



Katie Boatright

Re-imagining Truth and Redress

Racial Injustice against African
Americans in the United States and
the Current Push for Transitional
Justice

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FOREWORD

The European Master's Degree in Human Rights and Democratisation (EMA) is a one-year intensive programme launched in 1997 as a joint initiative of universities in all EU Member States with support from the European Commission. Based on an action- and policy-oriented approach to learning, it combines legal, political, historical, anthropological and philosophical perspectives on the study of human rights and democracy with targeted skills-building activities. The aim from the outset was to prepare young professionals to respond to the requirements and challenges of work in international organisations, field operations, governmental and non-governmental bodies, and academia. As a measure of its success, EMA has served as a model of inspiration for the establishment of six other EU-sponsored regional master's programmes in the area of human rights and democratisation in different parts of the world. Today these programmes cooperate closely in the framework of the Global Campus of Human Rights, which is based in Venice, Italy.

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Each year the EMA Council of Directors selects five theses, which stand out not only for their formal academic qualities but also for the originality of topic, innovative character of methodology and approach, potential usefulness in raising awareness about neglected issues, and capacity for contributing to the promotion of the values underlying human rights and democracy.

The EMA Awarded Theses of the academic year 2020/2021 are:

- Boatright, Katie, *Re-imagining Truth and Redress: Racial Injustice against African Americans in the United States and the Current Push for Transitional Justice*. Supervisor: Stephan Parmentier, KU Leuven.
- Boeren, Annelie, *Refugees' Experiences in Sites of Prolonged Displacement, Liminality, and Exception: A Case Study of the Diavata Refugee Camp in Northern Greece*. Supervisor: Georgios Agelopoulos, Aristotle University of Thessaloniki.
- Heinrich, Agnes, *Handle with Care. How to Improve Access to Healthcare for Deaf People in a Pandemic*. Supervisors: Kalliope Agapiou-Josephides, Aristotelis Constantinides, University of Cyprus.
- Lombardi, Federica, *From Myanmar to The Hague. A Feminist Perspective on the Search for Gender Justice by Rohingya Women before the International Criminal Court*. Supervisor: Dolores Morondo Taramundi, University of Deusto, Bilbao.
- McCall Magan, Ríon, *Idir Eatarthu is Achbrann. The Framing of Women's Agency in Northern Ireland's Counterterrorism Legislative Discourse during the Troubles (1968-1998)*. Supervisor: Martin Kahl, University of Hamburg.

The selected theses demonstrate the breadth, depth and reach of the EMA programme and the passion and talent of its students. We are particularly proud of EMA's 2020/21 students: as teachers and students across the world can testify, the COVID-19 pandemic brought many different challenges for teaching and learning. It is fair to say that our students researched and wrote their theses in turbulent times. On behalf of the Governing Bodies of EMA and of all participating universities, we applaud and congratulate them.

Prof. Manfred NOWAK
Global Campus Secretary General

Prof. Thérèse MURPHY
EMA Chairperson

Dr Orla Ní Cheallacháin
EMA Programme Director

This publication includes the thesis *Re-imagining Truth and Redress: Racial Injustice against African Americans in the United States and the Current Push for Transitional Justice* written by Katie Boatright and supervised by Stephan Parmentier, KU Leuven.

BIOGRAPHY

Katie graduated with a Bachelor's in Political Science from Trinity University in San Antonio, Texas in 2019. Her activism in the Movement for Black Lives and long-standing interest in transitional justice motivated her to pursue this Master and thesis.

ABSTRACT

Transitional justice mechanisms such as criminal prosecutions, institutional reforms, truth commissions and reparations influence the history and collective memories shared by communities. The aim of this paper is to examine the ongoing push to incorporate transitional justice in the US' repertoire for justice and redress and how the history of racial injustice and transitional justice within the US can explain this push as well as the need to establish federal transitional justice mechanisms as proposed by H Con Res 19 and HR 40; these congressional resolutions propose the establishment of a federal truth commission for racial injustice and a federal reparations programme for African Americans respectively. By not reconciling human rights abuses against African Americans, the differing histories between communities within the US and the national Movement for Black Lives have set the scene for a national dialogue about the past, how we remember it and how we should proceed.

ACKNOWLEDGEMENTS

I would like to thank the following people for their support over the course of this research: my academic support teams at KU Leuven and the Global Campus and particularly my supervisor Prof Dr Stephan Parmentier, whose support and enthusiasm for this thesis has been vital to its outcome. The Global Campus of Human Rights team for giving me the opportunity to take part in the programme. A special thanks to Daniela La Mattina, without her help over the summer I would in all likelihood still be in Texas.

I would also like to thank my family back home, Amelia, Constantine, Mom and Bubba, and those no longer with us, Dad, Papa, Mama, Nana, Papa and Melanie, without their constant support, guidance and love I surely would not be here. Thank you to my friends in Leuven, EMA and at home for their companionship and caring throughout. A special thanks to Gilles, who said he was disappointed about not being included in the acknowledgements. I hope you are happy now.

Finally, I would be remiss to not acknowledge those too often forgotten, the victims of the abuses detailed within this research. May we remember that they loved and lived. That they were and should still be.

*'All History is current; all injustice continues on some level,
somewhere in the world.'*

- Alice Walker

TABLE OF ABBREVIATIONS

ANP	American Nazi Party
CTRC	Canada Truth and Reconciliation Commission
CWP	Communist Workers Party
GTCRP	Greensboro Truth and Community Reconciliation Project
GTRC	Greensboro Truth and Reconciliation Commission
ICTJ	International Center for Transitional Justice
ICTRC	Iowa City Ad Hoc Truth and Reconciliation Commission
LTRC	Liberian Truth and Reconciliation Commission Diaspora Project
MWTRC	Maine Wabanaki State Child Welfare Truth & Reconciliation Commission
MLTRC	Maryland Lynching Truth and Reconciliation Commission
MDTRC	Metropolitan Detroit Truth and Reconciliation Commission
M4BL	Movement for Black Lives
N'COBRA	National Coalition of Blacks for Reparations in America
PTRC	People's Truth and Reconciliation Commission
SATRC	South African Truth and Reconciliation Commission
TRC	Truth and Reconciliation Commission
TTP	Truth Telling Project
US	United States of America
WVO	Workers Viewpoint Organization

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INTRODUCTION

Since 2014, the Movement for Black Lives (M4BL) in the United States of America (US) has sparked a national dialogue about the US' past and present human rights abuses against African Americans. Subsequently, there has been national dialogue on how the US has reached this point, the failure of truth-telling and redress, and the need for it now. The question of the US's inability to reconcile and remember its past has been asked.¹ However, there has not been such large-scale support for these processes as there are during the M4BL.² Given the novelty of these protests and national conversation, it is time to reopen this discussion and examine the historical causes and precedent of the current push toward transitional justice, mainly truth commissions and reparations.

When examining the history of racial injustice and transitional justice, secondary sources will take a multidisciplinary approach focusing on the fields of transitional justice, history, political science and African American studies. In order to analyse and discuss the current state of transitional justice and truth commissions, primary sources of the mandates, legislation and executive orders will be used. The first chapter outlines theoretical aspects of transitional justice, collective memory, the need for re-making historical narrative in the US and the importance of civil society in transitional justice. The goal is to examine how transitional justice can help understand the past, particularly when

¹ Andrew Valls, 'Racial Justice as Transitional Justice' (2003) 36 *Polity* 53.

² Sherrilyn A Ifill, 'Creating a Truth and Reconciliation Commission for Lynching' (2003) 21 *Law & Inequality* 263; *ibid*; Peter Osborne and Millie Cooke, 'Reflections on the Black Lives Matter Movement' (2020) 109 *The Round Table: The Commonwealth Journal of International Affairs* 612.

that past is understood differently by different groups. In addition, following how transitional justice mechanisms have arisen in the US this chapter will reflect on how the concept of transitional justice has been extended by its US applications. The second chapter outlines a history of racial injustice in the US, from slavery to contemporary injustices. This research will examine the context in which the push for transitional justice first arose, beginning with the antebellum and Jim Crow eras, and then move to contemporary racial injustice within the criminal justice system and mainstream media, mainly focusing on police brutality. This particular injustice has sparked significant national dialogue and protests over the past 30 years, beginning most prominently with the Rodney King case and culminating in worldwide demonstrations in the George Floyd and Breonna Taylor cases in the summer of 2020. The goal here is to understand how this past has shaped the present and US history in reframing injustice to maintain the status quo, as well as law enforcement's particular role as enforcer of the status quo. The third chapter examines the origins of truth commissions and reparations in the US, how communities within the US have positioned themselves within the context of transitional justice work and how these mechanisms establish precedents in the lead up to the national push for transitional justice during the M4BL. Finally, the fourth chapter deals with the M4BL and the transitional justice mechanisms employed since the movement began, particularly how transitional justice in the US grew to become a dominant means for redress, moving from the local to national sphere.

The M4BL protests led to national dialogue and awareness around racial injustice and a renewed push for transitional justice mechanisms in dealing with the past. However, it was not until 2004 in Greensboro, North Carolina, when truth commissions became part of the US' transitional justice repertoire, which have since exploded in popularity over 2019 and 2020. As such, this research will examine how these events have culminated in a renewed push for reparations, the Greensboro Truth Commission and the implications of the more recent truth commissions and projects in Tulsa, Maryland and Iowa City.

One major limitation of this research is that during 2020 and 2021, over the course of the research, between 30 and 40 local and regional

truth commissions have been established.³ Additionally, the current push for transitional justice includes more US communities than the African American population and more transitional justice mechanisms than truth commissions and reparations. There have been truth commissions established to confront abuses against other communities, such as the Maine Wabanaki State Child Welfare Truth & Reconciliation Commission, which completed its final report in 2015. There is also the ongoing California Truth and Healing Council, which is set to complete its work in 2025. Predominantly, the truth commissions in the US have focused on Native peoples and African Americans, as the abuses committed against them are the most long-standing, dating back to before the founding of the US and impacting a significant portion of the US population even today. Importantly, commissions focusing on abuses against Native peoples as well as those to be discussed in more detail here share similar features that are unique to the US context, in that they have been pushed for by the community first and then retained within that community or region.

³ Jennifer Trahan, 'Time for Action: Transitional Justice and Legacies of Racial Injustice in the United States' (New York University Center for Global Affairs and International Center for Transitional Justice 2020) <<https://facebook.com/watch/?extid=SEO---&v=381805929865967>> accessed 9 December 2021 ; Fernando Travesi, 'The Time Is Now: A Discussion on Transitional Justice in the United States' (International Center for Transitional Justice 2021) <<https://facebook.com/192200249691/videos/466234904682302>> accessed 13 March 2021; Virginie Ladisch and Anna Myriam Roccatello, 'The Color of Justice: Transitional Justice and the Legacy of Slavery and Racism in the United States' (International Center for Transitional Justice 2021).

1.

TRANSITIONAL JUSTICE, COLLECTIVE MEMORY AND
CIVIL SOCIETY

Transitional justice can be described as ‘the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms’.⁴ Historically, these mechanisms have arisen in two major ways, the transition from authoritarianism to democracy, and the transition from war to peace. The application of transitional justice to legacies of human rights abuses is a very recent one.⁵ Such application is relevant particularly to the North American context as both Canada and the US have established transitional justice mechanisms, at various levels, to address racial injustice and indigenous peoples. In the US, the most frequently employed of these are criminal prosecutions and institutional reforms, which are often insufficient to satisfy victims’ needs. As such, the failure of one mechanism can play a role in the establishment of another. Transitional justice mechanisms can also function on complementarity as final reports by truth commissions often recommend establishing reparations programmes and reforms.

⁴ ICTJ, ‘What Is Transitional Justice?’ [2009] International Center for Transitional Justice 2; Wendy Lambourne, ‘What Are the Pillars of Transitional Justice? The United Nations, Civil Society, and the Justice Cascade in Burundi’ (2014) 13 Macquarie Law Journal 41.

⁵ United Nations, ‘Guidance Note of the Secretary General: United Nations Approach to Transitional Justice’ (United Nations 2010).

1.1 OVERVIEW OF TRANSITIONAL JUSTICE MECHANISMS AND THEIR US APPLICATIONS

Criminal prosecutions and institutional reforms have long been employed in the US. While not usually viewed as transitional justice as such, these mechanisms are the most prominent within this context, and their failures have in part led to a push for truth commissions and reparations to be discussed below.

Criminal prosecutions are the first and most robust mechanism of transitional justice made up predominantly of international humanitarian law, international human rights law and international criminal law.⁶ Increasingly, these crimes can be punished nationally, as many treaties that make up these bodies of law have been added to the national legal system of member states. In the US context, very rarely do criminal prosecutions occur for crimes relating to racial injustice at either the local or federal level, and many of the abuses discussed here (slavery, segregation and lynching) occurred too far in the past to be arbitrated now. The importance of prosecutions in US transitional justice is not that they provide justice for victims.⁷ Rather, as they tend not to provide justice, victims are then forced to seek other means for justice, including truth commissions, reparations and institutional reforms.

Another mechanism of transitional justice is institutional reform, which seeks to transform the institutions primarily responsible for the violations of rights to prevent recurrence.⁸ This mechanism can include vetting, structural reform wherein the institutions are restructured to provide accountability and representation, as well as instituting public oversight bodies.⁹ Lastly, reforms can include the transformation of local and national legal frameworks wherein abuses are prevented through amending and creating legislation to ensure the protection of human rights.¹⁰ Within the US, the first major institutional reforms come in the form of the Thirteenth, Fourteenth and Fifteenth Constitutional Amendments, which abolished slavery, granted citizenship and protection under the Constitution to formerly enslaved people, and granted universal

⁶ Stephan Parmentier, 'Transitional Justice' in William A Schabas (ed), *The Cambridge Companion to International Criminal Law* (CUP 2016).

