

Judiciary Committee of the House of Representatives,
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Oversight Hearing on the Legacy of Trans-Atlantic Slave Trade

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2141 Rayburn House Office Building

Dear Congressman John Conyers, and Members of the House Judiciary Committee, and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties:

I'm very pleased to appear before the Committee today to discuss the Oversight Hearing on the Legacy of the Trans-Atlantic Slave Trade, which will consider H.R. 40, the historic legislation proposed by Congressman John Conyers in 1989.¹ Congressman, let me first thank you for your historic actions in 1989. Your resolute effort to seek a discussion of reparations for descendants of those Africans captured during the Atlantic Slave Trade, was an important and timely effort in 1989. It is, ironically, even more important and timely in 2007. What we should have known then, and clearly know now, is that the horrors of the Slave Trade have yet to be addressed and the passage of time makes it even more difficult for us to respond to one of the most tragic, brutal, and for some, financially beneficial periods in American history.² The time has come for this great country, to once again, address its past, and do so in response to the urgent need to heal wounds and bring together a nation that has yet to heal from the vestiges of slavery. Let us be clear going forward. This is an effort to further study and understand the legacy of slavery. HR 40 is, essentially about education, about increasing knowledge and uncovering the truth about our collective self. The question about what might follow from that knowledge is of course, still open. HR 40 might best be viewed as a brave, crucial step toward true healing.

I speak today as the Founder and Executive Director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. The Houston Institute is named after Charles Hamilton Houston, one of Washington DC's most revered intellectuals of the 20th century, and a 1922 graduate of Harvard Law School. Mr. Houston was also Vice Dean at Howard Law School, training such legal luminaries as the late Justice Thurgood Marshall and the late Oliver Hill, among others. Mr. Houston fought for our country during World War I, and was working to end racial segregation in our country during World War II. He died at a relatively young age of 54 on April 22, 1950.³ The Charles Hamilton Houston Institute is designed to carry on Mr. Houston's important work in the 21st century fighting for racial justice in this nation and abroad.

I support the call for reparations for the descendants of the millions slaves who toiled in this county for decades, and who never were compensated for their labor. Our county's history in addressing issues of past discrimination long after they occurred is a testament to our willingness to look back in order to move forward. That resolve is most clearly observed in the unity displayed, by Republicans and Democrats, by veterans and civilians, and by conservatives and liberals, during the historic passage of the Civil Liberties Act of 1988.⁴ The Act was designed to correct injustices against American citizens decades after their suffering. It was an Act that followed apologies and regrets by some of America's most important leaders, including the late Chief Justice Earl Warren, who, long after his

¹ Commission to Study Reparations Proposals For African Americans Act, HR 3745 IH, <http://thomas.loc.gov/cgi-bin/query/z?c101:hr3745>:. Accessed 17 December, 2007.

² See Randall Robinson, *The Debt: What America Owes to Blacks* . New York: Plume, 2000.

³ For a biography of Houston, see Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*. Philadelphia: University of Pennsylvania Press, 1983.

⁴ Pub.L. 100-383, title I, August 10, 1988, 102 Stat. 904, 50a U.S.C. § 1989b et seq.

pivotal role in the internment of over 100,000 Japanese Americans during World War II, acknowledged that the decision was wrong and regrettable.⁵ In 1941, testifying before the House Committee, then California Governor Earl Warren said, “The only reason that there has been no sabotage or espionage on the part of Japanese-Americans is that they are waiting for the right moment to strike.”⁶

Some years later, the retired Chief Justice Earl Warren stated in his autobiography :

I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens. Whenever I thought of the innocent little children who were torn from home, school, friends and congenial surroundings, I was conscience-stricken.⁷

What is even more assuring than the regrets of former Chief Justice Earl Warren is the bipartisan effort to respond to the internment of 100,000 Japanese American citizens during World War II. Among those who supported The Civil Liberties Act of 1988 were Senator Robert Dole, Republican from Kansas, and Senator Daniel Inouye, Democrat from Hawaii. Both were World War II veterans, both seriously wounded during the War, and both firmly committed to The Civil Liberties Act.⁸ The laudable goals of the Civil Liberties Act of 1988 portend well for what the supporters of H.R. 40 should pursue, in tone and scope. The Civil Liberties Act of 1988 could not have been clearer:

The Congress recognizes that, as described in the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent residents of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II.

As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.

The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made.

For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.”

