Chapter One

Introductory Considerations

“You’re not supposed to be so blind with patriotism that you can’t face reality. Wrong is wrong, no matter who says it.” Malcolm X¹

The relationship between slavery, racism, and injustice of African Americans² has a long history spanning from the years after slavery was ‘officially’ abolished, and the civil rights era where racism was blatantly clear. While historic and contemporary inequalities are relatively known facts, the personal effects on African Americans are relatively ignored in society. Many African Americans today struggle with the historical legacy of “denigration of their being, including classification as sub-humans and chattel, subjugation to rape, forced labour, branding, lashings, murder, maiming, destruction of their languages, cultures, psychological and spiritual well-being resulting in structural subordination”³ which contributes to the inability for African Americans to attain a sense of justice today. This paper tries to find ways in attaining justice for the descendent of slavery and involuntary servitude while finding ways to unite Americans by establishing truth and justice.


² It is important to note that the use of African Americans in this paper does not mean all ‘Black’ people that are currently in the United States. I am not referring to those that are considered African American simply because of skin color such as those who have migrated from other places such as Africa, Latin America or the Caribbean. I speak of African Americans whose families were born in the U.S. and who know nothing of their heritage because of slavery and involuntary servitude in the United States.

“Should justice or truth take precedence?... One answer calls for “[a]ll the truth and as much justice as possible.” In 1945 at the beginning of Nuremburg Trials, the central aim of justice for victims of the Holocaust was “to delineate the unjust war and the parameters of justifiable punishment by the international community.” International justice in the form of criminal accountability for crimes committed by the Reich by way of treaties and conventions was the precedent during the postwar period. After the cold war in the 1980s, political transitioning began to take place, especially in Latin America. Successor regimes were faced to choose what form of ‘transitional’ justice should take place after a country had been savaged by violence. Would it be the justice that was executed at Nuremburg? “What is fair and just in extraordinary political circumstances was to be determined from the transitional position itself.” It started to be understood that the form of transitional justice would have to form around the actual political and social realities in each particular country. Therefore, multiple models of justice began to emerge.

The attempt to impose accountability through criminal law often raised rule-of-law dilemmas, including retroactivity in the law, tampering with existing laws, a high degree of prosecutorial selectivity, and compromised judiciary.” This became a dilemma in many countries. Prosecutions came to a stand still and were substituted with different methods for seeking the truth and accountability. This contemporary form of transitional justice Ruti G. Teitel names as the restorative model. She says, “The aim is to reconceive the social meaning of past conflicts, particularly defeats, in an attempt to reconstruct their present and future effects.”


6 Id.

7 Id. at 76.

8 Id. at 76.

further in adding that the restorative model of justice “rejects retribution as a response to crime, focusing instead on the needs of all parties involved.”

Since the early 1990s, the international human rights community has advocated truth commissions as an important part of uniting members of once opposing communities. These commissions have been suggested for virtually every international or communal discord that has been involved in a substantial amount of inhumane acts committed by, and against members of the population. Truth and reconciliation commissions have been the most prevalent and highly admired forms of transitional justice since South Africa’s Truth and Reconciliation Commission in 2002-2004.

The appeal of the model is its ability to look beyond individuals by “investigating past abuses with the goal of establishing an accurate historical record of events and promoting reconciliation,” restoring society as a whole. After a history of systematic human rights violations due to the Indonesian occupation in East Timor in 1974, and their departure in 1999, the president elect of East Timor since 2002, Leste Xanana Gusmão, was quoted in December 2000 with this working definition of the type of restoratative justice he hopes to establish:

I don’t deny the need of justice. People sometimes say if you don’t punish these people you will allow a political party to do the same, because everyone now knows there is no justice. I, myself, don’t believe in this… Nobody in the world said to Mandela ‘your commission of truth and reconciliation is unacceptable’, everybody applauded it… My problem is, if you try the militia, one or two immediately, the others will not come… I am thinking of a process of reconciliation here that

can avoid instability in the future and one that people can accept. I will not say no justice, but in a process maybe like South Africa.\textsuperscript{13}

Whether one models their restorative justice method of a Truth and Reconciliation Commission after the praised South African model or not, commissions strive for nation-building, therefore such methods of justice must be modeled after the political and social conditions in each particular country. In particular, this thesis examines whether existing notions of national justice should be afforded any specific attention in pursuing justice for the descendants of slavery and survivors of involuntary servitude in the United States. Judith Shklar mentions, “That rights can be claimed in order to protect others and that even when we claim them for ourselves, we are, in a sense, vindicating them for all.”\textsuperscript{14}

With the Civic Trust Model of reconciliation, African Americans can claim their right to justice while vindicating justice for all. The Civic Trust model is “the establishment of trust among citizens, and the trust of citizens in their institutions, both of which necessitate measures to understand, acknowledge, and overcome the past.”\textsuperscript{15}

Moreover, “The sense of trust at issue here is not the profound sense of trust characteristic of relations between intimates, but rather, ‘civic’ trust, which can develop among citizens who are members of the same political community but are nonetheless


strangers to one another.”\textsuperscript{16} Hence, what does it mean to be part of a political community, in the United States?

First, America is often said to be a “melting pot” “wherein diverse cultural identities are destroyed as individuals respond to the intense heat of nationalism.”\textsuperscript{17} It will be argued that this is not so. Being American does not mean giving up one’s cultural background, history, and ethnicity, it means one has embraced the ideals of America. My position is that ideals of America are captured in historical documents, which will be discussed.

As follows, the American political community consists of citizens who are administered by the federal government, which was established by the Constitution. Every citizen outside the capital is subject to the following governing bodies: the federal government, a state, county and sometimes city district regulations. Each level has its own political system in which members are bound to work within.\textsuperscript{18} Republicanism, such as the system in the United States, ascribes to the practice of citizenship and the promotion of ‘civic virtue.’ Political unity is understood in terms of an allegiance to the framework of the current Constitution, laws, and practices that are suppose to guarantee liberty of individuals.\textsuperscript{19}


\textsuperscript{17} James F. Lea, Political Consciousness and American Democracy 40 (1982).

\textsuperscript{18} United States Government, Microsoft Encarta Reference Library (2003).

Accordingly, I must say some words on reconciliation. In mentioning reconciliation, societies dealing with past human rights abuses often see reconciliation as a central goal in their processes of building a functional existence. Reconciliation is not simply forgetting or forgiving without justice, but trying to restore society in order to make it a place where people can live in relative peace and dignity.  

Chapter two is a short discussion on the social-political context of African slavery in America. Discussions will include various methods of restoring justice that prominent leaders of the reparations movement have proposed for rectifying the injustices done to African Americans ancestors and the continuing consequences of the past. Chapter Two, will discuss the collective idea of justice (although not fully implemented), irrespective of race, religion, gender, social and economic status. Therefore, the question of how can we use this ‘civic’ understanding, ‘civic’ trust which is ingrained into American society in order to apply the Civic Trust Model of reconciliation, to encourage justice between the descendents of slaves and survivors of involuntary servitude and American citizens as a whole. In particular, inquiry will extend to pertinent United States documents that have rooted the ideals of justice in American society. Furthermore, the position of such documents will be examined. In other words, should Americans look towards their historical documents to utilize national ideas of justice?

Chapter Three is dedicated to discussion that details the way a Truth and Reconciliation Commission (TRC) proposes to restore a society going through transitional justice. Discussion will highlight two Truth and Reconciliation commissions and how these particular models would not be suitable to establishing justice and reconciliation in the social political context in America. The South African model of Truth and Reconciliation will be expounded on because its social political background is similar to the American context. Chapter Four is a short discussion on the social-political context of African slavery in America. Discussions will include various methods of restoring justice that prominent leaders of the reparations movement have proposed for rectifying the injustices done to African Americans ancestors and the continuing consequences of the past. Finally, Chapter Five presents the conclusions and possible mechanisms for establishing justice through the Civic Trust Model of reconciliation for the descendents of slaves and survivors of involuntary servitude while strengthening the relations of the American people as a whole.
Chapter Two

American Slavery and Involuntary Servitude in Context

Social Political Background

Several forms of slavery existed around the world in the 15\textsuperscript{th} century.

Genes had nothing to do with it, and slaves came in all colors and shapes and from all corners of the earth. Some came from Africa. Others came from what is now Turkey, or the Balkan states, or the Soviet Union. Anyone who was vulnerable to capture was subject to sale, and hence much of the world’s labor was performed by land-bound serfs or captive slaves, owned outright by those who were wealthy and powerful enough to purchase or inherit them.\textsuperscript{21}

Over 4 million Africans and their descendants were enslaved in the United States and its colonies from 1619 to 1865 creating the largest forced migration in world history.\textsuperscript{22}

David Organ, director of the African World Studies Institute at Dillard University in New Orleans made these statements about the immediate cultural destruction of African slaves:

\begin{quote}
It started on the ships. People who spoke the same language or had the same markings of scarification were separated. The removal of identity was a central function of the enslavement process. The whole issue of language and naming is so central to identity that slaves were not allowed to speak their native language or maintain traditional names. Once in America, slave
\end{quote}


owners also would not permit drumming because they knew slaves could communicate through the rhythms, he said. It was another form of language.\textsuperscript{23}

The first African slaves to reach Jamestown, Virginia in 1619, were most likely considered indentured servants, who worked on plantations, like the white indentured servants, whom where already there. However, slavery in the Americas introduced for the first time the element of skin color as a marker of a slave, specifically chattel\textsuperscript{24} slavery.\textsuperscript{25} Most of the African slaves were advanced agriculturalists\textsuperscript{26}, as they became more profitable, harsher laws started to pass. "Racial slavery became institutionalized in the New England colonies in 1638 and later by law in Massachusetts in 1641.\textsuperscript{27} Meaning, anyone that was black was considered for the first time a piece of property subject to his master, for life.\textsuperscript{28}

In 1691, just as South Africa’s 1949 Prohibition of Mixed Marriages Act, many States passed anti-miscegenation laws, forbidding marriages between whites and blacks,

\textsuperscript{23} Christy Oglesby CNNfyi Senior Staff Writer, Reclaiming their roots Genetic test may allow African-Americans to recover the lost legacy of their ancestors (September 13, 2000) http://cnnstudentnews.cnn.com/2000/fyi/news/09/13/african.dna.testing/#1.

