

LET'S TALK ABOUT REPARATIONS

Nkechi Taifa*

In the spring of the 2019, the Columbia Journal of Race and Law invited activist, attorney and scholar, Nkechi Taifa, to Columbia Law School for a public lecture on the topic of Reparations for descendent of enslaved Africans in the United States. Reparations has been a subject to much public discourse over the years and, in the last decade in particular, there has been a renewed interest on the political viability of establishing a federal commission to study the harm caused by slavery and develop recommendations to repairing those lingering harms on living African Americans today. On June 19, 2019, the House of Representatives held a historic public hearing, where prominent African American scholars, activists, writers, lawyers, amongst others, shared their thoughts on the topic of reparations. This renewed interest is a culmination of over a century long struggle by the reparations' movement in the United States.

Ms. Taifa offers that historical view of the reparation's movement in the United States. In her captivating address to the Columbia Law School community, Ms. Taifa articulates the passions, courage, vision, successes, frustrations and resilience of the Reparations movement in the United States from the late 1800s to the present. At the conclusion of Ms. Taifa's remark, it was obvious to us at CJRL that Ms. Taifa's timely messages was much a much-needed intervention in the Reparations discourse.

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It is with that aim that the CJRL editorial board, in consultation with Ms. Taifa, decided to publish her remarks. Aside from the citations and annotation, the text below is largely as she delivered it a Columbia Law school audience on March 26, 2019. We are grateful to Ms. Taifa for allowing us to publish her speech and for working with us through the editorial process. We are overjoyed to be able to share her work with the world.

The human cargo was loaded on ships at a bustling wharf in the nation's capital, destined for the plantations of the Deep South. Some [of the enslaved] pleaded for rosaries as they were rounded up, praying for deliverance. But, on this day, in the fall of 1838, no one was spared: not the 2-month-old baby or her mother, not the field hands, not the shoemaker and not Cornelius Hawkins, who was about 13 years old when he was forced on board.

The enslaved were grandmothers and grandfathers, carpenters and blacksmiths, pregnant women and anxious fathers, children and infants, who were fearful, bewildered, and despairing as they saw their families and communities ripped apart by the sale of 1838. Some children were sold without their parents...and slaves "were dragged off by force to the ship..." Others...ran away before they could be captured.

Their panic and their desperation would be mostly forgotten for more than a century. But this was no ordinary [sale of enslaved people]. The enslaved [human beings] had belonged to the nation's most prominent Jesuit priest. And they were sold, along with scores of others, to help

secure the future of the premier Catholic institution of higher learning at the time, known today as Georgetown University.¹

So, what happened to these 272 men, women, and children who were literally sold down the river? And what is owed, if anything, to the descendants of those enslaved, and the descendants of the millions of others whose names and circumstances we will never know, who were sold, or insured, or raped, or castrated, or lynched, or subjected to gynecological experiments with no anesthesia, convict leasing, forced sterilizations, syphilis, redlining, mass incarceration...² What is owed, if anything, to the descendants of the enslaved whose kidnappings and tortures and uncompensated labor helped to ensure the survival of colleges, and universities, and banks, and corporations, and industries, and religious institutions, and private estates, and yes, local, state, and federal governments.³

¹ Rachel L. Swarns, *272 Slaves Were Sold to Save Georgetown. What Does It Owe Their Descendants?*, N.Y. TIMES (Apr. 16, 2016), <https://www.nytimes.com/2016/04/17/us/georgetown-university-search-for-slave-descendants.html>.

² Cynthia Prater et al, *Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity*, 2 HEALTH EQUITY 249, 251-52 (2018) (discussing discriminatory healthcare practices and violence against black men and women from slavery to the post-Civil Rights era); see also James G. Pope, *Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist View*, 94 N.Y.U. L. REV. No. 6 (forthcoming Dec. 2019) (discussing how the original meaning of the Thirteenth Amendment protects convicted offenders against slavery or involuntary servitude unless it has been imposed as a specific punishment for that specific crime).

³ Scholars at Yale published a research paper calling on Yale University to acknowledge how it has benefited from the profits of slave trade and to consider reparations. See Kate Zernike, *Slave Traders In Yale's Past Fuel Debate On Restitution*, N.Y. TIMES (Aug. 13, 2001), <https://www.nytimes.com/2001/08/13/nyregion/slave-traders-in-yale-s-past-fuel-debate-on-restitution.html?module=inline>; Ruth J. Simmons, the 18th president of Brown University, appointed a Committee on Slavery and Justice to spend

Thank you, Columbia Law School, for allowing me to share, just for a few minutes as part of my opening framing, an excerpt from Professor Rachel L. Swarns's article published in the *New York Times* on April 16, 2016 chillingly describing the sale of 272 enslaved persons to ensure the future of Georgetown University.⁴ I'm pleased to have been asked to speak here today at Columbia, an institution that is also looking at its own role and complicity in the crime against humanity that was the enslavement era.⁵

Unlike the Georgetown revelations—where there was a ship manifest with names—there is rarely evidence of identifiable descendants from the enslavement era from which to highlight not only the atrocities of the era, but its continuing vestiges, and to seek acknowledgment and remedy. Indeed, the

two years investigating Brown's historic ties to slavery. See Pam Belluck, *Brown U. to Examine Debt to Slave Trade*, N.Y. TIMES, (Mar. 13, 2004), <https://www.nytimes.com/2004/03/13/us/brown-u-to-examine-debt-to-slave-trade.html>.

⁴ See *supra* note 1 and accompanying text.

⁵ Professor and historian Eric Foner led a research seminar on Columbia University's relationships with slavery. Students in the Seminar presented their research to Columbia University's president, Lee C. Bollinger. Columbia University has been described as a "late comer to the studies of universities and slavery." Columbia's reckoning began when Bollinger read about Craig Steven Wilder's book, "Ebony and Ivy: Race, Slavery and the Troubled History of America's Universities," which included information about Columbia and the institution's history with slavery. The book documents how Columbia University (then named King's College) announced the swearing in of its first trustees on a poster paid for with a single advertisement: "for a slave action near Beekman's Slip in Lower Manhattan." See Jennifer Schuessler, *Columbia Examines Its Long-Ago Links to Slavery*, N.Y. TIMES (May 13, 2015), <https://www.nytimes.com/2015/05/14/books/columbia-examines-its-long-ago-links-to-slavery.html?smid=tw-share>; see also Jennifer Schuessler, *Dirty Antebellum Secrets in Ivory Towers*, N.Y. TIMES (Oct. 18, 2013), <https://www.nytimes.com/2013/10/19/books/ebony-and-ivy-about-how-slavery-helped-universities-grow.html?module=inline>.

issue of reparations for African-descended people in the United States was once in the not-too-distant past unthinkable, unfathomable by mainstream America as viable public policy.⁶ Much of the information about the enslavement era and the role of culpable parties, in general, has been buried. It's been buried for a very long time. Just as the bombing of Black Wall Street in Tulsa, Oklahoma. The massacre in Rosewood, Florida. If you don't know these instances, just Google [them].⁷ Countless others yet to be uncovered. Our history must not be buried. It must not be swept under the rug. And the descended victims must not be the only ones to uncover and unpack it.

My white colleague Katrina Browne uncovered evidence that her New England ancestors were the largest slave-trading family in U.S. history; [her ancestors] brought over 10,000 Africans to the Americas in chains.⁸ She documented her roots

⁶ Former Representative John Conyers of Michigan has proposed a bill that would establish a commission to study the impact of slavery and recommendations regarding reparations in 1989 and had continued to reintroduce it every congressional session until his retirement in 2017. *House Panel to Consider Slavery Reparations Proposals, All Things Considered*, NPR (Jun. 16, 2019), <https://www.npr.org/2019/06/16/733248929/house-panel-to-consider-slavery-reparations-proposals>.

