

Black Lives Matter in Every Town: An Argument for Scaling Up Existing Reconciliatory Practices in the United States

- *Siri Nelson, Valerie Gordon Award Essay for the Class of 2019*

I. *Reconciliation is impossible.*

“I am from Rwanda,” said the Lyft driver, who was subjected to overhearing my summary to a friend of research on Rwanda’s genocide and ideas on the implications gacaca courts might hold for reconciliation in the United States.¹ The driver, Mazi, spoke up to correct me on my mispronunciation of the word “gacaca.”

“It’s ‘ga-cha-cha,’” he said,

and I don’t think the courts were very effective, or meant to be that way.... There were millions of people who had committed crimes, and the government needed a fast way to process these criminals; the gacaca courts were started by the government to get through this process quickly.... It was not really a solution. Not much has changed, and then if anything the courts were just a source of stress. People had to go before the whole community—their neighbors—and hear accusations and accounts that were not always accurate. And on top of it, members of the community were afraid to speak for fear of retaliation ...it is a nice idea, but emotionally, the gacaca courts did not help.²

Mazi seemed to have some sense of hope despite his clear-eyed vision of gacaca courts and experience of growing up in a country that was embroiled in ethnic violence. “I was just a child; it [reconciliation] sounds like a good idea, though.” I don’t think Mazi was ready to give up on the idea of reconciliation, and neither am I.

The genocide in Rwanda is just one example of severe racial and ethnic violence that has marred history.³ This essay will describe the many hurdles to reconciliation and highlight how in practice, despite massive efforts, reconciliation has never fully been achieved.⁴ And it will propose how, despite failing to be a

¹ My friend Kaire “The Man” Colwell, after hearing me pronounce the courts as “ga-ka-ka” multiple times, looked at me quizzically and asked, “How do you say that again? Are you sure that how you are supposed to say it?”

² The Lyft driver, pseudonym “Mazi,” who picked up Kaire and me at around 9PM on August 25, 2017.

³ Other recent examples include apartheid in South Africa (where white South Africans violently oppressed and segregated non-white South Africans with impunity from 1948–1990), genocide in Yugoslavia (where mass murder of Muslim Serbs during war from 1992–1995 resulted in the loss of thousands of lives), and Nazi Germany (where millions of Jewish people and other ethnic minorities perished between 1941–1945), among others.

⁴ See Robyn Dixon, Furor over racist tweet lays bare South Africa’s persistent divide, Los Angeles Times, January 4, 2016 (retrieved from <http://www.latimes.com/world/africa/la-fg-southafrica-facebook-racism-20160104-story.html> on August 26, 2017) (describes outrage at racist rant of South African real estate agent Penny Sparrow, who compared Black people to monkeys. Later explaining her remarks by saying, “I made the mistake of comparing them with monkeys. Monkeys are cute and they’re naughty...I wasn’t being nasty or rude or horrible, but it’s just that they make a mess. It is just how they are.” The article goes on to explain that “61.4% of South Africans felt that race relations since the end of white minority rule in 1994 had either remained the same or deteriorated. More than

perfect solution, Rwandan gacaca courts could nonetheless inform attempts at reconciliation in the United States. I will argue that the aim of achieving reconciliation is to reflect and highlight our humanity, and therefore it should be more ferociously sought, and I suggest that the Black Lives Matter network is the most scalable and successful vehicle for reconciliatory work the United States has today.

a. But, it must be made possible.

My conversation with Mazi demands that I approach this essay through a lens of racial realism and helps me remember the importance of narrative in building a more just world.⁵ Racial realism is an approach that accepts that racial justice will likely be stymied for the duration of our lives. Rather than disprove this fact, a racial-realist perspective views actions taken to dismantle racism as affirmative expressions of our humanity. Regardless of the ultimate outcomes, resisting white supremacy is inherently valuable and, as a means of resisting white supremacy, reconciliatory practices too, are inherently valuable. Understanding the inherent value in reconciliation, from a racial-realist perspective, allows us to throw off the restrictions of that which is possible—and consider that which is ideal.⁶

Author and Law Professor Ronald C. Slye, who was involved in two truth and reconciliation commissions,⁷ aptly sets an ideal for the outcome of these reconciliatory efforts: “A truth commission would not — and could not — solve the problems that America faces because of its original sin of

60% said they experienced racism in their daily lives and more than 67% said they had little or no trust in people of other racial groups.”).

