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Financing Reparative Policies

How a Tax Paid in Stock Could Raise a Trillion Dollars Within a Year

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Introduction

Our biggest and longest-unaddressed challenges—from the climate crisis to universal childcare—require large upfront investments to address years of neglect or reliance on free labor. All too often, the size of these expenses is the end of the conversation, and thus major challenges are left unresolved and the future price tag continues to build. But what if the purported lack of resources to pay for bold, progressive priorities is only an illusion? This brief offers one strategy for quickly and fairly raising substantial funds. Taking reparations for slavery as a case study, it offers a policy innovation that can quickly raise a trillion dollars in one year.

A national effort to repair the harms of slavery and the subsequent segregation of Black Americans in the United States will require, by all estimates, trillions of dollars (Darity and Mullen 2020). Questions around how to raise this amount of money pose challenges for the political viability of enacting such a reparations plan.

Based on the research from my *Howard Law Journal* article, "Paying for Reparations," this brief proposes a novel approach to capitalizing a Reparations Fund through the in-kind remittance of corporate equity, which could raise at least $1 trillion in less than a year (Bearer-Friend 2024). I call this proposal the "Reparations Tax." The brief builds on my prior work on the viability of in-kind (i.e., noncash) remittance to satisfy tax obligations, as well as the target size of the fund proposed by Larry Neal (1990) and William A. Darity Jr. and A. Kirsten Mullen (2020), and describes the features of the in-kind tax proposal, the myriad design choices that would be necessary to ensure effective implementation, and analogs in the private sector for capitalizing a fund.

The results of this proposal would also radically reduce the racial wealth gap, which, according to William Darity, is "the economic measure that best captures the cumulative effects of the full trajectory of American white supremacy from slavery to the present" (Darity and Mullen 2021). This proposal is not meant to be the sole, stand-alone funding mechanism for reparations but is meant to awaken the reader's imagination to the many options available to finance reparative policies and to dispel the notion that money is a barrier.

What is unique about this proposal is that the tax would not be paid in cash but in shares of corporate stock. We could immediately capitalize a Reparations Fund worth over a trillion dollars with a tax rate of just 1.9 percent. The tax would be on all publicly traded firms listed on US stock exchanges.

There are many advantages to a tax paid in stock rather than in cash. First, companies would not need to have cash on hand to cover the cost of their tax bill. Second, issuing stock is a routine transaction for publicly traded firms. No new systems or accounting mechanisms are required. Third, the Reparations Tax rate can be very low because the tax base of all publicly traded stock is so large. Low tax rates minimize distortions in market behavior and also improve the likelihood of public support for the tax.

Although a tax paid in stock may seem radical, the private sector has long recognized that cash is not always the best form of exchange for a transaction. The highest-paid CEOs typically receive the majority of their compensation in stock, not cash. Compensation paid in stock is appealing to both the CEO and their employer. Many of the largest mergers in our country are also paid for in stock, not cash. Yet the public sector exclusively accepts taxes in cash except in the most extreme circumstances, such as when a taxpayer refuses to pay or cannot pay. The public sector has left an enormously powerful tool out of its toolbox by assuming all taxes should be paid in cash.

The biggest question for most readers will be why publicly traded firms should pay anything at all. The case for reparations has been debated since even before emancipation: Some argue for reparations under principles of corrective justice, others under theories of distributive justice (Logue 2004; Bilmes and Brooks 2024). I see a straightforward answer to this question. Governments are responsible for their debts, and those debts are primarily paid with taxes. Taxpayers need not be personally responsible for the damage caused by a hurricane in order for public funds to be used to repair the affected disaster area.

This justification stands independent of the separate observations that much of the wealth of our economy, including our stock market, was created through a debt that has yet to be paid.[1] The only reparations for slavery our federal government ever paid were to slaveholders for the estimated property value of the human beings who were emancipated.[2] Ultimately, this brief is not about whether to pursue reparations but about how to pay for reparations. To the extent that critics object to reparations because of its impact on the national deficit, this brief solves that problem. It also addresses critics' objections to reparations regarding who pays the cost.

