

Testimony concerning HR40, The Commission to Study and Develop Reparations Proposals for African-Americans Act (116th Congress 2019-2020)

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My name is William Darity Jr. I currently serve as the Samuel DuBois Cook Professor of Public Policy, African and African American Studies, and Economics and the Director of the Samuel DuBois Cook Center on Social Equity at Duke University. I am honored to have been asked (by Mr. Keenan Keller) to address the 116th Congress on an issue I have been studying for more than thirty years: the matter of reparations for black American descendants of persons enslaved in the United States of America. The testimony I will provide today is the culmination of extensive, rigorous, and evidence-based research I have undertaken on the subject of restitution for native black Americans.

The time has come for the United States, finally, to lay to rest the issue of what has been called, variously, the Slave Problem, the Colored Problem, the Negro Problem, the Black Problem, and the African American Problem. The country can ill afford to remain stranded in the mire of injustice, perpetually refusing to resolve the fundamental, historic national dilemma facing all Americans. For too long the nation has refused to take steps to solve an unethical predicament of its own making—the problem of the unequal status of black and white Americans. This Congressional hearing on HR40, the bill former Congressman John Conyers worked on so tirelessly for three decades, not only should credit his efforts but should lead directly to completion of the goal he and others have worked to achieve: charting a path toward a just and equitable America.

A policy of reparations is a set of compensatory policies for grievous injustice. The three goals of a reparations plan should be 1. acknowledgement, 2. redress, and 3. closure.

1. Acknowledgement is the admission of responsibility for the atrocity (or atrocities) by the culpable party, incorporating an apology. The admission must also be accompanied by a guarantee to make restitution in as rapid a fashion as possible.

2. Redress is the provision of restitution, typically in the form of monetary compensation—as it has been in the cases of Germany's reparations program on behalf of victims of the Holocaust and the United States' reparations program on behalf of Japanese Americans unjustly incarcerated during World War II.

3. Closure means the agreement by the victimized community and the culpable party that the debt has been paid. The victims would make no further group-specific claims on the culpable party, unless new atrocities take place.

A plan for black reparations in the United States must fulfill specific principles and those principles must inform, organically, the deliberations of the Commission to Study and Develop Reparations for African-Americans. In addition to the three central aims of a reparations program described above--acknowledgement, redress, and closure-- there are six principles that must be met: 1. With respect to black reparations, the United States government is the culpable party that must meet the obligation of awarding restitution to those eligible for

reparations. 2. The United States government is culpable for not providing compensation, over the course of 150 years since the end of the Civil War, compensation for enslaved blacks, their heirs, and their descendants. 3 The United States government also is culpable for maintaining the legal and authority framework that sanctioned slavery, legal segregation in the United States, and continues to permit ongoing racist practices. 4. Eligibility for reparations for African-Americans must apply specifically to those black Americans who are descendants of persons enslaved in the United States. 5. Black reparations must be designed, at minimum, to eliminate the racial wealth gap. 6. Black reparations also must include a systematic plan to maintain historical memory of the conditions that motivated the inauguration of the program of restitution.

With respect to the claim for black reparations, the United States stands as the culpable party. The current text of HR40 makes note of “[t]he role which the Federal and State governments of the United States supported the institution of slavery in constitutional and statutory provisions,” “the Federal and State laws that discriminated against formerly enslaved Africans and their descendants who were deemed United States citizens from 1868 to the present,” and “other forms of discrimination in the public and private sectors against freed African slaves and their descendants who were deemed United States citizens from 1868 to the present, including redlining, educational funding discrepancies, and predatory financial practices.” Indeed, to the extent that federal laws and their enforcement take precedence over both state government and private sector actions, the failure of the federal government to prohibit discriminatory actions by non-federal entities reinforces the national responsibility for making restitution.