⁷ Martha Biondi, 'The Rise of the Reparations Movement' (2003) 87 *Radical History Review* 255; Ladisch and Roccatello (n 3).

⁸ ICTJ (n 4); Lambourne (n 4); Parmentier (n 6).

⁹ ICTJ (n 4).

¹⁰ *ibid.*

male suffrage, respectively. Following the civil rights movement, the US enacted more institutional reforms to combat segregation and racial inequality seen in the Jim Crow era. The Jim Crow era defined a large part US racial injustice history between the end slavery and the civil rights movement and featured laws which legally entrenched segregation, disenfranchised black voters and criminalised black people. The reforms after this period included the Civil Rights Acts of 1957 and 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968 and affirmative action policies. These acts, in addition to landmark civil rights cases in the Supreme Court desegregating education,¹¹ mark a transformation of legal frameworks in the US. The deep-seated causes of racial inequality, discrimination and violence persist today, and while these reforms are landmarks in anti-discrimination law in the US, ‘their impact has been less thoroughgoing than anticipated -- the latest example is the impact of the Supreme Court decision in 2013 ending federal oversight of voter-suppressing states, which had the effect of unleashing voter suppression in those states in 2016 and 2018’.¹² While impactful and well-intentioned, these reforms, among others, have not transformed the US nor reconciled its past abuses. Instead, these abuses have continued in merely a different form.

These continuing abuses and lack of justice of the first two transitional justice mechanisms have led US communities to seek out alternatives such as truth commissions.

A truth commission is (1) focused on the past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized and empowered by the state under review.¹³

The goals of truth commissions are to ‘discover, clarify and formally acknowledge past abuses and thus generate more information (...) separate facts from rumors (...) Truth Commissions also pay attention to the needs of victims who rarely receive the time and space to share

¹¹ ‘Board of Education of Topeka, 347 U.S. 483 (1954)’.

¹² Joan Wallach Scott, ‘Calling History to Account: The Movement for Reparations for Slavery in the United States’ in *On the Judgement of History* (Columbia UP 2020) 60.

¹³ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 11-12.

their histories and interpretations of the past'.¹⁴ These features, as defined by Hayner, define most official truth commissions.¹⁵ However, there are unofficial truth commissions that operate outside of this widely accepted definition. The US has had to contend with this definitional manoeuvring as many truth commissions fall outside of Hayner's at one or more of her defining points. Nevertheless, truth commissions in the US have grown in popularity and have manoeuvred themselves under this 'official' umbrella. Truth commissions in the US intentionally use the framing of 'truth commission' in their establishment and base their model on prominent models of truth-seeking from South Africa and Peru, as well as recent precedents set within the US.

As noted by Parmentier, these goals are consistent within US truth commissions, which are one of the most prominent transitional justice mechanisms in the US today, as over 30-40 local commissions have arisen over the past two years.¹⁶ In this way, we can see the importance of truth-telling in the US. Rarely are victims of race riots, lynching, segregation and slavery given space to share their history of these events, and for many, their accounts can no longer be told. Instead, as a long-standing democracy, the US has been able to frame itself and its history as it wishes without handling questions of its past. As Bakiner notes, 'some people did not know about the basic facts of human rights violations, either because facts were concealed or because they chose to ignore them. Even when the facts were known, radical disagreement over their meaning threatened mutual understanding'.¹⁷ Consequently, in order to reframe the historical narrative of injustice closer to the truth, memory then plays an essential role in transitional justice. This is perhaps no more evident than in producing a final report that functions as a foundational text and a new official history to the history the truth commission has investigated.¹⁸ The final report is an essential element of truth commissions, and although the US deviates from Hayner's definition, truth commissions in the US do not deviate from the production of a final report. This element of truth commissions is essential for establishing a written narrative and for recommendations on how the community should proceed.

As more communities and regions in the US move toward the

¹⁴ Parmentier (n 6) 63.

¹⁵ Hayner (n 13).

¹⁶ Trahan (n 3); Travesi (n 3).

¹⁷ Onur Bakiner, *Truth Commissions: Memory, Power, and Legitimacy* (University of Pennsylvania Press 2010).

¹⁸ *ibid*; Hayner (n 13).

establishment of truth commissions to deal with past human rights violations, there is also a rejection of old societal consensus and a move to a new consensus wherein the victims. In this case, African Americans are centred in the narrative. As such:

truth commissions have emerged in political contexts where societies' conventional mechanisms for investigating serious crimes and writing unbiased accounts of the past (the judiciary and the media, chief among them) had ceased to function. They face the twofold task of discovering forensic facts and forging societal consensus over the meaning of the past.¹⁹

These conventional methods in the US (the criminal justice system and mass media) have long been unresponsive and hostile toward abuses committed against African Americans.²⁰ This unresponsiveness has now led to communities looking for new ways to have their voices heard and new modes of justice.

However, well-established democracies, like the US, and transitional justice have often been seen as incompatible, particularly the establishment of truth commissions.²¹ Transitional justice, as typically practiced, also occurs, as Hayner noted, in countries facing political change, which long-standing, stable democracies do not.²² Further, since truth commissions counter the traditional narrative of the event or events they investigate, they are often met with strong opposition. Establishing truth commissions can be seen as 'digging up' past abuses better left buried. Truth commissions are met with resistance and even open hostility by various actors, including the state.²³ In addition to truth commissions and projects, which are finite in nature, communities in the US have also called for ongoing processes.²⁴ These processes include town halls and community conferences to address racial violence such as lynching. These other mechanisms are often proposed as a way to manage the resistance and hostility that come with establishing an official truth

¹⁹ Bakiner (n 17) 63.

²⁰ Ryan Watson, 'In the Wakes of Rodney King: Militant Evidence and Media Activism in the Age of Viral Black Death' (2019) 84 *The Velvet Light Trap*.

²¹ James Edward Beitler III, *Remaking Transitional Justice in the United States: The Rhetorical Authorization of the Greensboro Truth and Reconciliation Commission* (Olivera Simic ed, Springer 2013) 142 <<http://link.springer.com/content/pdf/10.1007/978-1-4614-5295-9.pdf>> accessed 9 December 2020.

²² Hayner (n 13).

²³ Beitler III (n 21) 141.

²⁴ *ibid*.

commission.²⁵ These community-based projects mark another way that the US communities attempt to fit transitional justice into their long-standing democracy. Critiques on dredging up the past are not without their merits as the re-traumatisation of communities is certainly a concern in truth-telling processes, and resistance and hostility can stir up societal tensions.²⁶ Nonetheless, a lack of truth-telling and redress for abuses over time can lead to an even more significant increase in societal tensions and, in some cases, conflict.²⁷

Often seen as complementary, although separate to truth commissions, is reparation. This mechanism of transitional justice, also similar to truth commissions, has seen a recent and ongoing increase in interest. This means of redress can come in a variety of forms, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁸ Restitution is based on the idea that victims should be able to go back to their position before their rights were violated, which can include restoring their property, citizenship and occupation. Compensation is financial reimbursement for the damage done to victims, material or otherwise. Rehabilitation constitutes medical, psychological, legal and social assistance. Satisfaction is the broadest category of these five modes of reparations and can include truth-telling, looking for remains, commemorative activities and sanctions against perpetrators. The complementarity of truth commissions and reparations are particularly evident in the final reports of truth commissions, which often promote means of redress for victims by the state and the institutions responsible for the harm caused. This is especially salient within the US. Since the rise in popularity of truth commissions, two federal bills have been introduced and have been pushed for by supporters as complementary legislation. These bills include a national truth commission for human rights abuses against African Americans and a national investigation into means of reparations for descendants of enslaved people.²⁹

Unlike truth commissions, which are a new phenomenon in the US, the fight for reparations extends even further back than the end of slavery. Even while the institution was legal, many enslaved people, once freed,

²⁵ Beitler III (n 21) 141..

²⁶ Ladisch and Roccatello (n 3).

²⁷ *ibid.*

²⁸ Parmentier (n 6) 66.

²⁹ Sheila Jackson Lee, 'Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation' (H Con Res 19); Sheila Jackson Lee, 'Commission to Study and Develop Reparation Proposals for African Americans Act' (HR 40) 14.

would sue their former enslavers for unpaid wages. Further, once slavery was abolished, the land was initially supposed to be redistributed from enslavers to formerly enslaved people. Since then, there has been ‘no substantial period of time where the call for redress has been neglected’.³⁰ The reparations movement began as a push for land redistribution from southern plantations to newly freed people. In addition to demands for land, the movement following abolition directly mentions financial compensation for stolen labour.³¹ Reparations now include far more than land and monetary compensation for black Americans. Since the abolition of slavery and failure of reconstruction, black Americans have also suffered under Jim Crow, mass incarceration, segregation, lynching and police brutality. These abuses are numerous and systemic, intended to maintain inequality and uphold white supremacy within the US. As such, black communities in the US feel that compensation is not enough.³²

The reparations movement has primarily targeted the federal government when calling for reparations, particularly those for slavery.³³ Despite the legality of slavery being a state-by-state decision, slavery was a national system, which was supported mainly by and benefited both northern industry and southern agriculture. The same is valid for succeeding abuses against the black community, including segregation, Jim Crow and lynching. In addition, to the focus on the US government, reparations seekers have also taken to corporations and private institutions, which have been stakeholders in slavery, segregation and racial inequality.³⁴ The current state of the reparations movement, according to Taifa, can be described as having four main elements:

Number one: the formal acknowledgment of historical wrongs and an official, unfettered apology for the dehumanization and atrocities of the enslavement era and beyond (...) Number two: the recognition that the injury has continued throughout the years and still manifests today. Number three: the commitment to redress by the federal government (...) as well as corporate entities, religious institutions, and private institutions which enjoy unjust enrichment from the era. And, number four: the actual compensation in whatever form or forms are agreed upon.³⁵

³⁰ Nkechi Taifa, ‘Let’s Talk About Reparations’ (2019) 10 *Columbia Journal of Race and Law* 1, 9.

³¹ Scott (n 12) 65.

³² Ifill (n 2); Ladisch and Roccetello (n 3).

³³ Taifa (n 30).

³⁴ *ibid.*

³⁵ *ibid* 18.

While Congress apologised for slavery and segregation in 2009, the Senate qualified this apology by then passing legislation that reparations seekers should not use the 2009 apology resolution as support for a legal claim to reparations.³⁶ For this reason, Taifa specifies that Congress should issue an ‘unfettered apology’. Further, leaving the fourth element of US reparations so open-ended reflects the reality of the abuses committed against black people in the US. As noted, reparations can include more than financial compensation.³⁷ The reparations wanted and needed by the black community in the US are as varied and complex as the history of abuses committed against them. The means of redress cannot solely be financial compensation as it would not address the structural violence they have faced. Taifa recognises this and promotes reparations, including financial compensation, land, scholarship funds, community development, educational material from the perspective of descendants of enslaved people, monument and museum development, return of stolen artifacts, exonerations and elimination of unjust laws and practices.³⁸ However, financial compensation is the most common type of reparation called for and given in the US. Similarly, to truth commissions finding their peak in the US over the last few years, the reparations movement has also surged with an unprecedented number of civil society actors, politicians, as well as local and regional governments calling for reparations legislation.³⁹

1.2 TRANSITIONAL JUSTICE AND COLLECTIVE MEMORY MAKING

In addition to these mechanisms, memory is important to the work of transitional justice, particularly in the US context. The way we remember the past shapes the present and future. The histories communities and societies learn are not unbiased truth, instead they are a constructed narrative of the past that often serves to present the society in a positive light.⁴⁰ As de Brito noted, ‘transitional justice is a

³⁶ Tom Harkin, ‘A concurrent resolution apologizing for the enslavement and racial segregation of African Americans’ (2009) (S Con Res 26).

³⁷ Taifa (n 30).

³⁸ *ibid* 30-31.

³⁹ Biondi (n 7); *ibid*; Scott (n 12).

⁴⁰ Onur Bakiner, ‘One Truth among Others? Truth Commissions’ Struggle for Truth and Memory’ (2015) 8 *Memory Studies* 345.

component of the politics of memory, and we can see the politics of memory (...) as a particular kind of social memory-making'.⁴¹ Memory is social because it is not individuals, rather society that determines what we remember and how we remember it. Further, individual memories 'piggyback on the social and cultural practice of memory, and collective memory combines what we actually remember and a constructed past which is constituted by the collectivity'.⁴² Transitional justice then comes into play because a former consensus is broken down. Transitional justice generates a new 'official history' and establishes a new consensus. Further, the need to establish a new consensus becomes 'particularly intense when one group in a society is criminalized, its rights systemically abused, or there is an attempt to physically eliminate it'.⁴³ In de Brito's view transitional justice is a component of the politics of memory and can aid in collective memory-making. Given the past and ongoing abuses against African Americans in the US, there is no doubt a need to establish a new consensus given the scope of human rights abuses committed against them.

The need for a new consensus on the US history of racial injustice is particularly notable given the juxtaposition between how different communities in the US understand these abuses and, in some cases, whether they see a history of human rights abuses at all. African Americans know and have always known the impact of US history on the present, having suffered the abuse intergenerationally and themselves.⁴⁴ Further white Americans have a factually inaccurate idea of the past and present issues regarding race.⁴⁵ Given this dichotomy, there is a political and societal need for generating a new history in the US.⁴⁶ This need for the remaking of memory is not only a national issue but also an issue for individual communities. Within the US, atrocities such as public torture lynching, the Tulsa Race Massacre, the Greensboro Massacre, the Detroit Uprising and the Los Angeles Riots in 1965 and 1992 all incur different narratives locally among the

⁴¹ Alexandra de Brito, 'Transitional Justice and Memory: Exploring Perspectives' (2010) 15 *South European Society and Politics* 359, 361.

⁴² *ibid* 362.

⁴³ *ibid* 364.

⁴⁴ Valls (n 1).

⁴⁵ *ibid*; T McCarthy, 'Vergangenheitsbewältigung in the USA: On the Politics of the Memory of Slavery' (2002) 30 *Political Theory* 623.