⁵ Racial realism and narrative are important tenets of critical race theory. *See* Derrick Bell, racial realism, 24 Conn. L. Rev. 363, 378 1991-1992 (1992). (Bell describes his theory of racial realism as an approach that accepts that racial justice will likely be stymied for the duration of our lives, but motivates racial justice seekers to act as an affirmative expression of our humanity); Richard Delgado, On Telling Stories in School: A Reply to Farber and Sherry, 46 Vand. L. Rev. 665, 674. (Delgado reasserts the power of narrative as a tool, asserting that “[e]mpowered groups do not need particularity, context, or a focus on the individual [which narrative provides]. All the general rules, presumptions, and interpretations reflect them and their understandings”). In this case Mazi’s narrative radically informed my consideration of the gacaca thesis and was the final stone in the foundation of my thinking for this essay. I believe that had Kaire not inquired about the pronunciation, Mazi would have been unlikely to comment on the gacaca courts. By questioning me, Kaire created space that challenged the empiricism of the summary of my research and opened space for Mazi’s narrative. The introduction of Mazi’s narrative ushered in the essential critical race theoretical frameworks that infuse my analysis and inform my response to the difficult question of how reconciliation practices can be constructively implemented to heal the wounds of racial violence in the United States.

⁶ *Id.* Bell at 378. This racial realist approach is also baked into the foundation of this piece. Professor and Valerie Gordon advisor and mentor Susan Maze-Rothstein coached me through the narrative of my ideals (while acknowledging, but not being limited by, the realities of white supremacy) to help me get centered, shake off the insurmountable weight of finding the “right answer” to this problem, and ultimately move from being frazzled and overwhelmed to excited and equipped with a workable thesis.

⁷ Professor Ronald C. Slye, University of Seattle Law School Faculty Page, <https://law.seattleu.edu/faculty/profiles/ronald-c-slye> (last viewed on August 26, 2017)(chosen by Kofi Annan to be one of three international commissioners for the Kenyan Truth, Justice and Reconciliation Commission and international consultant to the South African Truth Justice and Reconciliation Commission.) And, *See* Note 8.

slavery. **The appropriate test for a truth commission is whether it furthers the nation’s efforts to engage meaningfully with the present manifestations of past violations.**”^[8]

The Movement for Black Lives is a grassroots movement that builds on Black organizing traditions and is a multiracial effort to accomplish the goal of engaging meaningfully with the legacy and continuing reality of white supremacy. The Movement is a political platform around which multiple groups organize to accomplish several goals: to end the war on Black people, seek reparations, demand that institutions divest from racist practices and invest in practices that remedy racial harms, achieve economic justice, establish community control of essential public institutions, and build political power for Black people.⁹ The Black Lives Matter network, known as Black Lives Matter, is a Movement for Black Lives member organization.¹⁰ Black Lives Matter was founded by three Black women—Alicia Garza, Patrisse Cullors and Opal Tometi—and is a collection of local, community-driven chapters throughout the United States that are committed to dismantling anti-Black racism.¹¹ The Black Lives Matter network, and many of the other organizations in the Movement for Black Lives, strives to identify restorative and reconciliatory practices through working together and experimenting with ways to make change.¹² Black Lives Matter is an organization that was established to, in Slye’s words, “engage meaningfully with the present manifestations of past violations” by creating spaces, and engaging in projects, that are centered on Black liberation and deposit power into the hands of Black leaders.¹³

In the United States there have been efforts to reconcile through commissions and councils, but many of those are site- and situation specific.¹⁴ Black Lives Matter presents an entry point for engagement and reconciliation that addresses the general and specific harms of global anti-Black racism.

⁸ Ronald C. Slye, *A truth and reconciliation commission for the United States*, Reuters, (August 10, 2015), <http://blogs.reuters.com/great-debate/2015/08/09/a-truth-and-reconciliation-committee-for-the-united-states>.

⁹ The Movement for Black Lives, *About Us*, <https://policy.m4bl.org/about/>. And, *See* the platform at <https://policy.m4bl.org/platform/> last viewed on August 26, 2017.

¹⁰ *Id.*

¹¹ *About the Black Lives Matter Network*, <http://blacklivesmatter.com/about/>. There are thirty-seven (37) chapters in the United States as of August 26, 2017.

¹² *We Affirm that All Black Lives Matter*, Black Lives Matter Network, <http://blacklivesmatter.com/guiding-principles/> last viewed on August 26, 2017. One of the guiding principles is “loving engagement,” which is described as “We are committed to embodying and practicing justice, liberation, and peace in our engagements with one another.”