⁵ For a discussion of Warren’s lobbying for internment, see Ed Cray, *Chief Justice: A Biography of Earl Warren*. New York: Simon and Schuster, 1997. pp 112-123

⁶ Testimony before Congress on the Internment of people of Japanese Ancestry (1941)

⁷ Earl Warren, *The Memoirs of Chief Justice Earl Warren*. Lanham: Madison Books, 2001.

⁸ For a discussion of Republican support for the Civil Liberties Act of 1988, see Leslie Hatamiya, *Righting a Wrong: Japanese Americans and the Passing of the Civil Liberties Act of 1988*. Stanford: Stanford University Press, 1993. Pp 38-42.

Based on the findings of the Commission on Wartime Relocation and Internment of Civilians (CWRIC), the purposes of the Civil Liberties Act of 1988 with respect to persons of Japanese ancestry included the following:

- 1) To acknowledge the fundamental injustice of the evacuation, relocation and internment of citizens and permanent resident aliens of Japanese ancestry during World War II;
- 2) To apologize on behalf of the people of the United States for the evacuation, internment, and relocations of such citizens and permanent residing aliens;
- 3) To provide for a public education fund to finance efforts to inform the public about the internment so as to prevent the recurrence of any similar event;
- 4) To make restitution to those individuals of Japanese ancestry who were interned;
- 5) To make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations.⁹

This important symbolic and substantive Civil Rights Act of 1988 provides a road map for the important work contemplated by H.R. 40, which, in its most current form, calls for similar efforts looking back and moving forward:

A BILL To acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.¹⁰

In pursuing this important goal, this committee should also be mindful of the history of slavery and the moral and urgent need to address the reparations question. I have written elsewhere on this important topic,¹¹ and refer here to some of the history that may prove useful in exploring these matters:

The African American reparations movement is commonly perceived as a recently developed political and litigation strategy resting on the shoulders of the lawsuits and legislation designed to achieve justice for Japanese American World War II internees and victims of the Holocaust. African American reparations arguments, however, began long before both these movements, growing out of a larger debate over the place of African

⁹ Civil Liberties Act of 1988, August 10, 1988 <http://www.civics-online.org/library/formatted/texts/civilact1988.html>. Accessed 17 December, 2007.

¹⁰ *Ibid.*

¹¹ See Charles Ogletree, *The Current Reparations Debate*, 5 University of California Davis Law Review 36, 2003; Charles Ogletree, *Does America Owe Us?*, Essence Magazine, February 2003; Charles Ogletree, *The Case for Reparation*, USA Weekend Magazine, February 2003; Charles Ogletree, *Repairing the Past: New Efforts in the Reparations Debate in America*, Harvard Civil Rights and Civil Liberties Law Review 38, 2003.

Americans in American society as well as the proper response of both whites and African Americans to slavery, Jim Crow, and the persistence of racism from the founding of this country until the present. The characterization of African American reparations as both recent and derivative has important political consequences. This rhetorical and political strategy enables reparations' opponents to discount history and African Americans' constant demand for reparations, instead presenting reparations' proponents as opportunistic latecomers, attempting to get something for nothing.

The African American demand for reparations precedes the Civil War.¹² While reparations activism has not been a constant feature of the civil rights struggle, it has periodically manifested itself in what Vincene Verdun calls different "waves" of activism.¹³ The first wave "was inspired by the tension between the Union and the Confederacy and the attendant desire to restructure the South in order to enhance the Union's military advantage."¹⁴ A broad, multi-racial coalition of activists sought to use reparations to complete the emancipation of slaves and to achieve compensatory justice by tying the award of property to freed slaves to disenfranchisement by former slave owners.

Verdun identifies the second wave of reparations as the attempt by African Americans to escape the South and achieve a semblance of freedom and economic parity in the North, including an effort to force "Congress to pass legislation appropriating economic relief to freedmen."¹⁵ This effort and subsequent reparations initiatives contained a strong "black nationalist" element.¹⁶

The third wave broke during World War II when a white Senator from Mississippi, Theodore Bilbo, proposed to appropriate newly acquired territories for colonization by African Americans.¹⁷ Black nationalists such as Marcus Garvey's United Negro Improvement Association supported this essentially segregationist effort.¹⁸

Verdun identifies a fourth and final stage of reparations activism as arising during the 1960s and 1970s as an outgrowth of the Civil Rights movement.¹⁹ Martin Luther King, in his famous *I Have a Dream* speech, iterated a demand for justice in terms of reparations. This speech, broadly embraced by most Americans as a result of King's strong appeal for color-blind justice, also called on the nation to conceive of the guarantees of life, liberty, and the pursuit of happiness in the form of a check for African Americans.