Moreover, the federal government abandoned the opportunity to provide immediate compensation to those persons formerly enslaved upon emancipation. The freedmen had been promised allotments of at least 40 acres of land. There is some ambiguity whether this was intended to be 40 acres per family of four or per individual, but even if we take the more conservative condition—40 acres per family—the allocation would have amounted to 40 million acres for the four million persons who were newly emancipated. This allocation never took place, and in the subsequent 150 years there has been no act of restitution for the formerly enslaved or their descendants. This is not because the descendants of slavery have been silent on this score. It is because their efforts to this point, actively, have been opposed and blocked. The Commission to be established under HR40 represents an opportunity, finally, to develop a reparations program that will address the nation’s unmet obligations.

The case for black reparations must be anchored on three phases of grievous injustice inflicted upon enslaved blacks and their descendants. First is the atrocity of slavery itself. Second are the atrocities exercised during the nearly century-long period of legal segregation in the United States (the “Jim Crow” era). Third are the legacy effects of slavery and Jim Crow, compounded by ongoing racism manifest in persistent health disparities, labor market discrimination, mass incarceration, police executions of unarmed blacks (*de facto* lynchings), black voter suppression, and the general deprivation of equal well-being with all Americans. Therefore, it is a misnomer to refer to “slavery reparations,” since black reparations must encompass the harms imposed throughout American history to the present moment—both slavery and post-slavery, both Jim Crow and post-Jim Crow—on black descendants of American slavery. It is precisely that unique community that should be the recipients of reparations: black American descendants of persons enslaved in the United States.

In a 2003 article written with Dania Frank Francis, and, more recently, in work written with Kirsten Mullen, we have proposed two criteria for eligibility for black reparations. First, an individual must demonstrate that they have at least one ancestor who was enslaved in the United States. Second, an individual must demonstrate that for at least ten years prior to the onset of the reparations program or the formation of the study commission, whichever comes first, they self-identified as black, Negro, or African-American. The first criterion will require genealogical documentation—but absolutely no phenotype, ideology, or DNA tests. The second criterion will require presentation of a suitable state or federal legal document that the person declared themselves to be black.

These criteria rule out blacks who are post-slavery immigrants to the United States, whose own ancestors are likely to have been subjected to enslavement and colonialism elsewhere. Indeed, they may have substantial claims for

reparations themselves, but not from the United States government. For example, Nigerians (and Nigerian Americans) have, in my estimation, a claim for reparations against the United Kingdom; similarly, Haitians (and Haitian Americans) have a comparable claim for reparations against France. However, legitimate claimants for black reparations from the United States government must be those black Americans whose ancestors were enslaved here after having been forced immigrants, rather than voluntary immigrants. This is a unique segment of the nation's black population; it is the segment that will be eligible for black reparations in America.

In our forthcoming book, *From Here to Equality: Reparations for Black Americans in the 20th Century*, Kirsten Mullen and I have identified the immense racial wealth gap as the prime indicator of the cumulative effects of the full trajectory of harms thrust upon black Americans. Wealth, the difference between the value of what one owns and what one owes, must not to be confused with income. Wealth is more important than income, at least, insofar as higher levels of wealth are protective against unanticipated losses in income due to unemployment or financial emergencies. Wealth is insurance against economic anxiety and economic disruption for individuals and families. Wealth expands opportunity and possibility for those with larger amounts.

Today, black Americans constitute approximately 13 to 14 percent of the nation's population, yet possess less than 3 percent of the nation's wealth. A core objective of the reparations program must be to move the black American share to at least 13 to 14 percent. Reparations designated specifically for black American descendants of slavery must be enacted and implemented to achieve that aim, moving black wealth, roughly, from less than \$3 trillion to \$13 to 14 trillion.

While closure is one of the imperatives of any reparations program, arriving at closure does not mean forgetting the record of atrocities. Thus, a key dimension of a black reparations program must be the development and application of a rigorous curriculum, fully integrated into public school instruction at all grade levels, telling the story of America's racial history, in all of its complexity, accurately.