A trillion-dollar tax proposal of course involves many technical details. The stock remitted to the fund would be in exact proportion to the categories of preferred and common stock already outstanding. The stock paid into a Reparations Fund could be new issuances or shares that the company bought back from the market. I do not

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[1] In "Normalizing Reparations," Linda J. Bilmes and Cornell Williams Brooks (2024) provide the following taxonomy of compounded racial harms inflicted over centuries as a result of the federally enshrined institution of slavery: "housing; wages, employment, and labor markets; education, criminal justice, health care, the franchise, and violence. Each broad category of racial harm represents specific harms to Black American bodies, opportunity, and wealth." If using the racial wealth gap as a proxy for the compounding harms of slavery, repair would cost $7.13 trillion (Derenoncourt et al. 2022). The gap is partially documented through the substantial retirement wealth gap (Moran 2023).
[2] By contrast, many other countries have provided reparations that attempt to compensate communities that were enslaved (Darity et al. 2024).

propose issuing a controlling interest of shares to the Reparations Fund created through the Reparations Tax. In the spirit of self-determination and emancipation, the eligible beneficiaries of a Reparations Fund would decide on its governance as well as the size and character of the fund's disbursements.

As with any new trillion-dollar tax, we should expect litigation. But the power to tax has been a part of our Constitution since our founding and is not on its face legally dubious. A tax, unlike eminent domain, does not require the government to pay fair-market-value compensation in exchange for the property it claims. And our country compensating its people for the enduring and compounding harms they have suffered is conventionally understood as providing for the general welfare. A Reparations Tax would be just that.

Taxes are how societies share their resources. Taxes are how the public uses the law to share what we have and heal those who are injured. And it is through taxes that the United States can finally pay its debt to those who helped build our country but were never paid for their work. Through tax law, we could finally achieve reparations for slavery.

I. The Reparations Tax

The basic features of the Reparations Tax are straightforward. The tax would apply to all publicly traded firms listed on US exchanges. The tax rate would be applied to the total volume of outstanding shares of each company on a onetime basis. The tax would be paid for in stock. The tax rate, and thus the revenue take of the Reparations Tax, is not a fixed aspect of the proposal. While any Reparations Tax rate over 1.9 percent would raise over $1 trillion within a year, the estimates proposed by Darity and Mullen (2020, 260–62) to adequately achieve reparations range from $5.7 trillion to $42.2 trillion.[3] This wide range of estimates is the result of different assumptions about the value of property and labor stolen through the institution of slavery and the interest rates used to bring them to present values, as well as considerations regarding which periods of racial harm are to be corrected (Craemer 2015; Bell 1974).

The Reparations Tax would be paid for in stock and would be remitted to a Reparations Fund managed by beneficiaries of the fund.[4] The remittance of stock would be in exact proportion to the classes of stock already outstanding. If a company preferred not to dilute the interests of current shareholders, the company could repurchase the stock

[3] Additional financing mechanisms could be braided with this approach, including debt financing. The anticipated appreciation of the fund could also count toward a multitrillion-dollar goal over a 10-year budget window.

[4] This brief focuses on the tax provision that would capitalize the Reparations Fund and not the distributions from the fund, but one possible eligibility requirement for receiving distributions is a two-part test that looks at ancestry and recent identification as African-American (see Darity and Mullen 2020, 258).

with cash and then contribute it to the fund. The tax rate would not be at the level of a controlling interest. A separate tax could apply to privately held firms to reduce incentive for a company to go private, if this is a concern.