⁷ *Tulsa-Greenwood Race Riot Claims Accountability Act of 2007: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 110th Cong. 26-61 (2007) (testimony and responses by John H. Franklin, Prof. of Psych., Fordham Uni.) (H.R. 1995, the "Tulsa-Greenwood Race Riot Claims Accountability Act of 2007, was introduced by Rep. Conyers to provide survivors or descendants of victims of the 1921 Tulsa Race Massacre with a mechanism to bring civil action for up to five years after the enactment of the bill. In 1921, Greenwood, a community in Tulsa, was one of the wealthiest African American communities in the United States—so much so that it was referred to as the "Black Wall Street." On May 31, 1921, the Greenwood district was destroyed after being ravaged by a white mob; over 1,200 homes were destroyed and up to 300 African Americans were murdered. The State and the city refused to undertake any investigations or prosecutions, and no convictions were ever obtained.)

⁸ Sheryl G. Stolberg, *At Historic Hearing, House Panel Explores Reparations*, N.Y. TIMES (Jun. 19, 2019), <https://www.nytimes.com/>

in the Sundance-acclaimed film *Traces of the Trade: A Story from the Deep North*. Deep North, *not* the South. She stresses that the slave trade was not just a few people taking a boat and sending it out. Everyone in the New England town lived off of slavery. The boat maker. The iron worker who made the shackle. The coopers who made the barrels to hold the rum. The distillers who took the molasses and sugar and made it into the rum. Literally the whole town was dependent on the slave trade. Wealth and privilege in the United States, [Browne] says, has been amassed in large measure as a direct or indirect consequence of the institution of slavery.

I've been actively organizing around this issue since 1975, at a time when the topic was not popular. When it was definitely on the fringes. When it was not fashionable to address the issue. When one would be branded as a militant, or a revolutionary, or just plain crazy. Or today, the term they call it: black identity extremists.⁹

It gives me great pleasure to now be in the company of some of the leading minds in the country promoting the right to, and the need for, reparatory justice. And now, we are in the company of 2020 Presidential candidates and other notables who are beginning to even just utter—feeling comfortable to just

2019/06/19/us/politics/slavery-reparationshearing.html(discussing the hearing on H.R. 40, a legislation that would create a commission to study the effects of slavery and potential reparations).

⁹ Khaled A. Beydoun & Justin Hansford, *The F.B.I.'s Dangerous Crackdown on "Black Identity Extremists,"* N.Y. TIMES (Nov. 15, 2017), <https://www.nytimes.com/2017/11/15/opinion/black-identity-extremism-fbi-trump.html> (op-ed discussing an intelligence report, published in August 2017 by the FBI's Counterterrorism Division, identifying "Black Identity Extremists" (BIEs) as an emerging terror threat sweeping the country. The report predicted that "BIEs' perceptions of unjust treatment of African Americans and the perceived unchallenged illegitimate actions of law enforcement will inspire premeditated attacks against law enforcement over the next year."). *Id.*

even utter—the term “reparations.” So, it's very critical that this issue be brought out into the open.

This reminds me of the words of Mamie Till-Mobley, the mother of fourteen-year-old Emmett Till, who in 1955 was viciously abducted by whites from the bed in his great uncle's house, who was terrorized and tortured, brutally mutilated, and dumped into the Tallahatchie River in Mississippi. And the only way her son's beaten and horribly disfigured body could be identified was by a ring that he wore on his finger. But you know, his mama Mamie Till, she refused a [closed] casket. She said, I don't want to bury his memory under the rug. She stated emphatically, I want you to open up the casket. Open it up, she demanded. She said, I want the world to see what they did to my boy. And, just as that casket was opened up for the world to see what was done to Emmett Till, today we're going to open up the casket of the legacy of enslavement. And we're going to talk about remedy.

N'COBRA – the National Coalition of Blacks for Reparations in America – was the coalition which spearheaded the modern-day reparations movement. And, I might say, that the seeds of N'COBRA emanated from a conference that was hosted at Harvard University in 1987—pursuant to a call by the National Conference of Black Lawyers—to discuss whether a constitutional amendment was needed to remedy the legacy of enslavement.¹⁰ And then there's another organization, NAARC—the National African American Reparations Commission—[who] opened up that casket [by]connecting the dots between the movement for reparations in the Caribbean and across the diaspora and the movement in the United States and,

¹⁰ N'COBRA was formed in 1987 to develop a grassroots reparations movement, but it is now the largest national organization devoted solely to reparations. In addition to supporting the reparations bill, N'COBRA has participated in education campaigns designed to pressure state and local legislatures to support reparations as well. See Charles P. Henry, *The Politics of Racial Reparations*, 34 J. BLACK STUD. 131, 142 (2003).

like Caricom, introduced a comprehensive ten-point program as a critical component of the reparations movement of the 21st century.¹¹

Ta-Nehisi Coates opened up that casket, [and] thrust[ed] the issue of reparations for African-Americans in the mainstream with his article in *The Atlantic Magazine*.¹² Those magazines are on people's living room coffee tables, and in the doctor and dentist offices, [and] in the mainstream media. So, let me at this time state emphatically that although many, or some of us may have just heard about this issue in the mainstream press, or might have heard your favorite candidate speak on it, the concept of reparations for Black people in America is not novel. Nor is the demand for such compensation new.

¹¹ In 2013, CARICOM, an organization that gathers 15 different Caribbean nations to promote integration, decided that each country member would create a commission for reparations. On March 11, 2014, CARICOM adopted a ten-point plan consisting of both financial reparations and symbolic demands for slavery, the Atlantic slave trade, and the genocide of indigenous populations. The plan—addressed to Denmark, France, Portugal, the Netherlands, the United Kingdom, and Sweden, included the following: (1) Full Formal Apology, (2) Repatriation, (3) Indigenous Peoples Development Program, (4) Cultural Institutions, (5) Public Health Crisis, (6) Illiteracy Eradication, (7) African Knowledge Program, (8) Psychological Rehabilitation, (9) Technology Transfer, (10) Debt Cancellation. ANA LUCIA ARAUJO, REPARATIONS FOR SLAVERY AND THE SLAVE TRADE: A TRANSNATIONAL AND COMPARATIVE HISTORY (2017); see also David Muhammad, CARICOM's "10 Point Program" for Reparations for Slavery for African People, THE FINAL CALL, http://www.finalcall.com/artman/publish/World_News_3/article_101422.shtml (last updated May 9, 2014).

¹² Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (Jun. 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (Coates' essay discussing the idea of financial compensations for the descendants of slaves transformed the national discussion around reparations and put it at the center of U.S. public discourse. In *The Atlantic* article, he argued that the early American economy was built on slave labor, and that both private and public institutions intentionally engineered the black-white "wealth gap.").

The demand for reparations for unpaid labor during the enslavement era has been continuous. There's been no substantial period of time where the call for redress has been neglected. During the late nineteenth century, the National Ex-Slave Mutual Relief, Bounty and Pension Association—led by Reverend Isaiah Dickerson and Callie House—had six hundred thousand dues-paying members seeking to obtain compensation for slavery from federal agencies.¹³ During the 1920s, Marcus Garvey and Universal Negro Improvement Association galvanized hundreds of thousands of Black people demanding repatriation as a form of reparations. Both of these movements were destabilized by government forces, and their primary leaders unjustly imprisoned.¹⁴ We need to open up that casket!

In the early 1960s, Queen Mother Audley Moore of New York presented a petition for reparations to the United Nations on behalf of the Universal Association of Ethiopian Women.¹⁵

¹³ See generally MARY F. BERRY, *MY FACE IS BLACK IS TRUE: CALLIE HOUSE AND THE STRUGGLE FOR EX-SLAVE REPARATIONS* (2006) (recounting the story of pioneering activist, Callie House, who led the fight for reparations for the formerly enslaved, seventy years before the civil rights movement picked up the mantle).