¹³ *See Id.*, and *Locate a Chapter*, Black Lives Matter, <http://blacklivesmatter.com/find-chapters/> last viewed on August 26, 2017.

¹⁴ Truth Commissions, Northeastern University School of Law Civil Rights and Restorative Justice website (retrieved from <http://nuweb9.neu.edu/civilrights/truth-commissions/> on August 25, 2017) (describes various truth commissions in the United States, including: The Greensboro Truth and Reconciliation Commission—convened in 1989 to heal the harms of the Greensboro Massacre, twenty years prior, where white supremacists shot into a crowd protesting their hate, killing five and wounding ten, in Greensborough, NC; The Mississippi Truth Project—convened in 2009 to address the racially motivated crimes and injustices in Mississippi between 1945 and 1975;

II. *What is reconciliation?*

Reconciliation is a contemporary legal concept, as it arises out of the concept of restorative justice.¹⁵ Restorative justice is an approach to crime that encompasses various methods towards “healing and reintegration of offenders into their communities.”¹⁶ The legal restorative justice movement was started by professionals in the United States who believed that the criminal justice system was ineffective and severe.¹⁷ In restorative justice proceedings, victims and offenders convened to discuss the harms done and decided together what restitution would be appropriate for the offense or crime.¹⁸ Victims are not only considered to be those directly affected, or targeted, by the crime but also family and other community members that have been impacted by the crime.¹⁹ Elements of restorative justice proceedings include (a) structured shaming, (b) responsibility taking, (c) acknowledgement of the injury done, and (d) reintegration of the offender.²⁰ One major objective of restorative justice proceedings is to create a situation in which the victim no longer fears the offender and thus can recommence a communal relationship with that individual.²¹ Restorative processes are encouraging because they strive to highlight our humanity, including the humanity of the offender.²²

Restorative justice approaches in the United States have been viewed as only appropriate for low-impact crimes, but this narrow view has been challenged by the Rwandan adoption of gacaca courts.²³

1898 Wilmington Race Riot Commission—convened in 2000 to address the harms caused by the Wilmington Race Riot of 1898, where white rioters destroyed the thriving Black community of Wilmington, NC; The 1921 Tulsa Race Riot Commission—convened in 1997 to address the harms caused by the 1921 riot, where white rioters destroyed the thriving Black community of Greenwood, OK, killing 300 Black people in the process; Rosewood Massacre Commission—convened in 1993 to address the harms caused by 400–500 white men when they burned down the houses, stores, and churches of the thriving Black community of Rosewood, FL, killing two Black men in 1923; Brown University Steering Committee on Slavery and Justice—convened in 2006 to investigate the University’s historical relationship with slavery and the transatlantic slave trade, among others.)

¹⁵ Carrie Menkel-Meadow, *Restorative Justice: What Is It and Does It Work?*, *Annu. Rev. Law. Soc. Sci.* 2007, 3:10.1-10.27, 10.10 (2007). In general terms both restorative justice and reconciliation are concepts with deep roots in the ways we interact with each other as human beings. This essay will not explore the deep-rooted reconciliatory approaches or anthropological roots of restorative justice, but rather discuss restorative justice as a model for dealing with crimes or offenses in a way that is generative and community based, rather than in a punitive and structural/systematic way. Menkel-Meadow’s work is the foundational piece referenced by this essay because it takes a comparative approach, provides a succinct overview, and discusses gacaca courts.

¹⁶ *Id.* at 10.2.

¹⁷ *Id.* at 10.3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Supra* note 7. According to Professor Slye, “One of a truth commission’s most essential functions is to separate the character of a person from the character of his or her actions. We often fall into the trap of wanting to reduce people to good or bad, innocent or guilty.”

²³ *Supra* note 15 at 10.4. And, at 10.3 where Menkel Meadow sites Umbriet et al. 2005 in stating that “some think restorative justice is most appropriate in the context of small interpersonal wrongful acts, such as petty thefts, simple assaults, drug-or-alcohol related crimes, and family abuse, restorative justice has been adapted for cases involving

Restorative justice is an adaptable approach and is in tune with global human rights initiatives because the main goal of reconciliation is to engage in a process of development that results in a political culture that respects the human rights of all people.²⁴

In addition to the enumerated restorative justice goals above, a few other elements should be taken into consideration. Most importantly, restorative justice proceedings should be voluntary, personalized, narrative based, transparent, and should conclude in a shared recommitment to new norms.²⁵ Thus, restorative justice is a collaborative, and democratic, approach to addressing harm in a way that builds rather than breaks down communities.²⁶

