important to recognize that no matter what happens in the courts of the United States, the reparations movement is much larger than federal and state lawsuits. The Transatlantic Slave Trade stretched its malignant web across several continents, and those unjustly enriched by slavery reside on both sides of the Atlantic. The beneficiaries of slavery include corporations, governments, and the general public, as well as individual slaveholders. Slavery was a complex and multi-faceted system, and its aftermath cannot be redressed through any one avenue. The ramifications of slavery's legacy continue to influence the economies of African, Caribbean and South American nations.[10] Other countries have debated reparations for slavery,[11] as have international fora such as the 1993 Pan-African Congress on Reparations,[12] and the 2001 World Conference Against Racism,

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[8] *See* Elizabeth M. Iglesias, *Identity, Democracy, Communicative Power, Inter/ National Labor Rights and the Evolution of LatCrit Theory and Community,* 53 U. MIAMI L. REV. 575, 621-622 (1999); Francisco Valdes, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience-RaceCrits, QueerCrits, LatCrits*, 53 U. MIAMI L. REV. 1265 (1999).

[9] *See* Cato v. United States, 70 F.3d 1103 (9th Cir. 1995). *See also* Hohri v. United States, 847 F.2d 779 (Fed. Cir. 1988) (damage actions for the internment of Japanese-American citizens barred by statute of limitations).

[10] *See* ROBINSON, *supra* note 5, at 181; *see also Report of Regional Conference of the Americas*, U.N. GAOR, 2d Sess., at 4–7, U.N. Doc. A/CONF.189/PC.2/7 (April 24, 2001), *available at* http://193.194.138.190/huridocda/huridoca.nsf/(Symbol)/A.CONF.189.PC.2.7.En?Opendocument.

[11] *See* Transcript of debate initiated by Lord Gifford in House of Lords concerning African reparations, 14th March 1996, *at* http://www.arm.arc.co.uk/LordsHansard.html.

[12] *See* Foster, *supra* note 3.

Racial Discrimination, Xenophobia, and Related Intolerance.[13]

Ultimately, African Americans must work in coalition with international reparations movements. Latina/os Critical Race Theory (LatCrit), with its focus on internationalism, comparativisim, and rotating centers, provides both a forum and a paradigm for this type of effort.[14] Furthermore, legal recognition of unjust enrichment is not limited to the Anglo-American common law system. Civil law systems that prevail throughout much of Central and Latin America[15] recognize equivalent concepts, as do international human rights law and theory.[16] Thus, the relevance of this discussion of restitution is not limited to reparations cases in United States courts of law.

I

CURRENT REPARATIONS LITIGATION

On March 26th, 2002, attorneys for Deadria Farmer-Paellmann filed a complaint in the U.S. District Court for the Eastern District of New York seeking recovery from three companies (Aetna Insurance, Fleetboston Financial, and CSX Rail Networks) for conspiring with other entities, persons, and institutions to commit and/or knowingly facilitate crimes against humanity, and to further illicitly profit from slave labor.[17] Many of the substantive claims of the complaint are restitutionary, and the remedies sought by the complaint are overwhelmingly restitutionary: "Plaintiffs and the plaintiff class are slave descendants whose ancestors were forced into slavery from which the defendants un-

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[13] *See* Gay McDougall, *The World Conference Against Racism: Through a Wider Lens*, 26 FLETCHER FORUM OF WORLD AFFAIRS 135 (2002).

[14] *See* Valdes, *supra* note 8.

[15] *See*, *e.g.*, JOHN PHILIP DAWSON, UNJUST ENRICHMENT, A COMPARATIVE ANALYSIS (William S. Hein & Co. 1999) (1951); Liana Fiol-Matta, *Civil Law and Common Law in the Legal Method of Puerto Rico: Anomalies and Contradictions in Legal Discourse*, 24 CAP. U. L. REV. 153 (1995).

[16] *See*, *e.g.*, Irwin Cotler, *The Holocaust, Thefticide and Restitution: A Legal Perspective*, 20 CARDOZO L. REV. 601, 614 (1998).

> [T]he notion that a state might enrich itself from the commission of crimes against humanity, from the ashes of the Holocaust is as reprehensible as it is unjust—an assault on the very foundations of international law and the international law of human rights and a foundational breach of the Nuremberg Principles.

Id.

