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What HR40 Gets Wrong and Why

Dr. William Darity Discusses Federal Reparations Study Bill

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by **William "Sandy" Darity, Jr.** 4 months ago

What HR40 Gets Wrong and Why

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For more than a year, a campaign has been underway to revise the text of HR40, legislation to establish a study commission to develop proposals for a black reparations plan in the United States. I personally submitted testimony to the

House Judiciary Subcommittee holding hearings on the bill on June 19, 2019 (Juneteenth) with a number of recommendations for revision. In fact, while others who presented testimony examined the pros and cons of African American reparations, my testimony was the sole statement that discussed the actual content of the legislation.

At that point, naïve in the belief that the hearings truly would explore ways to improve the HR40 bill, I was supportive of the passage of the bill, subject to revision. The sustained resistance to any critical assessment of the content of HR40 on the part of National Coalition of Blacks for Reparations in America (NCOBRA) and their allies, particularly National African American Reparations Commission (NAARC) and the Institute of the Black World, is leading me to reconsider my position. You can read NCOBRA's position here. It may be best either to replace the bill in its entirety or to leapfrog it and move directly to the design of legislation for reparations. After all, forthcoming work from scholars who constitute the Reparations Planning Committee and the final chapter of the book written by Kirsten Mullen and myself, From Here to Equality: Reparations for Black Americans in the Twenty-First Century, will provide a comprehensive blueprint for restitution for black American descendants of persons enslaved in the United States.

The central problem with the current version of HR 40 is an important change made in the legislation by NAARC and NCOBRA during the interval between the 2015-2016 and 2017-2018 sessions of Congress. What was the nature of the change?

Originally, the proposed study Commission consisted of seven members, three appointed by the U.S. President, three appointed by the Speaker of the House, and one appointed by the President Pro-Tempore of the Senate. Kirsten Mullen and I found odd the assignment of appointment authority for any positions to the President since this is a Congressional commission. Ultimately, one of the recommendations put forward in my Juneteenth testimony is to have all members appointed by the Congress, while restoring the original number of seven members.

Any President can at any time, appoint their own commission to study plans for black reparations if they so desire.

In contrast, the 2017-2018 versions of HR40 increased the number of commissioners to thirteen. The six additional members would be "selected … from the major civil society and reparations organizations that have historically championed the cause of reparatory justice." It is transparent that NCOBRA and its allies wrote themselves into significant representation on the Commission. They say that the bill was modeled directly after the enabling legislation for the Commission on Wartime Relocation and Internment of Civilians, legislation that produced the report that led to the reparations plan for Japanese Americans unjustly incarcerated during World War II. But that Commission had only nine members, and none of them were designated to be "from the major civil society and reparations organizations that have historically championed the cause of reparatory justice."

This is, necessarily, a bit more subtle that the language in proposed New York State legislation (Assembly Bill A3080A) that is specific about whom will hold appointment power over the majority of members of that commission:

4. Membership. a. The commission shall be composed of fourteen members who shall be appointed within 90 days after the effective date of this act, as follows:
(1) one member shall be appointed by the governor;
(2) one member shall be appointed by the speaker of the assembly;
(3) one member shall be appointed by the temporary president of the senate;
(4) one member shall be appointed by the minority leader of the assembly;
(5) one member shall be appointed by the minority leader of the senate;
(6) three members shall be appointed by the National Coalition of Blacks for Reparations in America (N.C.O.B.R.A.);
(7) three members shall be appointed by the December 12th Movement; and
(8) three members shall be appointed by Dr. Ron Daniels of the Institute of the Black World.

Greater subtlety in the language of HR 40 does not reduce the danger of having a Commission strongly influenced by NAARC and NCOBRA.

The danger is these organizations' lack a commitment to a comprehensive reparations plan for black American descendants of U.S. slavery.

In From Here to Equality, Kirsten Mullen and I argue that a sound black reparations project in the United States must have three key features:
First, it must designate black Americans who have at least one ancestor enslaved in the United States as the eligible recipients.

Second, it must target the racial wealth gap, now approaching a difference of $850,000 in net worth between the average black and white household. Elimination of that gap will require a federal expenditure of $10 to $12 trillion, mandated by Congress. The racial wealth gap, we contend, is the prime economic indicator of the cumulative, intergenerational impact of white supremacy, from slavery to the present moment.

Third, it must prioritize direct payments to eligible recipients. It must give individual recipients maximal discretion over the use of the funds.

These are the three components that reparations activist Otis Griffin has dubbed "pure reparations."

In contrast, the NCOBRA/NAARC axis advocates the US government pay reparations to all black people in the United States or to all black people across the Americas. This amorphous globalist strategy dilutes the precision of the debt claim made by the descendants of the newly emancipated, who never received the promised 40 acres in restitution for their years of bondage. This is a claim made by their descendants who have borne the full burden of the multiplicative impacts of slavery, the century-long Jim Crow period, and ongoing discrimination, police brutality, and over-incarceration. It is a claim directed squarely at the United States government, the culpable party for supporting and sanctioning the atrocities inflicted on black Americans since the founding of the Republic.

The United States is not responsible for nor obligated to meet the full bill for the harms of colonialism and slavery across the entire Americas, nor across the African continent for that matter. It is obligated to meet the claim for justice for black American descendants of chattel slavery in this country.