⁴⁶ McCarthy (n 45).

communities within these particular areas. The span of the US and variation in abuse has led many to push for local truth commissions. It has been only recently that a national truth commission for all of these racial injustices and their consequences has been proposed.⁴⁷

1.3 TRANSITIONAL JUSTICE AND CIVIL SOCIETY

Finally, the role of civil society in transitional justice is crucial. The establishment of transitional justice mechanisms usually stems from civil society first, and their processes require civic engagement and ongoing support. Traditionally, civil society is predominantly comprised of non-governmental organisations (NGOs) and other organised groups. However, more recently, the role of organisations has taken a back seat to the role of social movements and people ‘taking to the streets’. Tarrow defines social movements as ‘collective challenges by people with common purposes and solidarity in sustained interactions with elites, opponents, and authorities’.⁴⁸ Gready and Robins then argue that social movements change the traditional view of civil society’s role in transitional justice because they become a source of identity and community for traditionally marginalised groups.⁴⁹

Further Gready and Robins position the ‘new civil society’ as rejecting the usual language, acts and spaces used to sanction what is political, and that it claims new spaces for political action as in streets, squares and virtual platforms.⁵⁰ Mainly, ‘new civil society’ rejects rigid hierarchical decision-making found in the old civil society in favour of direct action characterised by ‘horizontality, replaceability, and leaderlessness’.⁵¹ This is essentially where ‘new civil society’ diverges because old civil society and social movements have homogeneous memberships and leaders. In contrast, the new civil society has diverse, fluid, changing membership. Contemporary civil society has two dominant actions which help to

⁴⁷ Ifill (n 2); Ladisch and Roccatello (n 3).

⁴⁸ Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (2nd edn, CUP 1998).

⁴⁹ Paul Gready and Simon Robins, ‘Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and “New” Civil Society’ (2017) 21 *International Journal of Human Rights* 956.

⁵⁰ *ibid.*

⁵¹ *ibid.* 967.

define it; however, these are not exhaustive. The first is the occupation of city squares and streets, and the second, social media, which plays a vital role in organising and mobilising collective action.⁵² Finally, the new civil society has a transnational element, in which social media plays a central role. These elements of the changing role of civil society are all overwhelmingly present in the Black Lives Matter movement in the US.

In addition, new civil society and social movements have the added benefit of social media.⁵³ Social media has increased how connected individuals are and how fast civil society can mobilise.⁵⁴ Social media has also promoted the idea of a global civil society, wherein the ‘social sphere comprised of multiple civil societies that are interconnected by common values and interests, often across geographical spaces and nationally defined territories’.⁵⁵ Similar to the transnational nature of US truth commissions, which rely on international organisations and former commissions for authority, social movements and civil society in the US also gain support and authority from the support of other civil societies.⁵⁶ This has led to the potential of global protest and mobilisation, as noted in the Black Lives Matter protests of June 2020, which occurred not only across the US but also globally. As such, the promotion of transitional justice and its promise of truth-telling and redress have also garnered support among civil society within and without the US.

1.4 CONCLUSION

The standing of transitional justice mechanisms in the US and how civil society in the country has influenced, reshaped and extended the concept of transitional justice are influential in how the US is now dealing with its past and which means of redress civil society groups are advocating for. The following chapter will examine the injustices faced by the African American community by the state and white Americans as well as how these injustices have persisted and changed over time.

⁵² Gready and Robins (n 49) 968.

⁵³ Beitler III (n 21); Gready and Robins (n 49).

⁵⁴ DDeChaine, *Global Humanitarianism: NGOs and the Crafting of Community* (Lexington Books 2005); Beitler (n 21).

⁵⁵ Beitler (n 21) 138.

⁵⁶ DeChaine (n 54); *ibid.*

2.

A HISTORY OF US RACIAL INJUSTICE 1619 – PRESENT

To fully understand the current context of racial injustice in the US, it is essential to understand what led the country to this point, including its past injustices as well as the legal and institutional frameworks that have maintained the power structure of the US. Power structures have upheld white supremacy at the expense of African Americans. These injustices and the failed attempts at accountability and redress have contributed to a renewed interest in evaluating the ills of US history, how they have not been solved and what we should do now.

2.1 SLAVERY AND THE FAILURE OF RECONSTRUCTION

Even before the founding of the US began the transatlantic slave trade, the first enslaved persons arrived in Jamestown in 1619, starting the institution of chattel slavery.⁵⁷ Eventually, chattel slavery became entrenched in colonial law, starting in Virginia in 1662 with a law stating that a child's freedom is determined by the freedom of their mother.⁵⁸ Slavery did not end with the independence of the 13 colonies despite not being expressly mentioned in the Constitution. Instead, the institution of life-long, hereditary slavery was further cemented into law and practice, including the three-fifths clause, slave trade provisions, fugitive slave clause and Dred Scott opinion of the Supreme Court.⁵⁹

⁵⁷ David Lyons, 'Racial Injustices in U.S. History and Their Legacy' [2020] Redress for Historical Injustices in the United States 33.

⁵⁸ *ibid.*

⁵⁹ Sandford, 60 U.S. 393 (1856).

The three-fifths clause stated that for representative purposes, the people who are counted in the population are free persons, including those held in servitude for a fixed period and three-fifths of all other persons, and excluding Native Americans. This meant that those who are held in life-long hereditary slavery are counted for three-fifths of a person. The slave trade provisions prevented Congress from enacting legislation to ban the transatlantic slave trade for 20 years. Enacted in 1793, the Fugitive Slave Act provided for all enslaved persons who ran away, attempted to escape, and those that aided them would be prosecuted, and the enslaved persons returned ‘to whom such service or labour be due’.⁶⁰ The Fugitive Slave Act and the conduct of slaves in the south were monitored and enforced by slave patrols.⁶¹ Slave patrols were established for the enforcement of such acts, returning enslaved persons to their enslavers, spreading fear and terror to prevent slave revolts as seen in the Caribbean and disciplining enslaved persons.⁶²

As noted, the Constitution makes no mention of slavery, and the US was founded on the idea of universal human rights as stated in the Declaration of Independence. These documents were seen in stark contrast to the institution of slavery and the transatlantic slave trade. Although, it should be noted, that as many of the authors and signatories were themselves enslavers, the intended meaning of all men being created equal imbued with inalienable rights was ambiguous even at the time. Nevertheless, these texts remained foundational to the abolition movement as abolitionists saw the founding documents as an extreme juxtaposition to the transatlantic slave trade and chattel slavery. As a result of this contrast and the growing pro-abolition attitude, activists and lawyers brought the infamous Dred Scott case to the Supreme Court. Dred Scott, an enslaved person, was brought across state lines from Missouri, where slavery was legal, to Illinois, where it was not. In the case, lawyers argued that in Illinois, Scott was a free man and entitled to rights under the Constitution. In a 7-2 decision, the Supreme Court held that the Constitution was not meant to apply to those contained in slavery at the time it was written. It, therefore, did not apply to them at

⁶⁰ Sandford, 60 U.S. 393 (1856) 37.

⁶¹ KB Turner, David Giacomassi and Margaret Vandiver, ‘Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts’ (2006) 17 *Journal of Criminal Justice Education* 181; Connie Hassett-Walker, ‘How You Start Is How You Finish? The Slave Patrol and Jim Crow Origins of US Policing’ (2021) 46 *Human Rights* 6.

⁶² Hassett-Walker (n 61).

the time of the decision in 1857,⁶³ further entrenching the idea that black people, whether free or enslaved, were not legal persons in the US. This decision was seen as a major push factor for the abolition movement. As this momentum grew, Abraham Lincoln won the presidency on an anti-slavery platform in November 1860. Following this, seven states seceded from the Union, and in 1861 the American Civil War began after a clash between Confederate and Union soldiers in Fort Sumter, North Carolina. Slavery was abolished by the thirteenth amendment in January of 1865. The Civil War ended with the Confederate surrender in April the same year.

Immediately following the war began the issue of how to reconstruct the south and integrate the four million newly freed people. The Reconstruction Act of 1867 outlined the terms on which southern states could be readmitted to the Union. Among these requirements included signing and ratifying the Fourteenth Amendment and granting universal male suffrage. The Fourteenth Amendment grants equal protection under the Constitution and forbids former Confederates from holding federal office unless authorised by a two-thirds vote in Congress. The Fifteenth Amendment guaranteed the right to vote for black men by prohibiting voter discrimination on the basis of 'race, color, or previous condition of servitude'.⁶⁴ Congress also passed the Civil Rights Act of 1866, which granted citizenship and thus constitutional rights to recently freed people, circumventing the Dred Scott decision, which had previously withheld these rights. Despite these acts and constitutional amendments, almost as soon as slavery ended, Black Codes (later to be called Jim Crow Laws) were enacted. The first states to do so were Mississippi and South Carolina, and by 1866 the entire south had enacted similar policies. These laws enforced segregation policy, limited what occupations black people could have, the types of property they could own, and restricted voting laws to all but eliminate black voters.

In January 1865, after the Union abolition of slavery and shortly before the end of the war, General Sherman issued Special Field Order No 15. This order called for a coastal strip thirty miles from the sea reaching from Charleston, South Carolina, to St John's River, Florida, to

⁶³ Jane Dailey, Glenda Elizabeth Gilmore and Bryant Simon, *Jumpin' Jim Crow: Southern Politics from Civil War to Civil Rights* (Princeton UP 2000); Lyons (n 57).

⁶⁴ US Const Amend XV.

be set apart for settlement by recently freed black people.⁶⁵ In addition to this, young black men were encouraged to enlist in the Union to be given compensation in the establishment of agriculture on their new lands. Heads of families were to choose their lands and be given not more than 40 acres of tillable land.⁶⁶ These lands were to be protected militarily until the time Congress granted land deeds to the families. By June, 40,000 people had settled in the land granted to them by Special Order No 15.⁶⁷ Then-President Andrew Johnson rescinded Sherman's order, and much of the land was returned to former enslavers. Johnson also instituted compensation to enslavers for the losses they incurred due to abolition.⁶⁸ Johnson stood in stark opposition to reconstruction and, as a result, in opposition to his Congress, vetoing most bills relating to reconstruction. Despite his vetoes, Congress, via a two-thirds vote, still passed some reconstruction legislation. To this end, in March 1865, Congress reinstated the Bureau of Refugees, Freedmen, and Abandoned Lands (also called the Freedmen's Bureau) to redistribute lands, facilitate the transition of enslaved people to freedmen and provide rations.⁶⁹ These lands included eight to nine hundred thousand acres of land held by the federal government within the former Confederate states. To this end, General Howard gave Circular Order No 13 for Union soldiers to identify lands for this purpose; however, the order was rescinded in September 1865.

Abolitionists and activists continued to advocate for land redistribution and settlement similar to Sherman's plan; however, no others were actualised. There are many explanations as to why redistribution of land failed, including a will on the part of northerners and southerners to maintain cotton as a cash crop and stabilise the post-war economy. Redistributing the land as proposed would ensure the end of the cotton and textile industry as freed people would move toward sustenance farming rather than cotton production.⁷⁰ The value of southern land plummeted after the abolition of slavery leading northern investors to purchase large swaths of land at low rates, often partnering

⁶⁵ Jeffrey R Kerr-Ritchie, 'Forty Acres, or, an Act of Bad Faith' in Marilyn Yaquinto and Michael T. Martin (eds), *Redress for Historical Injustices in the United States: On Reparations for Slavery, Jim Crow, and Their Legacies* (Duke university Press 2007) 222, 223.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ Joan Wallach Scott, 'Calling History to Account: The Movement for Reparations for Slavery in the United States' in *On the Judgement of History* (Columbia UP 2020).

⁶⁹ Kerr-Ritchie (n 65) 224.

⁷⁰ Dailey, Gilmore and Simon (n 63).

with southern planters.⁷¹ Freedmen lacked the capital and organisation that the wealthy white class had, making competition with northern investors and southern planters difficult, to say the least. As such, wealthy plantation owners retained the wealth and land in the south. During and after the war, some land was seized by the federal government and whilst some were redistributed to formerly enslaved persons, most of the seized land was returned to enslavers or auctioned to investors.⁷² The Black Codes and failure of land redistribution forced many formerly enslaved persons to remain on their former plantations as sharecroppers. The sharecropper system that emerged in the post-slavery south did not solely arise out of a lack of land redistribution by the federal government, rather freed people were forced to buy credit, which placed them in debt most often to their former enslavers and constrained them to work on their former plantation.⁷³ This new financial relationship between formerly enslaved people and their former enslavers meant that one, these freed people could not move freely, and two that former enslavers were then compensated by local stores for this credit.⁷⁴ Further, this indebtedness on the part of African Americans in much of the south was not relieved by reforms in the eras to follow and has played a major role in the persistence of structural violence in the US today.⁷⁵

In addition to these missteps in reconstruction is what many consider to be the end of the reconstruction era, the Hayes-Tilden Agreement in 1877.⁷⁶ After the war, southern states had many electoral crises. Louisiana and Carolina were the most prominent in the presidential election of 1876. Rutherford B Hayes, the republican candidate, and Samuel J Tilden, the Democratic candidate, found themselves at a standstill for the presidency. To resolve this, President Grant signed the Electoral Commission Act, which established a commission of eight republicans and seven democrats to clinch the Electoral College dispute.⁷⁷ In a backroom deal, Democrats agreed not to interfere with Hayes's election in exchange for the removal of federal troops from the south, which would, in effect, mark the end of reconstruction.⁷⁸ Removing federal

⁷¹ Dailey, Gilmore and Simon (n 63).

⁷² Lyons (n 57) 43.

⁷³ Scott (n 68) 58.

⁷⁴ *ibid.*

⁷⁵ *ibid* 59.

⁷⁶ Kerr-Ritchie (n 65).

⁷⁷ Lyons (n 57).