Like many sovereign wealth funds and public pension funds, the Reparations Fund would be governed by a board, which should be elected by fund beneficiaries to ensure that the underlying priority of self-determination is maintained.[5] The board would have fiduciary duties to the fund and would oversee the work of hired professionals paid out of the annual yield of the fund. Additionally, the fund would be subject to enforcement actions by the state or claims brought by the beneficiaries of the fund. Presumably, fund managers would diversify the investments of the fund under the general principles of prudent fund management.[6] This brief does not prescribe how funds should be distributed to beneficiaries, but some possibilities are: (1) All eligible beneficiaries receive a partial interest in the fund (like investors in a mutual fund), (2) all eligible beneficiaries receive periodic distributions of cash from the fund, and (3) the fund finances public works that are of value to the eligible beneficiaries.

II. Advantages of the Reparations Tax

This brief proposes a new strategy for capitalizing a trillion-dollar Reparations Fund in less than a year. The advantages of this Reparations Tax proposal include its scale, its low rate, its one-off nature, its political appeal, its progressivity, its administrability, and its flexibility. As such, the in-kind tax proposal also provides a model for other types of reparative policies.

The Reparations Tax is at the ***scale*** necessary to quickly achieve a trillion-dollar capitalization. The total value of all publicly traded firms on US exchanges provides an enormous tax base worth over $50 trillion. Market capitalization in the United States is consistently larger than gross national income, making it a larger taxable base than many conventional approaches such as corporate income taxes (Siblis Research 2024a).

Because the proposed tax base is so large, the required tax rates to achieve a fixed revenue target can be ***relatively low***. With a tax rate as low as 1.9 percent, applied to the total amount of outstanding shares of a liable form, a onetime remittance of corporate

[5] See Westley 1998: "The guiding principle of reparations must be self-determination in every sphere of life in which Blacks are currently dependent. To this end, a private trust should be established for the benefit of all Black Americans. The trust should be administered by trustees popularly elected by the intended beneficiaries of the trust." The independence of the fund is a consistent priority in reparations efforts; see, e.g., Yamamoto, Serrano, and Natividad Rodriguez 2003: "The team aims to secure a trust fund that administers money received through its claims, and an independent commission to distribute those funds to the poorest members of the black community, where damage has been most severe."
[6] See, e.g., Uniform Prudent Management of Institutional Funds Act 2006.

equity would raise over $1 trillion within a year. By contrast, our corporate income tax rate is currently 21 percent and our top individual income tax rate is 37 percent. Even a 100 percent tax rate on all corporate profits would not achieve the same scale of revenue as the Reparations Tax.

Under conventional tax policy principles, lower rates are generally preferred because they produce less distortion in economic behavior.[7] The ***onetime nature*** of the tax also limits the market distortions associated with the tax, principally impacting economic choices already made rather than new firm decisions.[8]

The low tax rates allowed by the large tax base also improve the ***political appeal*** of the proposed Reparations Tax.[9] This public appeal is also furthered by the fact that the nominal taxpayers for the new liability are generally under-taxed groups facing strong public scrutiny: large, multinational corporations listed on Wall Street exchanges.[10] Many of the shareholders who will be impacted by any subsequent dilution will also be outside of the US altogether (Rosenthal and Mucciolo 2024).

The Reparations Tax has a ***progressive*** incidence since it dilutes the value of current shareholders in publicly traded firms. These shareholders are at the highest end of the income spectrum. The top 20 percent of wealthiest households own 87 percent of corporate equities (Federal Reserve 2024). Hence, this tax proposal satisfies both a pursuit of progressivity as an end in and of itself in addition to progressivity as a single criterion among many for evaluating tax policy.