\textsuperscript{24} Roy L. Brooks, Atonement and forgiveness: A new model for black reparations 20 62 (2004). “Chattels” that is, a slave was not merely an article of personal property belonging to his master.

\textsuperscript{25} Id at 20.


Virginia being the first State. Institutions, policies, laws, and procedures under the U.S. constitution in 1787 sanctioned racial Slavery. “The import and export taxes that states imposed on slave traders for every slave purchased from the coasts of Africa created the earliest financial benefits for nation-states participating in the slave trade.” David Brion Davis, Yale University History professor states, “The U.S. Constitution was designed to protect the rights and security of slaveholders, and from 1792 to 1845 the American political system encouraged and rewarded the expansion of slavery into nine new states.” The destruction of families is illustrative in this passage,

I said to him, “For God’s sake! Have you bought my wife?” He said he had. When I asked him what she had done, he said she had done nothing, but that her master wanted money. He drew out a pistol and said that if I went near the wagon on which she was, he would shoot me. I asked for leave to shake hands with her which he refused, but said I might stand at distance and talk with her. My heart was so full that I could say very little…I have never seen or heard from her that day to this. I loved her as I love my life. (Moses Grandy).

The life, liberty, and human dignity of African Americans were denied and African Americans still suffer from the lingering side effects of slavery. An example is the Dred Scott case where “in March of 1857, the United States Supreme Court, led by Chief

29 Id. at 23.


Justice Roger B. Taney, declared that all blacks, slaves as well as free, were not and could never become citizens of the United States. The court also declared the 1820 Missouri Compromise unconstitutional, thus permitting slavery in all of the country's territories.”

Justice Taney remarks were as follows:

Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous.

In 1865 when slavery was declared over, it is said, “The most barbaric, uncivilized manifestations of hate and the sense of white superiority took place after slavery was declared over, and systematically took place until the 1960s.”

The Black codes were created from 1865-1866 which left African Americans with little freedom. Even the freedom to choose a type of work was often regulated. Many white southerners believed blacks were predestined to work as agricultural laborers. In addition, the advantage of regulating occupations provided them with laborers. In South Carolina, for example, a special license and certificate from a local judge attesting to a freedman's skill had to be obtained in order to pursue work in any occupation other than in agriculture or domestic work.

During Reconstruction years between 1865-1896, the Thirteenth, Fourteenth, and Fifteenth Amendments, along with the Civil Rights Act of 1875, were enacted.

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Unfortunately, they proved not to protect the rights and freedom of freed slaves and their descendents. Several Supreme Court decisions overturned Reconstruction legislation by promoting racial segregation and ultimately leaving the descendents of slaves in servitude. The Supreme Court's decision in Plessy v. Ferguson in 1896 paved the way to racial segregation.\(^38\) In 1903, W.E.B. Du Bois described the African American as such.

An African American has a “double consciousness, and two-ness of being an American, a Negro; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder”\(^39\).

As in South Africa, “Southern states passed laws that restricted African Americans access to schools, restaurants, hospitals, and public places. Signs that said "Whites Only" or "Colored" were posted at entrances and exits, water fountains, waiting rooms, and restrooms.”\(^40\) With the sanction of both the Federal government and state governments through legislation, the continuance of servitude on the descendents off African slaves was upheld until the 1960s.

In the 1960’s when Black Power movements were at their peak, the ideology and culture at that time made it acceptable to be “black and proud.” Black Americans started to seek their cultural roots by the ethos of Marcus Garvey and other black nationalists at the time. Blacks “began to insist on Afro-American as the only acceptable description of

\(^{38}\) Creation of the Jim Crow South
http://afroamhistory.about.com/od/jimcrowlaw1/a/creationjimcrow.htm


their ethno-national status and, indeed, of their very identity.”

“An Afro-American is an American whose old country forebears were from Africa. It suggests that an Afro-American is a special kind of American, one whose historical experience is different from that of other Americans, even other hyphenated-Americans”.

The majority of slaves that were taken from Africa and brought to America came from three regions, The Western Sudan, the Guinea Coast, and the Congo. “Western Sudan comprises of present day Burkina Faso (formerly Upper Volta), Cape Verde, Chad, The Gambia, Mali, Mauritania, Niger, and Senegal. The countries of the Guinea Coast are Benin, Cameroon, Côte d'Ivoire (Ivory Coast), Equatorial Guinea, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Sierra Leone, and Togo. The Congo comprises of present day The Democratic Zaire and People's Republics as well as most of Angola.”

There is no reliable number of how many ethnic groups were taken from these areas, however there are approximately 40 major ethnic groups African Americans descend from that can be found in present day African nations,

- Mali: Mandinka, Fulani, Bambara, Songhai, and Dogon
- Senegal, Gambia, & Guinea: Wolof, Serer, Fula, Peuhl, Balante, and Papel
- Sierra Leone & Liberia: Temne, Mende, Kissi, Goree, Kru, and Vai
- Ivory Coast: Gullah, Bassa, and Grebo
- Ghana: Ashanti, Fante, and Ga

42 See Table, African Slave Trade Regions.
44 See Table, West Africa Circa 1870.
Benin & Togo: Fon, Ewe, and Mina
Nigeria: Yoruba, Nupe, Edo-Bini, Igbo, Ibibio, Ijaw, Ihani, and Efik
Cameroon: Duala
Angola: BaKongo, Imbangala, Mbunda, and Lunda
Congo: Luba

All was left behind and forgotten. The history of Africa has slowly been uncovered in the West, although it has been clouded and overlooked by the continuous ideas of the “Dark Continent” black savages jungle, along with lions, tigers and bears. In modern times, the images of Africa have been expanded to include a continent plagued with HIV-AIDS, genocides, famine, and civil war. The African history in African American past, present and future has been one that has been taken from them, degraded, and concealed for over 400 years. Some people, ‘black’, ‘white’ and ‘others’ have even said, “African Americans benefited from enslavement and in fact owe whites for emancipation!”

As DNA research has become a scientific reality, thousands of African Americans have taken DNA tests that allow them to know where their ancestors come from. Rick Kittles Howard University geneticist says, “To a lot of blacks, knowing a little bit of the story is important. This will definitely contribute a lot to understanding the history of African Americans.” The people that came from Africa as slaves were from three primary agriculture arras. All three regions were connected to major river systems, the Senegal,

Niger, and the Congo Rivers, which made it possible for exploration. Within these three major areas numerous kingdoms developed, the earliest (ninth century) known were the Sudanic Empires: Ghana, Mali, and Songhay. Following were the Guinea Coast and the Congo Kingdom. 47 "We have been mentally enslaved and physically enslaved in terms of our history," said Irena Webster, executive director for the Association for the Study of African-American Life and History in Silver Spring, Maryland. "The Europeans have all of that history of themselves, and we don't. Any effort to bring us closer to our history is critically important." 48

African Americans as a group were not in modern terms “liberated” from the barbarism of Africa. They come from a glorious past. Whether it was full of kingdoms, villages, civil wars, births, or celebrations, it was theirs.

The Reparations Movement

From the beginning of slavery, African Americans have rebelled. Among the movements created were the Anti-slavery and reparations movements, the pre and post Reconstruction period, the Garvey Movement, the Civil Rights movement in the 1960s and 1970s to the post-Civil Liberties Act. From the beginning of 1989 to present time, 49

47 See Table, Africa’s Kingdoms and Empires.


African Americans and others have inquired the Federal government as well as state governments for accountability and reparations for the crime of slavery and servitude in the United States.

In January of 1989, Congressman John Conyers introduced the bill H.R. 40, Commission to Study Reparation Proposals for African Americans Act. He has introduced HR 40 every Congress since 1989. His bill has four components

1. It acknowledges the fundamental injustice and inhumanity of slavery
2. It establishes a commission to study slavery, its subsequent racial and economic discrimination against freed slaves;
3. It studies the impact of those forces on today's living African Americans; and
4. The commission would then make recommendations to Congress on appropriate remedies to redress the harm inflicted on living African Americans.

Massachusetts State Senator Will Owens also introduced reparations legislations. In 2001, Chicago, Dallas, Detroit, Cleveland, and Washington DC passed resolutions asking Congress to endorse national hearings on reparations. California Legislative Assembly joined the list in making California the forerunner of all the states. California’s Resolution urges “Congress to apologize to Black Americans for the “fundamental injustice, cruelty, brutality and inhumanity of slavery”. In October 2002, Chicago City

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51 Id.

Council and Los Angeles City Council approved ordinances requiring all companies wishing to do business in their state to investigate and disclose any profits gained from American slave trade. Other cities are considering similar measures.