[17] Farmer-Paellmann v. Fleetboston Fin. Corp., No. 02-1862 (E.D.N.Y. Mar. 26, 2002), *available at* http://www.nyed.uscourts.gov/02cv1862cmp.pdf [hereinafter *Complaint*].

justly profited. Plaintiffs seek an accounting, constructive trust, restitution, disgorgement, and compensatory and punitive damages arising out of Defendants' past and continued wrongful conduct."[18]

The complaint raises four questions of law and fact that go to the heart of restitution, namely, whether the defendants:

> a. knowingly, intentionally, and systematically benefited from the use of enslaved laborers;
> b. wrongly converted to their own use and for their own benefit the slave labor and services of the Plaintiffs' forebearers, as well as the products and profits from such slave labor;
> c. knew or should have known that they were assisting and acting as accomplices in immoral and inhuman deprivation of life and liberty;
> d. have been unjustly enriched by their wrongful conduct.[19]

II

An Overview of Unjust Enrichment

Count V of the Farmer-Paellmann complaint is based upon unjust enrichment. Unjust enrichment is of growing importance in claims involving wrongs directed at an identifiable group. It has been used in Holocaust litigation[20] and has been suggested as an independent basis for liability in claims against multinational corporations by indigenous peoples who have been displaced or harmed by environmental damage to their land but have thus far been unable to obtain judicial relief.[21] Randall Robinson's *The Debt* outlines a series of successful claims under international law and, citing Dudley Thompson, observes:

> Not only is there a moral debt but there is clearly established precedence in law based on the principle of unjust enrichment. In law if a party unlawfully enriches himself by wrongful acts against another, then the party so wronged is entitled to recompense. There have been some 15 cases in which the highest tribunals including the International Court at the Hague have

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[18] *Id.* at 7. For accounting, constructive trust, restitution and disgorgement, see Douglas Laycock, Modern American Remedies: Cases and Materials (2d ed. 1994).

[19] *Complaint*, *supra* note 17, at 10–11.

[20] *See* Derek Brown, *Litigating the Holocaust: A Consistent Theory in Tort for the Private Enforcement of Human Rights Violations*, 27 Pepp. L. Rev. 553, 556 (2000).

[21] *See* David N. Fagan, *Achieving Restitution: The Potential Unjust Enrichment Claims of Indigenous Peoples Against Multinational Corporations*, 76 N.Y.U. L. Rev. 626, 627-29 (2001).

awarded large sums as reparations based on this law.[22]

Western systems of law have traditionally recognized the principle of unjust enrichment. A celebrated maxim of Roman Law proclaims, "'By the law of nature it is fair that no one become richer by the loss and injury of another.'"[23] This concept was familiar to common law attorneys through the works of legal commentators of the sixteenth and seventeenth centuries, such as Grotius and Pufendorf, and applied in early English decisions such as *Moses v. MacFerlan*, decided in 1760.[24]

In 1937, the American Law Institute promulgated the first *Restatement of Restitution*. Prior to the *Restatement*, the law of restitution was "a miscellaneous assortment, (part legal, part equitable) of forms of action and remedial devices . . . ."[25] The first *Restatement* explicitly created the legal category of restitution by linking previously unconnected doctrinal rules together using the concept of unjust enrichment.[26] The first *Restatement of Restitution* is extremely influential; one cannot "describe or apply this body of law without heavy reliance on the structure outlined in 1936 by The American Law Institute."[27] No later edition has superceded the first *Restatement*, and an attempt to promulgate a second *Restatement of Restitution* in the 1980s was abandoned, while the production of a third *Restatement* is underway.[28] The *Discussion Draft of the Third Restatement* is incomplete and does not yet address transactions in which a benefit is wrongfully obtained.[29] Therefore, this Article will focus on the

22 ROBINSON, *supra* note 5, at 221.

23 Shael Herman, *The Contribution of Roman Law to the Jurisprudence of Antebellum Louisiana*, 56 LA. L. REV. 258, 276 n.69 (1995) (citing Dig. 50.17.206). In 528 A.D., the Emperor Justinian ordered the compilation of Roman Law now known as the *corpus juris civilis*. It contained a digest of the legal opinions of the Roman jurists from a period of nearly a millennium. *See* ARTHUR TAYLOR VON MEHREN & JAMES RUSSELL GORDLEY, THE CIVIL LAW SYSTEM: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW 6 (2d ed. 1977).