¹⁴ Marcus Garvey was a Jamaican-born black nationalist leader who led the “Black Zionism” movement, which encouraged African-Americans to become conscious of their roots and organize their return to Africa. The FBI began investigating Garvey’s activities in order to destabilize the black power movement, and they actively sought to deport him as an “undesirable alien” to undermine his power. They eventually succeeded and he was convicted of mail fraud in 1923, imprisoned in 1925, and deported to Jamaica in 1927. See Judith Stein, *PARDON MARCUS GARVEY*, N.Y. TIMES (Nov. 5, 1983), <https://www.nytimes.com/1983/11/05/opinion/pardon-marcus-garvey.html?searchResultPosition=6>; see also *Marcus Garvey*, FBI RECORDS: THE VAULT, <https://vault.fbi.gov/marcus-garvey> (last accessed Oct. 30, 2019).

¹⁵ Queen Mother Audley Moore, a prominent civil rights activist and black nationalists, was the best-known advocate for African American reparations in the 1950s and 1960s. Her organization, the Universal Association of Ethiopian Women, actively promoted reparations from 1950 until her death in 1996. See Eric Pace, *Queen Mother Moore, 98, Harlem Rights Leader, Dies*,

And yes, in his 1964 book *Why We Can't Wait*, Dr. Martin Luther King proposed a “Bill of Rights for the Disadvantaged,” which emphasized redress for both the historical victimization and exploitation of Blacks as well as their present-day degradation.¹⁶ In 1967, the Black Panther Party list[ed] the issue of Reparations and restitution for slave labor as point number three of their ten-point program.¹⁷ Also in 1968, the Republic of

N.Y. TIMES (May 7, 1997), <https://www.nytimes.com/1997/05/07/nyregion/queen-mother-moore-98-harlem-rights-leader-dies.html>;

¹⁶ On May 28, 1964 at the “World March Toward Human Rights Luncheon” of the NAACP Legal Education and Defense Fund, Dr. King described the “Bill of Rights for the Disadvantaged” as a broad-based and comprehensive measure that must cover all of the disadvantaged—both blacks and whites. He believed that opportunity and social equity could only be achieved after both racial barriers to blacks and economic barriers to both blacks and whites had been eliminated from the socioeconomic structure. He eventually reframed his earlier call for a “Bill of Rights for the Disadvantaged” to a “Social and Economic Bill of Rights,” and it demanded: “(1) the right of every employable citizen to a decent job, (2) the right of every citizen to a decent income, (3) the right of a decent house and the free choice of neighborhood, (4) the right of an adequate education, (5) the right to participate in the decision making process, and (6) the right to the full benefits of modern science in health care.” David B. Oppenheimer, *Dr. King's Dream of Affirmative Action*, 21 HARV. LATINX L. REV. 56, 80 (Aug. 2017).

¹⁷ The Black Panther Party's Ten-Point Program was first publicized in the second issue of the organization's newspaper, *Black Panther*, on May 15, 1967. The platform and program—*What We Want Now! What We Believe*—was a set of guidelines written by Huey B. Newton and Bobby Seale, the founders of the Black Panther Party for Self Defense. The program emphasized the Party's ideals and commitment to the revolutionary movement, and the original Ten Point Program read:

What We Want: (1) We want freedom. We want power to determine the destiny of our Black community. (2) We want full employment for our people. (3) We want an end to the robbery by the White man of our Black community. (4) We want decent housing, fit for shelter [of] human beings. (5) We want education for our people that exposes the true nature of this decadent American society. We want education that teaches us our true history and our role in the present day society. (6) We want all Black men to be exempt from military service. (7) We want an immediate end to police

New Afrika proclaimed in its Declaration of Independence: “We claim no rights from the United States other than those rights belonging to [human beings] anywhere in the world, and these include the right to damages, reparations, due us for the grievous injuries sustained by our ancestors and ourselves by reason of United States’ lawlessness.”¹⁸

In April of 1969, the Black Manifesto was adopted at the National Black Economic Development Conference in Detroit. The manifesto—presented by civil rights activist James Forman—included a demand that white churches and synagogues pay \$500 million dollars in reparations to Blacks in

brutality and murder of Black people. (8) We want freedom for all Black men held in federal, state, county, and city prisons and jails. (9) We want all Black people when brought to trial to be tried in court by a jury of their peer group or people from their Black communities. As defined by the constitution of the United States. (10) We want land, bread, housing, education, clothing, justice and peace.

What We Believe: (1) We believe that Black people will not be free until we are able to determine our destiny. (2) We believe that the federal government is responsible and obligated to give every man employment or a guaranteed income. We believe that if the White American business men will not give full employment, then the means of production should be taken from the business men and placed in the community so that the people of the community can organize and employ all of its people and give a high standard of living. (3) We believe that this racist government has robbed us and now we are demanding the overdue debt of forty acres and two mules. Forty acres and two mules was promised 100 years ago as retribution for slave labor and mass murder of Black people. We will accept the payment in currency which will be distributed to our many communities: the Germans are now aiding the Jews in Israel for the genocide of the Jewish people. The Germans murdered 6,000,000 Jews. The American racist has taken part in the slaughter of over 50,000,000 Black people; therefore, we feel that this is a modest demand that we make...

The Black Panther Party’s Ten-Point Program, UC PRESS BLOG, <https://www.ucpress.edu/blog/25139/the-black-panther-partys-ten-point-program/> (last accessed Oct. 1, 2019).

¹⁸ MICHAEL T. MARTIN & MARILYN YAQUINTO, REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES (2007).

United States, touted as only the beginning of the amount owed.¹⁹ The following month, James Forman absolutely, audaciously, interrupted Sunday service at Riverside Church here in New York to announce this reparations demand from the Black manifesto. And, believe it or not, several religious institutions did respond with financial donations.

In 1972, the National Black Political Convention in Gary, Indiana adopted the “Anti-Depression Program,” which was an act authorizing the payment of a sum of money and reparations for the enslavement era, and a negotiating commission between representatives of the United States and the Republic of New Afrika to determine kind, dates and other details of paying reparations.²⁰ The Nation of Islam’s publication, *Muhammed Speaks*—and later *The Final Call*—in their section “What We Want, What We Believe” has always demanded that the United States exempt Black people “from all taxation as long as we’re deprived of equal justice.”²¹ And the organization has long called for the establishment of a separate territory which former slave owners are obligated to financially support for at least twenty years.

So the end of the 20th century brought renewed vigor to the call for reparations for people of African descent in the United States—with the founding of the National Coalition of Blacks for Reparations in America. N’COBRA was founded to build a mass-based movement for reparations in the United

¹⁹ This amount was later raised to \$3 billion. Keith Dye, *The Black Manifesto for Reparations in Detroit: Challenge and Response, 1969*, 35 MICH. HIST. REV. 53, 53 (2009).

²⁰ “The program made three basic demands of the U.S. government: ceding land and sovereignty to the RNA ‘in areas where blacks vote for independence’ via plebiscite; paying \$300 billion in reparations ‘for slavery and unjust war against the black nation’; and establishing a negotiations procedure to determine reparations payment.” DAN BERGER, *THE HIDDEN 1970S: HISTORIES OF RADICALISM* (2010).

²¹ CLIFTON E. MARSH, *THE LOST-FOUND NATION OF ISLAM IN AMERICA* (2000).