In-kind remittance is also ***easier to administer*** because it does not create the liquidity issues of cash tax liabilities or the valuation issues associated with wealth taxes. Because the Reparations Tax is modeled after a routine transaction in the private sector—the issuance of new stock—complying with the tax obligation does not require substantially new overhead costs for the taxpayer beyond the tax liability itself. The alignment of the Reparations Fund's interests with that of private shareholders also helps reduce future noncompliance. If both private and public investors have the same equity interests, then the factors that ensure holders of capital get their cut can also be

[7] This effect on behavior and its aggregate effect on the economy is typically categorized under the tax policy criterion of "efficiency" (see Mankiw, Weinzierl, and Yagan 2009). See also Bearer-Friend et al. 2022 (describing the critiques of efficiency as a criterion for evaluating tax policy).
[8] For a discussion of the advantages of onetime taxation, such as deemed repatriation, see Kleinbard 2014. This logic also motivated the recently enacted deemed repatriation of foreign-source income held overseas by the subsidiaries of US multinational corporations. This "mandatory repatriation tax" was subsequently upheld by the Supreme Court.
[9] For an example of how politicians are able to use low rates to make potentially radical tax proposals broadly appealing, consider Sen. Elizabeth Warren's description of her wealth tax as "just two cents" on every dollar above $50 million (Rosalsky 2019).
[10] Of course, the ultimate distributions from the fund will also impact the level of public support (Craemer 2009).

used by the Reparations Fund.[11] The vast majority of shareholders would become watchdogs to make sure that the Reparations Fund is receiving its apportioned returns.

The proposal also provides ***flexibility***. It does not require new issuances to the Reparations Fund, because the treasurer of the liable firm can simply buy the stock back from the open market and remit the repurchased shares. This makes the possible dilution of already outstanding stock *elective*. Even if in some cases a company prefers a cash payment to in-kind remittance, the equivalent of remittance in cash remains an option.

The proposed Reparations Tax does not foreclose considering additional finance mechanisms to fund reparations in conjunction with in-kind remittances. Indeed, due to the scale of funding needed, a blend of methods will likely be necessary.[12] Other financing options include higher income taxes, issuing new currency, federal borrowing, shifting federal spending, privatizing federal assets, and civil damages through litigation (Bearer-Friend 2024).

Should the federal government fail to enact a reparations program, the private sector could independently pursue the capitalization of a Reparations Fund through in-kind remittance of equity. One appeal to investors for this approach is that such remittances, often given in-kind, would be eligible for the charitable deduction (I.R.C. § 170). Although shareholders at times challenge corporate giving as a breach of fiduciary duty, courts regularly uphold corporate philanthropy as covered by the Business Judgment Rule.[13] This is due in part to the deductibility of the contributions and the long-term corporate goodwill created by the donation.[14] As part of the corporate sector's continued response to the urgency of the Black Lives Matter movement, companies could pursue a shared effort to electively capitalize a Reparations Fund following the terms of this brief.[15]

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[11] An additional administrative convenience of the proposal is that much of the compliance obligation is managed by firms rather than the IRS. While the terms of the shares would need to be reviewed, the remitted shares would just mirror preexisting issuances. Firms would do the information gathering and structuring of the remittances, and the IRS would solely be responsible for checking that the distributed shares match the outstanding shares based on the documentation provided by the liable entity.

[12] This has already been the case at the local level. Both San Francisco, CA, and Evanston, IL, rely on a braided funds approach to reparations for slavery. See California Reparations Report 2023; San Francisco African American Reparations Advisory Committee 2023.

[13] See, e.g., *Hanrahan v. Kruidenier*, 473 N.W.2d 184, 188 (Iowa 1991): "We find the gift well within the ambit of the business judgment rule and agree with the trial court's rejection of plaintiffs' challenge to the gift of the artwork."

[14] See also Bulter and McChesney 1999, 1226: "The law's general refusal to interfere with philanthropic decisions within the firm is tolerable as well, given the overall benefits of philanthropy to the firm, the general sense that profit maximization motivates most philanthropy, and the difficulty of distinguishing profit maximization from utility maximization."

[15] For an account of recent efforts by the private sector to respond to the Black Lives Matter Movement, see Lin 2023.