At roughly the same time, the Nation of Islam demanded that the federal government set aside three states for African Americans and contended that "our former

¹² In 1829, David Walker "passionately protested the lack of compensation for the labor of slaves." Ewart Guinier, Book Review, 82 Yale L.J. 1719, 1721 (1973) (reviewing Boris I. Bittker, *The Case for Black Reparations* (1973)).

¹³ Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 Tul. L. Rev. 597, 600 (1993).

¹⁴ *Ibid.*

¹⁵ *Ibid.* at 602

¹⁶ *Ibid.* at 603

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.* at 603-604

slave masters are obligated to maintain and supply our needs in this separate territory for the next 20 to 25 years—until we are able to produce and supply our own needs.”²⁰ Perhaps the single most important reparations demonstration during this period was James Forman’s interruption of a Sunday morning service at Riverside Church in New York City to introduce the “Black Manifesto,” which demanded five hundred million dollars not from the federal government but from churches and synagogues.²¹ While King did not endorse the Nation of Islam’s brand of nationalism and demand for land, the organization’s efforts represented a powerful strand in the reparations debate.

From the late 1970s to the 1990s, reparations was the subject of a few law review articles²² but received little mainstream interest. The efforts of the National Coalition of Black Reparations Activists (N’COBRA), were pivotal in preserving the reparations movement. Without N’COBRA’s continued activism, the legacy of reparations for African Americans, stretching from David Walker to Queen Mother Moore, might have disappeared.²³

More recently, two events have spurred on claims for reparations for African Americans. First, the publication of Randall Robinson’s book *The Debt* powerfully indicted society’s failure to acknowledge slavery and reignited the reparations debate. Robinson wrote:

No race, no ethnic or religious group, has suffered so much over so long a span as blacks have, and do still, at the hands of those who benefited, with the connivance of the United States government, from slavery and the century of legalized American racial hostility that followed it.²⁴

Robinson forcefully argued that, while the causes of African American poverty are complex, they are based in part on a history of racism and discrimination that politically, culturally, socially, and psychologically disenfranchised African Americans.²⁵ A central plank of Robinson’s critique is simply that African American lives and values are discounted—

²⁰ The Muslim Program is reprinted in every issue of *The Final Call*. See, e.g., Final Call, Sept. 7, 1990, at 39, cited in Verdun, *supra* note 13, at 604.

²¹ Verdun, *supra* note 13, at 603–04.

²² See, e.g., 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); Verdun, *supra* note 13. For earlier examples, see Boris I. Bittker, *The Case for Black Reparations* (1973) (discussing German and Native American reparations as potential precedents for black reparations); Graham Hughes, *Reparations for Blacks?*, 43 N.Y.U. L. Rev. 1063 (1968).

²³ Jonathan Tilove, *Slavery Payback Proposal Moves to Forefront; Once Far-Fetched, Idea Being Taken Seriously*, Times-Picayune (New Orleans), Sept. 29, 2002, at 1, 2002 WL 25257694. (N’COBRA “has become the primary engine of grass-roots organizing on the issue [of reparations]”); see also Nat’l Coalition of Black Reparations Activists, *Black Reparations: American Slavery and Its Vestiges* 34–36, 43–47 (2d ed. 2002). See generally *Should America Pay?: Slavery and the Raging Debate on Reparations* (Raymond Winbush ed., 2003).

²⁴ See Randall Robinson, *The Debt: What America Owes to Blacks*. New York: Plume, 2000. pp 8.

²⁵ *Id.* at 62–63.

worth less—in America today, much as they were discounted at three-fifths value in the Constitution.²⁶

Representative John Conyers's introduction and continued support for H.R. 40 in the House of Representatives is a second major event precipitating a renewed interest in reparations.²⁷ H.R. 40 was first presented to Congress in 1989. The bill calls for the establishment of a commission to investigate the extent to which the United States government benefited from slavery and make appropriate recommendations. H.R. 40 was inspired by, and mirrors, the Civil Liberties Act of 1988,²⁸ the statute granting reparations to Japanese American victims of the government's internment policy and also Aleut Americans removed from their homes for defense purposes during World War II. H.R. 40 does not demand that money be paid but only that an investigation be conducted. Nonetheless, over the first fourteen years, the initiative has faced substantial opposition. A bipartisan Congress passed the Civil Liberties Act of 1988, yet Representative Conyers still waits to see H.R. 40 pass fourteen years after first presenting it to Congress. Indeed, dissent persists among African Americans in general²⁹ and even within the Congressional Black Caucus³⁰ about whether reparations is a viable political program. Nonetheless, Representative Conyers files the bill every year in a symbolic effort to keep the reparations demand alive at the highest level of the legislative branch.