The process of reconciliation as a constructive approach is still up for debate today.²⁷ Restorative processes can be made ineffective when feelings of coercion reduce the authenticity of participation, when structural hindrances or persistent prejudices result in unequal access to valid participation, or when restorative approaches are deemed an inappropriate remedy for the harm.²⁸ These aspects can be difficult to mitigate because participation in restorative justice processes can easily feel coerced due to the social nature of these processes. Also, structural hindrances and persistent prejudices that prevail outside of restorative justice processes must be effectively dismantled when establishing the process, which is extremely difficult. Due to imbedded attitudes about the punitive and retributive role of law enforcement and the emergent quality of restorative practices, many legal professionals and members of the general public will see them as inappropriate remedies to harms they take seriously.

III. *“Gacaca does not give us everything we need but it gives us most things and certainly more than other potential processes.” – President Kagame²⁹*

On April 6, 1994, an explosion reverberated throughout Kigali, Rwanda. Uncertainty spread throughout the capital, and residents warily went about their evening work. Within hours, they learned that President Habyarimana's plane had been shot down. Roadblocks emerged throughout the capital and, then, the countryside. And then the killings began. Over days, then weeks, then months—

murder, rape, genocide, and other serious transgressions against large groups or even a whole society.” She then discusses that the next step in the process of evaluation restorative justice practices is to determine whether they “can be scaled up to national levels of political and civic reconciliation-like processes or through reparations,” which is exactly the question this essay aims to discuss.

²⁴ James Gibson, Section Two: Case Studies: A. Moves toward Democracy: Overcoming Apartheid: Can Truth Reconcile a Divided Nation?, 603 *Annals* 82, 88 (2006).

²⁵ *Supra* note 15 at 10.4.

²⁶ *Id.* (“When it works most effectively, restorative justice enhances participatory and deliberative democracy and can promote community building, political legitimacy, and the development of new social and legal norms.”).

²⁷ *Supra* note 15 at 10.18.

²⁸ *Id.* 10.5-10.6.

²⁹ Phil Clark, Hybridity, Holism, and “Traditional” Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda, 39 *Geo. Wash. Int'l L. Rev.* 765 at 788 (2007) (quoting an interview with Rwandan President Paul Kagame on June 13, 2016).

roughly three months in total—nearly every tenth person in Rwanda was slaughtered. As many as 1,000,000 people were killed in 100 days, or 10,000 per day. It was the swiftest mass murder ever executed and resulted in the near-extirpation of the Rwandan Tutsis. Meanwhile, another 2,000,000 Rwandans were displaced into neighboring countries.^[30]

The genocide in Rwanda was committed by over one million Hutus and was fueled by rancorous propaganda, governmental institutions that commanded compliance in murderous tasks, and ethnic hatred forged under and informed by colonial rulers that were invested in eugenics.³¹

Gacaca courts are a form of communal conferencing rooted in Rwanda's traditions.³² It is important to remember that gacaca are not frozen in time.³³ Rather, the gacaca courts were constructed as an amalgam of various practices in order to be scaled out to meet the needs of a country recovering from a large-scale genocide in a country where the criminal system was ill equipped to process the magnitude of crimes that needed to be adjudicated.³⁴ The gacaca courts were part of a judicial framework that included the UN International Criminal Tribunal for Rwanda and the Rwandan national courts.³⁵ The mix between social and legal approaches to justice, represented by the gacaca courts, is referred to as a hybrid form by legal scholar Phil Clark.³⁶

In Rwanda, family and community are highly valued and intrinsic to one's self-assessment.³⁷ Pre-genocide gacaca hearings, operating as a restorative practice, allowed offenders to revitalize their relationships and restore their social standing.³⁸ Gacaca proceedings occurred out in the open, for community members to see and participate in.³⁹ The proceedings dealt with issues of land use, marriage, and inheritance where elders would judge parties, and ideal outcomes were a confession and request for forgiveness.⁴⁰ Gacaca penalties reflected an investment in social context because they usually involved

³⁰ Fulfilling the U.S. Obligation to Prevent Exterminationism: A Comprehensive Approach to Regulating Hate Speech and Dismantling Systems of Genocide, 43 Loy. U. Chi. L.J. 317, 330-1.

³¹ *Id.*

³² *Supra* note 15 at 10.7.

³³ Phil Clark, *Hybridity, Holism, and "Traditional" Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda*, 39 Geo. Wash. Int'l L. Rev. 765, 776 (2007).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* (Clark argues that despite the general outsider perspective of gacaca as an indigenous practice, it is in fact "endogenous: initiated and synthesized within Rwandan society but—because of the complicated nature of this synthesis and how markedly current gacaca differs from the original practice that partly inspired it—viewed by much of the population as a new and perhaps confusing or even disagreeable entity.").