⁷⁸ *ibid.*

troops also removed oversight from the south, particularly for free and fair elections and protection for recently freed people.

Social stratification was not only violently enforced through lynching but also legally entrenched via Black Codes. Finally, due to its many problems, reconstruction was seen in the memory of African Americans as a failure and, more importantly, as a debt owed to them by the federal government.⁷⁹ This debt is meant as a ‘monetized obligation, but something in excess (...) a type of offense requiring expiation’.⁸⁰ These perceptions would mark a major talking point in the civil rights era and reparations movements to follow.

2.2 PUBLIC TORTURE AND RACIAL TERROR LYNCHINGS

The serious abuses under chattel slavery and the lack of reparations after its abolition led to deep social classifications which were violently enforced by lynchings, which ‘in the 1890s (...) occurred every two or three days’.⁸¹ Ridding black Americans of their new rights, particularly their electoral rights, was a key factor in maintaining the social order of the antebellum period. From slavery’s abolition until Jim Crow laws became the norm in the early 1900s, black people who tried to participate in politics, advance economically or exercise their social freedoms were then violently reprimanded and terrorised by lynchings.⁸² As a result of violent intimidation, black voter registration and participation fell dramatically. In 1868 Mississippi, black voters were a majority of the registered voters. By 1890 only 6% of eligible black people were registered to vote.⁸³

As sociologist and criminologist David Garland notes, between 1882 and 1940, of the 4,000 lynchings which occurred, several hundred were ‘public torture lynchings’. During this time, many anti-lynching laws were introduced to Congress. However, none entered into force.⁸⁴

⁷⁹ Dailey, Gilmore and Simon (n 60).

⁸⁰ Scott (n 68) 55.

⁸¹ Lyons (n 57) 41.

⁸² Sherrilyn A Ifill, ‘Creating a Truth and Reconciliation Commission for Lynching’ (2003) 21 *Law & Inequality* 263; *ibid*; Peter Osborne and Millie Cooke, ‘Reflections on the Black Lives Matter Movement’ (2020) 109 *The Round Table: The Commonwealth Journal of International Affairs* 612.

⁸³ *ibid* 275.

⁸⁴ Lyons (n 57).

Before the end of slavery, lynchings had been a form of vigilante justice, occurring mainly on the frontier.⁸⁵ By the end of reconstruction in 1877, lynchings had decreased in most of the US, the only exception being the south, where rather than decreasing, lynchings increased, and almost all victims were black.⁸⁶ Not only did lynchings increase in number, but also in severity, matching a general increase in interracial violence, including riots and other attacks on black communities by their white neighbours. Lynchings during this time often took place publicly in front of crowds and involved the torture of the victims.⁸⁷ These specific events involved large crowds, professional photographers and often postcards for viewers to share like souvenirs.⁸⁸ Northern newspapers and those of larger southern cities admonished these kinds of lynchings. However, often law enforcement in the places in which lynchings occurred would state that there was no way to identify the lynchers, leaving these acts largely unpunished. In investigations surrounding the victims' cause of death, the reports would state the victims died at 'the hands of persons unknown'.⁸⁹ The exact number of lynchings during this time is unknown. However, their mark in US history and the racial injustices faced by the black community at the hands of their white neighbours cannot go unnoticed. For example, the now-infamous lynching of three black men in Duluth, Minnesota, in 1920 was attended by approximately 10,000 white people.⁹⁰ This is one of approximately 4,000 lynchings during this period. Lynching then is not only a crime for which the murderers are culpable because entire communities watched, cheered, assisted, photographed and commemorated. Millions of white people throughout the US are then implicated in lynchings, their endurance and their popularity.⁹¹ As these were often community-wide events, they garnered at least passive acceptance by law enforcement, the judiciary and politicians in the communities in which lynchings occurred.⁹²

⁸⁵ David Garland, 'Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America' (2005) 39 *Law and Society Review* 793; Kathleen Belew, 'Lynching and Power in the United States: Southern, Western, and National Vigilante Violence' (2014) 12 *History Compass* 84.

⁸⁶ Garland (n 85).

⁸⁷ *ibid.*

⁸⁸ *ibid.* 794.

⁸⁹ *ibid.*

⁹⁰ *Ibid.* (n 82) 266.

⁹¹ *ibid.*

⁹² *ibid.* 268.

The same year Rosa Parks would stage a protest against segregation. Emmett Till, a 14-year-old boy from Chicago, was lynched in Mississippi.⁹³ When his body was found three days after the murder, Till was only recognisable from a ring with his initials. His mother, Mamie Bradley, held an open casket funeral in Chicago, saying, 'I wanted the world to see what they did to my baby'.⁹⁴ A photo of Till's body was published in *Jet* magazine and *The Chicago Defender*, both African American publications.⁹⁵ Till's murderers, Roy Bryant and JW Milam, were tried before an all-white jury and issued not guilty verdicts. This verdict and the decision not to charge them with kidnapping led to further national outrage.⁹⁶ The media coverage and public outrage within and without the black community would go on to be a major spark in the civil rights movement.

The effects of lynchings included more than decades of disincentivising black voters. Black communities also feared economic and educational prosperity for fear of violent retaliation. Further, after lynchings occurred in an area, black people would flee, which often set communities on the bottom of the economic totem pole even further back.⁹⁷ Regulation of political, economic and social behaviour of black people through lynching would remain commonplace in the south for decades, only decreasing once Jim Crow and segregation became the norm, although lynching did not disappear entirely.⁹⁸ Many of the transitional justice mechanisms, particularly truth commissions, are being established to address this very topic. The push toward addressing this violation is especially notable because, in large part, lynchings went unchecked and unpunished in the US.

⁹³ T Neumeister, 'The Emmett Till Murder a Picture Is Worth a Thousand Words: An Interview with History Professor Elliot Gorn' (*Loyola University Chicago*) <<https://luc.edu/features/stories/academics/thestoryofemmettill/>>.

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ Ifill (n 82) 292.

⁹⁸ Lyons (n 57).

2.3 JIM CROW AND CIVIL RIGHTS INSTITUTIONAL REFORMS

As mentioned, the origins of Jim Crow can be found in the immediate aftermath of the Civil War, wherein southern states created Black Codes to restrict the freedom of formerly enslaved people. In conjunction with labour camps, this system ran by the predominantly black prison population meant that while slavery had ended in practice, the south was unwilling to reform the social and economic order. As the southern economy was based on agriculture, much of the south was rural.⁹⁹ After slavery ended, the south was forced to industrialise more, and with violence by the Ku Klux Klan (KKK), lynchings and enforcement of Black Codes on the rise, many black people moved to cities where they could be safer.¹⁰⁰ This led to more laws being enacted to restrict black populations in cities, namely segregation.

Segregation soon became commonplace in much of the south and was met with resistance by the black population. One such law in Louisiana required separate railcars for black and white passengers. To test the constitutionality of the law, Homer Adolph Plessy, who was of mixed race, rode in an empty whites-only railcar from New Orleans to Covington, Louisiana. After refusing to leave the railcar, he was arrested and later convicted for violating the Louisiana law. Plessy filed a petition against the judge, stating that the law violates his Fourteenth Amendment right to equal protection. The case eventually made its way to the Supreme Court in 1896.¹⁰¹ The court ruled that separate but equal facilities are constitutional, and the Fourteenth Amendment only applies to civil and political rights. The landmark *Plessy v Ferguson* decision cemented segregation in the US.^{102 103}

As cities in the south established more oppressive laws and lynchings continued into the 1920s, black people began to move north in what is now called the Great Migration.¹⁰⁴ However, the north was not exempt from Jim Crow laws, many northern cities were still segregated and some states enacted laws requiring black people to own property before they were able to vote.

⁹⁹ Dailey, Gilmore and Simon (n 63).

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² 'Plessy v. Ferguson, 163 U.S. 537 (1896)'.

¹⁰³ Dailey, Gilmore and Simon (n 63).

¹⁰⁴ *ibid.*

The disparities between white and black people became more apparent during and after World War II. Firstly, during the war, black people were discouraged from joining the military and often worked low wages, even as white Americans were entering the service and prospering in jobs aiding the war effort.¹⁰⁵ Following protests and a potential march on Washington, President Franklin D Roosevelt opened national defence and government jobs without discrimination based on race, religion, colour or national origin. Further, following demands by civil rights activists, President Truman integrated the military in 1948.¹⁰⁶ These actions, as well as international human rights discourse, colonial liberation movements and increased national awareness, led to a cascade of support for civil rights leading into the civil rights and Black Power movements of the 1950s and 1960s.¹⁰⁷

The civil rights movement began as an effort by black Americans to end racial discrimination and segregation. As noted, Jim Crow laws discriminated against black Americans in nearly every category, voting, housing, economics and education among them. Going into the civil rights era, international attention was drawn toward human rights in the Universal Declaration of Human Rights¹⁰⁸ and decolonisation, the juxtaposition between the US' support of this and the US' own practices were stark, and the debts owed to the black community still had not been paid.¹⁰⁹ The civil rights era saw organisation and activism across the nation, the most notable of which include: the Montgomery Bus Boycott, the Little Rock Nine, the Greensboro Four, Freedom Riders, the March on Washington and the Selma to Montgomery March. Social movements in the US have a history of changing policy; this is the case both with the abolition movement and civil rights.¹¹⁰

In addition to leading to institutional reforms, the civil rights movement also led to landmark Supreme Court decisions. Most notably is *Brown v Board of Education*¹¹¹ in 1954, which overturned the separate

¹⁰⁵ Dailey, Gilmore and Simon (n 63).

¹⁰⁶ *ibid.*

¹⁰⁷ Caroline Nagel and others, 'The Legacies of the U.S. Civil Rights Act, Fifty Years On' (2015) 48 *Political Geography* 159.

¹⁰⁸ United Nations, "Universal Declaration of Human Rights", 10 December 1948, 217 A (III), Available at: <<https://Refworld.Org/DocId/3ae6b3712c.Html>> accessed 10 April 2021.

¹⁰⁹ Nagel and others (n 107).

¹¹⁰ Kenneth T Andrews and Sarah Gaby, 'Local Protest and Federal Policy: The Impact of the Civil Rights Movement on the 1964 Civil Rights Act' (2015) 30 *Sociological Forum* 509.

¹¹¹ Board of Education of Topeka, 347 U.S. 483 (1954).

but equal precedent set by *Plessy v Ferguson*¹¹². Brown was also the first major case concerning segregation since *Plessy* in 1896.¹¹³ The court ruled that separate but equal doctrine established in the *Plessy* opinion had no place in education and that segregation of schools by states was unconstitutional.¹¹⁴ This decision desegregated all schools in the US from elementary to higher education. It was met with much resistance, white protest and as such, some black students had to be escorted into schools and to class by federal troops, as in the case of Arkansas' Little Rock Nine and the University of Alabama.¹¹⁵

In particular, the civil rights and Black Power movements led to institutional reforms throughout the 1950s, 1960s and early 1970s, including the Civil Rights Acts 1957 and 1964, the Voting Rights Act 1965, the Fair Housing Act 1968 and the Fair Employment Act 1972.¹¹⁶ The Civil Rights Act 1957 was signed by President Eisenhower and protects voter rights by allowing federal prosecutions of those who suppress another's right to vote.¹¹⁷ The Civil Rights Act 1964 was signed by President Lyndon B Johnson and prevented discrimination on the basis of race, religion, colour, sex or national origin in employment. The Voting Rights Act 1965 eliminated literacy tests as a requirement to vote, allows federal examiners to review states' voter requirements and allows federal observers to monitor polling.¹¹⁸ The Fair Housing Act 1968 provides for equal housing opportunities regardless of race, religion, or national origin.¹¹⁹ Finally, the Fair Employment Act 1972 addresses discrimination in employment by creating the Equal Employment Opportunity Commission as the enforcement and monitoring body of the Civil Rights Act 1964. The Fair Employment Act also requires employers to make reasonable accommodations for the religious practices of their employees.¹²⁰

These reforms however did not relieve much of the structural and systemic violence faced by the black population in the US. Nutritional, educational, medical, employment and housing programmes were

¹¹² *Plessy v. Ferguson*, 163 U.S. 537 (1896).

¹¹³ Andrews and Gaby (n 110).

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ Nagel and others (n 107).

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

severely cut back by the 1980s.¹²¹ These social programmes have not addressed the systemic nature of Jim Crow. Black Americans still have a lower life expectancy, inferior access to healthcare, medical racism, less wealth, higher unemployment and substantially higher incarceration rates. One of the clearest legacies of the Jim Crow era, which persists today, is residential segregation.¹²² Beginning during the Great Migration, wherein black people fled lynching in the south to large cities elsewhere in the US, residential segregation has led to the dense concentration of black populations into underfunded and underdeveloped urban areas.

2.4 CONTEMPORARY RACIAL INJUSTICE AND SYSTEMIC POLICE VIOLENCE

In the decades following the civil rights movement, we have seen mass incarceration, the war on drugs and the militarisation of the police as continuations of the violence from previous eras.¹²³ In addition to the injustices within the criminal justice system, there is the indifference of mainstream media in acknowledging systemic racism and, in fact, promoting a ‘both sides’ narrative that is not indicative of the reality faced by African Americans in the US.¹²⁴

Media portrayals of civil rights demonstrators often portrayed them as disturbances to the peace. This framing of black people in the media as ‘disturbance, other, and criminal’ led conservative politicians to push for a restoration of ‘law and order’ through crackdowns in policing and harsher punishments¹²⁵. During the war on drugs in the 1980s and 1990s, black people were portrayed as unpredictable addicts and criminals.¹²⁶ During these decades, the criminal justice system we see today involves the militarisation of the police, racial profiling and mass incarceration. Media portrayals of police violence not only are indifferent, but show the victims, most often black men, as the aggressor equating black

¹²¹ Lyons (n 57) 46.

¹²² Andrews and Gaby (n 110); Nagel and others (n 107).

