

REPARATIONS – A NEW PERSPECTIVE

by Paul Lorenzen

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AP – Today the governor of Alabama issued the “**Tractor Emancipation Proclamation**” declaring that all farmers shall deliver their tractors to the *Alabama State Tractor Reprocessing Center* within 30 days. The Governor stated that ‘the reason for his Proclamation is that tractors used by farmers in this state emit excessive carbon emissions and play too great a part in **Climate Change** and must be taken out of service *immediately* to Save the Planet.’”

Although fictional, the above report coming from the Associated Press today is analogous to the “**Emancipation Proclamation**” issued by President Abraham Lincoln January 1, 1863, in which he declared that more than three million slaves, owned by the farmers of the Confederate states, were to have their legal status changed from slave to free.

“Wait a minute” you say. “Tractors are not ‘people’ so it is not the same thing!”

However, in 1863, nearly two years after the start of the Civil War, under the Constitution and laws of the United States, slaves were considered “property” just as tractors are today. They were considered essential farming equipment in the South and were bought and sold just as tractors are today by farmers. They also were “bred” and sold similar to horses, cattle, and chickens, today. They were legally considered “property” as can be seen by the **Dred Scott Decision** by the US Supreme Court in 1857 and the **Fugitive Slave Act of 1850** requiring runaway slaves found in the Northern states to be returned to their owners in the South. The Constitution was not amended to **legally** change their status until the 13th Amendment was ratified on December 6, 1865.

As such, according to the **Fifth Amendment** of the United States Constitution, “. . . nor shall private property be taken for public use, without just compensation.” In other words, the laws of eminent domain, in which the state or federal government are permitted to take private property *without the consent of the property owner*, would apply to this “taking” and the requirement is that “just compensation” is to be paid to the property owner for the value of what was “taken” by the government.

As an example, suppose you owned a parcel of prime commercially zoned vacant land in the heart of Mobile, Alabama. That land would be very valuable. If the Mobile City Council passed an ordinance changing the zoning to residential, the value of that land would automatically drop dramatically. The City council could be sued in what is called an “inverse condemnation” action asking for the difference in the land value commercially zoned and the value of the residentially zoned land. Thus, the City Council would be required to pay “Just Compensation” for the value of the land “taken” by their ordinance. Even though you still owned the land, your land lost value by virtue of the City Council action so you could be compensated for that loss in value caused by government action.

In the same manner, when the legal status of the slaves was changed by Abraham Lincoln’s (unconstitutional) action of the Emancipation Proclamation, the Southern farmers automatically lost valuable Property, which was “taken” by the federal government. There was no “Just Compensation” given to the farmers for the value of the property taken by that federal action. Thus, the farmers in the

South had a right to file an “inverse condemnation” action against the federal government to obtain Just Compensation for the value “taken” by Lincoln’s action. That inverse condemnation law suit has never been filed. However, according to the Fifth Amendment of the Constitution, it could be filed and, to the best of my knowledge, there is *no statute of limitations* that applies to enforcing the US Constitution.

With the call heard in contemporary society by the Civil Rights “movement,” for reparations for the people of the Negro race currently living in the United States (many of whom are *not* descendants of freed slaves), it seems appropriate to consider the legal basis for any reparations that are to be paid.

As a real estate appraiser, when I am asked to value a property taken by the government under eminent domain (5th Amendment), the typical appraisal process is to perform a “before and after” analysis. I value the property before the taking, then consider the value of what is left after the government has taken what they need. The difference in the before and after values is the value of what was taken. In theory, the sum of the parts should equal the whole. What the property owner **lost** was then gained by the government.

When considering the Emancipation Proclamation, and the subsequent 13th Amendment, the Before and After analysis would consider the fact that the farmers whose slaves were deemed to be free lost the market value of the slaves. The value that was lost, however, did not accrue to the federal government directly. It accrued to the slaves who were freed, and to their descendants, many of whom are now calling for Reparations. Thus, the before and after analysis of the “transaction” caused by Abraham Lincoln would demand that the Southern White slave owners and their current descendants, **not** the former slaves and their descendants, should receive **Just Compensation!**

In fact, since the government taking the private property receives the benefit of the taking and pays the property owner, it could be argued that the party who receives the benefit should make that payment. In the case of the Emancipation Proclamation “taking,” the persons who received the benefit were the slaves who were freed, and their descendants. Thus, if **any** Reparations (Just Compensation) is to be paid, it would appear that **SOCIAL JUSTICE** would demand that the descendants of the freed slaves should make the payment of **Just Compensation** not the other way around!

Administratively, however, that would be extremely difficult to accomplish. Therefore, I am suggesting that the *most equitable way* to handle this injustice to the property owners of 1863 would be for the US Congress to pass a resolution acknowledging the injustice of the delayed payment to the White slave owners of Just Compensation and stating that **“freedom” is priceless** and that to demand payment from the descendants of the freed slaves would put them all back in **financial** slavery! Therefore, the descendants of the freed slaves should receive a **PRESIDENTIAL PARDON** for the lack of payment for their freedom.

The “before” value of the slaves *could* be quantified with sufficient data and analysis. However, the “after” value of the freed slaves **could never be quantified**. Since American society recognizes the value of freedom, we should then **celebrate together** that the goal of the original Constitutional Convention in 1787 (eventually freeing the slaves) was accomplished, although by an *illegal and unconstitutional* Proclamation by President Abraham Lincoln.