African Americans, until recently, had neither autonomous voice, nor even any status in the world community. In the past, even if there was any international forum in which a claim could be brought, African Americans were ignored and accused of asking for a free handout. As success has arisen for a number of African Americans, this element by no means deletes the fact that an injustice was done to the descendents of Africans in America and the lingering affects are very much present.
Chapter Three

Historical American Documents That Have Shaped The Idea of Justice in American Society

Introduction

This chapter looks at the U.S. documents that have shaped the ‘civic’ view of justice in America, namely the Constitution and the Declaration of Independence. The Constitution and the Declaration of Independence are not stagnant documents that have continued to utilize the exact interpretation of the founders.53 When Thomas Jefferson wrote, “All men are created equal” in the Constitution ‘blacks’ were not included. The equality of all was not what the founders actually meant, “the constitution compromised with slavery, failing to mention it but protecting it by allowing slave-holders to count three-fifths of the slave population toward representation in the House of Representatives”54. This contradiction is a reality of the American past. Although both documents have continued to manifest themselves through the years towards a universal and inclusive ideal, large pockets of society have not chosen to make such changes themselves. Today it is recognized that these documents are to be interpreted in a contemporary manner while upholding the originalist ideals of justice. In my analysis, I will view the Declaration of


54 Mark Tushnet, Constituting We the People, 65 Fordham L. Rev. 1557 1561 (1996-1997).
independence and the Constitution in an originalist manner. Although, in the amended manner in which they apply to all irrespective of race, religion, gender, sexual orientation, and social political positions. I will highlight the pertinent parts relating to our topic within two documents, The Declaration of Independence, and The United States Constitution and its Amendments.55

Nevertheless, I will compare and highlight the similarities of the justice the U.S. founders petitioned for in the Declaration of independence and what the descendents of slaves and survivors of involuntary servitude have been petitioning for the last 400 years. In the second analysis, I will highlight how the constitution, particularly the Preamble, the Ninth Amendment, and the Fourteenth Amendment could be of use to the struggle of justice for African Americans.

55 I chose not to include The Bill of Rights in my analysis, not because it is not important in understanding what the founders and present day Americans believe as justice, discussion into The Bill of Rights would be a paper on its own. To briefly mention, Amendment nine within The Bill of Rights simply means the rights listed in the constitution are not the only rights that Americans have. The U.S. State department explains Amendment nine as follows, “Some people feared that the listing of some rights in the Bill of Rights would be interpreted to mean that other rights not listed were not protected. This amendment was adopted to prevent such a misinterpretation.” Hence, Amendment nine within the Bill of Rights would be useful in establishing transitional justice for African Americans, because it could be used in conjunction with the argument following, in establishing the right to define one’s dignity.
The Declaration of Independence

The Declaration of Independence is the founding document of the United States of America. The principles of justice that would later shape the United States were made clear in this document.

The Declaration of Independence can be divided into four parts. The first is the introduction that leads into the purpose of the document, and the proposal to seek separation from the State of Great Britain. The introduction includes a plea for what the American founders had in mind as to justice:

Assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of humankind requires that they should declare the causes which impel them to the separation. 56

This statement deals with God Given rights, which are listed in the second part. As Philip A. Hamburger explains in “Natural Rights, Natural Law, and American Constitutions” (Yale, 1993) “the underlining assumptions regarding the state of nature provided the foundations so that individuals could “reason” as to what was needed to “preserve” their liberty.” 57 Because the State of Great Britain has not respected their opinions that would entitle them to life in a separate and equal existence, the founders are requesting separation from the State of Great Britain.

The second part of the Declaration of Independence explains what “the laws of nature” mean, and offers an explanation as to the meaning of ‘good’ government. The definition of “the laws of nature” is as follows:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.\(^{58}\)

In this statement, all individuals are equal with certain absolute rights, which include Life, Liberty, and the Pursuit of Happiness, among others. As such, good government is one that protects these rights with the consent of the people while allowing them to take control of their own lives.

The third part of the document is a list of injustices committed by the State of Britain. Consequently, the State of Britain has not met the conditions of good government and therefore the 13 colonies warrant a separation from the State.

Finally, the fourth part of the Declaration of Independence is a vow made by the founders on their lives, wealth, and honor to uphold the independence and rights of the United Colonies, which would later become the United States of America. It is relevant to highlight a few statements in this section that will be discussed together with the previous statement. First,

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.\(^{59}\)


\(^{59}\) Id.
And

We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of humankind, Enemies in War, in Peace Friends.60

There is an eerie connection between the statements made by the founders and the justice African Americans have been seeking since slavery until now. These ideas are significant positions on civic identity in America, although the voices of the descendents of slaves and survivors of involuntary servitude have yet to be fully heard. This will be expounded on in the fourth chapter but for now, I will relate the two struggles.

African Americans, the descendents of slavery and survivors of servitude, have endured the middle passage, slavery in America, servitude, lynching, mob violence, and years of national and state government policies against them as a people. What they ask is for justice to be given to them, Life, Liberty and the pursuit of Happiness. Life, Liberty and the pursuit of Happiness form the basis of American values which extend to include individual freedom, education, family and privacy. Individual freedom for African-Americans as a whole in the fight for justice against the crimes of the past is to be exempt from a burdensome condition. This burdensome condition is the unknown knowledge of self, 61 African Americans continue to bring up the circumstances of their emigration and settlement in America, although the particulars of emigration and settlement from Africa to present day are unknown to many of them. The stripping of culture, religion, language,

60 Id.

homeland, knowledge of ancestors, accurate history, absolute, completes loss of identity is what makes up the genuine wound upsetting the African American community. While African Americans in general have earned the right, and are proud to be American, the liberty to know their history and have it told must be resolved as best as possible to allow those to move on. As the Founders petitioned for justice, African Americans petition for justice as well in the form of the truth about themselves, which the Laws of Nature and of Nature’s God entitle them. Hector St. John Crevecouer in 1782 describes the Founders as such: “From nothing to start into being; from a servant to the rank of

Cornel West, a scholar in African American studies, describes basic issues African Americans are facing:

The proper starting point for the crucial debate about the prospects for black America is an examination of the nihilism that increasingly pervades black communities. Nihilism is to be understood here not as a philosophic doctrine that there are no rational grounds for legitimate standards or authority; it is, far more, the lived experience of coping with a life of horrifying meaninglessness, hopelessness, and (most important) lovelessness. The frightening result is a numbing detachment from others and a self-destructive disposition toward the world. Life without meaning, hope, and love breeds a coldhearted, mean-spirited outlook that destroys both the individual and others.

West, supra note 61, at 14.

The most basic issue now facing black America: the nihilistic threat to its very existence. This threat is not simply a matter of relative economic deprivation and political powerlessness -- though economic wellbeing and political clout are requisites for meaningful black progress. It is primarily a question of speaking to the profound sense of psychological depression, personal worthlessness, and social despair so widespread in black America. A major contemporary strategy for holding the nihilistic threat at bay is a direct attack on the sense of worthlessness and self-loathing in black America. This angst resembles a kind of collective clinical depression in significant pockets of black America. The eclipse of hope and collapse of meaning in much of black America is linked to the structural dynamics of corporate market institutions that affect all Americans. Under these circumstances black existential angst derives from the lived experience of ontological wounds and emotional scars inflicted by white supremacist beliefs and images permeating U.S. society and culture. These beliefs and images attack black intelligence, black ability, black beauty, and black character daily in subtle and not-so-subtle ways. Toni Morrison novel, The Bluest Eye, for example, reveals the devastating effect of pervasive European ideals of beauty on the self-image of young black women. Morrison's exposure of the harmful extent to which these white ideals affect the black self-image is a first step toward rejecting these ideals and overcoming the nihilistic self-loathing they engender in blacks.

West, supra note 61, at 17-18.
master; from being a slave of some despotic prince, to become a free man, invested with lands”. As the Founders came from being slaves to men, the request for a decent respect should be given to the descendents of the slaves of slavery and survivors of involuntary servitude. Those that have been elected by their constituents must acknowledge all of their constituencies’ grievances in order to uphold the foundation of society by respecting their opinions and entitling their rights.

In order to attain the full right to Life, Liberty, and Pursuit of Happiness, America must begin with acknowledging and educating about the exodus of slaves and survivors of involuntary servitude so that African Americans can begin to reconstruct themselves anew as whole people. This, and only this, will allow African Americans to regain some sense of who they are as people and allow the crimes of the past to be dealt with once and for all.

The United States Constitution and its Amendments

On February 14, 2006, United States Supreme Court Justice Scalia at an Annual Federalist Association Conference in Puerto Rico said, “The Constitution is not a living organism, it is a legal document. It says something and doesn’t say other things.” The amending process mentioned in Article V of the Constitution can only change the

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63 Mark Tushnet, Constituting We the People, 65 Fordham L. Rev. 1557 1559 (1996-1997).

Constitution. “As long as it was not amended, the Constitution must be interpreted in its 
original sense”, 65 which is binding in Court interpretations today.

The Constitution of the United States serves as the fundamental laws of the United 
States of America. Eleven years after the Second Continental Congress in Philadelphia 
convened in the summer of 1776 the Constitutional Convention also took place in 
Philadelphia during the summer of 1787. “The Constitution defines distinct powers for 
the Congress of the United States, the president, and the federal courts.” 66 “The 
Constitution also establishes and limits the authority of the federal government over the 
states, and spells out freedoms and liberties for U.S. citizens.” 67

I will focus on The Constitutions Preamble, the Ninth Amendment, and the Fourteenth 
Amendment, which are most pertinent to establishing justice for the descendents of 
slaves and survivors of involuntary servitude in particular. “The Constitution remains tied 
to the particular people and history of the United States. Constitution-talk, therefore, is 
about what “We the People of the United States” ought to do. Of course, what We the 
People of the United States” ought to do may well have some connection to advancing 
justice, as the Constitution’s Preamble asserts.” 68

Although confined to fifty-two words, the Framers believed that the “Preamble 
represents the country’s personality: that we are an aspiring people attempting to truly

65 Edward J. Melvin, The Constitution and the Declaration of Independence: Natural Law in American 

67 Id.

make the nation “a more perfect union.” The Preamble to the United States Constitution states:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The United States Senate Constitution homepage explains the preamble by stating, “The Preamble explains the purposes of the Constitution, and defines the powers of the new government as originating from the people of the United States.” “Elected officials and commentators have remarked on the Preamble’s efficacy in explaining the goals of the Constitution.”

As a preamble is intended to set the tone of document, we can safely assume that all bills and amendments following the preamble must be matched to coincide with the essence of the text. In deciphering what the Ninth Amendment means, let us look at what it says:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

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71 Id.