¹²³ Stephen F Ostertag, ‘Antiracism and the US Civil Sphere: The Case of Black Lives Matter’ in Jefferey C Alexander, Trevor Stack and Farhad Khosrokhavar (eds), *Breaching the Civil Order: Radicalism and the Civil Sphere* (CUP 2019) <<https://pitchfork.com/thepitch/1327-the-sounds-of-black-lives-matter/>>.

¹²⁴ Andrew Valls, *Rethinking Racial Justice* (OUP 2018); *ibid*.

¹²⁵ Ostertag (n 123).

¹²⁶ *ibid* 76.

masculinity with ‘hypermasculinity, criminality, and hypersexuality’.¹²⁷ This was the same portrayal of black men during lynchings, depicting them as sexual aggressors and criminals who needed to be stopped.¹²⁸ In this way, the media works in hand with the police perpetuating racial bias and stereotypes.¹²⁹ These portrayals impact public opinion concerning police brutality and only serve to perpetuate divisions in the collective narrative of US racial injustice.

Mass incarceration in the US and racial disparities within the prison population is now well-documented.¹³⁰ These are also directly related to the war on drugs.¹³¹ Mass incarceration in the US, legally entrenched by harsher sentencing laws in the 1970s and 1980s, was motivated by the need to maintain the social stratification based on race established by Jim Crow.¹³² Black people are over-policed, face more police violence, as well as harsher and longer sentences compared to white people.¹³³ Racial profiling in the police is a significant contributor to the disparities among the prison population. While there is no comprehensive research on the subject, the practice is linked to the overrepresentation of black people within the prison population.¹³⁴ In terms of sentencing, black people face harsher and longer sentences in comparison to other populations, particularly the white population.¹³⁵ Finally, after a prisoner’s release, it is then legal to discriminate against them in housing, employment, voting rights and welfare.¹³⁶ While this is true for all prisoners, for African Americans, this is compounded by racial discrimination within these spheres and overrepresentation within the prison population.¹³⁷ Voter disenfranchisement as a consequence of a felony varies by state. While imprisoned, 48 states strip the voting rights of prisoners with Maine and Vermont being the only exceptions.¹³⁸ After release, most

¹²⁷ Felicia Campbell. And Pamela Valera. ‘The Only Thing New is the Cameras: A Study of U.S. College Students’ Perceptions of Police Violence on Social Media’ (2020) 51 *Journal of Black Studies* 654.

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ Valls (n 124).

¹³¹ *ibid.*

¹³² *ibid.* 4.

¹³³ *ibid.*

¹³⁴ *ibid.*; Ostertag (n 123).

¹³⁵ Valls (n 124).

¹³⁶ *ibid.*

¹³⁷ *ibid.*

¹³⁸ *ibid.*

states impose a time period wherein formerly incarcerated people are disenfranchised during their probation or parole period.¹³⁹ Further, states with larger proportions of incarcerated black people are more likely to impose extended voter disenfranchisement than states with smaller proportions.¹⁴⁰

Policing in the US as the start of the criminal justice system and the target of recent protest is particularly notable. As mentioned, during slavery in the US, slave patrols were established to control the population of enslaved people in the south. These patrols were a ‘government-sponsored force that was well organized and paid to patrol specific areas to prevent crimes and insurrection by slaves against the white community’.¹⁴¹ Slave patrols were the antecedent of law enforcement in the south, and after the abolition of chattel slavery, they became the enforcers of Black Codes and Jim Crow.¹⁴² Importantly, in the north, police stemmed from English police forces and could be found in most major northern cities by the late 1800s.¹⁴³ During the civil rights era, as the US faced unprecedented levels of social, political and cultural change, police became enforcers of the status quo throughout the US. The status quo being the oppression of African Americans to maintain the political, social and economic prosperity of white Americans. The protests during civil rights were nationwide, and the police response to them was nearly uniform across the US. Law enforcement used fire hoses, dogs and tear gas against protesters even as they protested peacefully.¹⁴⁴ This is now mirrored in the violent responses to Black Lives Matter protests, wherein police use rubber bullets and tear gas, among other tactics, in response to the protests.

The abuses against black people at the hands of the police have, for most of US history have gone largely undocumented and unreported. However, as photography and videography became more accessible and common the documentation of such events has as well. The need for the world to see, for truth-telling and for change has always been a counter to abuses committed against black Americans, and as means of documentation has increased, so to have demands for change and redress.

¹³⁹ Valls (n 124).

¹⁴⁰ Turner, Giacomassi and Vandiver (n 61).

¹⁴¹ *ibid* 186.

¹⁴² Hassett-Walker (n 61).

¹⁴³ *ibid*.

¹⁴⁴ *ibid*.

Arguably the firestarter to the onslaught of videos documenting violent police brutality is the Rodney King case. King was pulled over for speeding on 3 March 1991, in Los Angeles.¹⁴⁵ Twenty-one officers came onto the scene, and three of them severely assaulted King in full view of the other 17.¹⁴⁶ This encounter was recorded by a witness, sold to a local television station and broadcasted thousands of times across the US. The Los Angeles Police Department (LAPD), in particular, has a long history of abuse against the city's population of colour.¹⁴⁷ At the time of the Rodney King beating, the LAPD Police Chief Daryl Gates was coming under criticism for coming into conflict with communities of colour. In the 1980s and 1990s, a shorthand code by LAPD officers for crimes involving black people was 'NHI – No Human Involved'.¹⁴⁸ At the same time, the LAPD was paying millions of dollars in settlement of citizen abuse cases. Chokeholds were common practice by the LAPD at the time, which are now banned in most police departments due to their lethality. During the 1980s, 88% of deaths by chokehold were black men.¹⁴⁹ This institutionalised brutality and discrimination in Los Angeles was representative of policing across the US at this time and remains ongoing.

After the Rodney King video was broadcast, the assault was seen as proof of the LAPD's systemic discriminatory practice and brutality.¹⁵⁰ Four officers were indicted for the assault but were all given not-guilty verdicts at trial.¹⁵¹ Following the acquittal there were days of riots in Los Angeles, wherein many businesses were burned to the ground, over 1,000 people died and many more wounded.¹⁵² In the wake of Rodney King's case, there was a hope that by broadcasting the violence, reform and justice would come, but this came neither in the verdict nor in the years to follow as the LAPD still has issues surrounding systemic racism and racial violence.¹⁵³ Further, the portrayal of King at trial was

¹⁴⁵ Ronald N Jacobs, *Race, Media, and the Crisis of Civil Society: From Watts to Rodney King* (CUP 2009).

¹⁴⁶ *ibid* 81.

¹⁴⁷ *ibid*.

¹⁴⁸ Ryan Watson, 'In the Wakes of Rodney King: Militant Evidence and Media Activism in the Age of Viral Black Death' (2019) 84 *The Velvet Light Trap*.

¹⁴⁹ *ibid*.

¹⁵⁰ Jacobs (n 145).

¹⁵¹ *ibid* 113.

¹⁵² Watson (n 148).

¹⁵³ M Felkor-Kantor, *Policing Los Angeles: Race, Resistance, and the Rise of the LAPD* (University of North Carolina Press 2018) <http://jstor.org/stable/10.5149/9781469646855_felker-kantor>.

not that of a victim but of an ‘aggressive, buffed-out, monster, demon’ in an effort to justify the actions of the police and, as was common in the preceding decades, dehumanise a black man to stoke white fear and justify white violence.¹⁵⁴ The King case is one notable example of a nationwide systemic problem with policing. However, the visibility of the case did not lead to accountability of the officers involved, nor did it prompt change in LAPD policing. This policing problem two decades following King’s beatings and the Los Angeles riots would once again garner national attention as the M4BL takes hold.

2.5 CONCLUSION

The long and violent history of racial injustice in the US, as noted, has influenced the structure of institutions today as well as how communities seek redress for these injustices. The criminal justice system and other institutions within the US have an interest in maintaining the status quo, often by discrimination and violence. Since these institutions are the usual mechanisms through which victims seek redress, many communities turned away from federal or state aid and toward the community and other mechanisms of redress.

¹⁵⁴ Ostertag (n 123); Watson (n 148).

3.

THE BEGINNINGS OF US TRANSITIONAL JUSTICE

The history and precedent established by the first truth commissions within the US are important for subsequent attempts at such projects, which have occurred recently within the context of the Black Lives Matter movement. The same is true for the reparations movement as in the US, these mechanisms are seen as especially complementary and often pushed for together. Further, reparations are considered fundamental rights under international law and have significant precedent in programmes established outside the US.¹⁵⁵ While it is, of course, impossible to truly repair the damages done by human rights abuse, the steps taken toward justice via truth commissions and reparations programmes alike are essential for redress and healing.¹⁵⁶ This chapter will focus on the precedents to the ongoing push for transitional justice in the US.

3.1 THE GREENSBORO TRUTH AND RECONCILIATION COMMISSION

Truth commissions in the US are strongly influenced by the South African model, one of the largest undertakings in truth commissions and the first to hold public hearings.¹⁵⁷ The South African Truth and Reconciliation Commission (SATRC) lasted from 1996 to 2003 and was called on to establish the truth of human rights abuses under the

¹⁵⁵ Fernando Travesi, 'The Time Is Now: A Discussion on Transitional Justice in the United States' (International Center for Transitional Justice 2021) <<https://facebook.com/192200249691/videos/466234904682302>> accessed 13 March 2021.

¹⁵⁶ *ibid.*

¹⁵⁷ Caroline Nagel and others, 'The Legacies of the U.S. Civil Rights Act, Fifty Years On' (2015) 48 *Political Geography*.

apartheid regime.¹⁵⁸ The SATRC was an ambitious undertaking with both written and public testimony from approximately 21,000 victims and 7,000 amnesty applicants.¹⁵⁹ The main characteristics the South African model inspired in the US are truth-telling to reach a new consensus on the historical narrative and as such reaching reconciliation. The most notable differences between the South African and US truth commissions is that the US does not include amnesty, and there is a lack of state or local support in the US context. Based predominantly on this model and with help from the SATRC and International Center for Transitional Justice (ICTJ), stands the first truth commission in the US in Greensboro, North Carolina.

3.1.1 Racial injustice in North Carolina and the Greensboro massacre

Preceding the conflict in Greensboro, North Carolina, is a long history of racial injustice and inequality. Following the war, North Carolina, a former slave state, had one of the largest chapters of the KKK in the US and eventually a large number of American Nazi Party (ANP) members.¹⁶⁰ Ezell Blair Jr, David Richmond, Franklin McCain and Joseph McNeil, influenced by the nonviolent techniques used in India and the Freedom Riders, staged a sit-in in a segregated Woolworths in Greensboro on 1 February 1960. The Greensboro Four stayed at the Woolworths until it closed, returning the next day with more students, and by the fifth day, more than 500 students joined. The sit-ins quickly garnered national attention and spread across the US, and by the summer of 1960, many states desegregated dining.

Over the civil rights era and into the 1970s, there was an increase in membership of racial terrorist groups like the KKK, which ‘served as an alternative society for the disaffected’.¹⁶¹ The KKK and groups like it were particularly prominent in North Carolina, which had more dues-paying members than any other state during the 1960s.¹⁶² The KKK would remain a prominent actor in the state well into the 1970s. At

¹⁵⁸ Nagel and others (n 157).

¹⁵⁹ *ibid.*

¹⁶⁰ D Cunningham, ‘Truth, Reconciliation, and the Ku Klux Klan’ (2008) 14 *Southern Cultures* 68.

¹⁶¹ *ibid.*

¹⁶² Joshua Inwood, ‘Righting Unrightable Wrongs: Legacies of Racial Violence and the Greensboro Truth and Reconciliation Commission’ (2012) 102 *Annals of the Association of American Geographers* 1450.

the same time, during the 1970s, many workers sought unionisation. In Greensboro, the organising party was the Workers Viewpoint Organization (WVO), which sought to unionise textile mills in North Carolina.¹⁶³ The employees of the textile industry were majority black at the time, although not exclusively. The KKK perceived the efforts of the WVO and groups like it as race-mixing and developed an anti-unionist and anti-Communist stance as a result. Conversely, the WVO developed an anti-KKK stance not only due to their terrorism but also because racial cooperation was key in creating a textile union.¹⁶⁴ On 8 July 1979, within this tense environment, the WVO confronted the KKK in China Grove.¹⁶⁵ The KKK was attempting to recruit new members, and the WVO sought to disrupt the event, which they did successfully, leading the WVO to plan an anti-Klan rally the following November in the Morningside Homes neighbourhood of Greensboro.¹⁶⁶

The WVO and Communist Workers Party (CWP) planned an anti-KKK march for the morning of 3 November 1979. Unknown to these demonstrators the KKK and ANP planned an armed counter-protest. As the march began, the KKK and ANP began to yell racial offences at the demonstrators, who met their taunts by chanting 'Death to the Klan!'.¹⁶⁷ The KKK and ANP then opened fire on the crowd, killing five and wounding many more. César Cauce, Michael Nathan, William Sampson, Sandra Smith and James Waller would lose their lives in the attack. Local media was present at the shooting. However, the Greensboro Police Department was notably absent during and after the shooting and did not stop the KKK and ANP members involved in the shooting from fleeing the scene. Further, the portrayal of the shooting was considered to be inaccurate by the demonstrators who were present. The city's two newspapers claimed the events were done at the hands of outsiders coming to Greensboro, creating a 'city under siege'.¹⁶⁸ In this context, the media and city framed the CWP, KKK and ANP as equals, extremist groups and outsiders, which were unreflective of the Greensboro community. Following this, multiple criminal trials

¹⁶³ Inwood (n 162).

¹⁶⁴ Cunningham (n 160); *ibid.*

¹⁶⁵ Inwood (n 162).

¹⁶⁶ *ibid.*

¹⁶⁷ S Bermanzohn, *Through Survivors' Eyes: From the Sixties to the Greensboro Massacre* (Vanderbilt UP 2003).