States. And, since its creation, the call for reparations substantially leaped forward, generating what I call the modern-day reparations movement. N'COBRA sought to mainstream the concept through public education, legislative and litigat[ion] initiatives. There have been many organizations before and after. There's Dorothy Lewis's Black Reparations Commission,²² the African People's Socialist Party,²³ African National Reparations Organization,²⁴ the National Black United Front,²⁵ the December First Movement,²⁶ the Black Radical Congress, [and] #40. The Movement for Black Lives included as a key plank the issue of reparations as part of their policy agenda.²⁷

²² CHARLES P. HENRY, *LONG OVERDUE: THE POLITICS OF RACIAL REPARATIONS* (2009) (The Black Reparations Commission, headed by Dorothy Lewis, worked in partnership with N'COBRA to advocate for racial reparations).

²³ *How the African People's Socialist Party Made Reparations a Household Word*, AFRICAN PEOPLE'S SOCIALIST PARTY, <http://apsuhuru.org/reparations/history/> (last accessed Oct. 31, 2019) (since 1982, the African People's Socialist Party has held 12 World Tribunals on Reparations for African People).

²⁴ *Political Report to the Fifth Congress of the African People's Socialist Party*, AFRICAN PEOPLE'S SOCIALIST PARTY, <http://asiuhuru.org/ontheground/apspusa/congress5/report07.shtml#sthash.DwRtXYHH.dpuf> (last accessed Oct. 31, 2019) (the African National Reparations Organization was created by the African People's Socialist Party for the sole purpose of making reparations a "household name.").

²⁵ *National Black United Front*, AFRICAN ACTIVIST ARCHIVE, <http://africanactivist.msu.edu/organization.php?name=National+Black+United+Front> (last accessed Oct. 31, 2019) (The National Black United Front was established in the 1980s to fight for the cultural develop of African people).

²⁶ COLOURED COMMUNITY (2005) (the December 1st Movement, which drew its name from the freeing of enslaved peoples on December 1, 1834, "sought to invigorate a despondent and disunited Coloured community by kindling within it an identification with a common slave past.").

²⁷ *Platform*, THE MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/platform/> (last accessed Oct. 31, 2019) (M4BL published a platform which included reparations as one of six key demands: "[w]e demand that the government repair the harms that have been done to Black communities in the form of reparations and targeted long-term investments.").

In 1988, legislation was passed in this country authorizing the payment of \$20,000 to each Japanese-American detention camp survivor, a \$1.5 million trust fund to be used to educate Americans about the sufferings of the Japanese-Americans, a formal apology from the United States Government, and a pardon for all of those convicted of resisting detention camp internment.²⁸ [This legislation] started with a congressionally-mandated commission. And that's when the light bulb went off. There was a model, and there was a very recent, right-in-your-face precedent. A congressionally-mandated commission to study the issue of reparations for Japanese-Americans led to the submission of proposals, which led to a bill that was signed by the president.

So, using the commission which led to the Japanese-American Civil Liberties Act as an inspirational strategy, N'COBRA collaborated with Congressman John Conyers in getting H.R. 40 drafted and introduced.²⁹ A commission to

²⁸ The Civil Liberties Act of 1988, introduced in the House as "Civil Liberties Act of 1987," was signed into law by President Ronald Reagan in 1988. The law declared that a "grave injustice was done to citizens and permanent aliens of Japanese ancestry" and Congress formally apologized on behalf of the nation. It directed the Attorney General to identify and locate individuals eligible for reparations and pay \$20,000 to each eligible individual. It also established within the Treasury a Civil Liberties Public Education Fund to sponsor research and public educational activities related to internment. Finally, the law requested that the President offer pardons to individuals convicted of violating laws or executive orders during the internment period because they refused to accept discriminatory treatment on the basis of their Japanese ancestry, *Civil Liberties Act of 1988*, Pub. L. No. 100-383, § 100, 102 Stat. 94 (1988).

²⁹ H.R. 40 was introduced in House Action by the House of Representatives on January 3, 2019. It had been introduced in the previous session of Congress, but the bill had not been enacted by the 115th Congress. The bill establishes the Commission to Study and Develop Reparations Proposals for African-Americans, and the commission will "examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies." The commission will identify "(1) the role of the federal and state governments in supporting the institutions of

examine the institution of slavery and subsequent racial and economic discrimination against African Americans, and the impact of those forces on Black people today. The commission will [have a similar mandate to the commission for Japanese-Americans] to make recommendations to Congress on appropriate remedies. The number 40 in H.R. 40 is in remembrance of the unfulfilled nineteenth-century campaign promise by General Sherman—his Field Order No. 15—that promised freed Blacks forty acres.³⁰ I'm not sure exactly where the mule part came [from]. Congressman Conyers's reparations study bill was the key organizing vehicle the N'COBRA coalition has used over the past three decades as part of this public education mobilization campaign.

The issue of reparations for African Americans was once, in the not-too-distant past, unthinkable by mainstream America as viable public policy. But today, there's been a flurry of Democratic presidential candidates addressing the issue of reparations with varying levels of understanding and expertise on the issue. I humbly submit, at least for those candidates who are in Washington on the Hill, that they, and every member of Congress, endorse the passage of H.R. 40 and encourage the introduction of a Senate companion bill as well. Since the introduction of H.R. 40 in 1989, several state legislatures and scores of city councils across the country have passed reparations-type legislation, or H.R. 40 endorsement resolutions. In 1994, the Florida State Legislature paid \$150,000 to each of the 11 survivors of the 1923 Rosewood Race Massacre, [and]

slavery, (2) forms in discrimination in the public and private sectors against freed slaves and their descendants, and (3) lingering negative effects of slavery on living African-Americans and society.” *Commission to Study and Develop Reparation Proposals for African-Americans Act*, H.R. 40, 116th Cong. (2019-2020).

³⁰ Barton Myers, *Sherman's Field Order No. 15.*, NEW GEORGIA ENCYCLOPEDIA (Sep. 25, 2005), <https://www.georgiaencyclopedia.org/articles/history-archaeology/shermans-field-order-no-15>.

created a scholarship fund for students of color.³¹ In 2001, the Tulsa Race Riot Reconciliation Act was enacted, with the Oklahoma state legislators deciding on a scholarship fund and memorial to commemorate the June 1921 race slaughter that left over 300 Black people dead and forty square blocks of exclusively Black businesses, homes, schools, churches, obliterated.³² Survivors of torture by Chicago police received an unprecedented reparations package based on the reparations ordinance passed by the City Council as a result of torture by police officers.³³ The *Pigford* class action settlement against the U.S Department of Agriculture for racial discrimination against Black farmers in its allocation of farm loans and assistance, is reportedly the largest federal settlement for civil rights violations to date: \$2.2 billion.³⁴

City Councils endorsing H.R. 40 include: Pine Bluff, Arkansas, Alameda County, Berkeley, Compton, Foster City, Inglewood, Los Angeles, East Palo Alto, San Francisco, Washington, D. C, Atlanta, Georgia, Chicago, Evanston, Illinois, Baltimore, Maryland, Detroit, Michigan, Jackson and Claiborne County, Mississippi, St Louis, Missouri, Camden, Passaic County, Patterson and North New Jersey, Cleveland, Ohio, Philadelphia, Dallas and Fort Worth, Texas, Burlington, Vermont and Richmond, Virginia. And I'm sure that there are more. Most don't realize this has already happened. These city councils have already passed resolutions endorsing a commission to study this issue. And I cite this because even though this is relatively recent history, it's buried. It's forgotten,

³¹ See C. Jeanne Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, FLA. ST. U. L. REV. 503, 517 (1994).

³² See OKLA. STAT. tit. 74, § 74-8000.1 (2014).

³³ See Andrew S. Baer, *Dignity Restoration and the Chicago Police Torture Reparations Ordinance*, 92 CHI.-KENT L. REV. 769 (2018).

³⁴ See Tadlock Cowan & Jody Feder, *The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers*, CONG. RES. SERV. (May 29, 2013), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf>.

and we forever invent wheels when we could leap forward on the shoulders of things that have already gone on before.