At the same time President Bush recognized the critical importance of remembering our history with slavery in the United States, and his words, expressed 4 years ago in Senegal, ring true today:

For hundreds of years on this island peoples of different continents met in fear and cruelty. Today we gather in respect and friendship, mindful of past wrongs and dedicated to the advance of human liberty.

At this place, liberty and life were stolen and sold. Human beings were delivered and sorted, and weighed, and branded with the marks of commercial enterprises, and loaded as cargo on a voyage without return. One of the largest migrations of history was also one of the greatest crimes of history.³¹

At the same time, the desire and the necessity to look back in order to move forward can be seen in the decision by the United States Senate to apologize, just this past year, for the period of brutal lynchings in America during the 19th and 20th centuries.³² Our country

²⁶ *Id.* at 52.

²⁷ See Commission to Study Reparations for African Americans Act, H.R. 40, 108th Cong. (2003).

²⁸ 50 U.S.C. app. §§ 1989–1989d (2000).

²⁹ See, e.g., Lori Horvitz, *Race Adviser Says Payback Impractical*, Orlando Sentinel, Apr. 28, 1998, at C1, 1998 WL 5346152 (noting that African American historian John Hope Franklin, head of the advisory board to President Clinton's Initiative on Race, objected to the payment of reparations).

³⁰ Some of the members of the Black Caucus still have not endorsed H.R. 40, 107th Cong. (2003).

³¹ President Bush Speaks at Goree Island in Senegal, July 8th, 2003.

³² Senate Resolution 39, *Apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation*. <http://landrieu.senate.gov/lynching/resolution.pdf>. Accessed 17 December 2007.

has taken important steps forward, in the states of Virginia,³³ Maryland,³⁴ North Carolina³⁵ and Alabama,³⁶ all expressing regret a or outright apologies for the horrors of slavery.

At the University level, The University of Alabama issued its own apology.³⁷ Under the stellar leadership of President Ruth Simmons, a descendant of slaves, Brown University issued The Steering Committee on Slavery and Justice, making numerous recommendations and offering future students of African descent scholarships and developing programs to address Brown's historical connections with the Atlantic Slave trade.³⁸ The University of Virginia issued its on apology,³⁹ and the Virginia Legislature looked back at the more recent history of opposition to racial integration, passing legislation that provided victims of segregation with financial support to pursue their lost educational opportunities.

Scholars like Professor Alfred Brophy of the University of Alabama have written extensively about this history, as recounted in his excellent book, *Reparations Pro and Con*,⁴⁰ and Professor Robert Westley from Tulane Law School , wrote a timely and informative article a decade ago entitled, *Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?*⁴¹

The time has arrived when H.R. 40 must be adopted and we must study this important and timely topic. It is our obligation to learn for the past as a means of finding the proper guidance as a nation, in pursuing our future. Thank you.

Charles J. Ogletree, Jr.

³³ See Senate Joint Resolution no.332. <http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+SJ332>. Accessed 17 December 2007.

³⁴ See Senate Joint Resolution no 6. <http://mlis.state.md.us/2007RS/bills/sj/sj0006t.pdf>. Accessed 17 December 2007.

³⁵ See Senate Joint Resolution 1557. <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=s1557>. Accessed 17 December 2007.

³⁶ See House Joint Resolution 321. <http://alisondb.legislature.state.al.us/acas/acasloginFire.asp?SESSION=1036>. Accessed 17 December 2007.

³⁷ See Resolution Acknowledging and Apologizing for the History of Slavery at the University of Alabama. <http://www.ua.edu/academic/facsen/03-04/ResolutionApologizeForSlavery042004.htm>. Accessed 17 December 2007.

³⁸ See Brown University Steering Committee on Slavery and Justice. http://www.brown.edu/Research/Slavery_Justice/. Accessed 17 December 2007.

³⁹ See University of Virginia's Board of Visitors Passes Resolution Expressing Regret for Use of Slaves. <http://www.virginia.edu/uvatoday/newsRelease.php?id=1933>. Accessed 17 December 2007.

⁴⁰ Alfred Brophy, *Reparations: Pro and Con*. Oxford: Oxford University Press, 2006.

⁴¹ Robert Westley; 40 B.C. L. Rev. 429 Boston College Law Review December, 1998