³⁷ *Id.* at 778. This work is my first encounter with Rwanda and Rwandan culture as a topic of scholarly interest. Just as Mazi corrected me in my pronunciation of "gacaca," I acknowledge that this too may be a misinterpretation of the text.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

the sharing of food and drink and in more severe cases utilized tools like short-term banishment.⁴¹ Gacaca proceedings were so significantly socially imbued that penalties that were purely retributive or punitive rather than restorative were considered inadequate.⁴²

As history progressed, colonial powers institutionalized gacaca, shifting the process from local and communal hearings to an arm of the formal legal system.⁴³ Under the influence of colonial power, gacaca became less about addressing traditional, cultural concerns related to social belonging and more of a venue for pre-trial adjudication and hearings.⁴⁴ This transition enabled administrators to look to gacaca to help address the multitude of crimes that needed to be tried after the genocide.⁴⁵ Gacaca were established through the ratification of laws that reflected the United Nations' approaches to and definitions of genocide.⁴⁶ This transition in the implementation of gacaca is particularly interesting because it reflects both a departure from a community-based approach and a scaling up in application.

Post-genocide, before the government began to endorse official gacaca in the courts nationwide, Rwandans began conducting their own, non-state, gacaca proceedings—even in prisons and religious communities.⁴⁷ These community courts emerged organically out of religious ideals around confession and forgiveness as well as the culturally embedded view of gacaca as a mechanism for fostering social cohesion and reconciliation.⁴⁸

In 2001 gacaca courts were made a legally valid vehicle for trying genocide by the enactment of Rwanda's Gacaca Law.⁴⁹ The law that the gacaca courts enforced, the Organic Law of 1996, reflected the definition of genocide presented in multiple United Nations declarations.⁵⁰ At the time of the establishment of official gacaca courts that focused on genocide, there were over 100,000 offenders, most of whom had been incarcerated for at least a decade for their crimes, to be further held accountable and to re-enter society.⁵¹ These gacaca courts were staffed by 250,000 locally elected representatives who were

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 779.

⁴⁵ *Id.*

⁴⁶ *Id.* at 789-90.

⁴⁷ *Id.*

⁴⁸ *Id.* at 787.

⁴⁹ *Id.* at 783.

⁵⁰ *Id.* at 789. These declarations are “the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the 1948 Geneva Convention on the Protection of Civilian Persons in Time of War, and the 1968 Convention of Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.”

⁵¹ Phil Clark, Hybridity, Holism, and “Traditional” Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda, *George Washington International Law Review* (2007).

trained over six days to be gacaca judges.⁵² Gacaca judges were to perform judicial activities such as “summoning witnesses... issuing search warrants, and imposing punishment on those found guilty.”⁵³

The gacaca process was highly personal and addressed a deep trauma. It may take generations to fully understand the impact of gacaca courts that tried genocide-related crimes, but Mazi’s narrative experience pushes us to seek other, hopefully more successful solutions.

IV. Neither international human rights nor domestic laws have been effectively used to provide racial justice or create an equal society in the United States.

After World War II, the United Nations and its members began building a body of law recognizing human rights and with the aim of protecting all people of the world from experiencing severe racial and ethnic violence.⁵⁴ The preamble to the United Nations’ Universal Declaration of Human Rights (UDHR) summarized the relationship between the recognition of human rights and the prevention of severe racial and ethnic violence as follows:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.^[55]

The UDHR is a pledge that member states committed to uphold “as a common standard of achievement for all peoples and all nations...”⁵⁶ The UDHR lays out some fundamental perspectives, including these: “All are equal before the law and are entitled without any discrimination to equal protection of the law”⁵⁷ and “[n]o one shall be subject to arbitrary interference with his privacy, family, home, or correspondence, not to attacks upon his honor and reputation.”⁵⁸

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations treaty that asserts in its preamble that “the existence of racial barriers is repugnant to the ideals of any human society.”⁵⁹ It describes racial discrimination as

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying the recognition, enjoyment or exercise,

⁵² *Id.* at 785.

⁵³ *Id.* at 792.

⁵⁴ Toward a Comparative Approach to the Crime of Genocide, 62 Duke L.J. 161.

⁵⁵ U.N. Universal Declaration of Human Rights, United Nations, December 10, 1948, Preamble, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁵⁶ *Id.*

⁵⁷ *Id.* at Art. 6.