The model used for the Reparations Tax can also be extended to other revenue needs. For example, the scale of public investment required to address climate change is even greater than the estimates for reparations (Kotchen, Rising, and Wagner 2023). Financing a national trust for universal childcare, free college, or expanded public housing could also be achieved through in-kind remittances. The presumption of "cash-only" taxes unnecessarily constrains public fiscal capacity, and a Reparations Tax could pave the way for many other future public investments.

III. Design Choices

The principal design element of the Reparations Tax is that the tax is paid in equity. The taxable base is all publicly traded stock listed on US exchanges, and the remittance requires that stock be in exact proportion to the classes of stock already outstanding for each firm. Despite these fundamentals, policymakers will have many design options when enacting the Reparations Tax. The following section describes the five additional specifications that statutory drafters would need to consider before introducing legislation.

A. Timing of Reparations Tax Liability

Generally, taxes are either assessed per transaction, like a sales tax, or assessed annually, like a property tax or an income tax. By contrast, the Reparations Tax would be a onetime tax. This design choice helps prevent a controlling interest eventually being remitted to the fund.[16] The onetime structure is also consistent with the goals of reparations. If reparations have actually been achieved, then additional tax liabilities shouldn't be necessary.[17]

B. Type of Securities Remitted to the Reparations Fund

Some publicly traded companies issue more than one type of stock.[18] The two broad categories are common stock and preferred stock, with multiple classes of preferred stock. The Reparations Tax should require that remittances to the Reparations Fund mirror existing ratios of stock under each preexisting class. The treasury of a company already keeps track of the amount of stock outstanding under each category and will be able to ensure that the new remittances are proportionate. The advantage of this

[16] There are many reasons to want to prevent a controlling interest, but one aspect is to prevent expectation that the fund is competent to manage any of these firms. Fractional ownership does not necessitate control.

[17] Some advocates for reparations believe that no apology or financial transfer will ever be sufficient. From this standpoint, acknowledging the inadequacy of the attempt at reparations is an important feature of the gesture. To accommodate this perspective, the Reparations Tax could be applied to all future initial public offerings (IPOs).

[18] This type of company is often referred to as a *dual-class firm* (Gompers, Ishii, and Metrick 2010).

design choice is that it aligns the interests of the Reparations Fund with all the other shareholders of the firm. Any effort to dilute or otherwise disfavor the shares issued to the Reparations Fund will also impact all other shareholders, who would be expected to advocate for their own interests. Unlike the federal income tax, where both managers and shareholders have a mutual interest in minimizing income tax liability, the Reparations Fund would have common cause with all other shareholders after the initial remittance to the fund.

The Reparations Fund would not receive bespoke shares under the Reparations Tax. Rather, the shares would mirror the existing categories and classes of outstanding stock. This could include both common and preferred stock. Some stock is convertible, allowing the shareholder to convert the preferred stock to common stock upon a certain event. Again, this type of stock should also be remitted to the fund in exact proportion to what is already outstanding.

Historically, many shares of publicly traded firms had a par value that allowed shareholders to insist their interest be purchased from the firm at the par value. Current practice, however, is to have a par value of zero or near zero. The shares remitted to the Reparations Fund should match the par values of the outstanding shares. Not only is this consistent with the general design principles of mirroring the interests of other shareholders, but it also prevents a liquidity crunch for taxpaying firms should the managers of the Reparations Fund seek to cash in their shares all at once.

Some preferred stock has initial limitations on resale. This is especially common for founders' stock. Again, these restrictions should apply to an equal proportion of shares remitted to the fund as are already outstanding for the publicly traded firm. The consequence of this for the Reparations Fund is that it would either need to survive as long as these limitations or distribute benefits in-kind rather than immediately liquidate all its assets.

The existing rules for registering securities should also apply to any shares issued to the fund. This protects the tradability of the shares in the fund. It also provides clarity to other shareholders about what has been remitted to the fund.