Largely as a result of mobilizations initiated by folks who have been working on these issues for a long time, there have been countless civil and human rights organizations, religious groups, professional organizations, civic groups, sororities, fraternities, and labor unions over the past thirty years who have also endorsed the call for reparations and to endorse H.R. 40. But you know that's not all: reparations advocates have also challenged corporations who benefited from the profits made from the trafficking of human beings. Countless companies and industries were enriched as a result of the enslavement era.

Companies sold life insurance policies on the lives of enslaved persons. Aetna, New York Life, AIG. The financial giants J. P. Morgan Chase Manhattan Bank and FleetBoston Financial Group.³⁵ Others with documented ties to slavery included the railroads Norfolk Southern, CSX, Union Pacific, and Canadian National.³⁶ And newspaper publishers that assisted in the capture of runaway slaves include: Knight Ridder,

³⁵ See Rachel L. Swarns, *Insurance Policies on Slaves: New York Life's Complicated Past*, N.Y. TIMES (Dec. 18, 2016), <https://www.nytimes.com/2016/12/18/us/insurance-policies-on-slaves-new-york-lifes-complicated-past.html> (discussing life insurance policies on enslaved individuals, which allowed slave owners to “recoup three-quarters of a slave’s value in the event of an untimely death); see also Virginia Groark, *Slave Policies*, N.Y. TIMES (May 5, 2002), <https://www.nytimes.com/2002/05/05/nyregion/slave-policies.html> (discussing how major insurance companies like Charter Oak Life Insurance Company, Aetna, the FleetBoston Financial Corporation, and CSX Corporation profited off of the slave trade by offering insurance policies on enslaved peoples).

³⁶ See Danielle Young, *6 Historic Structures in America That Were Built by Slaves*, THE ROOT (Jul. 26, 2016), <https://www.theroot.com/6-historic-structures-in-america-that-were-built-by-sla-1790856172> (discussing how the four major railroad networks in North America—Norfolk, CSX, Union Pacific, and Canadian National—still own lines that were build and operated through the labor of enslaved black people).

Tribune, and E.W. Scripps.³⁷ And as you well know, the financial backers [of] many of the country's top universities were wealthy slave owners. Open up that casket.

The quest for reparations, for reparatory justice in the United States since the turn of the century, is not new, although there are those who feel the thrust came about only as a result of today's social media. But indeed, it is quite clear that the demand for reparations in the United States has been long and continuous.

And I submit, in the context of Black people in this country, the quest for reparations essentially constitutes four elements. Number one: the formal acknowledgment of historical wrongs and an official, unfettered apology for the dehumanization and atrocities of the enslavement era and beyond. Why do I say “unfettered” apology? Why don't I just say apology? Because the Senate and the House of Representatives *did* pass symbolic resolutions apologizing for slavery and segregation. However, the 2009 bill passed by the Senate contained a disclaimer that those seeking reparations or cash compensation could not use the apology to support a legal claim.³⁸

Number two: the recognition that the injury has continued throughout the years and still manifests today. Number three: the commitment to redress by the federal government, which sanctioned enslavement and subsequent segregation by state and local governments, as well as corporate entities, and religious institutions, and private institutions which enjoy unjust enrichment from the era. And, number four: the actual compensation, in whatever form or forms are agreed upon.

Formal acknowledgment, recognition that injury continues, a commitment to redress by culpable entities, and the

³⁷ See MWALIMU J. SHUJAA & KENYA J. SHUJAA, THE SAGE ENCYCLOPEDIA OF AFRICAN CULTURAL HERITAGE IN NORTH AMERICA (2015).

³⁸ See S. Con. Res. 26, 111th Cong. (2009-2010).

actual compensation. “So why the federal government?” people often ask me, “wasn’t all of the injury done by the states?” I say the federal government because we must remember the origins of how Black people came to this country in the first place. We are the descendants of Africans kidnapped and transported to the United States with the explicit complicity of the United States government and every single arm of the United States law-making and law-enforcing machinery.³⁹ United States federal law, state law, high court decisions, and lower court decisions.⁴⁰ The dehumanization, the atrocities, the terrorism of our enslavement in the United States were not isolated occurrences but a matter of *war*. Yes, war, committed under the specific authority of the United States Constitution. The kidnapping was a wrongful act for which our ancestors and we as the heirs are entitled to damages. The enslavement was a wrongful act for which our ancestors and we as their heirs are entitled to damages. The stealing of our labor was a wrongful act as was the genocide we’re still suffering. We are entitled to damages, to reparations, to reparatory justice, to compensation.

We speak of our own U. S. Constitution; article I, section 9, clause I expressly guaranteed the continued importation of African prisoners of war to every single state that might desire our labor until the year 1808. That article also upheld the further dehumanization of the African by relegating their status to that of three-fifths of a White man and most egregious, it was war conducted against the African on this soil under the authority of yet another constitutional provision: article IV, section 2, clause 3, also known as the Fugitive Slave Provision, which mandated that no enslaved person, even if he or she had

³⁹ See NORA NEALE HURSTON, *BARRACOOON: THE STORY OF THE LAST “BLACK CARGO”* (2018) (Hurstons’ non-fiction work based on three months of periodic interviews with Cudjo Lewis, the last survivor of the last slave ship to land on American shores).

⁴⁰ See *Dred Scott v. Sandford*, 60 U.S. 393 (1856); see also *The Antelope*, 23 U.S. 66 (1825).

reached a free state, none of us was safe, and it was the obligation, it was a duty, the *constitutional responsibility* of every single white man, woman or child to deliver us up to the government. I never understood why Harriet Tubman—the only person who we knew about from the [history] books—had to go all the way to Canada. Why couldn't she just stay in New York or Pennsylvania with the people she brought to freedom? Why did she have to go all the way to Canada? Because the Constitution of the United States said that you couldn't. Anywhere in this country, you were not safe. You had to go outside of the territorial bounds if you wanted to escape capture.

The 13th Amendment, passed in 1865, recognized the freedom of all descendants of Africans enslaved in the United States and made it illegal to continue slavery, except for that ridiculous “except as punishment for a crime” clause⁴¹ But, the

⁴¹ The 13th Amendment was ratified on December 6, 1865. It reads: “Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII § 1. The exception for parties who have been convicted—otherwise known as the “Punishment Clause”—has served as a bulwark against claims that forced prison labor amounts to slavery or involuntary servitude and should therefore be prohibited by the Thirteenth Amendment. Federal courts “have held that the main purpose of the amendment was specific—to abolish African-American chattel slavery and its incidents” and that the Punishment Clause “renders any current prisoner’s argument that they are slaves or involuntary servants void and frivolous.” Ryan S. Marion, *Prisoners for Sale: Making the Thirteenth Amendment Case Against State Private Prison Contracts*, 18 Wm. & Mary Bill Rts. J. 213, 214 (2009). While some commenters frame the Punishment Clause as unrelated to the history of racial discrimination and punishment in the United States, others argue that, in including the Punishment Clause in the Thirteenth Amendment, the drafters anticipated the continued “capture and relegation of Black bodies back into slavery.” Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 Cornell L. Rev. 899, 931 (2019). In other words, the Thirteenth Amendment can be understood as “functionally preserv[ing] slavery as a means of persistent racial subjugation.” *Id.* at 933.

13th Amendment's "exception clause" is another whole presentation.