The United States Senate Constitution homepage explains, “The failure of the Constitution to mention specific rights does not mean that the government can abridge that right, but its protection has to be found elsewhere.”\textsuperscript{74} “This lack of a list of rights which would incorporate those listed as “inalienable” in the Declaration of Independence”\textsuperscript{75} led a heated debate from the late 1700’s to the mid 1800’s concerning the specific meaning of the “certain rights”.\textsuperscript{76}

The mention of “certain rights” in the Ninth Amendment has been translated to mean natural rights. The question is then which natural rights? If we assume that the Constitution is a continuation and development from previous documents that set a precedent concerning the rights of Americans, then I would be safe to assume that we can use the Declaration of Independence to guide us to what these founders meant to extract from this Amendment. In 1884, Justice Field made a statement concerning the Declaration of Independence:

As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that the new evangel of liberty to the people: “We hold these truths to be self evident”- that is so plain that their truth is recognized upon their mere statement-“that all men are endowed”- not by edicts of Emperors, or decrees of Parliament, or acts by Congress, but “but by their Creator with certain inalienable rights”- that is, rights which cannot be bartered away, or given away except in punishment of crime-“and that among these are life, liberty, and the pursuit of happiness, and to

\textsuperscript{74} Id.


\textsuperscript{76} Id.
secure these”- not grant them, but secure them—“governments are instituted among men, deriving their just powers from the consent or the governed.77

Although the Ninth Amendment was of great importance during the early years of the Constitution, it went unnoticed for 174 years, until its usage in the Griswold v. State of Connecticut case in 196578 “in which the Supreme Court of the United States ruled that the Constitution protected a right to privacy. The case involved a Connecticut law that prohibited the use of contraceptives. By a vote of 7-2, the Supreme Court invalidated the law on the grounds that it violated the “right to marital privacy.”79 The Ninth Amendment alone is often characterized as a hollow amendment unable to be a source of unremunerated rights. Thus, the disregard for this Amendment led to the Griswold v. State case being supported by numerous amendments, in order to make a solid case. Scholars conclude that the Ninth Amendment and the Preamble should be used in conjunction with the Fourteenth Amendment, to further advance unremunerated rights.80

The Fourteenth Amendment has been positive and negative in the fight for African American rights and justice in the past. “The amendment was intended to impose a new political and economic view on a country that had, prior to the amendment, conducted

80 Id.
itself without much restraint.’’

Dred Scott v. Sanford (1857) was a case where Dred Scott, a slave who was taken to Wisconsin (a “free” state) and tried to sue for freedom in court. He lost his case in St. Louis, Missouri, won it on appeal, and then lost it again on appeal. The Court ruled against Scott on the basis that slaves were not citizens of the United States and could never be citizens because they were property. The Fourteenth Amendment was ratified in July of 1869, which declared ‘blacks’ to be U.S. citizens. Even though the ratification was a significant event, the struggle for justice for ‘blacks’ had just begun.

The Fourteenth Amendment is quite lengthy, however, the section pertinent to this discussion is section 1, which states:

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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Laurence Tribe and Michael C. Dorf explain, “The battle for constitutional meaning occurs primarily in the interpretation of prior cases.” Therefore, it is necessary to bring up a case that will hopefully bring into context the actual possibilities in pursuing this


82 See Table, Free States and Slave States.


direction for gaining justice for African Americans. In the case of Lawrence and Garner v. Texas 539 U.S. 558 (2003), the idea of liberty to adult persons in deciding how to control their private lives was put to the test. The court reversed the criminal prohibition of homosexual sodomy in Texas. The Lawrence court held that consensual sex between adults was part of liberty protected under the Fourteenth Amendments substantive due process clause. In explaining the liberty the Constitution demands for the autonomy of the person in the control of one’s existence, Justice Kennedy gave this opinion to the Court:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Thus, the Declaration of Independence and the Constitution build the civic trust model of reconciliation in an American context. They are living documents in which the originalist’s ideas of justice are expanded to include all people in the United States. The


86 Supra note 85.

"Substantive Due Process" is the fundamental constitutional legal theory upon which the Griswold/Roe/Casey privacy right is based. The doctrine of Substantive Due Process holds that the Due Process Clause not only requires "due process," that is, basic procedural rights, but that it also protects basic substantive rights. "Substantive" rights are those general rights that reserve to the individual the power to possess or to do certain things, despite the government’s desire to the contrary. These are rights like freedom of speech and religion. "Procedural" rights are special rights that, instead, dictate how the government can lawfully go about taking away a person’s freedom or property or life, when the law otherwise gives them the power to do so.

precedent set in the Lawrence Garner v. Texas case should make it possible for African Americans to use these documents to build a case for creating a truth, and reconciliation commission which would allow them to establish their right to justice which is upheld in, and central to these documents. The right to define one’s dignity is a right that is an American right, supported by the Supreme Court. The right to know the truth about the existence of African Americans as a whole will help restore the dignity and personal autonomy of African Americans. This will further promote the general welfare of Americans by healing a 400-year-old wound. It would be somewhat utopian to believe that there will be total tranquility in American society if a truth and justice commission is launched. Although, the tensions that have created a society of ‘Black and White’, shrouded by misunderstandings and lack of truth, could greatly be diminished if some form of truth and justice is granted to the descendents of slaves and survivors of involuntary servitude. Until this is settled, there will always be division concerning this issue in American society.

Therefore, what remains to be considered in the next Chapter is looking closer at what a Truth and Reconciliation Commission is (TRC’s). The focus is primarily on South Africa’s Truth and Reconciliation Commission as an example for our case in question. Two Truth and Reconciliation Commissions will be examined for their suitability or lack thereof in an American reconciliation context.
Chapter Four

Truth and Reconciliation Commission-Concept, Practice, and a Promising Approach

Introduction

This chapter will examine the composition of a truth and reconciliation commission. As stated in the previous chapter, the civic trust model will be incorporated in order to develop a model that could be applied in the American context. Numerous aspects of truth and reconciliation commissions will be mentioned as two TRC’s will be briefly evaluated in order to illustrate what should not be done in the American social political context. The civic ‘trust’ model will specifically be tested against the South African Truth and Reconciliation Commission because it is probably one of the only contexts that is somewhat similar to the American context. This will necessitate a brief background on the social and political situation in the case. Viewing this latter relationship will prove to illustrate how the civic ‘trust’ method help launch South Africa’s TRC, and further prove to be suited in the American context for creating justice for the descendents of slaves and survivors of servitude.
Truth and Reconciliation Commission

The expression, truth and reconciliation commission is loosely used for structures set up to confront unspeakable legacies of the past, in order to achieve an all-inclusive sense of justice and candor for a nation, and to establish a sense of understanding, civic trust and solidarity. Thomas Buergenthal, one of the three commissioners in the United Nations Truth Commission for El Salvador, observed:

Many of the people who came to the Commission to tell what happened to them or their relatives and friends had not done so before. For some, ten years or more of silence and pent-up anger had gone by. Finally, someone listened to them, and there would be a record of what they had endured. They came by thousands, still afraid and not a little skeptical, and they talked, many for the first time. One could not listen to them without recognizing that the mere act of telling what had happened was a healing emotional release, and that they were more interested in recounting their stories and being heard than in retribution. It is as if they felt some shame that they had not dared to speak out before and, now that they had done so, they could go home and focus on the future less encumbered by the past. 88

According to Priscilla Hayner, an expert on truth commissions, there are four elements that all may or may not be included characterize a truth commission:

(1) A truth commission focuses on the past; (2) a truth commission is not focused on a specific event, but attempts to paint the overall picture of certain human rights abuses or violations of international humanitarian law, over a period of time; (3) a truth commission usually exists for a period of time, ceasing to exist with the submission of a report of its findings; and (4) a truth commission is always vested with some sort of authority, by way of its sponsor, that allows it access to information, security, or protection to dig into sensitive issues, and greater impact with its report. 89


Although these four primary elements are common, they are not exhaustive elements that comprise a truth and reconciliation commission.

When deciding who will sponsor a truth commission, different branches of the government may do so, an international commission headed by the U.N., such as in East Timor, a regional body, or it may be sponsored under a permanent national structure like a special supervisory committee, like in the case of South Africa.90

Most truth commissions are usually created during a transitional period within a country, exercised to promote reconciliation among people by facing past human rights abuses.91 Respect for all people irrespective of opinions during truth commissions must be present throughout the process. According to Jonathan Allen, he views truth commissions as “merely political compromises, institutions spawned by unprincipled negotiation of a transfer of power. Justice becomes the casualty of a political calculation”92 He also adds, “it is not that no reconciliation is possible without truth, but rather, that morally justifiable reconciliation requires the disclosure of truth and some concern to see justice served. Reconciliation on other terms is demeaning or in other ways morally unjustified.”93 Further, in countries that are trying to develop or uphold democratic canons, reflection on past injuries is an important basis that aims to respect justice and the rule of law. It is important that this should be an ongoing reflection and critical

90 Id at 156.
91 Id at 154.
93 Id at 317.
appropriation of the past, for enshrining past suffering in memory alone is as likely to blind one to new injustices and to contribute to a narrow obsession with self alone or a narrow group as it is to play a sensitizing role or stimulate the moral imagination.”

Donald Shriver explains problems that may occur when trying to forget atrocities: “pain can sear the human memory in two crippling ways: with forgetfulness of the past or imprisonment in it. The mind that insulates the traumatic past from conscious memory plants a live bomb in the depths of the psyche. But the mind that fixes on pain risks getting trapped in it. Too horrible to remember, to horrible to forget.”