¹⁶⁸ Inwood (n 162).

and one civil suit were held. However, the Greensboro community felt as though they received no justice. It would not be until 20 years later that the community would look for justice outside of a courtroom.

Following the massacre, there were two criminal trials¹⁶⁹ and one civil suit.¹⁷⁰ The day after the shooting, arrests were made for the KKK and ANP members involved. During the first criminal trial in 1980, 14 Klansmen and Nazis involved in the shooting faced charges of first-degree murder, felony riot and conspiracy.¹⁷¹ Jury selection began with inclusive and representative proportions of the Greensboro community, but the selection process would go on to exclude all non-white people. Further, one juror expressed strong anti-communist views.¹⁷² The trial ended in a weeklong deadlock, and the all-white jury delivered not guilty verdicts on all counts. The second trial, which took place in 1984, was a federal civil rights case. Nine Klansmen and Nazis were federally indicted for conspiracy, violating civil rights of persons on the grounds of race or religion, conspiracy to violate persons engaging in integrated activity and violating civil rights that resulted in the death or injury of persons.¹⁷³ Preceding the trial, the US government listed racial hatred as the motivation behind the massacre.¹⁷⁴ Similar to the previous trial, the nine defendants were cleared of all charges by an all-white jury. In the 1985 civil suit, a federal civil jury found the Greensboro police commander¹⁷⁵ and the handler of the KKK informant liable for the wrongful death of Michael Nathan.¹⁷⁶ Nathan's estate was awarded compensation for wrongful death.¹⁷⁷ Some survivors were compensated; however, none of the other four estates of those killed during the violence were awarded amounts.¹⁷⁸

¹⁶⁹ *State v Fowler* [1980] 353 NC 599; *US v Griffin* [1984] 585 F Supp 1439.

¹⁷⁰ *Waller v Butkovich* [1985] 605 F Supp 1137.

¹⁷¹ R Boger, C McDowell and D Gwynn, 'The Greensboro Massacre' (*University of North Carolina*, 2009) <<http://libcdm1.uncg.edu/cdm/essay1979/collection/CivilRights>> accessed 9 December 2020.

¹⁷² *ibid.*

¹⁷³ *New York Times*, '9 Cleared of Charges Linked to 5 Deaths at Anti-Klan Rally' *New York Times* (16 April 1984).

¹⁷⁴ *New York Times*, 'Federal Rights Trial Opening in Deaths at Greensboro, N.C., Rally' *New York Times* (9 January 1984).

¹⁷⁵ *New York Times*, '9 Cleared of Charges Linked to 5 Deaths at Anti-Klan Rally' (n 173).

¹⁷⁶ David Androff, 'A Case Study of a Grassroots Truth and Reconciliation Commission from a Community Practice Perspective' (2018) 18 *Journal of Social Work* 273.

¹⁷⁷ *ibid.*

¹⁷⁸ *New York Times*, '9 Cleared of Charges Linked to 5 Deaths at Anti-Klan Rally' (n 173).

The lack of any perceived or substantive justice during these court cases was a major push factor in the establishment of the Greensboro Truth and Reconciliation Commission (GTRC). The failure to hold perpetrators accountable is common within the US justice system. Victims of racial injustice in the US have long been left behind by the traditional avenues of justice-seeking for victims, as in the case of lynchings and police brutality. Survivors and families of the Greensboro massacre were faced with a government unwilling to help or even acknowledge the harm caused, and as such, they sought out other mechanisms for truth and justice.

3.1.2 *Fitting Greensboro into transitional justice*

Local activists began calling for the GTRC in 1999, on the 20th anniversary of the massacre. Several community groups began organising for funding and support, eventually culminating in the Greensboro Truth and Community Reconciliation Project (GTCRP). The GTCRP was established in 2003 and funded by the Andrus Family Fund with help from the ICTJ. The GTCRP sought help from local, national and international actors in the establishment of the truth commission.¹⁷⁹ The GTCRP also organised two advisory groups. The Local Task Force was made up of 82 survivors and supporters from Greensboro and the National Advisory Committee was made up of 47 survivors and supporters nationally.¹⁸⁰ Taking from the South African model, the GTRC conducted its research and outreach via statement taking, public hearings and documentary research.¹⁸¹

The City Council of Greensboro was consulted in the TRC's establishment. A petition was signed by 5,000 residents asking the council to support the process.¹⁸² However, after a meeting, the City Council voted 6-3 to oppose the TRC.¹⁸³ As is common for truth commissions and projects, it is important to note that they are met with resistance and even hostility by groups that see the truth as a potential threat. It is then

¹⁷⁹ Spoma Jovanovic, 'Communication for Reconciliation: Grassroots Work for Community Change', *American Psychological Association Convention* (2006) 3.

¹⁸⁰ Androff (n 176).

¹⁸¹ Jill E Williams, 'Legitimacy and Effectiveness of a Grassroots Truth and Reconciliation Commission' (2009) 72 *Law and Contemporary Problems* 143.

¹⁸² Jovanovic (n 179).

¹⁸³ Magarrell L and Wesley J, 'Report Series Lessons in Truth-Seeking: International Experiences Informing United States' (2006) International Center for Transitional Justice..

a common feature of US truth commissions and projects that they are met with government resistance and hostility in the Greensboro case. Further, the City Council vote was made along racial lines, with the white members voting to oppose and the black members dissenting.¹⁸⁴ The City Council's position did not stop the work of the GTCRP or the GTRC, nor did it halt further attempts to include the government in the process. For example, the Mayor's office appointed the head of the selection panel for commissioners, and the GTRC was supported by some members of Congress.¹⁸⁵

The city's opposition received mixed reactions from the GTRC and the community. On the one hand, the city was seen as complicit in the massacre and the narrative portrayed in the aftermath. As such, the city's involvement could threaten the truth the GTRC sought to tell as well as the independence and control over the process.¹⁸⁶ On the other hand, the lack of government support affected the funding and legitimacy of the GTRC, which called into question if the GTRC qualified as a truth commission, a question which the GTRC mandate addressed at length and the answer to which characterises many truth commissions and projects in the US.

Strictly interpreted, the GTRC does not fall into the definition of truth commission as established by Hayner. This was noted by opponents of the GTRC in the City Council.¹⁸⁷ As the first truth commission in the US, the GTRC was then tasked with fitting themselves in with preceding commissions to garner legitimacy and authority. For one, the GTRC was not authorised and empowered by the state. The GTRC's opponents argued it does not investigate a pattern of events that occurred over time, instead of focusing on a singular event.¹⁸⁸ Lastly, the GTRC was established under the same regime in which the events took place, hardly making the process transitional.¹⁸⁹ The GTRC also faced accusations of bias. Each of these criticisms was addressed in the GTRC's mandate, effectively altering the perception and defining characteristics of truth commissions in the US context and positioning themselves along with

¹⁸⁴ Jovanovic (n 179).

¹⁸⁵ *ibid.*

¹⁸⁶ Magarrell and Wesley (n 183).

¹⁸⁷ Jovanovic (n 179).

¹⁸⁸ Cunningham (n 160); Inwood (n 155).

¹⁸⁹ *ibid.*

previous truth commissions as in South Africa, Peru and Chile.¹⁹⁰

First, the commissioners addressed scholarship surrounding the lack of government involvement. Usually, when not state-sanctioned, truth commissions would be considered unofficial and, as such, truth projects rather than truth commissions proper. The mandate transforms this by making official and unofficial 'incidental to the definition of truth commissions as opposed to essential'.¹⁹¹ Further, the commissioners redefine how truth commissions can be established and at what level they can be legitimate.¹⁹² Finally, the commissioners responded to a city councilman, who critiqued their legitimacy by noting the commission would have no power to compel testimony or produce evidence. The commissioners addressed this by aligning themselves with state-sanctioned truth commissions, which also did not have this power, such as El Salvador, Guatemala and Peru.¹⁹³

Second, the GTRC notes that the Greensboro Massacre did not occur in a vacuum. Rather, that the events of 3 November 1979 are the result of long-term and ongoing racial injustice.¹⁹⁴ As mentioned, North Carolina has a long history of racial violence which regularly goes unpunished in the US justice system. Further, the commissioners examined the systemic nature of racial injustice and antecedents to the massacre and aligned themselves in this manner to the SATRC. The close identification was also criticised with one councilman stating, 'To pattern the project from the model of what happened in South Africa, over many years of abuse and inhumane treatment (...) is almost like comparing apples to oranges'.¹⁹⁵ In response, the GTRC stated that the abuses under Jim Crow and segregation in the US are at the national, systemic level similar. Further, should South Africa and other countries where such atrocities occurred be examined at the local level, they would look like what happened in Greensboro.¹⁹⁶ Of course, a truth commission investigating widespread, long-term abuse is different from

¹⁹⁰ James Edward Beitler III, *Remaking Transitional Justice in the United States: The Rhetorical Authorization of the Greensboro Truth and Reconciliation Commission* (Olivera Simic ed, Springer 2013) <<http://link.springer.com/content/pdf/10.1007/978-1-4614-5295-9.pdf>>.

¹⁹¹ *ibid* 109.

¹⁹² Greensboro Truth and Reconciliation Commission, 'Final Report' (Greensboro Truth and Reconciliation Commission 2006) <<https://greensborotrnc.org/>> 12. accessed 9 December 2020.

¹⁹³ Beitler III (n 190) 109.

¹⁹⁴ *ibid*.

¹⁹⁵ *ibid* 112.

¹⁹⁶ *ibid* 113.

one examining a single instance of violence. However, this difference, according to the GTRC, is one of scale since in both instances ‘individuals used race as a reason to treat others as less than human’.¹⁹⁷

The final major accusation waged against the GTRC and its classification as a truth commission was that it did not occur at a time of political or regime change. The commissioners here argue that the community in Greensboro and, in truth, black Americans in the US had been calling for change throughout history and had been ignored time and time again by their government. For Greensboro, this is evident in the acquittals of Klansmen and Nazis, media portrayal of the massacre, the City Council’s opposition to the GTRC and their efforts to delegitimise the GTRC.¹⁹⁸ The commissioners use this framing to note that there have been calls for social and political change since 3 November 1979, and that since then, they have gone unanswered. Finally, the accusation of bias claimed that since the GTRC was called for by the victims, the process would be illegitimate and biased. However, victims have ‘without fail been the moving force behind truth-seeking initiatives’, and via the selection process established by the GTCRP, the commissioners reflected a wide range of the Greensboro community and the US generally.¹⁹⁹

Despite these criticisms, the commissioners place themselves under the umbrella of truth commissions, and the GTRC has been accepted as such. In an interview with a Greensboro survivor, Hayner even states that ‘many countries are holding truth commissions organized by governments and non-governmental organizations (...) A nation, or a community within a nation, needs to reflect, to come to terms with specific incidents or patterns of injustice’.²⁰⁰ The GTRC is a notable example of truth-seeking in the US and has several features that go on to characterise most truth processes in the US thereafter. As Beitler states:

It operated independently of government authority; it developed through grassroots means and community-based partnerships; it received support from NGOs (such as the ICTJ) and philanthropic organizations (such as the Andrus Family Fund); and it drew upon the rich rhetorical resources of past truth commissions.²⁰¹

¹⁹⁷ Greensboro Truth and Reconciliation Commission, ‘Mandate for the Greensboro Truth and Reconciliation Commission’ (Greensboro Truth and Reconciliation Commission 2004) <<https://greensborotrc.org/>> 14. accessed 9 December 2020.

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ Bermanzohn (n 167) 370.

²⁰¹ Beitler III (n 190) 130.

Beitler goes on to enumerate several transitional justice mechanisms within the US, which have followed the model of the GTRC including the Mississippi Truth Project, the Maine-Wabanaki Truth and Reconciliation Commission, the Metro-Detroit Truth and Reconciliation Commission on Racial Inequality and the Liberian Truth and Reconciliation Commission Diaspora Project (LTRC). The US history with Liberia is important to note here, and its involvement further cements the idea of transnational cooperation in US transitional justice mechanisms. The LTRC took statements from displaced Liberians in Minnesota beginning in 2006 and later in multiple other US cities.²⁰² In addition, Liberia was established as a colony for formerly enslaved people in the 1820s and gained independence in 1847.²⁰³ Throughout Liberia's history, there has been conflict between indigenous Liberians and Americo-Liberians, who held the majority of political power despite being the minority population.²⁰⁴ However, the LTRC was unlike other truth initiatives in the US at this point, largely supported by the Liberian government.

The GTRC's goal was to produce truth centred on racial injustice and violence and how these injustices were upheld and perpetrated by the state. Therefore, the GTRC focused on state support of Klansmen and Nazis rather than the Klansmen and Nazis themselves, although they were not left out.²⁰⁵ The seven commissioners included faith leaders, community organisers, as well as transitional justice, psychology and legal experts.²⁰⁶ The selection process was established such that the commissioners reflected Greensboro and the US writ large. In total, 54 people gave statements, including residents of Morningside Homes, nearby textile workers, police, activists, Klansmen, civic leaders, reporters, and several academic and legal experts.²⁰⁷ In addition, the GTRC had a documentary process in which commissioners reviewed interviews and archival records from the city and police departments.²⁰⁸ A half-hour talk show, newsletter, website, blog and outreach events like worship services were also held.²⁰⁹

²⁰² Beitler III (n 190) 130.

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ Inwood (n155).

²⁰⁶ Greensboro Truth and Reconciliation Commission, 'Final Report' (n 192).

²⁰⁷ Cunningham (n 160).

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

These community events were established to engage the entire Greensboro area and promote reconciliation and inform community members on what the GTRC did and how to have a dialogue about the topics discussed.²¹⁰ The educational outreach included poetry workshops, training to ‘teach people how to have dialogue, not argument’,²¹¹ community-wide meetings to discuss what locals hoped would be in the final report. There were also smaller discussions among residents lasting for about one-two hours, marches, guest lectures and workshops on including education on the topic into public school and college classrooms. Finally, the GTRC held a meeting with representatives from other truth commissions, including South Africa and Peru.²¹² While many of these events were successes, the proceedings and deliberative process were often interrupted by the city and police department, who harassed and intimidated not only the commissioners but also those who could provide statements.²¹³ As a result, many people were either advised against or fearful of testifying for fear of retaliation.