No payment was made for stolen labor, land, cultural rape, or economic exploitation. In fact, the Dred Scott case had been decided scarcely eight years prior to the 13th Amendment, in which, a Supreme Court justice ruled that a Black person in America had no rights. None. No rights which a White person was bound to respect. And, neither Dred Scott nor any other Black person could be a citizen of the United States. And, when they said, "we the people" [in the Constitution], they meant "we the white people."⁴²

As of 2017, the average of the minimum daily wages for non-industry prison jobs was a mere 86 cents. Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, PRISON POLICY INITIATIVE (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>. African Americans are incarcerated at five times the rate of white people, meaning that prison labor conditions have a disproportionate impact on African Americans. *Criminal Justice Fact Sheet*, NAACP (last accessed Sept. 29, 2019), <https://www.naacp.org/criminal-justice-fact-sheet/>. In 2018, incarcerated people across the country went on strike. One of their main demands was an "immediate end to prison slavery." *Prison Strike 2018*, INCARCERATED WORKERS ORGANIZING COMMITTEE (last accessed October 1, 2019), <https://incarceratedworkers.org/campaigns/prison-strike-2018>.

⁴² In the 1857 case of *Dred Scott v. Sandford*, the Supreme Court held that no African American, whether free or enslaved, could be a citizen of the United States with the right to sue in federal court. The court further held that the Missouri Compromise, which prohibited slavery and indentured servitude "north of thirty-six degrees thirty minutes north latitude" was unconstitutional. *Dred Scott v. Sandford*, 60 U.S. 393, 15 L. Ed. 691 (1857). The *Dred Scott* decision serves as "critical evidence of the comprehensive government involvement in slavery," and some commentators have argued that the Supreme Court opinion itself is a harm compensable by reparations. Brophy, Alfred L., *Considering Reparations for the Dred Scott Case. THE DRED SCOTT CASE: HISTORICAL AND CONTEMPORARY PERSPECTIVES*, Christopher Bracey, David Konig, and Paul Finkelman, eds., Ohio State University Press, 2010; U of Alabama Public Law Research Paper No. 997900. Available at SSRN: <https://ssrn.com/abstract=997900> (page 16).

Although the 13th Amendment set no restrictions on the freedom of formally enslaved people, the 14th Amendment, passed two-and-a-half years later robbed the newly freed people of some of their hard-won freedom.⁴³ I say this because the 14th Amendment imposed the obligations of the United States citizenship upon the African in America without his or her informed consent, or the benefits of that citizenship, and without any meaningful discussion of political alternatives inherent in the international right to self-determination.⁴⁴ The audacity. How are you going to take a free people and tell them that they have to become part of your family, especially since you had castrated his father, raped his mother, and sold his children off to your relatives. Didn't ask him if he wanted to join your family. Didn't ask him if he wanted to start another family, his own family.

If the African were free, no one—not even the ex-slave holder—could define the African's future status for him, or impose a status upon him. This was the free person's [choice] alone; it was the fruit of the right to self-determination. This is why it's pertinent to understand that reparations is not solely an economic concept. It is a political concept as well, and it is a cultural one. Reparations are not limited to stolen labor, but also for unjust war, and cultural aggression. The political essence of slavery is not merely found in the economic exploitation of labor, but in the illegal imposition of U.S. jurisdiction on the enslaved or his or her descendants. It can never be overemphasized. I know we don't learn it like this. But it can never be overemphasized that black people are on this soil as a

⁴³ The Fourteenth Amendment was adopted on July 9, 1868. It reads, in relevant part: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV § 1.

⁴⁴ One of the purposes of the United Nations listed in its charter is the development of "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." <https://www.un.org/en/sections/un-charter/chapter-i/index.html>

result of warfare supported by the United States and other nations. [They] are here as a result of vicious colonization, cultural rape, economic exploitation, mental bondage, and terror. And the full ramifications of this historical record must not be endlessly ignored. We need to open up that casket.

You see, this is why the claim from the federal government is so important; because every time we ran away—it didn't matter if we just walked off, tiptoed off quietly in the night, or organized elaborate slave insurrections, or if we fled to Pennsylvania or New York—they were going to come after us with their armed forces,⁴⁵ with their militias, and with their dogs. So, they chased us, and they pursued us, and tracked us down, and castrated us, and lynched us, and sought to quell all forms of resistance.

When we see the video of the ruthless pursuit, chasing, and blatant gunning down of Walter Scott in South Carolina like a runaway slave.⁴⁶ When we see the gunning down of Michael

⁴⁵ See Frank Reeves, *Confederates 'Slave Hunt' in North a Military Disgrace*, PITTSBURGH POST-GAZETTE (June 30, 2013), <https://www.post-gazette.com/news/state/2013/06/30/Confederates-slave-hunt-in-North-a-military-disgrace/stories/201306300221> (“In June 1863, when Brig. Gen. Albert Jenkins' cavalry, in the vanguard of the Confederate army, galloped into Pennsylvania, its aim wasn't only to spy and steal supplies. The soldiers were also determined, as historian Margaret Creighton notes, to round up African-Americans, whom the Confederates regarded as "contraband" that should be returned to "rightful" owners”, <https://www.post-gazette.com/news/state/2013/06/30/Confederates-slave-hunt-in-North-a-military-disgrace/stories/201306300221>; Radley Balko, *Boston and Militarism: The Fugitive Slave Hearings*, HUFFPOST (May 01, 2013), https://www.huffpost.com/entry/boston-and-militarism-the_0_n_3193922?guccounter=1 (“After meeting with his cabinet, Filmore ultimately decided federal marshals had the power to summon military troops to help them catch escaped slaves, but that they should first get authorization from a district court judge”).

⁴⁶ See Emily Shapiro, Kendis Gibson, and Stephanie Wash, *Walter Scott Remembered at Funeral, Week After Fatal Shooting*, ABC NEWS (Apr. 11, 2015), <https://abcnews.go.com/US/walter-scott-remembered-week-fatal-shooting/story?id=30245536>.

Brown in Ferguson like a dog in the street.⁴⁷ When we see Eric Garner in New York being choked to death,⁴⁸ and countless others [killed] by those who have sworn to uphold the law, we know that there is a connection between the United States criminal punishment system and the necessity of reparatory justice.⁴⁹ There is a connection between the disparities in the health care system today and the necessity of reparatory justice.⁵⁰ There is a connection between the lack of economic

⁴⁷ See Ace Johnson, *Ferguson Resident's Video of Shooting*, THE NEW YORK TIMES (Jul. 29, 2015), <https://www.nytimes.com/video/us/100000003059803/aftermath-of-michael-brown-shooting.html>; see also Janelle Richards, *Five Years After the Ferguson, Missouri, Police Shooting of Michael Brown Jr., Residents Still Seeking Change*, NBC NEWS (Aug. 9, 2019), <https://www.nbcnews.com/news/us-news/five-years-after-ferguson-missouri-police-shooting-michael-brown-jr-n1040226>.

⁴⁸ See Oliver Laughland, *Eric Garner: No Charges Against White Police Officer Over Chokehold Death*, THE GUARDIAN (Jul. 16, 2019), <https://www.theguardian.com/us-news/2019/jul/16/eric-garner-death-new-york-no-charges>.

⁴⁹ African Americans are incarcerated at five times the rate of white people. *Criminal Justice Fact Sheet*, NAACP (last accessed Sept. 29, 2019), <https://www.naACP.org/criminal-justice-fact-sheet/>; see also Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2012) (discussing the relationship between mass incarceration and racial control).

⁵⁰ People of color are less likely to receive preventative health services, receive lower quality care, and have worse health outcomes for certain conditions than white people. For example, African-American mothers die from pregnancy-related complications at rates three to four times greater than white women. Martha Hostetter and Sarah Klein, *In Focus: Reducing Racial Disparities in Health Care by Confronting Racism*, THE COMMONWEALTH FUND (Sept. 27, 2018), <https://www.commonwealthfund.org/publications/newsletter-article/2018/sep/focus-reducing-racial-disparities-health-care-confronting>; see also Vernellia R. Randall, *Slavery, Segregation and Racism: Trusting the Health Care System Ain't Always Easy! An African American Perspective on Bioethics*, 15 St. Louis U. Pub. L. Rev. 191, 195 (1996) (tracing the history of racism in the American health care system, including "experimentation, the Sickle Cell Screening Initiative, Family

opportunity and the necessity of reparatory justice.⁵¹ There is a connection between the post-traumatic slave syndrome⁵² and post-incarceration stress syndrome⁵³ and the necessity of reparatory justice. There is a connection, and each harm must be compensated, and it is past time that the federal government's role be emphasized.