⁵⁸ *Id.* at Art. 12.

⁵⁹ International Convention on the Elimination of All Forms of Racial Discrimination, (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>).

on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.^{60]}

The ICERD outlines the various rights it aims to protect in Article 5.⁶¹ The document demands that signatory states “condemn all propaganda and all organizations based on ideas of superiority of one race or group...or which attempt to justify or promote racial hatred and discrimination of any form” and makes these offenses punishable by law.⁶²

The Declaration on Race and Racial Prejudice (DRRP) builds on the values presented in the ICERD.⁶³ The DRRP defines racism as “racist ideologies, prejudiced attitudes, discriminatory...” and states that “[r]acial prejudice, historically linked with inequalities in power, reinforced by economic and social differences between individuals and groups, and still seeking today to justify such inequalities, is totally without justification.”⁶⁴ The DRRP describes the most serious manifestations of racial prejudice and discrimination as being represented by genocide, apartheid, and crimes against humanity. It positions “[o]ther policies and practices of racial segregation and discrimination” as “crimes against the conscience and dignity of mankind [which] may lead to political tensions and gravely endanger international peace and security.”⁶⁵

The United States was a signatory to the UDHR and ICERD.⁶⁶ So, it is only natural that while reading through the rights put forth by the UDHR, ICERD, and PRRD, a racial justice seeker would likely begin to assess the viability of remedies for Black Americans. In fact, Black Americans have sought United Nations adjudication for the crime of genocide as early as 1951 and have continued more recently.⁶⁷

⁶⁰ *Id.* at Art. 1.

⁶¹ *Id.* at Art. 5; enumerated rights, including “(a) the right to equal treatment before the tribunals and all other organs administering justice; (b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution; and (c) political rights, in particular the right to participate in elections....”

⁶² *Id.* at Article 4.

⁶³ U.N. Declaration on Race and Racial Prejudice, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RaceAndRacialPrejudice.aspx>. Its preamble states that drafters are “[d]etermined to...promote the implementation of [ICERD].” The Declaration also notes “with the gravest concern that racism, racial discrimination, colonialism and apartheid continue to afflict the world in ever-changing forms, as a result of both the continuation of legislative provisions and government administrative practices contrary to the principles of human rights and also of the continued existence of political and social structures, and of relationships and attitudes characterized by injustice and contempt for human beings and leading to exclusion, humiliation and exploitation, or the forced assimilation, of members of disadvantaged groups.”

⁶⁴ *Id.* at Article 2 Sections 2 and 3.

⁶⁵ *Id.* at Article 3 Sections 2 and 3.

⁶⁶ See United Nations Human Rights Office of the High Commissioner, Status of Ratification Interactive Dashboard—United States, <http://indicators.ohchr.org/> last viewed on September 4, 2017.

⁶⁷ *UN Asked to Act Against Genocide in the United States*, Baltimore Afro-American, December 21, 1951, p. 19 (1951) available at <https://news.google.com/newspapers?id=mdQmAAAAIABAJ&sjid=kgIGAAAAIABAJ&dq=we-charge-genocide&pg=2113%2C3191483>; Glen Ford, *Mass Black Incarceration: Damn Right, We Charge Genocide*, Black Agenda Report, (February 14, 2012) <https://blackagendareport.com/content/mass-black-incarceration-damn->

Assessing the viability of genocide claims can be complicated.⁶⁸ Formal bodies such as a domestic court or the International Criminal Court (ICC) adjudicate genocide and apartheid claims.⁶⁹ For United States citizens, utilizing international law has shown to be difficult due to the availability of constitutional protections interpreted as overlapping and/or adequate to protect the human rights interest in question.⁷⁰

In 2002 a group brought a class action suit against multiple influential government officials and business people seeking damages for centuries of oppression and racial violence, stating that “African-Americans have been treated as aliens and enemies of the state rather than citizens and that the United States has allowed various group[s], e.g. the Ku Klux Klan and Masonic organizations to wage a campaign of terror against African-Americans.”⁷¹ The petitioners made their claim citing the Trans-Atlantic Slave Trade, the denial of knowledge as to national identity and heritage of ancestors, segregation, drug importation into Black communities, medical experimentation, counter-intelligence programs, and colonial aggression and destabilization of predominantly Black nations.⁷² The court dismissed these claims as “frivolous.”⁷³ This disgraceful opinion is just one in the legal cannon of disregard to Black lives and demonstrates the lack of availability of legal remedies for Black Americans faced with racial violence. This view is especially unacceptable because evidence as to the seriousness of historical and prevailing inequality, racial discrimination against, and segregation of Black Americans is readily available.⁷⁴