24 James Gordley, *The Common Law in the Twentieth Century: Some Unfinished Business*, 88 CAL. L. REV. 1815, 1821, 1823, 1870 (2000).

25 RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT (RESTATEMENT 3D), Reporter's Introductory Memorandum, at xv (Tentative Draft No. 1, Mar. 31, 2000).

26 Emily Sherwin, *Restitution and Equity: An Analysis of the Principle of Unjust Enrichment*, 79 TEX. L. REV. 2080, 2083, 2095 (2001).

27 *See* RESTATEMENT 3D, *supra* note 25.

28 Gordley, *supra* note 24, at 1870. *See also* RESTATEMENT 3D, *supra* note 25.

29 The third main branch of liability in restitution, the subject of Chapter 4, deals with benefits wrongfully obtained. Transactions in which a benefit is obtained by wrongdoing generally involve a form of taking without asking;

first *Restatement*.

As noted, U.S. common law and procedure have thus far resisted any legal claims for compensation to slaves and their dependents for the depredations of slavery. This failure of law provides the key value of pursuing actions for unjust enrichment. Claimants who cannot establish all of the elements necessary in traditional causes of action such as tort or contract *"can satisfy the unjust part of the unjust enrichment standard simply by proving that pertinent activities were intuitively wrong, unfair, or unjust."*[30]

Section 1 of the 1937 *Restatement of the Law of Restitution* describes the core principle of unjust enrichment: "A person who has been unjustly enriched at the expense of another is required to make restitution to the other."[31] A person is unjustly enriched when the retention of the benefit would be unjust.[32] The *Restatement* defines benefit broadly: a benefit is conferred if a person "performs services beneficial to or at the request of [another] . . . or in any way adds to the other's security or advantage."[33] The Farmer-Paellmann complaint invokes this form of unjust enrichment, for instance, in the allegation in paragraph thirty, "Defendant CSX is a Virginia corporation. . . . It is a successor-in-interest to numerous predecessor railroad lines that were constructed or run, at least in part, by slave labor."[34] The complaint cites other acts of unjust enrichment:

> 29. [Defendant] FLEETBOSTON is the successor in interest to Providence Bank . . . founded by Rhode Island businessman John Brown. Brown owned ships that embarked on several slaving voyages and Brown was prosecuted in federal court for participating in the international slave trade after it had become illegal under federal law. Upon information and belief, Providence Bank lent substantial sums to Brown, thus financing and profiting from the founder's illegal slave

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> the resulting transfer is nonconsensual because the defendant has neglected a duty to contract with the owner for the property or its use.

RESTATEMENT 3D § 1 cmt. d. Chapter 4 has not yet been published.

30 Paul T. Wangerin, *The Strategic Value of Restitutionary Remedies*, 75 NEB. L. REV. 255, 267 (1996) (emphasis added). Critics of unjust enrichment often focus on its indeterminancy. *See* Sherwin, *supra* note 26.

31 RESTATEMENT (FIRST) OF RESTITUTION § 1 (1937) [hereinafter RESTATEMENT 1ST].

32 *Id.* cmt. a.

33 *Id.* cmt. b.

34 *Complaint*, supra note 71, at 9.

> trading. . . ."[35]
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> 31. Defendant AETNA INC. (AETNA) is a corporation. . . . Upon information and belief, AETNA's predecessor in interest, actually insured slave owners against the loss of their human chattel. AETNA knew the horrors of slave life as is evident in a rider through which the company declined to pay the premiums for slaves who were lynched or worked to death or who committed suicide . . . . AETNA, therefore, unjustly profited from the institution of slavery.[36]

It seems axiomatic that by actively using slave labor to build its facilities, a corporation wrongfully obtains a benefit through the use of duress. The *Restatement* requires restitution for benefits obtained through coercion, including situations where a person has conferred a benefit because of duress or undue influence.[37] The allegations directed at Fleetboston clearly satisfy the requirement of an unjust act by noting the illegality of Brown's participation in the slave trade after the United States banned it.[38] But how does Aetna's activity of insuring slaves, a presumably legal act that did not involve the use of coercion or duress by Aetna's predecessors, support an unjust enrichment claim against Aetna? One of the advantages of the unjust enrichment theory is that a defendant may be unjustly enriched without having committed any other civil wrong. Rather, a "defendant may enrich himself by means that we condemn as unjust but for which we would not impose tort liability in the absence of enrichment."[39] Where the proceeds of insurance policies were payable to the owner of the slave and not the slave's family, the insurers benefited from the possibility of injury to the slave, with no corresponding benefit adhering to the slave.[40]

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[35] *Id.* at 8.

