

AB 3121 California Reparations Task Force Testimony

Overview Outline of Testimony of Greg Carr, Ph.D., JD, Howard University

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Introduction

While migration is the central theme in human history, violent modern forced migrations as a consequence of settler colonialism provide direct source and context for the modern world system of nation-states. Global, regional, national and local obligations and efforts to address and remedy ongoing effects of harm against specific groups deprived of natural and human resources by these serial forced migrations present discrete polities with an opportunity to model a wide variety of repair models. Consequently, the US State of California's *Task Force to Study and Develop Reparation Proposals for African Americans* may find it useful to consider the following four broad assertions, pursuant especially to considering defining eligibility beyond "race" and "lineage" as another point of departure for exploring reparative relief for descendants of Africans for who group identity as African captives begins, as described in §8301.1(b)(1)(A), with their "capture and procurement" on the African continent:

1. Demands for and questions of reparations have been raised since before the transformation of western settler colonies into settler states as a challenge to undertake structural modern social transformation. The essential guiding question at all levels of polity provided repair is, "how do we decolonize the modern world?"
2. Questions of "race" and/or "lineage" have cultural, social and political definitions that are best addressed by studying how they intersect with, influence and interact with legal definitions and also how they function beyond specific legal definitions in broader historical frameworks.
3. The racial category of "Black" as used in the modern world system emerges directly out of a process of Western ("White") colonialism that established "Black" as coterminous with fluid racialized unfree labor arrangements, thereby establishing the eligibility category for redressing a global harm through varied local repair efforts.
4. Polity (country-level, regional/state level, local/municipal level) repair efforts should not automatically preclude any form of remedy. US state-based efforts, cognizant of the undermining of racially categorized remedies in Federal and State law, may find a creative point of entry for proposed remedies by applying to California residents of African descent an overarching concept that recognizes the singularly unique circumstances that made enslavement and Blackness virtually coterminous, allowing a legal status more akin under federal and state constitutional law to date to that enjoyed by Native Americans and other discrete immigrants from other sovereign polities.

Outline of Testimony

- 1. Demands for and questions of reparations have been raised since before the transformation of western settler colonies into settler states as a challenge to undertake structural modern social transformation. The essential guiding question at all levels of polity provided repair is, “how do we decolonize the modern world?”**
 - Description of “The Dilemma of Negro Americans” (Chapter 4) and “Where We Are Going” (Chapter 5) by Martin Luther King, Jr., *Where Do We Go From Here: Chaos or Community*; Description of the attempted dismemberment of Africa (forced emigration and objectification of Africans) by Ngugi wa Thiongo in *Something Torn and New*
 - Dr. King and Ngugi trace the local status of African people in the US and elsewhere to European attacks on the African continent. King’s reparations-anchored proposed structural solutions in the areas of education, employment, rights and housing do not construct eligibility by race or lineage but in addressing the conditions of African people caused by global structural oppressions call for “a radical restructuring of American society” requiring a re-examination of “old presuppositions,” including “people-centered” rather than “property and profit centered” models. Ngugi notes that “There is no region, no culture, no nation today that has not been affected by colonialism and its aftermath. Indeed, modernity can be considered a product of colonialism.”
- 2. Questions of “race” and/or “lineage” have cultural, social and political definitions that are best addressed by studying how they intersect with, influence and interact with legal definitions and also how they function beyond specific legal definitions in broader historical frameworks.**
 - Description of the gradual creation of the coterminous concepts of “Africans” and “Black People” by a wide range of scholars, including in Howard French’s recent book *Born in Blackness: Africa, Africans and the Making of the Modern World, 1471 to the Second World War*.
 - The major challenge: To displace enslavement as the point of origin for repair status. Colonialism is the trigger, not a condition with shifting definitions that depended on an incalculable array of local unfree labor arrangements. Can/should we establish a concept that anticipates federal and state constitutional challenges to policy remedies?
- 3. The racial category of “Black” as used in the modern world system emerges directly out of a process of Western (“White”) colonialism that established “Black” as coterminous with fluid racialized unfree labor arrangements, thereby establishing the eligibility category for redressing a global harm through varied local repair efforts.**
 - Description of a framework for understanding African enslavement in the US, its demise and afterlives articulated by Ira Berlin in *The Long Emancipation: The Demise of Slavery in the*

United States; Description of the indeterminate legal status of formerly enslaved Africans by Imari Abubakari Obadele; Description of the consistently arbitrary enforcement of legal rights of Africans in ostensibly “free” antebellum US states by Derrick Bell in *Race, Racism and American Law*.

- Berlin notes that enslavement was an intercontinental asymmetrical war in which no formal truce was declared. Obadele observes that the legal status of formerly enslaved African people was not determined from within, but imposed externally, with no plebiscite among Africans. Unlike relationships with Native American nations, the concept of collective African personhood (e.g., “race” or “lineage” as counterposed with unfree labor status) remains underexplored in American law.
4. **Polity (country-level, regional/state level, local/municipal level) repair efforts should not automatically preclude any form of remedy. US state-based efforts, cognizant of the undermining of racially categorized remedies in Federal and State law, may find a creative point of entry for proposed remedies by applying to California residents of African descent an overarching concept that recognizes the singularly unique circumstances that made enslavement and Blackness virtually coterminous, allowing a legal status more akin under federal and state constitutional law to date to that enjoyed by Native Americans and other discrete immigrants from other sovereign polities.**
- Might definitions of “race” and/or “lineage” be made more flexible by adding a theory of the portability of status if a person of African descent need only establish (1) Membership in the harmed category as defined globally; and (2) Legal relationship in the local polity providing/enforcing repair policy. Satisfying the second condition might preclude reparations claims in other polities, depending on emerging regional and/or international agreements. This would also create an “opt out” (rather than demonstrate tedious and ultimately exclusion-based “opt in” standards) approach to reparations.
 - Under such an arrangement, each population of African people would seek reparations from the appropriate polity as part of an emerging regional and global network of understanding created by polity actors in creative combination, debate and contrast. This work would allow US states like California to explore the possibility of creating regional state clusters of agreement, reciprocity, etc. on issues of reparations policy as well as distinguish legal remedies from current erosion of federal constitutional race-based remedy law.