Where legal adjudication has failed, reconciliation may succeed. Black Americans have been fighting for equality throughout the history of the United States.⁷⁵ The Movement for Black Lives pushes every

right-we-charge-genocide; *We Charge Genocide: The cry rings true 52 years later*, Peoples World, (February 21, 2003) <http://www.peoplesworld.org/article/we-charge-genocide-the-cry-rings-true-52-years-later/>; Stephanie Nebehay, *UN Condemns U.S. Police Brutality, Calls For ‘Stand Your Ground’ Review*, Huffington Post – Black Voices, (August 30, 2014) http://www.huffingtonpost.com/2014/08/30/un-police-brutality-stand-your-ground_n_5740734.html.

⁶⁸ Toward a Comparative Approach to the Crime of Genocide, 62 *Duke L.J.* 161, 164 (2012).

⁶⁹ NUSL Senior Law Librarian Jootaek “Juice” Lee spent an afternoon pointing me to source documents, introducing me to international law frameworks and the difficulty in applying it to the United States due to venue.

⁷⁰ *Benas v. Baca*, CV-00-11507 LGB (SHx), 2001 U.S. Dist. LEXIS 23789 (C.D. Cal. Apr. 20, 2001) (discusses jus cogens application to a domestic torture claim brought under international law.)

⁷¹ *Rosser-El v. United States*, 2002 U.S. Dist. LEXIS 27166, 4.

⁷² *Id.* at 2.

⁷³ *Id.* at 7.

⁷⁴ For some places to start, see Ta-Nehisi Coates, *The Case for Reparations*, *The Atlantic*, June 2014 (retrieved from <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> on August 26, 2017) (“Two hundred fifty years of slavery. Ninety years of Jim Crow. Sixty years of separate but equal. Thirty-five years of racist housing policy.”) and Michelle Alexander, *The New Jim Crow*, *The New Press* (2010). (This book describes the connection between the current mass incarceration system and the abolished Jim Crow system of segregation.)

⁷⁵ The struggle for Black liberation has woven its way through American history: from the *Dred Scott v. Sanford* case (where a Black man sued for his and his family’s freedom) to the 1960s–70s civil rights movement (where multitudes of Black people, and some non-Black supporters, implemented a variety of direct-action and legal strategies, ultimately defeating Jim Crow and gaining protections from discrimination in public institutions) to the contemporary Movement for Black Lives (which emerged in response to extrajudicial killings of Black people,

American to grapple with his or her conscience and say, “Black Lives Matter” as a way to dismantle the conscience harming practices of racial discrimination and segregation and build new, racially just norms.

V. *“It’s a new way of forming interconnected humanity.” - Rev. Karlene Griffiths Sekou⁷⁶*

Like pre-genocide Rwandan gacaca courts, reconciliation processes are already at work in our society; they are in the grassroots organizing tradition and have historically brought together heterogeneous populations, despite conflicting or competing identities.⁷⁷ These approaches may not be adequate to address the grievous harms Black Americans have suffered and continue to suffer, but they may help generate a sea change in American society that will empower all Americans to disrupt racial prejudice, discrimination, and segregation.

Black Lives Matter Boston is the Boston chapter of Black Lives Matter (hereafter referred to as “the Boston chapter” or “the chapter”). The chapter is multiracial and engages in reconciliatory work in the Boston Community. I found out about the Boston chapter when a member of the Black Law Students Association (BLSA) informed me that the chapter was giving talks around Boston throughout that February to celebrate Black History Month.

To bring a speaker, Martin Henson, to NUSL, I worked with a multiracial group of students, and BLSA cosponsored the event with the Queer Caucus.⁷⁸ The event gained a good deal of attention from the community and was attended by a multiracial group of nearly 100 students, faculty, and staff.

After the Black Lives Matter event at NUSL, I learned more about the chapter and discovered that speaking to predominantly non-Black communities was a continuous part of the work Black Lives Matter

which law enforcement engaged in with impunity)—not to mention the various cultural movements and artists that have informed and sustained these political efforts.

⁷⁶ Lisa Wangsness, no title, The Boston Globe, April 16, 2016, <https://www.bostonglobe.com/2016/08/12/blm/MJGKdvImEKDSWPYqoMkuQN/story.html>.