Truth commissions or maybe more accurately named “investigating commissions” main function is to investigate the past under protection and authority of a sanctioned body. The result of the investigation is an objective accurate record of a country’s past. “Such an account serves as an instrument of preservation and education, preventing history from being rewritten by possible subsequent oppressive regimes, and teaching its society valuable lessons from its past to circumvent repetition in the future.” State admittance of its role in past crimes and injustices is often a long awaited acknowledgement that can play a role in the healing process for individuals as well as the country. Truth commissions help honor victims while offering some answers to


97 Id.

98 Id at 158.
provocative questions about what really happened. A group of Chilean therapists observed during the Rettig Commission: “we have found that the person or the family needs to recount the traumatic experience in detail, and express the emotions it produced. This permits integration into a coherent history of events that were necessarily disassociated, allowing the person to feel the pain of the losses experienced. It opens up the possibility for grief and mourning, and facilitates the development of a more coherent self-image.”

Therefore, the final report of a truth commission can educate the public and remind the public of the human costs that were supposed of or unknown. Tina Rosenberg asserts, “People need to see the human cost” such as in the African American context. Psycho-social ills caused by the destruction of the family unit continue today. “Moving beyond statistics to real people of blood, flesh, and tears, a commission that gathers individual testimony can present human consequences of atrocities that are otherwise unfathomable and overwhelming.”

In Martha Minows’ book, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence, she has identified twelve aspirations to establishing transitional justice, although I will list five that are central to establishing justice for African Americans:

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100 Id at 66.

101 Id. 76.
1. Overcome communal and official denial of the atrocity and gain public acknowledgement;
2. Obtain the facts in an account as full as possible in order to meet victims’ need to know, to build a record for history, and to ensure minimal accountability and visibility of perpetrators;
3. Forge the basis for domestic democratic order that respects and enforces human rights;
4. Promote reconciliation across social divisions; reconstruct the moral and social systems devastated by violence;
5. Restore dignity to victims.\textsuperscript{102}

By addressing these five matters in a commission, it would allow African Americans to heal their scars while promoting unity in American society by fessing up to the major causes of racial discord in American society.

Though truth and reconciliation commissions are not perfect solutions for establishing all of these aspirations, at least it is a way to begin the process of officially recognizing the brutality and tragedy of a State’s history. There is much elasticity in setting up the structure and function of future, truth and reconciliation commissions. Next, I will briefly look at two truth and reconciliation commissions that I consider noteworthy, although they would not fit an American context. Briefly, I will mention the social political context in both countries illuminating the technical issues of how the particular commission was organized. Following will be presented a thorough evaluation of the social and political background of South Africa and the subsequent structure of South Africa’s Truth and Reconciliation Commission, a model that is best suited for the American particular context.

\textsuperscript{102} Martha Minow, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence 88 (1998).
East Timor

East Timor was colonized by Portugal in the 16th century. With the arrival of a Portuguese governor, the area became a colony in 1702. In the 1970’s Portugal was occupied with the decolonization of Angola and Mozambique, and abruptly left East Timor, which independently declared itself independent on November 28, 1975. Nine days later with the support of Western powers, Suharto’s Indonesian forces invaded and occupied East Timor.

For 24 years, until 1999, The East Timor guerilla forces, known as the Fretilin, fought against Indonesian forces. The Indonesian forces attacked the civilian population, by torturing and killing, on the claim that they were helping the guerilla forces. On August 20, 1999 an UN-sponsored agreement between Indonesia, Portugal and the US, held a referendum in which the East Timorese voted for independence from Indonesia. Clashes instigated by anti-independence militia broke out soon afterwards. A peacekeeping force, the International Force East Timor (INTERFET) led by Australia intervened to restore order. INTERFET was replaced by a United Nations Transitional Administration in East Timor (UNTAET) in which it was responsible maintaining security, coordinating relief assistance to East Timorese, and assisting in the drafting of a new constitution and conducting elections”.


104 Id.

In October 1999, the UN sponsored the International Commission of Inquiry on East Timor (UNTAET). Although, this commission was not considered effective due to the lack of cooperation with the Indonesian government and the lack of accountability for the crimes that were committed in 1999. In August 2000, a steering committee chaired by UNTAET was developed to establish a new truth and reconciliation commission.

In 2002, the UNTAET established the Commission for Reception, Truth and Reconciliation (CAVR). The statement of purpose stated:

The Commission is an independent statutory authority that will inquire into human rights violations committed on all sides, between April 1974 and October 1999, and facilitate community reconciliation with justice for those who committed less serious offenses. The Commission will not give amnesty.\(^\text{106}\)

The commission consisted of three main functions:


2. Community Reconciliation: The Commission will facilitate community reconciliation by dealing with past cases of lesser crimes such as looting, burning and minor assault. In each case, a panel comprised of a Regional Commissioner and local community leaders will mediate between victims and perpetrators to reach agreement on an act of reconciliation to be carried out by the perpetrator.

3. Recommendations to Government: The Commission will report on its findings and make recommendations to the government for further action on reconciliation and the promotion of human rights.\(^\text{107}\)


\(^{107}\) Id.
The set up of this particular commission would not work within the United States for two main reasons. First, it’s no amnesty approach seeks to prosecute and punish perpetrators, rightfully so, this would not be appropriate considering most of the individuals that actually participated in the crimes against African Americans ancestors and survivors\textsuperscript{108}, have died or are elderly. In addition, in order for the American population as a whole to participate in a truth and justice commission, I feel an amnesty would be appropriate. For example, an amnesty approach could take the form of companies or family members of slave owners who come forward with information or documents should not be penalized or threatened with class action suits. “And you will know the truth, and the truth will make you free” should reign in a truth commission for African Americans, the only justice that could come out of such commission is as much truth as possible.

Second, the involvement of the United Nations in the development of an American truth and justice commission would not be welcomed by the United States in fear that the United Nations assistance would interfere with US sovereignty.

On January 20, 2006, the final report came out which concluded that Indonesian security forces committed human rights violations that amounted to crimes against humanity and war crimes against the Timorese population.\(^{109}\)

**The Chilean Truth and Reconciliation Commission : The Rettting Commission**

In 1973, General Augusto Pinochet overthrew President Allende in a coup d’etat. For the next seventeen years, Pinochet ran a military state. Pinochet’s government, led by the National Intelligence Directorate (DINA) and then National Intelligence Center (CNI) destroyed any opposition by harassment, torture, killings, disappearances and forced exile. In 1978, the government passed amnesty law 2191\(^{110}\) which exempted prosecution to anyone that committed human rights abuses from 1973-1978. In 1980, opposition groups formed an armed resistance in which the government justified their violence. In 1988 due to domestic and international pressure, Pinochet agreed do hold a referendum in which the population voted against him. He gave up his power in 1989.

In 1990, Patricio Aylwin won the election and took office, however, Pinochet remained the Commander in Chief of the Army through 1997. Moreover, most of the people in power, the judiciary and the senate, were still dominated by supporters of Pinochet.


In March 1990, Aylwin created the National Commission on Truth and Reconciliation, also known as the Rettig Commission. Nine members were appointed, which were divided politically between Pinochet supporters and opponents. The commission had four main functions:

1. To establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances.

2. To gather evidence that might make it possible to identify the victims by name and determine their fate or whereabouts.

3. To recommend such measures of reparation and the restoration of people’s good name as it regarded as just.

And

4. To recommend the legal and administrative measures which in its judgment should be adopted in order to prevent further grave human rights violations from being committed.\textsuperscript{111}

“The Rettig Commission had been given a mandate that was in certain ways limited.”\textsuperscript{112}

In the objective report named, “Methodology and Work of the National Commission on Truth and Reconciliation in Preparing This Report” it was stated:

In accordance with a solid and well-established principle in the area of human rights, it was determined that in no case was the Commission neither to take on legal functions proper to the courts nor to interfere in cases already pending. In order to make the matter even more explicit, the Commission was expressly prohibited from making pronouncements on whether, and to what extent particular persons might be responsible for the events it investigated.

The methodology of this particular commission would not work within the United States for two main reasons. First, the Commission was not given classified information that


would have made it possible for new and crucial evidence to be gathered and documented. In the American context, classified information will be crucial in collecting new information. Second “all information that was uncovered was handed over to the Courts”\textsuperscript{113}, and not released. In the American context, it will be necessary for all information to be accessible to all. Third, the Commission was to address human rights violations that only resulted in death. This decision would not be appropriate in the American context because it would not help establish all the truth by denying the full context of violence, torture, and racism towards African Americans.

In February 1991, President Alywin apologized to the victims and their families. The Rettig Commissions final report called for a reparations policy, “including legal and administrative assistance, financial support for education, medical care and psychological services, and symbolic reparations to vindicate the victims such as public monuments or parks.”\textsuperscript{114}

\textbf{South Africa: The Socio-Political Context}

The Dutch established a colony in South Africa (1652) by way of the Dutch East India Company at the Cape of Good Hope. The Dutch established the South Africans legal system which was based on Dutch common law which is based on Roman-Dutch tradition. “The main source of law was the Digest of Emperor Justinian which expounds,


among other things, that man was born either freeman or slave.”\textsuperscript{115} The relationship the Dutch had with the native groups was one of master and slave. The rights of slaves were minimal, they were seen as chattels, they were exposed to extreme forms of torture, they had no rights within the law and were forced out of their habitations. As the Dutch become more settled into South Africa, “Dutch men tended to cohabit with slave women and the majority of children born to female slaves, had Dutch fathers”\textsuperscript{116}, leading way to the Colored category.

The British occupied the Cape in 1795, introducing British common law. In 1834, the British Act of Parliament ‘officially’ abolished slavery. Much like the case of slaves in America, the legal emancipation did not lead to social emancipation. The same “features of the master-slave relation were reproduced in labor legislation by means of the past laws and was sustained by social practice. Slave labor was merely concerted into cheap labor.”\textsuperscript{117} In the early 1800’s the beginnings of an Afrikaans nation started to take place with the escalation of white settlement, with the French Huguenots and Germans fleeing from religious persecutions in Europe, following British settlers.\textsuperscript{118}

In the 1830’s the Afrikaners started to move into rural areas of South Africa, Swaziland, Zimbabwe and Botswana in order to avoid British taxes and ideas of justice. They, along with Colored slaves, settled in the areas between the Orange and Vaal rivers which came


\textsuperscript{116} Id. at 5-6.