C. Buyback Option for Firms

With all publicly traded stock that is unrestricted, firms can "buy back" the stock, also referred to as *repurchasing*. Because the shares issued to the fund would mirror the outstanding shares of the firm, most would be unrestricted for sale and could be bought back.[19] Firm managers would decide, based in part on the amount of liquidity available, whether they would like to counteract the dilution the in-kind remittance creates by buying back an equivalent number of shares, either through a tender offer or on the open market. The alternative of disallowing buybacks and instead requiring new issuances to the fund presents additional constitutional issues. Requiring some type of bespoke issuances could also make the shares of these issuances vary from most outstanding stock, likely decreasing the value of the shares and undermining the goal of the proposal.

D. Tax Rate and Equity Formula

Just as a corporate income tax rate can be set at many different rates—and has been over its history in the United States—the rate of the Reparations Tax is not a fixed aspect of the proposal. The proportion of a firm's total equity to be remitted to the fund is an adjustable feature of the design. Ultimately, political factors are most likely to determine the enacted rate, but some considerations are worthy of discussion.

First, guiding the selection of tax rate would be the total size of the Reparations Fund that needs to be capitalized. With a target of $1 trillion, the rate would need to be at least 1.9 percent (Siblis Research 2024b).[20] A separate question would be whether a flat rate or graduated rates would be imposed. The proportion of equity to be remitted could vary based on the size of the firm or other criteria. A limiting factor on any selected rate is that the proportion of ownership remitted to the fund should not be a controlling interest. This number is not the same for all firms, however.[21] Setting the rate low enough would be one strategy for avoiding this problem.

For determining whether a tax liability has been met, the equity formula will be based on outstanding stock amounts at the time of remittance rather than on a specific date prior to remittance. This prevents a tax advantage for firms with sufficient cash to repurchase stock and remit to the fund rather than issue new shares. If the tax rate is simply applied to the current ownership ratios immediately prior to any new issuance, the amount remitted would reflect the dilution of the new issuances and no longer be for the full amount of assessed tax.

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[19] For example, some vesting schedules require the shareholder to maintain their position for a certain period of time. This prohibition on resale is not specific to repurchases by the firm but applies to any party seeking to purchase the shares.

[20] These data are based on the combined values of shares of all the listed companies, a figure that of course changes throughout the course of a single day. "Market capitalization" is the total value of a firm, calculated by multiplying the share price by the number of outstanding shares.

[21] No uniform percentage of equity ownership would constitute a "control" since a party can achieve control over more than 50 percent of voting stock without owning 50 percent of a firm. In the US, the proportion of ownership to be the majority shareholder of a publicly traded firm can be lower than 15 percent (see, e.g., Coffee 1991). Of course, substantive control of a firm is also not just limited to shareholders (see, e.g., McClane 2020).

E. Governance of the Reparations Fund

Many successful models already exist for public fund management. In the United States, there are over 3,000 public pension funds holding $5.3 trillion in assets (Public Plans Data 2024). Fund managers reinvest retirement contributions remitted to these funds in order to grow the funds over time on behalf of fund beneficiaries. With the Reparations Fund, a staff of experts would need to administer the fund and advise a governing board responsible for it. While initially the governing board could be appointed, full freedom from the initial bondage of slavery would demand that the management of the fund not be handed over to those initially responsible for the harm. Hence, an election by beneficiaries of the fund would be preferable.[22] A key part of the governance of the fund could be to ensure that the trustees have sufficient latitude to avoid investments that harm the self-interest of beneficiaries. For example, a tribunal within the board could bar investments in companies that have been documented to have engaged in racial discrimination in the past five years.

IV. Questions and Responses

In the following section, I anticipate a series of questions about the Reparations Tax from policymakers and voters and offer responses.