[36] *Id.* at 9.

[37] RESTATEMENT 1ST, *supra* note 31, ch. 3, Scope note.

[38] *Complaint*, *supra* note 17, at 8. *See also* Abstract UPA Publication Papers of the American Slave Trade, *at* http://www.lexisnexis.com/academic/2upa/Aaas/PapersAmericanSlaveTrade.htm (last visited Feb. 24, 2003).

[39] Douglas Laycock, *The Scope and Significance of Restitution*, 67 TEX. L. REV. 1277, 1284 (1989).

[40] In 2000, the California State Legislature found and declared that:

> a) Insurance policies from the slavery era have been discovered in the archives of several insurance companies, documenting insurance coverage for slaveholders for damage to or death of their slaves, issued by a predecessor insurance firm. These documents provide the first evidence of ill-gotten profits from slavery, which profits in part capitalized insurers whose successors remain in existence today.
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> (b) Legislation has been introduced in Congress for the past 10 years demanding an inquiry into slavery and its continuing legacies.

III

Constructive Trust as a Remedy in Reparations Cases

Professor Mari Matsuda has identified and refuted some of the doctrinal objections to reparations cases, several of which focus on the remedial ramifications of restitution.[41] Opponents protest that reparations would tax whites whose ancestors were not in the United States during the era of slavery. In response, Professor Matsuda writes: "Members of the dominant class continue to benefit from the wrongs of the past and the presumptions of inferiority imposed upon victims. They may decry this legacy, and harbor no racist thoughts of their own, but they cannot avoid their privileged status."[42]

The *Restatement of Restitution* addresses the privileged status to which Professor Matsuda refers in terms of unjust enrichment and unjust deprivation.[43] When enrichment has been obtained

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Cal. Ins. Code § 13810 (West Supp. 2003). In response to these findings the Legislature enacted SB 2199, now codified at California Insurance Code sections 13810 through 13813. *Id.* §§ 13810-13813.

[41] Matsuda, *supra* note 5, at 374.

[42] *Id.* at 379.

[43] Restatement 1st, *supra* note 31, § 160 cmt. d (unjust enrichment and unjust deprivation).

> In most cases where a constructive trust is imposed the result is to restore to the plaintiff property of which he has been unjustly deprived and to take from the defendant property the retention of which by him would result in a corresponding unjust enrichment of the defendant; in other words the effect is to prevent a loss to the plaintiff and a corresponding gain to the defendant, and to put each of them in the position in which he was before the defendant acquired the property.
>
> There are some situations, however, in which a constructive trust is imposed in favor of a plaintiff who has not suffered a loss or who has not suffered a loss as great as the benefit received by the defendant. In these situations the defendant is compelled to surrender the benefit on the ground that he would be unjustly enriched if he were permitted to retain it, even though that enrichment is not at the expense or wholly at the expense of the plaintiff. . . . So also, where the defendant makes a profit through the consciously wrongful disposition of the plaintiff's property, he can be compelled to surrender the profit to the plaintiff and not merely to restore to the plaintiff his property or its value . . . . So also, in certain cases where the defendant wrongfully prevents the plaintiff from acquiring property and acquires the property for himself, the defendant can be compelled to surrender the property to the plaintiff, and not merely to restore the property to the person from whom the defendant wrongfully acquired it . . . .

Id.

wrongfully, restitution seeks disgorgement of the benefit.[44] Part II of the first *Restatement* examines the remedies of the constructive trust and the equitable lien as mechanisms for the disgorgement of unjust enrichment.[45] Under the theory of the constructive trust, a person unjustly enriched is bound to hold the benefit of that enrichment for the person actually entitled to receive it. The wrongdoer is likened to a trustee who holds the property solely for the benefit of the intended beneficiary, but no true trust arises.[46] With the equitable lien, while the beneficiary is not entitled to the return of the wrongfully-obtained item, he is entitled to his share of the proceeds of the property.[47] Although constructive trusts are most commonly used when wrongfully-obtained property can be specifically identified,[48] a remedy is also available in situations where precise identification is not feasible.