\textsuperscript{117} Id at 6.

\textsuperscript{118} Id at 7.
to be known as the Transvaal and Orange Free Sates Republics.\textsuperscript{119} The Boers (the Farmers) started to take farm land from the native Africans and introduced a system of superiority on the population. The Transvaal Constitution in 1858 stated, “The people desire to permit no equality between colored people and the white inhabitants in either Church or State”. With the discovery of gold in the Transvaal, laws controlling movement started to evolve, “Africans were lashed for walking on the pavements of Johannesburg and sent to prison for being off their masters’ property without displaying their passes.”\textsuperscript{120} After nine wars were fought between the Zulu’s and the Afrikaans, the Afrikaans were able to defeat the Zulu with gun power. During this time, the British defeated the Zulu in 1979 in the Natal province by the use of gun power as well. “Despite the declaration that they would govern with no distinction of color, origin, race, or creed, by the end of the century, Natal developed a society in which race domination of whites over Africans and Indians was exercised as rigidly and perhaps with more violence, than anywhere else in southern Africa”\textsuperscript{121} The laws and the courts became major instruments for maintenance of stratification and privilege.”\textsuperscript{122} For example, “prison regulations classified prisoners into three groups: African, Indians and Europeans. In one prison, white prisoners were permitted to bathe twice a week. Dark skinned prisoners, however,


\textsuperscript{120} Id at 9.

\textsuperscript{121} Id at 9.

\textsuperscript{122} Id. at 10.
were permitted to bathe only once a week, in the same water the whites had used twice.”\textsuperscript{123}

In 1902, the Afrikaans defeated the British in the Anglo-Boer War (1899-1902). Reconciliation was forged and ideas of a unified nation of white control emerged. Roman-Dutch common law was mixed in with English constitutional law. The newly created Union of South Africa in 1910 launched a compromise, similar to the ethos of the North-South debate in the United States, “the Cape favored a color-blind franchise, whereas the delegated from the other colonies favored a white-only franchise. A compromise was finally reached which allowed the Cape to retain its franchise qualification while the Northern provinces were permitted to exclude all blacks from the participation in the electoral processes. This agreement was entrenched in the constitution.”\textsuperscript{124}

In 1936, the Parliament passed The Representation of Natives Act, “which removed African voters from the electoral roll in the Cape Province and gave them separate representation.”\textsuperscript{125}

In 1948,” the Nationalist Government gained power and intensified segregation measures, particularly in the Cape where they had not previously not been rigidly

\textsuperscript{123} Id.


\textsuperscript{125} Id at 17.
applied”.126 In 1949, the Prohibition of Mixed Marriages Act made it illegal for persons of a different race to marry.127

The year 1950 marked the solidification of the Apartheid system by two main acts, the Population Registration Act and the Group Areas Act. The Population Registration Act classified race in four categories under the law, Black, White and Colored (Mixed) and Asian. Social rights, political rights, educational opportunities, and economic status were largely determined by which group an individual belonged to. Separate facilities started to spring up with “whites only” signs in toilets, restaurants, buses, trains, libraries, beaches and parks, to mention a few. Like the United States, it was the court and not the legislature, which imposed the element of color in South Africa. In 1953, the Parliament enacted the Reservation of Separate Amenities Act which allowed public places to reserve separate but unequal status in all facets of public life. This law worked in tandem with other laws passed as part of the apartheid system. In 1957, the enactment of the Immorality Amendment Act made it a crime to display intent or interest in conducting a relationship with a member of a different race. For non-whites, freedom of movement was suppressed and judicial law biased.

The Group areas Act of 1966 made it legal to create separate areas in towns and cities for Africans, Colored, and Whites. The colored group had been subdivided into Indian, Chinese, Malay and “other colored” groups.

126 Id at 23.
127 Id. at 23.
On June 16, 1976, a peaceful protest, against having to learn Afrikaans in school, erupted into violence as police opened fire on thousands of students. This date is known as the worst in South African history. The riots began to spread throughout South Africa and later world-reaction through visions on television and news marked the beginning of the end of Apartheid. Many non-white South Africans, as well as some white South Africans, began their protests against the Apartheid government which continued to grow throughout the 1980s. World-wide boycotts against the South African Apartheid system started to be organized. “In the 1970’s and 80’s, world attention was riveted by the brutal images coming out of South Africa: striking black school children braving bullets and white security forces bulldozing homes in the black townships.” Consequently, President F. W. de Klerk (National Party) began to dismantle the apartheid system in the early 1990s. On February 11, 1990 Nelson Mandela, the symbol of the anti-apartheid movement, was released from prison. During these developments, an interim constitution was rewritten in 1993. “The African National Congress (ANC) conceded that an amnesty of some kind would have to be granted, in order to move forward. A clause was added to the interim constitution” which states “In order to advance – reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.” A civic ‘trust’ was formed between once opposing parties in the development of


the 1994 Interim Constitution which spearheaded the objective for the Truth and Reconciliation Commission in the preamble:

In humble submission to Almighty God, We, the people of South Africa declare that: Whereas there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms; and whereas in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles; and whereas it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution; now therefore the following provisions are adopted as the Constitution of the Republic of South Africa.

On May 10, 1994, Mandela (May 1994 to June 1999) was elected president of the African National Congress.

Following the year of Mandela’s election, a year of debate along with two international conferences were dedicated to examining the intricacies of the development of a truth and reconciliation commission which would focus on restorative justice. "The restorative justice nature of the transition in South Africa was fortified by constitutional commitment." "On this basis the new Government of National Unity under President Nelson Mandela – which included members not only of the ANC but also the National

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131 Id at 334.

132 Id.
Party and the IFP, headed by Chief Mangosuthu Buthelezi – drafted legislation for a wide-ranging commission of inquiry, with power to grant amnesties.”

The civil rights movement, starting with the establishment of Jim Crow laws, legalized segregation and margilization as the Apartheid system did to blacks and coloreds in South Africa. The official end of legalized racism in South Africa and The United States has dissolved in two very different ways. In South Africa, ending its Apartheid system understanding that society cannot move forward unless the record is cleared concerning the crimes of the past have given large portions of blacks and coloreds the chance to reclaim their identities. Although law prohibited legalized racism in America 30 years before South Africa, I think many African Americans today would not say that “liberty and justice for all” is a reality for most of them today. I think this is because the issues of slavery, involuntary servitude and subsequent racism, was and has not been dealt with on a national level. In saying this, America should learn from South Africa in order to correct its mistakes.

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South African Truth and Reconciliation Commission (TRC)

“There is a need of understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.”

In 1995, the South African Parliament passed the Promotion of National Unity and Reconciliation Act, mandating the establishment of the Truth and Reconciliation Commission (TRC). The mandate of the Truth and Reconciliation Commission was “to establish as complete a picture as possible of the cases, nature and extent of the gross violations of human rights which were committed during the period March 1960 and December 1993. The antecedents, circumstances, factors and the contexts of such violations, as well as the motives of such violations, as well as the perspectives of the persons responsible for committing such violations should be established.” The Commission was given a year and a half to investigate human rights violations, identify victims of gross violations, and extends amnesty to perpetrators who complied and to


Ubuntu is a term found in the Nguni-based languages of Southern Africa and refers to "humaneness" and community interdependence.


make recommendations on appropriate reparations to the victims and communities ravaged by the system.\textsuperscript{137}

The TRC performed its mandate through three committees: the Amnesty Committee, Reparation and Rehabilitation Committee and Human Rights Violations Committee.

\textbf{Amnesty Committee (AC)}

The primary function of the AC is to consider that applications for amnesty were done in accordance with the provisions of the Act. Applicants could apply for amnesty for any act, omission or offence associated with a political objective committed between 1 March 1960 to 6 December 1993. The cut-off date was later extended to 11 May 1994. The final date for the submission of applications was 30 September 1997. Being granted amnesty for an act means that the perpetrator is free from prosecution for that particular act.\textsuperscript{138}

Although the Apartheid regime had a well-known history of “political violence and human rights violations, including massacres, killings, torture, lengthy imprisonment of activists, and severe economic and social discrimination”\textsuperscript{139} against black and colored South Africans, “the most controversial aspect of the TRC’s mandate the “amnesty for truth”\textsuperscript{140} “in which the applicant had to make a full disclosure of his or hers actions and that his or her act, omission or offence could be associated with apolitical act”\textsuperscript{141} was deemed necessary in order to establish ‘all the truth and as much justice as possible’. The


\textsuperscript{140} Id.

belief that presided was, since many high-ranking members from the community, government officials, police, political party members, etc, would be reluctant to turn themselves in, preventing the truth from surfacing, this amnesty was the only way to gain the knowledge so many sought. However, it has been noted that “rather than ‘blanket’ amnesty for perpetrators provided by previous truth commissions, for the first time in history of truth commissions perpetrators would be granted amnesty only if they could satisfy certain conditions laid down in the legislation establishing the Commission.”

Reparation and Rehabilitation (R&R) Committee

The enabling act empowered the R&R Committee to provide victim support to ensure that the Truth Commission process restores victims’ dignity; and to formulate policy proposals and recommendations on rehabilitation and healing of survivors, their families and communities at large. The envisaged overall function of all recommendations is to ensure non-repetition, healing and healthy co-existence. A President’s Fund, funded by Parliament and private contributions, has been established to pay urgent interim reparation to victims in terms of the regulations prescribed by the President.

“Compensation can never compensate.”

“Reparations is a general term that encompasses a variety of types of redress, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.” Reparations are compensation for a wrong done as well as a settlement given to restore a community to a previous or good condition. Very few governments give reparations in the monetary form, or are able to give an ample amount that would satisfy the victims or survivors.