In their final report, the commissioners published a new official history in which they found that it was foreseeable that any contact between the groups would result in violence as it had in the past, particularly given the KKK’s terrorist activity, the KKK’s linkage of communism and race, as well as ongoing tensions following previous interactions.²¹⁴ In addition, the Greensboro Police Department (GPD) was well aware of this history and knew that the KKK and ANP interfering with the protest would violate protesters’ first amendment rights to the freedoms of speech and assembly.²¹⁵ The GPD had an informant within the KKK during this period, Eddie Dawson, who made a speech at the Klan rally in China Grove and organised the counter-protest in Greensboro. Dawson also obtained copies of the permit and route the CWP protestors would take on 3 November. Further, according to eyewitnesses, Dawson shouted the first insults at the protestors with the intent to incite violence.²¹⁶ While informants are by definition party to criminal activity, organisation and incitement

²¹⁰ Jovanovic (n 179).

²¹¹ *ibid* 12.

²¹² *ibid* 12-14

²¹³ Inwood (n 155).

²¹⁴ Greensboro Truth and Reconciliation Commission, ‘Final Report’ (n 192) 300.

²¹⁵ *ibid*.

²¹⁶ *ibid*.

exceed the involvement informants should have. The police failed to intervene when Dawson took these leadership roles and orchestrated criminal acts. As their informant, the police had full knowledge of the Klan's and Nazis' intention prior to the march and still did not intervene or warn the demonstrators about the planned armed counter-protest.²¹⁷ The GPD did not stop the caravan of KKK and ANP members from arriving in Greensboro, despite the knowledge that they had firearms with the intent to use them. The GPD also stationed all officers between 5 and 20 blocks away from the main route and remained at their posts during the shooting.²¹⁸ Following the shooting, the GPD did not stop cars fleeing the scene.

The City of Greensboro deflected attention, concealed information from the public and intimidated the press into withholding footage of the massacre.²¹⁹ The hidden information included previous violent encounters between the groups involved, officer testimony, radio transcripts and information regarding the mishandling of the KKK informant by the GPD, and that the GPD knew of the counter-protest and intended violence a month before the march. The final report also listed recommendations for the city and police department. Both institutions should issue public and private apologies, issue compensation, erect memorials and begin antiracism training.²²⁰ In particular, the city government should amend the education curriculum to include the GTRC and its findings, expand jury selection to prevent all-white juries and institute a citizens' review board of the GPD.²²¹ The board should then aggregate, publicise and investigate all accusations of corruption with the police department. The commissioners also include recommendations for the community, including holding the city and police department accountable via civil suits and maintaining civic engagement as they did during the mandate of the GTRC.²²² Unfortunately, the city government's opposition to the GTRC proved to be a barrier to implementing these recommendations. It was not until 2017 when the City of Greensboro issued an official apology. In this apology, they acknowledged the police department's awareness of the

²¹⁷ Greensboro Truth and Reconciliation Commission, 'Final Report' (n 192) 300.

²¹⁸ *ibid.*

²¹⁹ *ibid.*

²²⁰ *ibid.*

²²¹ *ibid.*

²²² *ibid.*

KKK and ANP's plans and that they intentionally did not intervene once the violence broke out. Unfortunately, the police department itself has yet to issue an apology.

The GTRC stands as a representative of how communities can address 'the social harm of racial discrimination and violence'.²²³ The GTRC led directly and indirectly to a cascade of truth commissions promoted primarily through grassroots community organising and civil society actors. From the perspective of a grassroots movement, the GTRC was a very successful undertaking despite the resistance it encountered. This is especially true given that for the first time, the victims of the Greensboro Massacre had their stories and voices heard after decades of misrepresentation and resistance by the state.²²⁴ It is then no wonder that given their example, communities around the US would seek to have their own voices heard. One such community is that of Detroit, which, inspired by the Greensboro and South African models, established a commission to examine the truth and effects of housing discrimination based on race.

3.2 THE METROPOLITAN-DETROIT TRUTH AND RECONCILIATION COMMISSION

The second truth commission in the US occurred in Detroit, Michigan, and sought to examine the causes and consequences of the Detroit Uprising and subsequent residential segregation in the city. Again, opposed by the local government, the Metropolitan Detroit Truth and Reconciliation Commission (MDTRC) displays how a lack of state support can affect the functioning of truth commissions in the US even with support from civil society.

In July 1967, following a police raid and subsequent police brutality, crowds began to form, eventually leading to riots. In addition to this specific instance of police brutality, the Detroit Police Department had become increasingly militarised, and instances of police brutality had become increasingly frequent, leading to this particular raid. These riots spread through 35 square miles of the City of Detroit, Michigan, leading to 43 deaths, 682 burned buildings and 7,200 arrests.²²⁵ During

²²³ Androff (n 176) 283.

²²⁴ Inwood (n 155).

²²⁵ P Lowinger, C Darrow and F Huige, 'Case Study of the Detroit Uprising: The Troops and the Leaders' (1969) 21 Arch Gen Psychiatry 33, 33.

and after World War II, Detroit had been a major industrial centre and, at one point, the fourth largest city in the US. However, as the post-war economy turned to vehicle manufacturing, these auto companies moved manufacturing out of the city and, with it, jobs. Wealthier white populations moved with economic opportunity. However, less wealthy black populations remained in metropolitan Detroit with little economic opportunity left.²²⁶ Further, Metro Detroit is surrounded by so-called 'sundown towns' wherein African Americans must leave before the sun sets for fear of violent retaliation. So, in addition to the increase in police brutality, the black population of Detroit faced violence from the white community, a housing crisis and an economic crisis in the lead up to the Detroit Uprising.²²⁷

In response to the uprising, President Lyndon B Johnson established the Kerner Commission headed by Illinois Senator Kerner to try and understand the causes of riots as well as how they could have been prevented, not only in Detroit but also in cities facing similar urban conflict.²²⁸ The Kerner Commission found that the federal government should take action to create jobs in these areas and expand welfare particularly by ending the requirement to provide a residency, a common barrier for the unhoused. These recommendations, which would help alleviate poverty by investing in the people, were not implemented. Rather, instead of addressing the issues of poverty and race, the City of Detroit sought to remove low-income and black people from the metropolitan area leading to decades of housing discrimination and worsening poverty among the black population.²²⁹ The city's practices and white flight to the surrounding suburbs led to de facto racial segregation throughout the city. These issues persisted for decades, and as mentioned, the civil rights legislation did not solve systemic racism or the structural violence faced by black Americans, and many of the programmes established during the era were severely cut back by the 1980s.²³⁰

²²⁶ Joshua Inwood, Derek Alderman and Melanie Barron, 'Addressing Structural Violence through US Reconciliation Commissions: The Case Study of Greensboro, NC and Detroit, MI' (2016) 52 *Political Geography* 57, 61.

²²⁷ *ibid* 19.

²²⁸ *ibid* 17.

²²⁹ *ibid* 21.

²³⁰ David Lyons, 'Racial Injustices in U.S. History and Their Legacy' [2020] *Redress for Historical Injustices in the United States* 33.

As seen in Greensboro, the MDTRC was established by civil society actors with no government involvement in 2011.²³¹ In their mandate, one commissioner of the MDTRC held that they would investigate ‘racial oppression of people of color by individuals, structures, and institutions.’²³² They state that the oppression in Metro-Detroit caused economic disparities, fewer housing and job opportunities, higher poverty rates, restricted access to education and health care, and lower life expectancies.²³³ The MDTRC explicitly aligned itself with both the South African and Greensboro models. As the GTRC, the MDTRC planned to release a final report following a two-year period of hearings and inquiry. In addition, the MDTRC, as the GTRC, has commissioners that are representative of the community they serve. More specifically, the MDTRC was to investigate and take testimony concerning residential segregation and its effects on the Detroit Uprising.²³⁴

This truth commission can be seen as the counter to the success in Greensboro. As neither was supported by the local, regional or national government, they each faced funding, structural and legitimacy issues. However, while the GTRC is perceived mainly as a success by both the Greensboro community and transitional justice scholars, the MDTRC was not able to complete its mandate.²³⁵ The MDTRC was created just before Detroit filed for bankruptcy in 2013. The economic strife in the city proved to be a major setback.²³⁶ Two years after its inception, the MDTRC lost three commissioners due to personal issues and the clarity of the mandate.²³⁷ In the end, the MDTRC did not fulfil its mandate and, per its charter, had a limit of two years to complete its work and produce a final report. While the MDTRC was able to elect new commissioners, its activities have since ceased altogether. In this instance, the MDTRC did not have the same funding as the GTRC, the same amount of clarity with its mandate, and was undertaken during a time of economic uncertainty for the city and its population. To this end, the MDTRC shows the limits truth commissions in the US have when there is a lack of government involvement.

²³¹ Inwood, Alderman and Barron (n 226).

²³² ‘Maryland Lynching Truth and Reconciliation Commission Interim Report’.

²³³ Beitler III (n 190) 134.

²³⁴ Inwood, Alderman and Barron (n 226).

²³⁵ *ibid*; Androff (n 176).t

²³⁶ Inwood, Alderman and Barron (n 226).

²³⁷ Androff (n 176).

3.3 OTHER TRUTH AND RECONCILIATION EFFORTS IN THE US

The GTRC was not an anomaly, and African American communities are not the only ones establishing truth commissions. Native nations in the US have also established truth commissions. A notable example is that of the Maine Wabanaki State Child Welfare Truth & Reconciliation Commission (MWTRC) which began in 2012 and published its final report in 2015. The MWTRC examined US policy, the Indian Child Welfare Act of 1978, which removed native children from their homes and placed them with non-native families.²³⁸ The MWTRC was the first state-wide initiative and the first to have US government support. Maine's governor and five Wabanaki chiefs signed the MWTRC's mandate sanctioning the commission.²³⁹ The MWTRC also had the precedent of the GTRC and the Truth and Reconciliation Commission of Canada (CTRC), which also examined the displacement of native children to residential schools and the abuses against children in them.²⁴⁰ The CTRC began in 2007 and lasted until 2015. The precedent of these TRCs garnered authority in the establishment of the MWTRC and successive truth commissions and projects. Other projects pursued by communities in the US include efforts in Rosewood, Florida; Mississippi; and Tulsa, Oklahoma.²⁴¹ While not commissions proper, these projects show a growing effort by civil society for truth-telling and justice in the lead up to larger, even national, efforts in the wake of the M4BL. Truth commissions and projects in the US usually follow a period of community activism.²⁴² Further, in the most recent period of activism in the US, the largest since the civil rights movement in the 1960s, truth and reconciliation have garnered national attention. These efforts culminated in legislation urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation.²⁴³

²³⁸ Office of the Tribal Advisor, 'California Truth and Healing Council' (*The Governor's Office of the Tribal Advisor*, 2019) <<https://tribalaffairs.ca.gov/cthc/>> accessed 13 March 2021.

²³⁹ *ibid.*

²⁴⁰ *ibid.*

²⁴¹ Virginie Ladisch and Anna Myriam Roccatello, 'The Color of Justice: Transitional Justice and the Legacy of Slavery and Racism in the United States' (International Center for Transitional Justice 2021).

²⁴² Magarrell and Wesley (n 183).

²⁴³ Sheila Jackson Lee, 'Commission to Study and Develop Reparation Proposals for African Americans Act' (HR 40).

This bill works in complement to HR 40 for the establishment of reparations in the US.

3.4 THE REPARATIONS MOVEMENT

Reparations in the US have been called for since they were promised but never actualised in the aftermath of the Civil War. It is true however that the momentum behind the movement has waxed and waned in its nearly 160-year history. Of course, there are notable periods that garner more support for reparations than others, as in the civil rights, Black Power and Black Lives Matter movements. A major reason for this is that as reparation for slavery was never actualised after the Civil War, the US still owes a debt to the descendants of formerly enslaved people. There were multiple attempts to realise land redistribution by the Sherman Special Field Order No 15²⁴⁴, Howard Circular Order No 13²⁴⁵ and many debates within Congress after the Civil War. However, most of the four million formerly enslaved people were left without tillable land. Many freed people remained on their former plantations as sharecroppers, while others moved to the north or cities within the south that were urbanising at the time. As a result, the call for land redistribution ceased to be the primary demand of freed people. However, its failure remained to be seen as a debt owed, and this perception has lasted through the civil rights movement and even to today.²⁴⁶ This debt would go on to be mentioned by Dr Martin Luther King Jr and the Black National Economic Conference in 1969.²⁴⁷

Action on the local, regional and international levels did stop after the civil rights and Black Power movements. Since the US seems unwilling to take action federally, many organisations and individuals have taken to

²⁴⁴ Sherman, W. "Special Field Orders, No. 15, Headquarters Military Division of the Mississippi" (16 Jan. 1865) Orders & Circulars, Series 44, Adjutant General's Office, Record Group 94, National Archives. <<http://Freedmen.Umd.Edu/Sfo15.Htm>> accessed 12 May 2021.

²⁴⁵ Howard, O. "Circular Order No. 13" (28 July 1865) General Circulars 1865-1869, Bureau of Refugees, Freedmen, and Abandoned Lands, Record Group 105, National Archives Asst Adjutant.

²⁴⁶ Martha Biondi, 'The Rise of the Reparations Movement' (2003) 87 *Radical History Review* 255.