In some cases where the plaintiff would be entitled to enforce a constructive trust or equitable lien upon property if the property could be traced, but he is unable to trace the property, he is entitled to maintain a proceeding in equity to obtain a decree establishing a personal liability of the defendant.[49]

When typical actions for damages deny recovery unless the person who has suffered an undeserved loss can prove the defendant's malfeasance and her loss with exactitude, the judicial system maintains the misdistribution of benefit and loss. Without regard as to whether an unjustly enriched person is a wrongdoer or an innocent, restitution requires disgorgement of the unearned benefit. By foregoing a requirement of wrongdoing,[50] restitution compares the position of the victim and the beneficiary. One person has done nothing wrong, but has obtained an unearned benefit. The other has done nothing wrong and has suffered an undeserved loss. Two people are thus in contrasting positions through no action of their own.

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[44] Mark. P. Gergen, *What Renders Enrichment Unjust?*, 79 TEX. L. REV. 1927, 1933 (2001).

[45] RESTATEMENT 1ST, *supra* note 31, §§ 160, 161.

[46] *See id.* § 160 cmt. a.

[47] *See id.* § 161 cmts. a, b.

[48] "A constructive trust is imposed upon a person in order to prevent his unjust enrichment. To prevent such unjust enrichment an equitable duty to convey the property to another is imposed upon him." *Id.* § 160 cmt. c.

[49] "The misappropriator is unjustly enriched whether or not the rightful owner can trace the specific property taken." Laycock, *supra* note 39, at 1280.

[50] *See*, *e.g.*, Starleper v. Hamilton, 666 A.2d 867 (Md. App. 1995); Markwica v. Davis, 64 N.Y.2d 38 (1984).

Unjust enrichment remedies that afford the ability to obtain an equitable decree can also equitably allocate the loss and gain. For example, in *G & M Motor Company v. Thompson*, the trial court imposed a constructive trust on the proceeds of a life insurance policy purchased with embezzled money.[51] The beneficiaries of the policy were not involved in the embezzlement.[52] The Oklahoma Supreme Court upheld a constructive trust on the insurance proceeds to the total amount of the embezzled monies, interest, and costs.[53] The court noted that "the surviving wife is an innocent beneficiary,"[54] and permitted the policy beneficiaries to receive the remaining proceeds.[55] The court could have imposed a constructive trust on the full amount of the insurance policy if it had been purchased solely with embezzled funds,[56] or on a pro rata share of the proceeds if the policy was purchased with co-mingled funds (a combination of rightfully and wrongfully obtained monies). Using a constructive trust permitted the court to select a third option that fully compensated the party who was wronged, yet allowed provision for the innocent beneficiaries. Equitable restitutionary remedies thus can provide the flexibility necessary to address the complexities of unjust enrichment claims in reparations litigation.

Conclusion

The ability of unjust enrichment to go beyond legal technicalities, to focus on the essence of wrongdoing, and to redistribute unjust gain illustrates that claims for reparations can be well served by restitutionary law and theory. This brief examination of unjust enrichment, however, merely skims the surface of restitution. Other provisions of the *Restatement of Restitution*, especially section 134, or *Services Tortiously Obtained*,[57] provide

[51] 567 P.2d 80 (Okla. 1977).

[52] *See id.* at 82, 84.

[53] *Id.* at 83, 84.

[54] *Id.* at 84.

[55] *Id.*

[56] Where a person by the consciously wrongful disposition of the property of another acquires other property, the person whose property is so used is . . . entitled . . . to the property so acquired. If the property . . . becomes more valuable than the property used in acquiring it, the profit thus made by the wrongdoer cannot be retained by him; the person whose property was used in making the profit is entitled to it.

Id. at 83 (citing Restatement (First) of Restitution § 160 cmt. d (1937)).

[57] Restatement 1st, *supra* note 31, § 134.

relatively untested theories that have great potential in the pursuit of reparations. Restitutionary remedies also provide unique tools such as tracing and accounting for profits that could potentially follow the transformation of the labor wrongfully obtained from African slaves to the benefits that continue to inure and enrich corporations, governments, and the general public to this day.