Others may have legitimate claims, but they are different claims that need to be made separately. As Rayshawn Ray and Andre Perry have observed, "…a Black person who can trace their heritage to people enslaved in U.S. states and territories should be eligible for financial compensation for slavery. Meanwhile, Black people who can show how they were excluded from various policies after emancipation should seek separate damages."

NCOBRA now claims, implausibly, that HR 40 sets a goal elimination of the racial wealth gap. The language may be open to that possibility, but HR 40 patently does not mandate that the Commission's report set erasure of the black-white wealth chasm as a core target for a reparations project.

What does the legislation say? It lists one of the items of harm as the fact that black American households have 1/16 of the wealth of white Americans and connects this to the "lingering effects of slavery." Aside from the inaccuracy of the statistic—the ratio of black to white wealth now is closer to 1/10—the wealth gap is far more than a "lingering effect of slavery."

Instead, it is due to an intentional set of national policies that followed the slavery years. These include failure to provide the formerly enslaved with the 40 acres, while 1.5 million white families received 160-acres land grants under the auspices of the Homestead Acts. It includes turning a blind eye to the waves of white massacres that took their toll in loss of black lives and seizure of black property by white terrorists, It includes the practices of restrictive covenants and redlining, as well as the discriminatory application of the New Deal and GI Bill to support homeownership. American public policy has been a machine for the denial and deprivation of black wealth. Now it must become a machine for building black wealth *at least* to levels comparable to white American wealth.

NCOBRA explicitly opposes direct payments to eligible recipients. They churlishly attack the notion of "cutting a check," a dismissiveness that belies the power of building the wealth of all black households that decscend from persons enslaved in the United States by upwards of $850,000. This would be life-changing in terms of economic security and opportunity. It would provide the material basis for full citizenship for black American descendants of U.S. slavery. In contrast, NCOBRA's ally NAARC advocates the formation of a National Reparations Trust Authority to manage the funds for the reparations project. They do not indicate precisely who would manage the fund nor direct its priorities.

Note further that "cutting a check" is metaphorical. Direct payments to eligible recipients need not take the form of cash transfers alone. They also could include the development of trust accounts or endowments for eligible recipients. But, the key is the final decision over their use must be in the hands of eligible recipients.

In my testimony on HR 40, I argued that the starting date for the accounting for atrocities should be the formation of the Republic in 1776, rather than 1619. The

United States of America did not exist prior to 1776. NCOBRA now makes a bizarre argument that the 13 colonies that formed the United States were “corporations” subjected to a “hostile takeover” by the rebels against the Crown. But, to the extent that the corporate analogy has any relevance, the pre-1776 corporate entity was not the colonies themselves. It was the colonial powers that established and maintained them, eventually, solely, the UK. Any bill for the period 1619-1776 should go to the former colonial powers, rather than being charged to the U.S. government. NCOBRA is welcome to make that case if they so desire. It is not the case made in *From Here to Equality*.

I also must note NCOBRA’s peculiar use of Gerald Horne’s excellent book, *The Counter-Revolution of 1776*, which actually supports the position taken in my testimony. Horne’s book, which is referenced in *From Here to Equality*, is vital in establishing the centrality of the maintenance of slavery as a key factor in the formation of the United States. The U.S. comes into being as a Slave Republic. Horne’s study actually reinforces the signal importance of 1776 as a start date for the accounting exercise for reparations to be brought before Congress.

Another recommended edit is to specify that the Commission shall complete its work in 18 months. HR 40 specifies that the Commission submit a report to Congress within one year of its empaneling. It does not specify that this must be a final or complete report. It is possible, under the terms of the current legislation, for the Commission to come to Congress in a year with a report requesting an extension. This could go on indefinitely. Instead, give the Commission 18 months to provide Congress with a final report.

NCOBRA objects to the recommendation that Commissioners not be paid and contends that there is a legal obligation to provide Commissioners with salaries. This simply is not true. The majority of Congressional commissions do not provide compensation beyond routine expenses for its members. The Congressional Research Service reports, “Most statutorily created congressional commissions do not compensate their members, except to reimburse members for expenses

directly related to their service, such as travel costs." Indeed, only one-third of Congressional commissions have had members who received pay.

The problem, in this case, is the fact that NCOBRA and allies wrote themselves onto a Commission with legislation that now pays Commissioners GS-18 level salaries, salaries that approach $200,000 per annum. This change took place at the same time that the rewrite of the bill led to an increase in the budget from $8 million to $12 million. At best, there is a hint of impropriety associated with the change in the legislation. At worst, there is a blatant conflict of interest. If NCOBRA truly wants to clear the air on this matter, it will support removing member compensation from the bill.

We cannot allow the Commission to be seated and wait until afterward to pressure it to do the right thing. We cannot leave the Commission's mandate for the content of its report open-ended. Too much is at stake. If such a Commission is created, it must be directed to produce the type of report that will lead to a comprehensive plan for reparations for black American descendants of U.S. slavery. As HR 40 currently stands, designed to give NCOBRA and NAARC a significant role in its deliberations, we face a grave risk of getting the wrong model for reparations.

As HR 40 currently stands, it is the wrong legislation for this important moment.

While still wrapped in naivete, I assumed there would be a good faith effort to evaluate HR 40 and revise it accordingly. I am beginning to believe it should be scrapped altogether.

The goal is pure reparations. The bill as currently constituted will not get us from here to there.

Further Analysis of HR40

The problem with the H.R. 40 reparations bill. The devil in the details.

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