A. Why should publicly traded corporations have to pay for reparations?

Many of the most valuable companies listed on US stock market exchanges did not exist prior to emancipation. For example, Apple was founded in 1976, yet, at a tax rate of 1.9 percent, Apple would need to remit approximately 292 million shares of its outstanding 15.4 billion shares to the Reparations Fund.[23]

This contribution is justified for multiple reasons. First, the federal government is responsible for paying its debts. The taxes used to pay victims of 9/11 were not paid by Osama Bin Laden, but with existing federal financing tools such as borrowing and a progressive federal income tax. The taxes that pay for reparations are similarly justified: They are a debt of the United States to be paid through taxes applied by the United States. Second, the accumulated stock value that is being taxed is the result of an

[22] Many states have laws specifying the election procedures for the governing boards of public pension funds. Puerto Rico also recently adopted procedures for the selection of a pension advisory board to protect the interests of beneficiaries.
[23] This calculation assumes that Apple either repurchases its shares to then remit to the fund or remits outstanding shares held by its treasury, rather than issuing new shares. Based on trading values on July 9, 2024, this would be worth approximately $77 billion.

economy that enslaved labor originally built and that effectively belongs to the shareholders of publicly traded firms. The current arrangement of our economy is partially the result of the compounded racial inequality that originated with slavery, thus there can be no redress of that unjust enrichment without a reordering of existing wealth.

B. Why should foreign investors have to pay for reparations?

The value of the Reparations Fund is the direct consequence of diluting the holdings of shareholders of companies listed on US exchanges. Many of those shareholders will be foreign. Investors who buy shares on US exchanges are seeking to profit from the growth of US companies. The Reparations Tax thus imposes a cost on those who currently profit from the US economy, an economy that the compounding harms of slavery and racial inequality have structured.

C. Is this tax constitutional?

Due to the scale of the tax and the number of powerful interests it impacts, we can expect litigation. Without actual statutory text to review, any conclusions about constitutionality would be unsound. Nevertheless, as a foundational matter, Congress has broad powers to impose excise taxes (Clarke 2023). These are typically *ad valorem*, such as the excise taxes on tobacco and alcohol (26 U.S.C. §§ 5001-5872). Here, the *ad valorem* excise tax would apply to the issued shares of companies listed on US exchanges. Congress has a long track record of applying such duties to financial products.[24] The corporate form itself is also eligible as a taxable base after "the Court held that the excise power authorized Congress to impose taxes on 'the actual doing of business in a certain way'" (*Flint v. Stone Tracy Co.*).[25] A final line of litigation may apply to the distribution of reparations funds to some, while excluding others, based on protected categories under the 14th Amendment. This litigation will hinge on both the eligibility criteria for the Reparations Fund (e.g., race versus substantiation of harm) and the choice of means by which funds are distributed (e.g., cash transfers versus investment in public works). Neither of these design choices are the focus of this proposal, since the community suffering harm should decide for itself how reparations funds are spent, but future expansion of the Reparations Tax that specifies the form of fund distributions will need to consider this litigation risk.

[24] Clarke 2023: "Congress imposed a duty on the issuance of bonds and similar notes"; see also *Veazie Bank v. Fenno* (upholding federal tax on bank notes); *Thomas v. United States*.
[25] See also *Charles C. Steward Machine Co. v. Davis* (relying on *Stone Tracy* for the proposition that Congress may tax "the enjoyment of a corporate franchise"); see also *Harmar Coal Co. v. Heiner* (describing the evolution of the excise doctrine since *Stone Tracy*).

D. Will shareholders or other stakeholders bring suit against companies that issue new stock to pay the Reparations Tax?

Shareholder actions are a common feature of modern corporate governance (Cornerstone Research 2024). However, a company that simply complies with its federal tax obligations should not give rise to a claim of action by shareholders, though companies themselves are likely to sue to challenge the constitutionality of the tax.[26] Shareholder actions would also be unlikely to succeed even if the Reparations Fund were to be capitalized voluntarily, since the Business Judgement Rule generally allows for corporate philanthropy. Many companies have also agreed to conduct racial equity audits without challenge (Velazquez 2024).