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142 Id. at 338.
Various forms of reparation were proposed in this commission such as, reburials and ceremonies, erecting memorials, improving social services and various forms of institutional reforms.\textsuperscript{146} The reparations committee consisted of redress, restitution, rehabilitation, restoration of dignity and reassurance of non-repetition. Immediate reparations were given to some that met the criteria of urgent need. However, it is stated “the fact that victims continue to wait for reparation while perpetrators receive amnesty has fueled the debate about justice for victims within the Commission process.”\textsuperscript{147} For future reference, it should be noted that any form of reparations should be allotted in a prompt manner.

**Human Rights Violations (HRV) Committee**

The task of the HRV Committee was to investigate human rights abuses that took place between 1960 and 1994, based on statements made to the TRC. The Committee established the identity of the victims, their fate or present whereabouts, and the nature and extent of the harm they have suffered; and whether the violations were the result of deliberate planning by the state or any other organization, group or individual. Once victims of gross human rights violations are identified, they are referred to the Reparation and Rehabilitation Committee.\textsuperscript{148}

The TRC’s investigatory department conducted public hearings around the country while understaffed and under-funded. Around 20,000 Victims and family members told their stories of what happened to them and members of their family in hopes to gain some new information concerning their particular situations. Only 7,060 individuals provided


the committee with new information. The hearings were aired on national television, radio and printed in newspapers.\textsuperscript{149}

On 29 October 1998, then President Nelson Mandela was presented with the TRC’s final report. The committee found that apartheid was a crime against humanity and although the previous government was responsible for most of the human rights violations, ANC had committed human rights abuses.

\textsuperscript{149} Id.
Chapter Five

Congressman John Conyers bill H.R. 40, Commission to Study Reparation Proposals for African Americans Act.*150

Americans must begin to confront the history of slavery, involuntary servitude and its residual effects on African Americans and everyone else in the United States. Such an examination should be focused on the role local institutions, state officials, federal government, and ordinary people had in condoning and promoting slavery, involuntary servitude, violence and torture and subsequent racism on millions of people.151

I propose that Ron Conyers bill H.R. 40 be slightly modified in order to advance the bill into something that can come into fruition. There are three suggestions that I would make to this bill. First, I propose to change the name from H.R. 40 Commission to Study Reparation Proposal for African American Act, to HR 40 the Truth and Unity Commission to Study Slavery, Involuntary Servitude and the Continued Effects on African Americans and the General Population. The reason I choose this title is to clearly express the motives of this commission which is to seek the truth about the history of African Americans in the United States and to bridge the gap, Blacks vs. Everyone else, in order for America to move beyond a society of Black and White. Second, I would

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include a blanket amnesty to all companies, businesses, and private persons in exchange for information such as documents, deeds, photographs, recordings, anything that will help record the truth about the history of slaves in America, involuntary slavery, and its continued effects. Third, due to the amnesty, the only reparations that will be expected are the restoration of dignity as in the South African TRC, the right of the individual/community to an acknowledgement of the violation committed and the right to a sense of worth. Such restorations would come in the form of education, development of school curriculum, libraries, monuments, and African-American / African study programs in the form of African language training and cultural immersions in African countries.

The truth and unity commission could provide opportunities for American people as a whole to be lifted from the burden of the past and move on to acknowledge each other as people rather than Blacks and Whites. The goal of the truth and unity commission is twofold first, to allow African Americans the liberty the Constitution and Declaration of Independence demand for the autonomy of each of them, to control their existence, simply by finding out the truth. Second, to support and encourage citizens to deal with the effects of slavery on Americans in general. Disregarding slavery, involuntary servitude, and its effects is a historical reality that has been snubbed too long. The tension between Blacks and Whites in particular that continues to ignite over any situation where the parties happen to be Black and White, such as in the recent Katrina incidents and the recent alleged North Carolina/Duke rape, will never end if America does not engage in a truthful and meaningful discussion about slavery, involuntary

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10 April 2003.
servitude, and their continued effects. Americans must fess up to the fact that these
realities in history have left a fracture in the United States that remains to be healed.

Like the South African TRC, the civic trust of justice that was formulated in order to
move South African society to a more peaceful co-existence can be used for revitalizing
the hopes and dreams the founders found in the Universal Declaration of Independence
and the Constitution. The same justice that the South African TRC petitioned and
received is the same that African Americans ask for, and Americans as a whole deserve.
Closing Remarks

“Reconciliation is only possible if we build on the foundation of truth. Amnesia may be comforting, but in the end it will prevent reconciliation rather than promoting it.”

America’s history of slavery, involuntary servitude and the remnants of such atrocities can no longer be ignored. While the Constitution has been amended to include African Americans, as well as other minorities, and historical documents have been understood to be mutually inclusive to all Americans as a political community, American must look at South Africa as a model. The steps South Africa has taken in clearing up the past can serve as an example for Americans to tackle their history in order to bestow justice for African Americans in anticipation that it would pave the way for a more just and harmonious society. Slavery and involuntary servitude must be studied and documented as an aspect of American history that continues to affect perspectives and relationships between Blacks and Whites. Our efforts to engage in conversations about slavery and involuntary servitude from the vision of “justice for all” from the founders to the contemporary form of civic trust is the only way African Americans can achieve, truth,

understanding and true justice in the future. As President Bush said in his July 8, 2003 Speech\textsuperscript{154} in the West African country of Senegal on Goree Island\textsuperscript{155}

My nation's journey toward justice has not been easy and it is not over. “The racial bigotry fed by slavery did not end with slavery or with segregation. And many of the issues that still trouble America have roots in the bitter experience of other times. But however long the journey, our destination is set: liberty and justice for all.

The journey for justice does not have to continue to linger. The truth and unity commission should be established in order to solidify, “liberty and justice for all”.

\textsuperscript{154} See appendix. President Bush Speaks at Goree Island in Senegal Remarks by the President on Goree Island (2003).

\textsuperscript{155} World heritage site. Major slave trading center from the 1500’s to the mid 1800’s.
Appendix

Commission to Study Reparation Proposals for African Americans Act (Introduced in House)\textsuperscript{156}

HR 3745 IH

101st CONGRESS
1st Session
H. R. 3745

To acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 20, 1989

Mr. CONYERS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Commission to Study Reparation Proposals for African Americans Act'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- The Congress finds that--
(1) approximately 4,000,000 Africans and their descendants were enslaved in the United States and the colonies that became the United States from 1619 to 1865;
(2) the institution of slavery was constitutionally and statutorily sanctioned by the Government of the United States from 1789 through 1865;
(3) the slavery that flourished in the United States constituted an immoral and inhumane deprivation of Africans' life, liberty, African citizenship rights, and cultural heritage, and denied them the fruits of their own labor; and
(4) sufficient inquiry has not been made into the effects of the institution of slavery on living African Americans and society in the United States.

(b) PURPOSE- The purpose of this Act is to establish a commission to--
(1) examine the institution of slavery which existed from 1619 through 1865 within the United States and the colonies that became the United States, including the extent to which the Federal and State governments constitutionally and statutorily supported the institution of slavery;
(2) examine de jure and de facto discrimination against freed slaves and their descendants from the end of the Civil War to the present, including economic, political, and social discrimination;
(3) examine the lingering negative effects of the institution of slavery and the discrimination described in paragraph (2) on living African Americans and on society in the United States;
(4) recommend appropriate ways to educate the American public of the Commission's findings;
(5) recommend appropriate remedies in consideration of the Commission's findings on the matters described in paragraphs (1) and (2); and
(6) submit to the Congress the results of such examination, together with such recommendations.

SEC. 3. ESTABLISHMENT AND DUTIES.

(a) ESTABLISHMENT- There is established the Commission to Study Reparation Proposals for African Americans (hereinafter in this Act referred to as the 'Commission').

(b) DUTIES- The Commission shall perform the following duties:
(1) Examine the institution of slavery which existed within the United States and the colonies that became the United States from 1619 through 1865. The Commission's examination shall include an examination of--
   (A) the capture and procurement of Africans;
   (B) the transport of Africans to the United States and the colonies that became the United States for the purpose of enslavement, including their treatment during transport;
   (C) the sale and acquisition of Africans as chattel property in interstate and intrastate commerce; and
   (D) the treatment of African slaves in the colonies and the United States, including the deprivation of their freedom, exploitation of their labor, and destruction of their culture, language, religion, and family.
(2) Examine the extent to which the Federal and State governments of the United States supported the institution of slavery in constitutional and statutory provisions, including the extent to which such governments prevented, opposed, or restricted efforts of freed African slaves to repatriate to their home land.
(3) Examine Federal and State laws that discriminated against freed African
slaves and their descendants during the period between the end of the civil war
and the present.
(4) Examine other forms of discrimination in the public and private sectors
against freed African slaves and their descendants during the period between the
end of the civil war and the present.
(5) Examine the lingering negative effects of the institution of slavery and the
matters described in paragraphs (1), (2), (3), and (4) on living African Americans
and on society in the United States.
(6) Recommend appropriate ways to educate the American public of the
Commission's findings.
(7) Recommend appropriate remedies in consideration of the Commission's
findings on the matters described in paragraphs (1), (2), (3), and (4). In making
such recommendations, the Commission shall address, among other issues, the
following questions:
   (A) Whether the Government of the United States should offer a formal
       apology on behalf of the people of the United States for the perpetration
       of gross human rights violations on African slaves and their descendants.
   (B) Whether African Americans still suffer from the lingering effects of
       the matters described in paragraphs (1), (2), (3), and (4).
   (C) Whether, in consideration of the Commission's findings, any form of
       compensation to the descendants of African slaves is warranted.
   (D) If the Commission finds that such compensation is warranted, what
       should be the amount of compensation, what form of compensation
       should be awarded, and who should be eligible for such compensation.
(c) REPORT TO CONGRESS- The Commission shall submit a written report of its
findings and recommendations to the Congress not later than the date which is one year
after the date of the first meeting of the Commission held pursuant to section 4(c).