The foregoing six principles should be guidelines that structure the charge of the Commission to Study and Develop Reparations Proposals for African-Americans. In addition, there are several revisions to HR40 that I view as essential to yield the strongest legislation to launch the Commission. The window that is relevant to the American black claim for reparations is 1776 to the present, not 1619 to the present, as the bill currently reads. Since the eventual claim for legislative redress must be made on the United States government, the beginning date must be associated with the founding of the Republic, not the landing of enslaved persons at Jamestown. Furthermore, the array of atrocities that occurred between 1776 and the present are of sufficient magnitude that the case is not weakened by discounting the colonial period.

In its current form, the longevity of the Commission is not specified in HR40. I recommend the Commission completes its report, inclusive of a detailed prescription for legislation to enact a reparations program for black Americans, within 18 months of its impaneling. The Congressional Commission on Wartime Relocation and Internment of Civilians opened with 20 days of public hearings that began on July 31, 1980 and the Commission's report, *Personal Justice Denied*, was published on February 24, 1983. President Johnson's National Advisory Commission on Civil Disorders (known colloquially as the Kerner Commission) issued its report with recommendations a mere seven months after impaneling.

I also recommend, like the Commission on Wartime Relocation and Internment of Civilians, the reparations proposals Commission should be appointed *exclusively by the Congress*. The Commission appointees should be experts in American history, Constitutional law, economics (including stratification economics), political science, and sociology. These appointees must have expert knowledge on the history of slavery and Jim Crow, employment discrimination, wealth inequality, health disparities, unequal educational opportunity, criminal justice and mass incarceration, media, political participation and exclusion, and housing inequities. The Commission also should include appointees with detailed knowledge about the design and administration of prior reparations programs as guidelines for structuring a comprehensive reparations program for native black Americans.

In addition, the Commissioners should not receive payment to minimize the prospect that personal aggrandizement will influence the proceedings. However, there should be a paid professional staff, and the Commissioner appointees' reasonable expenses should be met. In essence, they (nor any organization to which they belong) should not receive a salary, honorarium, or the equivalent for performing this critical national service.

There are also some sections of HR40 that merit revision for accuracy. Unlike the statement in Section 2 (a) many more than 4 million persons were enslaved in the United States between 1619 and 1865, since not all persons enslaved over that interval still were living at the end of the Civil War. It is valid to say there were about 4 million persons emancipated when the Civil War came to a close, but they were not the total number of persons subjected to American slavery.

Section 3.b. (2) indicts the United States government for blocking repatriation of formerly enslaved blacks to the African continent. Arguably, the exact opposite is true, particularly given the United States' role in the creation of Liberia. Even Abraham Lincoln advocated black repatriation until the later years of the Civil War. Alleged obstacles to repatriation are not a justification for black reparations. The core of the claim for reparations is a declaration for the establishment of full citizenship rights and compensation for the sustained denial of liberty for black descendants of American slavery. Of course, it will be their prerogative if some black recipients of reparations choose to use their funds to migrate to their preferred country in Africa, or elsewhere.

In conclusion, in addition to the Commission's report must detail the long and cumulative trajectory of atrocities visited upon black American descendants of persons enslaved in the United States and their ancestors, and it must provide a well-designed comprehensive program for reparations that will address the following specifics: criteria for eligibility for reparations and assistance for potential claimants to establish their eligibility, criteria for establishing the size of the reparations fund, details on how the reparations fund will be disbursed (and toward what ends), details on how the reparations program will be administered and *monitored*, and benchmarks for gauging the long term success of the program and administrative modification if needed. The eventual proposal also should include the hiring of a full staff of accountants and attorneys to track and service each individual claim for compensation. The details of all of these specifics must be framed by the six principles presented at the start of my testimony.

I thank you for giving me the opportunity to clarify the motivation and purpose of the Commission to Study and Develop Reparations Proposals for African-Americans.