

## THE U.S. REPARATIONS DEBATE: WHERE DO WE GO FROM HERE?

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A few years ago, I watched a news segment in which Representative Conyers discussed HR 40,<sup>1</sup> a bill that proposes to study the vestiges of slavery and the disparate impact that poverty and institutionalized discrimination has on those considered part of the African Diaspora. Since his resignation (tendered in the wake of sexual harassment allegations),<sup>2</sup> another U.S. Representative,—Sheila Jackson-Lee—has taken the helm<sup>3</sup> to reintroduce the bill for passage.<sup>4</sup> Although there are many arguments opposing reparations,<sup>5</sup> there are more facts and arguments which support this long overdue form of restorative justice.

The U.S. Constitution as amended outlawed slavery and any of its vestiges.<sup>6</sup> The U.S. Constitution places an inherent obligation on the government and *all* the people it represents. Although some Americans believe that we should essentially reset our race relations, and begin anew without considering race moving forward,<sup>7</sup> we cannot ignore our history and its lingering effects on the present. But we can move forward to help heal the social wounds, the financial devastation, and other long-term effects caused by the Trans-Atlantic Slave trade and resulting municipal slavery.<sup>8</sup> The United States cannot deny the voices lost to inhumane treatment such as beatings, lynchings, whippings, rapes, sodomization, degradation,<sup>9</sup> nor can the continual treatment of Black Americans as second-class citizens be denied,<sup>10</sup> as evidenced by contemporary police brutality, inequitable

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<sup>1</sup> See Donna Owens, *Veteran Congressman Still Pushing for Reparations in a Divided America*, NBC NEWS (Feb. 19, 2017), <https://www.nbcnews.com/news/nbcblk/rep-john-conyers-still-pushing-reparations-divided-america-n723151> [perma.cc/DBK9-UGBC].

<sup>2</sup> Yaimche Alcindor, *John Conyers to Leave Congress Amid Harassment Claims*, THE N.Y. TIMES (Dec. 5, 2017), <https://www.nytimes.com/2017/12/05/us/politics/john-conyers-election.html>.

<sup>3</sup> Michael Martin, *House Panel To Consider Slavery Reparations Proposals*, NPR (June 16, 2019), <https://www.npr.org/2019/06/16/733248929/house-panel-to-consider-slavery-reparations-proposals> [perma.cc/73QG-BTE].

<sup>4</sup> Commission to Study and Develop Reparation Proposals for African-Americans Act Congress, H.R. 40, 116<sup>th</sup> Cong. (2019).

<sup>5</sup> See Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: a Legacy Establishing a Case for International Reparations*, 3 COLUM. J. OF RACE & L. 147, 191–193 (2013).

<sup>6</sup> U.S. CONST. amend. XIII, § 1.

<sup>7</sup> See Gene Demby, *The Desire for a Reckoning Meets the Wish for a Reset*, NPR (May 27, 2014), <https://www.npr.org/sections/codeswitch/2014/05/27/315306194/the-desire-for-a-reckoning-meets-the-wish-for-a-reset> [perm.cc/RHW2-ME85].

<sup>8</sup> See generally Muhammad, *supra* note 5, at 147.

<sup>9</sup> *Id.* at 197.

<sup>10</sup> *Id.* at 184.

application of the law, and racial discrimination in housing, employment and education.<sup>11</sup>

These acts and the notions that they are based upon are all too familiar psychological and financial aches that cyclically arise via savvy rezoning derived through the American legacy of restrictive covenants to the detriment of Black people,<sup>12</sup> racial redistricting, and employment discrimination such as refusal to hire the well-qualified and, yes, well-educated Black American based on skin-color.<sup>13</sup>

For many decades, Black members of the African Diaspora have employed revolution, rebellion and the use of courts in colonial America and in European nation-states to obtain justice and freedom lost at the hands of the Trans-Atlantic Slave trade during the 17<sup>th</sup> through 19<sup>th</sup> centuries. The fluctuation of racial politics allowed some Black individuals to seek redress in U.S. courts,<sup>14</sup> while the evolution of international law encouraged Black litigants to appeal for the universal administration of applicable law in European courts.<sup>15</sup> Thus, the use of social influence and the United States court system together provided the necessary legal opening for Black individuals in the 21<sup>st</sup> century to argue that they were still owed restitution.<sup>16</sup>