SEC. 4. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT- (1) The Commission shall be composed of 7
members, who shall be appointed, within 90 days after the date of enactment of this Act,
as follows:
   (A) Three members shall be appointed by the President.
   (B) Three members shall be appointed by the Speaker of the House of
       Representatives.
   (C) One member shall be appointed by the President pro tempore of the Senate.
(2) All members of the Commission shall be persons who are especially qualified to serve
on the Commission by virtue of their education, training, or experience, particularly in
the field of African American studies.
(b) TERMS- The term of office for members shall be for the life of the Commission. A
vacancy in the Commission shall not affect the powers of the Commission, and shall be
filled in the same manner in which the original appointment was made.
(c) FIRST MEETING- The President shall call the first meeting of the Commission
within 120 days after the date of the enactment of this Act, or within 30 days after the
date on which legislation is enacted making appropriations to carry out this Act,
whichever date is later.
(d) QUORUM- Four members of the Commission shall constitute a quorum, but a lesser
number may hold hearings.
(e) CHAIR AND VICE CHAIR- The Commission shall elect a Chair and Vice Chair from among its members. The term of office of each shall be for the life of the Commission.

(f) COMPENSATION- (1) Except as provided in paragraph (2), each member of the Commission shall receive compensation at the daily equivalent of the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including travel time, during which he or she is engaged in the actual performance of duties vested in the Commission.

(2) A member of the Commission who is a full-time officer or employee of the United States or a Member of Congress shall receive no additional pay, allowances, or benefits by reason of his or her service on the Commission.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties to the extent authorized by chapter 57 of title 5, United States Code.

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS AND SESSIONS- The Commission may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and at such times and at such places in the United States, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission considers appropriate. The Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) POWERS OF SUBCOMMITTEES AND MEMBERS- Any subcommittee or member of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA- The Commission may acquire directly from the head of any department, agency, or instrumentality of the executive branch of the Government, available information which the Commission considers useful in the discharge of its duties. All departments, agencies, and instrumentalities of the executive branch of the Government shall cooperate with the Commission with respect to such information and shall furnish all information requested by the Commission to the extent permitted by law.

SEC. 6. ADMINISTRATIVE PROVISIONS.

(a) STAFF- The Commission may, without regard to section 5311(b) of title 5, United States Code, appoint and fix the compensation of such personnel as the Commission considers appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS- The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equal to the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(c) EXPERTS AND CONSULTANTS- The Commission may procure the services of experts and consultants in accordance with the provisions of section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the highest rate payable under section 5332 of such title.
(d) ADMINISTRATIVE SUPPORT SERVICES—The Commission may enter into agreements with the Administrator of General Services for procurement of financial and administrative services necessary for the discharge of the duties of the Commission. Payment for such services shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator.

(e) CONTRACTS—The Commission may—

(1) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriations Acts; and

(2) enter into contracts with departments, agencies, and instrumentalities of the Federal Government, State agencies, and private firms, institutions, and agencies, for the conduct of research or surveys, the preparation of reports, and other activities necessary for the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 7. TERMINATION.

The Commission shall terminate 90 days after the date on which the Commission submits its report to the Congress under section 3(c).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

To carry out the provisions of this Act, there are authorized to be appropriated $8,000,000.
President Bush Speaks at Goree Island in Senegal
Remarks by the President on Goree Island

Goree Island, Senegal
11:47 A.M. (Local)

THE PRESIDENT: Mr. President and Madam First Lady, distinguished guests and residents of Goree Island, citizens of Senegal, I'm honored to begin my visit to Africa in your beautiful country.

For hundreds of years on this island peoples of different continents met in fear and cruelty. Today we gather in respect and friendship, mindful of past wrongs and dedicated to the advance of human liberty.

At this place, liberty and life were stolen and sold. Human beings were delivered and sorted, and weighed, and branded with the marks of commercial enterprises, and loaded as cargo on a voyage without return. One of the largest migrations of history was also one of the greatest crimes of history.

Below the decks, the middle passage was a hot, narrow, sunless nightmare; weeks and months of confinement and abuse and confusion on a strange and lonely sea. Some refused to eat, preferring death to any future their captors might prepare for them. Some who were sick were thrown over the side. Some rose up in violent rebellion, delivering the closest thing to justice on a slave ship. Many acts of defiance and bravery are recorded. Countless others, we will never know.

Those who lived to see land again were displayed, examined, and sold at auctions across nations in the Western Hemisphere. They entered societies indifferent to their anguish and made prosperous by their unpaid labor. There was a time in my country's history

when one in every seven human beings was the property of another. In law, they were regarded only as articles of commerce, having no right to travel, or to marry, or to own possessions. Because families were often separated, many denied even the comfort of suffering together.

For 250 years the captives endured an assault on their culture and their dignity. The spirit of Africans in America did not break. Yet the spirit of their captors was corrupted. Small men took on the powers and airs of tyrants and masters. Years of unpunished brutality and bullying and rape produced a dullness and hardness of conscience. Christian men and women became blind to the clearest commands of their faith and added hypocrisy to injustice. A republic founded on equality for all became a prison for millions. And yet in the words of the African proverb, "no fist is big enough to hide the sky." All the generations of oppression under the laws of man could not crush the hope of freedom and defeat the purposes of God.

In America, enslaved Africans learned the story of the exodus from Egypt and set their own hearts on a promised land of freedom. Enslaved Africans discovered a suffering Savior and found he was more like themselves than their masters. Enslaved Africans heard the ringing promises of the Declaration of Independence and asked the self-evident question, then why not me?

In the year of America's founding, a man named Olaudah Equiano was taken in bondage to the New World. He witnessed all of slavery's cruelties, the ruthless and the petty. He also saw beyond the slave-holding piety of the time to a higher standard of humanity. "God tells us," wrote Equiano, "that the oppressor and the oppressed are both in His hands. And if these are not the poor, the broken-hearted, the blind, the captive, the bruised which our Savior speaks of, who are they?"

Down through the years, African Americans have upheld the ideals of America by exposing laws and habits contradicting those ideals. The rights of African Americans were not the gift of those in authority. Those rights were granted by the Author of Life, and regained by the persistence and courage of African Americans, themselves.

Among those Americans was Phyllis Wheatley, who was dragged from her home here in West Africa in 1761, at the age of seven. In my country, she became a poet, and the first noted black author in our nation's history. Phyllis Wheatley said, "In every human breast, God has implanted a principle which we call love of freedom. It is impatient of oppression and pants for deliverance."

That deliverance was demanded by escaped slaves named Frederick Douglas and Sojourner Truth, educators named Booker T. Washington and W.E.B. DuBois, and ministers of the Gospel named Leon Sullivan and Martin Luther King, Jr. At every turn, the struggle for equality was resisted by many of the powerful. And some have said we should not judge their failures by the standards of a later time. Yet, in every time, there were men and women who clearly saw this sin and called it by name.
We can fairly judge the past by the standards of President John Adams, who called slavery "an evil of callosal magnitude." We can discern eternal standards in the deeds of William Wilberforce and John Quincy Adams, and Harriet Beecher Stowe, and Abraham Lincoln. These men and women, black and white, burned with a zeal for freedom, and they left behind a different and better nation. Their moral vision caused Americans to examine our hearts, to correct our Constitution, and to teach our children the dignity and equality of every person of every race. By a plan known only to Providence, the stolen sons and daughters of Africa helped to awaken the conscience of America. The very people traded into slavery helped to set America free.

My nation's journey toward justice has not been easy and it is not over. The racial bigotry fed by slavery did not end with slavery or with segregation. And many of the issues that still trouble America have roots in the bitter experience of other times. But however long the journey, our destination is set: liberty and justice for all.

In the struggle of the centuries, America learned that freedom is not the possession of one race. We know with equal certainty that freedom is not the possession of one nation. This belief in the natural rights of man, this conviction that justice should reach wherever the sun passes leads America into the world.

With the power and resources given to us, the United States seeks to bring peace where there is conflict, hope where there is suffering, and liberty where there is tyranny. And these commitments bring me and other distinguished leaders of my government across the Atlantic to Africa.

African peoples are now writing your own story of liberty. Africans have overcome the arrogance of colonial powers, overturned the cruelties of apartheid, and made it clear that dictatorship is not the future of any nation on this continent. In the process, Africa has produced heroes of liberation -- leaders like Mandela, Senghor, Nkrumah, Kenyatta, Selassie and Sadat. And many visionary African leaders, such as my friend, have grasped the power of economic and political freedom to lift whole nations and put forth bold plans for Africa's development.

Because Africans and Americans share a belief in the values of liberty and dignity, we must share in the labor of advancing those values. In a time of growing commerce across the globe, we will ensure that the nations of Africa are full partners in the trade and prosperity of the world. Against the waste and violence of civil war, we will stand together for peace. Against the merciless terrorists who threaten every nation, we will wage an unrelenting campaign of justice. Confronted with desperate hunger, we will answer with human compassion and the tools of human technology. In the face of spreading disease, we will join with you in turning the tide against AIDS in Africa.

We know that these challenges can be overcome, because history moves in the direction of justice. The evils of slavery were accepted and unchanged for centuries. Yet, eventually, the human heart would not abide them. There is a voice of conscience and hope in every man and woman that will not be silenced -- what Martin Luther King called
a certain kind of fire that no water could put out. That flame could not be extinguished at the Birmingham jail. It could not be stamped out at Robben Island Prison. It was seen in the darkness here at Goree Island, where no chain could bind the soul. This untamed fire of justice continues to burn in the affairs of man, and it lights the way before us.

May God bless you all. (Applause.)
Africa Slave Trade Regions

158 Africa Slave Trade Regions  www.cr.nps.gov.
Empires throughout African history, exploringafrica.matrix.msu.edu.
Map of West Africa circa 1870 unimaps.com.
Map of Free and Slave States