Permit me to share an excerpt from W.E.B. Du Bois' *Black Reconstruction in America*, just to make it more vivid. He said:

They could own nothing; they could make no contracts; they could not testify in court; they could hold no property, nor traffic in property; they could not hire out; they could not legally marry nor constitute families; they could not control their children; they could not appeal from their master; they could be punished at will. They could not testify in court; they could be

Planning/Involuntary Sterilization, and the participation of the medical system in the justification of racism and discrimination in society.”).

⁵¹ Median African-American household wealth declined by over 50 percent between 1983 and 2016. Dwyer Gunn, *Why Racial Economic Disparity Keeps Growing in the U.S.*, PACIFIC STANDARD (Jan. 16, 2019), <https://psmag.com/economics/why-racial-economic-disparity-keeps-growing-in-the-us>.

⁵² “Post traumatic slave syndrome” is a theory of intergenerational trauma coined by Dr. Joy DeGruy that traces the “the adaptive survival behaviors” of African Americans to the oppression and violence of chattel slavery. Dr. Joy DeGruy, *Post Traumatic Slave Syndrome*, JOYDEGRUY.COM (last accessed Sept. 29, 2019), <https://www.joydegruy.com/post-traumatic-slave-syndrome>.

⁵³ There is a cluster of mental health symptoms associated with individuals who have been released from prison following a life sentence, including chronic post-traumatic stress disorder, institutionalized personality traits, social-sensory deprivation syndrome, and temporal and social alienation. Marieke Liem & Maarten Kunst, *Is There a Recognizable Post-Incarceration Syndrome Among Released “Lifers”?*, Int'l Journal Of Law and Psychiatry vol. 36, at 333-337 (May–Aug 2013)

imprisoned by their owners, and the criminal offense of assault and battery could not be committed on the person of a slave . . . The slave owed to his master and all his family a respect “without bounds, and an absolute obedience.” This authority could be transmitted to others. A slave could not sue his master; had no right of redemption; no right to education or religion; a promise made to a slave by his master had no force nor validity. Children followed the condition of the slave mother. The slave could have no access to the judiciary. A slave might be condemned to death for striking any white person.⁵⁴

The entire legal apparatus was used by those with the power to do so to establish a legal tradition that stripped blacks of all human dignity. This is genocide. We are entitled to reparations. The compensations we speak of are owed to us, and they continue beyond the era of chattel slavery.

[You need to go] down to Montgomery, Alabama, to the Lynching Museum that Bryan Stevenson has erected.⁵⁵ He poignantly captured just some of the stated rationales for lynchings. “Lynched for organizing black voters.” “After voting, white mob attacked and burned home, lynching an elderly mother and her two young daughters.” “Lynched by a mob of at least three thousand people.” This is all post slavery. This is the twentieth century. “Military veteran lynched and burned alive before thousands of spectators.” “Lynched for refusing to turn teenage son over to a mob. Son also lynched.” “Lynched for

⁵⁴ W.E.B. Du Bois, *Black Reconstruction in America: 1860–1880* (First Free Press Ed. 1998) (1935).

⁵⁵ Campbell Robertson, *A Lynching Memorial Is Opening. The Country Has Never Seen Anything Like It.*, *THE NEW YORK TIMES* (Apr. 25, 2018), <https://www.nytimes.com/2018/04/25/us/lynching-memorial-alabama.html>.

knocking on a white woman's front door.” “Man, wife, and their four children lynched after husband was accused of using inappropriate language with a white woman.” “Lynched after refusing to abandon their land to white people.” “Lynched for drinking from a white man's well.” “Lynched for not allowing a white man to beat him in a fight.” “Lynched for protesting the lynching of another black man.” “Lynched for frightening a white girl.” “Lynched for writing a note to a white woman.” Open up the casket! The list goes on and on.

You might ask, doesn't the legal doctrine of *Laches* vitiate the debt? *Laches* is based on the maxim that equity aids the vigilant, and if you sleep on your claim and you don't bring it up, you are forever precluded from it.⁵⁶ No. At no time since the era of enslavement have Black people neglected the campaign for reparatory justice. But even if we had, it has been the power of the United States and its refusal to consider reparations for African descendants which has frustrated our efforts heretofore, not any failure to pursue the demands on our part. Post-slavery discrimination and Jim Crow notwithstanding, it is pertinent to recognize that these events occurred not that long ago— really, not that long ago—and they still continue today.

I have heard no suggestion that the inheritance laws of the United States be changed so that everyone who is benefitting from a legacy of accumulated wealth forgoes it.⁵⁷ We also often hear, “I'm innocent and I should not be held liable for things that happened a hundred years ago. That was my great, great grandfather. In fact, I'm a liberal. I go to Columbia. I'm in the

⁵⁶ *Laches* is the “equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought.” *Laches*, BLACK'S LAW DICTIONARY (11th ed. 2019).

⁵⁷ See Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 Or. L. Rev. 453 (2010) (discussion the relationship between inheritance laws and racial wealth inequality).

public interest society. I'm in the National Lawyers' Guild.⁵⁸ I do not have one racist bone in my body." We all stand on the shoulders of those who came before us. Although the present generation of whites may be innocent of what their forefathers and foremothers did as a people, they are in a privileged position because of the actions of their predecessors. Each generation passes its debts, as well as its assets, on to the next generation. The heritage which whites enjoy in this country is what has been called white skin privilege—benefiting from a society, a state, and an economic structure which is governed by white supremacy. Although we might debate methods of operationalizing this data for measurement, there is no question that Caucasians in this country enjoy the fruits of four hundred years of unjust enrichment as a result of the stolen labor of African people.⁵⁹

Another question: what about new immigrants to this country who have no blood or other connection to the enslavement or Jim Crow era? Should they also have to pay? Newcomers are entitled to all the rights, privileges, and benefits of American citizenship once they become citizens. America does not say to its new citizens, because you have no ancestral connection to this country, you cannot vote, you cannot sue in court, or you cannot enter into contracts. Everyone pays the debt, regardless as to whether or not they had anything to do with creating it.

Those who question the need for reparations also say, "affirmative action, didn't that make everything alright?" Former congressman Craig Washington was quoted on the floor of the

⁵⁸ *About*, NATIONAL LAWYERS GUILD, <https://www.nlg.org/about/> (last accessed Sept. 28, 2019) ("The National Lawyers Guild is the nation's oldest and largest progressive bar association and was the first one in the US to be racially integrated").

⁵⁹ Michael Harriot, *Yes, You Can Measure White Privilege*, *The Root* (Apr. 14, 2017), <https://www.theroot.com/yes-you-can-measure-white-privilege-1794303451>.

House of Representatives when arguing in support of the Civil Rights Act of 1990, as saying nobody's asking for reparations. He said, I'm just asking you to give us the crumbs from the table.⁶⁰ And, despite the fact that when compared to the debt owed, affirmative action is indeed only crumbs, President George Bush Sr. vetoed the bill anyway, saying that it encouraged racial quotas.⁶¹

Another question: slavery ended a long, long time ago, why should the government pay reparations now? The answer is succinct: it should be paid because it is owed. Had it been paid before, there would be no past-due debt now. There is no statute of limitations in addressing human rights violations, and debts are neither absolved nor diminished by the passage of time.⁶² In fact, over time, a debt grows larger with interest. What about Africans in the diaspora and the reparations movement? It's an international movement. The descendants of Africans in Canada, Barbados, Haiti, Jamaica, and Brazil are due reparations, but

⁶⁰ Charles Krauthammer, *Essay: Reparations for Black Americans*, TIME (Dec. 31, 1990), <http://content.time.com/time/magazine/article/0,9171,972078,00.html>.