E. Would the value of the Reparations Fund be volatile?

Yes. Like the stock market as a whole, the Reparations Fund would fluctuate in value. This expected volatility should inform the design of any planned payout from the fund. For example, a fixed annual payout may be less appropriate than distributions that are proportionate to market performance.[27] Additionally, similar to a pension fund, trustees and managers would be able to sell stock to buy fixed income assets to reduce volatility over time.

F. Would companies try to avoid paying the Reparations Tax?

Probably. Like with any new tax, companies would seek to minimize their tax liability. One strategy would be to take a company private, so the design for the Reparations Tax could include a parallel provision for privately listed firms. Alternatively, the Reparations Tax could include an “exit tax” on companies that delist from US exchanges.

Once equity has been remitted to the fund, the tax planning opportunities are much more limited. The vast majority of shareholders will hold stock identical to what the fund holds, making it difficult for companies to exclude the Reparations Fund from distributions enjoyed by other shareholders.

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[26] Beyond the presumption that paying taxes in accordance with the law does not create any liability for a firm, some have also argued that boards have a legal obligation to address racial inequities (Brummer and Strine 2022).

[27] Public trusts funded through cash taxes also fluctuate in value based on the business cycle, with economic downturns leading to reduced tax receipts.

G. Would the Reparations Tax disrupt the US stock market?

Possibly, but the effects are speculative. Companies listed on US exchanges would likely see an across-the-board reduction in trading value relative to foreign exchanges. However, the economic impact of Black Americans being fully included in the US economy through the distributions of the Reparations Fund could lead to substantial economic growth that would be a boon to US company trading values over the medium term. The balance of the impact is uncertain.

H. How would the Reparations Fund spend its money?

The Reparations Fund is motivated, in part, to complete the promise of emancipation by enabling self-determination for descendants of enslaved people. Accordingly, the beneficiaries of the fund must decide how the Reparations Fund distributes its resources. As a tax scholar, I have offered a new strategy for how to pay for reparations, but it will be up to the community of impacted individuals to decide how to spend the funds. One possibility is to manage the Reparations Fund like a mutual fund, with all beneficiaries treated like investors holding shares in the fund that they could choose to sell or allow to appreciate. At the local level, reparations distributions have taken the form of housing assistance, investments in education, and direct cash transfers (California Reparations Report 2023).

I. What would be the impact of the Reparations Tax on retirement accounts?

Because the value that is conferred to the Reparations Fund is the result of diluting the ownership interests of existing shareholders, large institutional investors, including retirement funds, will incur much of the economic incidence of the Reparations Tax. Although some holders of these accounts will subsequently receive direct benefits from the Reparations Fund, others will only enjoy the indirect effects of a more just and equal economy. It is worth noting, however, that retirement accounts have also benefited from a host of longstanding tax preferences, including income tax exemption, and on net will remain tax-preferred relative to non-retirement investments. These longstanding preferences for retirement accounts have also generously benefited white households relative to Black households for multiple generations.[28]

[28] See, e.g., Moran and Whitford 1996; Brown 2021.

J. Why do we even need taxes to pay for reparations?

There are many ways to pay for reparations. This proposal does not preclude additional funding strategies. Alternatives include issuing bonds, printing new currency, shifting spending from other priorities, and privatizing federal assets.[29] Given the scale required for an adequate reparations program, a combination of approaches will likely be necessary.

Conclusion

In-kind remittance of corporate equity can be used for many public priorities. Although the need for reparations provides the rationale for the proposed tax in this brief, many urgent public priorities could be funded through in-kind remittance. For example, addressing our climate crisis could be achieved through the resources raised by noncash taxes. The assumption that taxes must be paid in cash unnecessarily constrains public fiscal capacity.

[29] See Bearer-Friend 2024; Darity and Mullen 2020.

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