The *N.Y.U. Review of Law and Social Change* seeks to heighten the momentum of this continued social and legal struggle for Black Americans. To this end, members of the *Review* have gathered scholars, grassroots activists and others to participate in its annual colloquium, this year dedicated to the issue of reparations for Black people of the African Diaspora. During the 19<sup>th</sup> through 21<sup>st</sup> centuries, publicists and historians, primarily Black Americans,<sup>17</sup> have accepted the baton to pursue this quest for restorative justice through periodicals, academic scholarship and media exposure.<sup>18</sup> However, the general public and broader legal community must understand that this struggle is likely to be more successful and benefit the entire society when these vital groups do not merely coincide, but

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<sup>11</sup> *Id.* at 174.

<sup>12</sup> See, e.g., LARRY SANTUCCI, HOW PREVALENT WERE RACIALLY RESTRICTIVE COVENANTS IN 20TH CENTURY PHILADELPHIA? A NEW SPATIAL DATA SET PROVIDES ANSWERS (2019) (finding nearly 4,000 racial covenants in Philadelphia deeds from the 1920s, which kept African Americans out of less populated and primarily white neighborhoods).

<sup>13</sup> See Muhammad, *supra* note 5, 172–73.

<sup>14</sup> See generally KIMBERLEY WELCH, BLACK LITIGANTS IN THE ANTEBELLUM AMERICAN SOUTH (2018) (discussing Black claimants who sued in their local courts for their freedom through broken manumission promises, wrongful enslavement, and owed debts against both black and white defendants).

<sup>15</sup> E.g., *Somerset v. Stewart*, 98 Eng. Rep. 499 (K.B. 1772); *Smith v. Gould*, 2 Salk. 666 (K.B. 1705); *Chamberlain v. Harvey*, S.C. Carth. 396 (1697).

<sup>16</sup> See *In re African-American Slave Descendants Litigation*, 471 F.3d 754, 757 (7th Cir. 2006) (explaining plaintiffs' argument that defendant's businesses, whose predecessors owned slaves and did business with slaveowners, owed reparations to plaintiffs, descendants of slaves).

<sup>17</sup> E.g., F. Michael Higginbotham, *A Dream Revived: The Rise of the Black Reparations Movement*, 58 N.Y.U. ANN. SURV. AM. L. 447, 454 (2003); Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.–C.L. L. REV. 279 (2003); Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 633 (1993).

<sup>18</sup> E.g., Charles J. Ogletree, *Does America Owe Us?*, ESSENCE, Feb. 2003, at 126.

actively work together in creating a sustainable solution that addresses economic, legal, and social disparities throughout the United States.

We as a society must ask ourselves, are America and her inhabitants too arrogant and self-righteous to admit that there is longstanding inequality for many Black people in its country?<sup>19</sup> Or do we have the wherewithal to look at facts and statistics<sup>20</sup> exposing its institutions that continue to purvey an economic hindrance to the progress of *all* Americans.

With all the pride that Americans will exhibit this upcoming July to celebrate this nation's birth, and the beginning of a new election year to steer this country into a true leader of democratic principles, we should keep in mind that those who had the foresight to see this country prosper summarized this ideal when they declared their goal of creating "a more perfect union."<sup>21</sup> In other words, they recognized that their revolutionary ideas would have no impact decades and centuries later without planning, intelligence and a desire to truly see America materialize into a country that matured to not only admit but to also remedy its mistakes. HR 40 is not a reset, it is a legal mechanism which would arguably move America forward by making this country confront its past, and let all *deserving* Americans enjoy a prosperous future. The *N.Y.U. Review of Law and Social Change's* annual colloquium marking its 50<sup>th</sup> anniversary seeks to provide a substantive platform to materialize this noteworthy endeavor.

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<sup>19</sup> See, e.g., Muhammad, *supra* note 5, at 167, note 121 (discussing historical roots of modern wealth gap between Black and white Americans).

<sup>20</sup> *Id.* at 168–175.

<sup>21</sup> U.S. CONST., pmb. "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."