⁶¹ President George Bush Sr. vetoed the Civil Rights Act of 1990, claiming that, “despite the use of the term ‘civil rights,’” the legislation “actually employ[ed] a maze of highly legalistic language to introduce the destructive force of quotas” into the workplace. Ann Devroy, *Bush Vetoes Civil Rights Bill*, The Washington Post (Oct. 23, 1990), <https://www.washingtonpost.com/archive/politics/1990/10/23/bush-vetoes-civil-rights-bill/cd68a6c4-8529-471a-b4f7-08c26cf65ac0/>. A modified bill—The Civil Rights of 1991—was later passed, which stated that only suits for intentional discrimination could be brought under Title VI of the Civil Rights Act, rather than suits for workplace practices that created a “disparate impact” against certain groups. <https://teachingamericanhistory.org/library/document/civil-rights-act-of-1991/>.

⁶² As mandated by United Nations, there can be no statute of limitations for actions constituting “crimes against humanity”—of which enslavement is one—even if such actions would not be in violation on the domestic law of the county in which they were committed. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf.

from their particular European colonizers. Colonized African countries are also due reparations, as are subjugated African descendants in Europe. All of these efforts deserve the solidarity and the moral support of justice lovers everywhere.

As we're coming down to the close, the jackpot question, the doozy, the elephant in the room: is reparations just about the money? Give me my check. No. No, reparations is not just about money. Really, it is not even mostly about money. Money might not even be one percent of what reparatory justice is all about. Reparations is mostly about making repairs: mental repairs, psychological repairs, cultural repairs, organizational repairs, social repairs, institutional repairs, technological repairs, economic repairs, political repairs, educational repairs, justice system repairs, and health repairs. The list goes on, because indeed a reparations settlement or negotiation can come in as many forms as necessary to equitably address the many forms of injuries sustained from chattel slavery and its continued vestiges.

N'COBRA taught the world that material forms of reparations can include, has included—and should include in this instance as well—cash payments, but also land. Other forms of reparations can include: funds for scholarships and community development, creation of multimedia depictions of history of the descendants of Africans enslaved the United States, textbooks for educational institutions to tell history from the African descendants' perspective, the development of historical monuments and museums, the return of artifacts and art to appropriate people, institutions,⁶³the exoneration of

⁶³ Tamara Lanier recently filed a lawsuit for ownership of photographs of her ancestors taken in 1850 and currently held in a Harvard museum. See Anemona Hartocollis, *Who Should Own Photos of Slaves? The Descendants, not Harvard, a Lawsuit Says*, THE NEW YORK TIMES (March 20, 2019), <https://www.nytimes.com/2019/03/20/us/slave-photographs-harvard.html>; see also Elizabeth Tyler Bates, *Contemplating Lawsuits for the Recovery of Slave Property: The Case of Slave Art*, 55 Ala. L. Rev. 1109 (2004) (discussing the various legal doctrines that could affect the return of art and artifacts).

political prisoners, and the elimination of unjust laws and practices.

And finally [people ask,] “Should Oprah and other wealthy Black people get a check?” The answer—[and by] get a check, I'm saying reparations—the answer, in my humble opinion, is short, sweet, and simple: yes. Yes, every person of African descent in the United States is entitled to a reparations settlement. And they, like anyone and everyone else, can do with it what they want. I don't know why this issue is so very difficult. Reparations—reparatory justice—is a legal remedy. It doesn't matter whether you are wealthy or you are poor. If a wealthy person steps out on the sidewalk and gets struck by a car, there is a redress in the court. The court doesn't say, oh, well, you have a million dollars, so you don't get it. It's a remedy. We need to look at it in that light.

I'm going to conclude right here, and just assert that the role that governments, corporations, industries, religious institutions, educational institutions, private estates, and other entities played and play in supporting the institution of slavery and its vestiges, are roles that must not be ignored. They must not be swept under the rug. They must be recognized. They must be acknowledged. They must be discussed. And they must be redressed with respect before we can really begin the process of racial healing, and atonement, and reparatory justice. I call on everybody to open up that casket. Thank you.

Audience Question: Do you have any views on metrics for identifying membership within individuals of African ancestry?

Nkechi Taifa: Yes. That's a real hot topic right now. And, that is why a commission is really important—so that all of the best minds come together and deal with this issue. I might have a personal opinion, but I'd really rather hear the expertise of a lot of different people who have thought about it from a lot of positions, because there has been a considerable amount of time. I mean, I heard one suggestion that if you can relate your ancestry to someone who was a slave then you would be entitled [to reparations]. Well, honestly, that's part of the damage. I

literally can't go on my father's side, past my grandparents because I don't know who my father's father was, or his last name. I mean, I know there was enslavement there. I can't relate it to a plantation. I can't go back.⁶⁴ And, honestly, on my mother's side, my mother's parents came from the islands. Okay, my mother was born in New York, but their parents came from the islands. They were not enslaved in the United States, [but] they were uprooted, ancestrally speaking, from Africa and brought to the islands and then, once coming here, suffered all of the indignities of the Jim Crow era. So, it's going to be a tough call. And then with all of the intermarriage, and long before intermarriage, rapes. I can't answer that, but that is one of the primary reasons why a formal, sanctioned commission needs to happen, so we can work out all of those metrics.

Audience Question: What causes of action, if any, can be brought through the courts to pursue Reparations?

Nkechi Taifa: We've been in the courts. But, we've been in the courts and each and every time we have been totally and completely kicked out. One basis is Laches. One basis is [the] statute of limitations.⁶⁵ And I told you, there's no statute of

⁶⁴ See Frederick Douglass, *My Bondage and My Freedom* (Urbana, Illinois: Project Gutenberg Ed. 2008) (1855) (ebook), <http://www.gutenberg.org/files/202/202-h/202-h.htm> (“[g]enealogical trees do not flourish among slaves”); Rebecca Onion, *How Do Descendants of Slaves Find Their Ancestors*, SLATE (Sept. 02, 2016), <https://slate.com/news-and-politics/2016/09/how-do-descendants-of-slaves-find-their-ancestors.html> (discussing how the absence of such genealogical information can affect policy decisions).

⁶⁵ *In re African-Am. Slave Descendants Litig.*, 471 F.3d 754, 762 (7th Cir. 2006) (“In all likelihood it would still be impossible for them to prove injury, requiring as that would connecting the particular **slavery** transactions in which the defendants were involved to harm to particular slaves. But in any event, suits complaining about injuries that occurred more than a century and

limitations on human rights violations. The Durban Conference that was held in South Africa specifically delineated the Atlantic slave trade and what came after as a crime against humanity.⁶⁶ So, we need to make these arguments in the court. I have another whole thing that I do on the issue of genocide. People think it's just killing members of the group. Yes, it's killing members of the group, but it is also causing serious bodily or mental harm to members of the group, deliberately inflicting upon the group conditions of life calculated to bring about their destruction in whole or in part. And the Genocide Convention is the only human rights convention treaty that's actually actionable in U. S. law because there's implementing legislation.⁶⁷ Why haven't the lawyers used that as a claim for reparations?

a half ago have been barred for a long time by the applicable state **statutes of limitations**").

⁶⁶ See <https://www.un.org/WCAR/durban.pdf>

⁶⁷ See 18 U.S.C.A. § 1091 ("Genocide").