⁷⁷ See the Vietnam-era anti-war movement (bringing together “hippies” and returning veterans), the women’s suffrage movement (bringing together women of all backgrounds), the civil rights movement of the 1960s–70s (with various multiracial coalitions), and the environmental protection movement (with local and international actors, bringing together radical and reformist bodies).

⁷⁸ At Northeastern University School of Law (NUSL), there were months marked by acts of anti-Black vandalism in the form of unauthorized removal of “Black Lives Matter” signs that were posted in hallways, on office doors, and on lockers. These acts of violence were a shock to Black students and reflected not only an anti-Black sentiment but a fundamental misunderstanding of what “Black Lives Matter” meant as a phrase and what the affiliated organization stood for. The opportunity to have a member of the Boston chapter speak to the NUSL community seemed like a chance to create space for deepened understanding, reconciliation, and security. Queer Caucus (a multiracial, predominantly white NUSL student organization) cosponsored the event in what could be understood as a reconciliatory move to express support for its Black members, Black NUSL students, and the Black community in general. The talk was a celebration of Black history, a demonstration that this kind of vandalism will not be tolerated.

Boston engages in.⁷⁹ I attended multiple workshops and lectures that were given by Martin Henson or Rev. Karlene Griffiths Sekou and marveled at the ways in which they created space for multiracial—often predominantly white—groups to begin the reconciliatory process of (a) self-awareness, (b) responsibility taking, (c) acknowledgement of the injury done, and (d) [re]integration.⁸⁰

Black Lives Matter chapters use personalized, local, and traditional practices of grassroots resistance in the United States that result in communal reconciliation as a result of working together across difference towards the shared goal of dismantling anti-Blackness—even if only on a local or interpersonal level.⁸¹ Black Lives Matter chapter membership is voluntary, and the level of participation is personalized. Much of the work done by chapters (whether it be direct action, protest, or community engagement and education) is narrative based and built on transparent, shared community values. Regardless of the given chapter practice, participation in Black Lives Matter by non-Black people can be understood, and utilized, as a space for reconciliation. The Movement for Black Lives invites every person to get involved in the struggle for a world governed by human rights norms of racial and ethnic evidence and disparages all forms of racial and ethnic violence.

If the work of the Black Lives Matter Network could retain its legitimacy and remain grassroots, free from governmental control or interests, it may be able to be scaled out as a local, personalized, and effective means for seeking racial reconciliation in the United States. Reconciliation processes through Black Lives Matter may not be adequate to address severe forms of racial violence, but they may be effective at supporting communities striving to address crimes against the conscience of humanity and providing its members with opportunities to meaningfully resist anti-Black racism in the United States. Large-scale racial reconciliation may be impossible, but Black Lives Matter makes small-scale reconciliation a possibility for every American. Every person in the United States should have access to

⁷⁹ The February 2017 Black History Month tour was one series of many. The chapter had been collaborating with United Unitarian churches throughout the Boston Area and provided workshops on eliminating racism. *See* Ariane Komyati, Black Lives Matter Boston holds conversation at Theodore Parker Church, *The Bulletin Newspaper*, (March 22, 2017) <http://www.bulletinnewspapers.com/29286/277236/a/black-lives-matter-boston-holds-conversation-at-theodore-parker-church>; and The Power of Now: Building Allies with Black Lives Matter Boston (May 6, 2017) <https://www.eventbrite.com/e/the-power-of-now-building-allies-with-black-lives-matter-boston-tickets-33712946330#>. While talking to non-Black audiences about resisting and dismantling anti-Black racism is only one of many ways the Black Lives Matter movement creates space for, and stimulates, reconciliation, it is the most tangible method I can glean from my limited knowledge of what kinds of work the Boston chapter does, and it also correlates with the discursive, verbal practice that is often associated with reconciliation (i.e., courts, hearings, mediations, and so on).

⁸⁰ *See* elements of reconciliatory practice on page 4 and replace “structured shaming” with “self-awareness.”

⁸¹ Any time a non-Black person speaks the words “Black Lives Matter,” puts a “Black Lives Matter” sign on his or her lawn, or walks into a Black Lives Matter office, it can be seen an act of reconciliation because by saying “Black Lives Matter” and voluntarily working to back up that statement, one is acknowledging that racial injustice exists, is wrong, and that one is ready to begin being held accountable for his or her part in it. Saying “Black Lives Matter” is a way for non-Black people to signal to Black people that they are, or want to be, safe to be around. And, within Black Lives Matter chapters, Black safety is paramount.

this possibility of reconciliation, regardless of where they live. Therefore, there should be a Black Lives Matter chapter in every town.