²⁴⁷ Joan Wallach Scott, 'Calling History to Account: The Movement for Reparations for Slavery in the United States' in *On the Judgement of History* (Columbia UP 2020) 66.

civil court and the international stage. In civil cases across the US, more than 3,000 named plaintiffs have filed suit against corporations known to be involved in slavery and the slave trade, prompting many of the corporations to make public apologies and settlements. Internationally, black organisations including the African Diaspora Caucus, the Black Radical Congress and the National Coalition of Blacks for Reparations in America (N'COBRA) called on the UN to 'characterize the institution of slavery and the transatlantic slave trade as crimes against humanity (crimes against humanity have no statute of limitations in international law); to assert the motive of white supremacy; and to call for reparations'.²⁴⁸ The US strongly opposed this initiative. However, the label of crimes against humanity was included in the Durban Declaration and Program of Action, which was signed by 168 nations at the UN's World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in 2001.²⁴⁹ Further, the Program of Action states that slavery and the transatlantic slave trade should have always been considered to be crimes against humanity. This counters the idea that since slavery and slave trades had long been legal in many parts of the world that they are only considered crimes in hindsight.²⁵⁰

Recently, calls for the US to address these abuses via reparations have increased again, with many local, regional, national and international organisations calling on Congress to include reparations on their agenda.²⁵¹ In addition, the reparations movement can now use precedents from reparation programmes for other communities. For example, Congress passed the Civil Liberties Act of 1988 for the Japanese Americans survivors of internment camps during World War II.²⁵² This legislation awarded survivors \$20,000, established a fund to be used for education programmes about the internment camps, a formal apology by the US government and pardons for those convicted for resisting detention.²⁵³ In addition, local reparations have been awarded in Rosewood, Florida, for a race massacre in 1923; North Carolina and Virginia for forced sterilisations; and Chicago, Illinois for

²⁴⁸ Biondi (n 246) 264.

²⁴⁹ *ibid.*

²⁵⁰ *ibid.*

²⁵¹ *ibid.*

²⁵² Scott (n 247) 67.

²⁵³ Nkechi Taifa, 'Let's Talk About Reparations' (2019) 10 *Columbia Journal of Race and Law* 1; *ibid.*

victims of torture.²⁵⁴ Using these programmes as precedent, HR 40, a congressional bill for a reparations commission of African Americans, was first introduced in 1989 and introduced again to the 117th Congress in April 2021. The most prominent actor within the modern reparations movement is N'COBRA, established in 1987 for the express purpose of gaining reparations for African Americans. N'COBRA has long championed HR 40, a congressional bill for studying reparations. HR 40 was first introduced in 1989 by John Conyers and Sheila Jackson Lee, who has re-introduced the bill every year since. HR 40 was introduced into the 117th Congress in January 2021.

3.5 CONCLUSION

The precedent of the first truth commissions in Greensboro, Detroit, and Maine as well as persistent call for reparations by the African American community and national politicians have set the groundwork for succeeding programmes and the introduction of broader, more widespread calls to action. As the M4BL began to address the legacy of human rights abuse in the US, calls for sweeping changes to the national narrative and means of repair began as well and have grown to spark national and international dialogue.

²⁵⁴ Travesi (n 155).

4.

THE PUSH FOR TRANSITIONAL JUSTICE IN THE M4BL

The M4BL began as a means to bring awareness and take action against police brutality in the US. In the years since its inception the M4BL has become a national and international organisation and sparked dialogue among communities and the federal government. Since the movement began the push for transitional justice, namely truth commissions and reparations, have become a dominant means of redress, and has moved from the local to national sphere.

4.1 THE M4BL: FROM #BLACKLIVESMATTER TO INTERNATIONAL PROTEST AND ORGANISATION

The Black Lives Matter movement and organisation began as an affirmation and call to action against state-sanctioned violence, the seeming impunity with which the police kill African Americans, and the opacity of the investigations into police violence.²⁵⁵ Following the murder of 17-year-old Trayvon Martin at the hands of George Zimmerman in 2012, the #Black Lives Matter began trending on Facebook and later on Twitter.²⁵⁶ The Black Lives Matter organisation, founded after the movement's online presence, was born out of the work of Alicia Garza, Opal Tometi and Patrisse Cullors.²⁵⁷ Black Lives Matter then joined other organisations in the fight against police brutality and the

²⁵⁵ Thomas William Nolan, *Perilous Policing: Criminal Justice in Marginalized Communities* (Routledge 2019) 64.

²⁵⁶ Rashawn Ray, 'Setting the Record Straight on the Movement for Black Lives' (2020) 43 *Ethnic and Racial Studies* 1393.

²⁵⁷ Herbert G Ruffin II, 'Working Together to Survive and Thrive: The Struggle for Black Lives Past and Present' (2021) 17 *Leadership* 32.

online activism community, eventually creating the M4BL, a coalition of 50 organisations.²⁵⁸ Following Zimmerman's acquittal in 2013, the M4BL gained more support online, eventually becoming a street movement following the murders of Eric Garner and Michael Brown, only one month apart. In July 2014, Eric Garner was killed by officer Daniel Pantaleo in Staten Island, New York. When attempting arrest, Pantaleo put Garner in a chokehold, a move banned by the NYPD in 1993. Garner lost consciousness and was taken to a nearby hospital, where he would be pronounced dead an hour later. A witness recorded Pantaleo's unlawful actions, and the footage went viral online. Then in August of 2014, Michael Brown was killed at the hands of police officer Darren Wilson in Ferguson, Missouri. The online movement #BlackLivesMatter garnered international attention, and thousands of protesters across the US marched for black lives.²⁵⁹ Both Wilson and Pantaleo faced grand juries. Both grand juries chose not to indict the former officers for the murder of Brown and Garner, respectively.²⁶⁰ Since Ferguson, an international coalition of over 50 organisations with thousands of participants has been created in the M4BL.²⁶¹

After Ferguson, police brutality and protests against it continued. The frequency with which police abused and killed black people did not slow after these protests began. In fact, as journalist Wesley Lowery would note as he spent eight months:

visiting city after city to report on and understand the social movement that vowed to awaken a sleeping nation and insisted it begin to truly value black life. Each day, it seemed, there was another shooting. In city after city, I found officers whose actions were at worst criminal and at best lacked racial sensitivity, and black and brown bodies disproportionately gunned down by those sworn to serve and protect.²⁶²

²⁵⁸ Fernando Travesi, 'The Time Is Now: A Discussion on Transitional Justice in the United States' (International Center for Transitional Justice 2021) <<https://facebook.com/192200249691/videos/466234904682302>> accessed 13 March 2021.

²⁵⁹ Nolan (n 255); Ray (n 256).

²⁶⁰ Stephen F Ostertag, 'Antiracism and the US Civil Sphere: The Case of Black Lives Matter' in Jefferey C Alexander, Trevor Stack and Farhad Khosrokhavar (eds), *Breaching the Civil Order: Radicalism and the Civil Sphere* (CUP 2019) <<https://pitchfork.com/thepitch/1327-the-sounds-of-black-lives-matter/>>.

²⁶¹ Ray (n 256).

²⁶² W Lowey, *They Can't Kill Us All: Ferguson, Baltimore, and a New Era in America's Racial Justice Movement* (Little, Brown and Company 2017).

Nevertheless, the protests would not grab widespread attention as they had in 2014. There are a variety of reasons for this, but the largest one is that the 2016 election and bigoted vitriol therein led to protests across the US against racism, sexism, family separation, gun violence and climate change.²⁶³ The all-encompassing nature of these protests on the one hand directed attention away from the individual movements, while on the other hand promoted the intersectionality of them. For example, it was during this time that the #SayHerName began to trend on social media thanks to the work of the African American Policy Forum in documenting police violence against black women.²⁶⁴ The M4BL until this point had primarily focused on black men and boys. Still, as the Women's and #MeToo movements rose in popularity during the 2016 election cycle, more attention was paid to how black women and girls are particularly victimised by police violence.²⁶⁵ #BlackLivesMatter and #SayHerName now function in partnership with one another.²⁶⁶

A major feature of the Black Lives Matter movement now is the use of social media and the occupation of public space, as black people have been historically excluded, regulated and controlled out of the public eye. This kind of civic engagement places them where they cannot be ignored. Further, as traditional mass media has been 'unresponsive to these grievances of police racism'.²⁶⁷ Activists then moved to social media, which is controlled by individuals themselves with the ability to reach audiences far beyond those of traditional media sources. In fact, media portrayals of black men during the first years of the M4BL maintained the biased and stereotypical reporting of previous decades. Following Trayvon Martin's murder, he was shown in pictures giving the middle finger and called a 'would-be thug'.²⁶⁸ In depicting Michael Brown, newspapers portrayed Brown as a large man with uncontrollable aggression using Darren Wilson's comparison of 'a 5-year-old trying to hold on to Hulk Hogan'.²⁶⁹ These depictions are not only inaccurate,

²⁶³ Nolan (n 255).

²⁶⁴ *ibid*; Ray (n 256); Ruffin II (n 257).

²⁶⁵ Nolan (n 255).

²⁶⁶ Ruffin II (n 257).

²⁶⁷ Ostertag (n 260).

²⁶⁸ Ryan Watson, 'In the Wakes of Rodney King: Militant Evidence and Media Activism in the Age of Viral Black Death' (2019) 84 *The Velvet Light Trap*.

²⁶⁹ Felicia Campbell and Pamela Valera, 'The Only Thing New is the Cameras: A Study of U.S. College Students' Perceptions of Police Violence on Social Media' (2020) 51 *Journal of Black Studies* 654. (N 128).

as Wilson and Brown are in reality similar sizes, but also reflect how society and the police perceive black men.

Public opinion and support have been critical in the M4BL, as it has the ability to pressure media, politicians and institutions to act and as such enact change.²⁷⁰ Finally, police officers tend to have impunity in regards to the killing of black people. Given US history concerning justice and accountability for crimes against African Americans, it is no surprise that police are often acquitted and allowed to remain at their post after such abuse. What is no longer true, however, is that police violence goes undocumented. In the face of overwhelming evidence as well as unprecedented numbers of demonstrators, the US is being forced to confront not only systemic racism within police departments but systemic racism within every institution.

On 25 May 2020, following an arrest attempt, police officer Derek Chauvin murdered George Floyd, pinning his knee on Floyd's neck for approximately nine minutes.²⁷¹ Witnesses of the murder recorded Chauvin and other officers' actions. Some bystanders even called 911 to try and get more police to stop the violence. A nine-minute recording of Floyd's final moments then went viral online prompting the largest protests in US history.²⁷² On 13 March 2020, Breonna Taylor was shot in her home by three plainclothes officers during a no-knock warrant raid on her apartment in Louisville, Kentucky. Taylor's death was raised to the national scale in May of 2020 as demonstrators called for justice for Taylor and Floyd.²⁷³ During these protests, more than 26 million Americans took to the streets in over 150 cities across the country.²⁷⁴

Following Floyd's death, the four officers involved, Derek Chauvin, You Thao, J Alexander Kueng and Thomas Lane, had their employment terminated. Chauvin was arrested on 29 May and later stood trial for second-degree and third-degree murder charges.²⁷⁵ Following a weeks-long trial, Chauvin was convicted of all charges on 20 April 2021. The

²⁷⁰ Ostertag (n 260).

²⁷¹ E Hill and others, 'How George Floyd Was Killed in Police Custody' *New York Times* (20 April 2021).

²⁷² Peter Osborne and Millie Cooke, 'Reflections on the Black Lives Matter Movement' (2020) 109 *The Round Table: The Commonwealth Journal of International Affairs* 612.

²⁷³ Ruffin II (n 257).

²⁷⁴ Osborne and Cooke (n 274); *New York Times*, 'How George Floyd Died, and What Happened Next' *New York Times* (25 May 2021).

²⁷⁵ N Bogel-Burroughs, 'Derek Chauvin Will Now Face a Third-Degree Murder Charge' *New York Times* (30 March 2021).

other three officers have been charged with aiding and abetting. Their trials are set for August 2021.²⁷⁶ Taylor's case stands in sharp contrast to Floyd's. Even a year following her death, none of the officers who fired into her bedroom have faced criminal charges over her killing.²⁷⁷ Taylor's family filed a civil suit for her wrongful death, receiving a \$12 million settlement and the inclusion of police reforms such as the ban on no-knock warrants within the city.²⁷⁸ Given the failure of criminal justice in Taylor's case, the Louisville community and Americans generally feel as though there has been no justice for her.²⁷⁹ Unfortunately, this is in line with many instances of police violence over the course of history where law enforcement can operate with little to no accountability for their abuses against black people.

The protests in the wake of Floyd and Taylor's deaths lasted for the entire summer of 2020.²⁸⁰ One city, Portland, Oregon, took to the streets every day for more than 100 days.²⁸¹ This engagement nationally has led to the push for transitional justice at the national level for both a national truth commission and national reparations committee to investigate the implementation of redress. Since transitional justice often focuses on commemoration, confrontation of authorities and public acknowledgment of wrongdoing on the part of the government, these actions by civil society are effective in promoting transitional justice mechanisms.²⁸² This is particularly true in the US, as transitional justice mechanisms, particularly truth commissions and reparations, have seen a surge in support and creation. By taking to the streets and filling public space, civil society's approach to transitional justice can provide mechanisms that are diverse, accessible and locally relevant, placing transitional justice 'closer to the pulse of contemporary activism and protest'.²⁸³

²⁷⁶ National Public Radio, 'What's Next For Chauvin And 3 Other Ex-Officers In Cases Over George Floyd's Murder?' (21 April 2021).

²⁷⁷ National Public Radio, 'A Year After Breonna Taylor's Killing, Family Says There's "No Accountability"' (13 March 2021).

²⁷⁸ *ibid.*

²⁷⁹ *ibid.*

²⁸⁰ T Fuller, '100 Days of Protest: A Chasm Grows Between Portland and the Rest of Oregon' *New York Times* (5 September 2020).

²⁸¹ *ibid.*

²⁸² Paul Gready and Simon Robins, 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society' (2017) 21 *International Journal of Human Rights* 970.

²⁸³ *ibid.* 71.

4.2 THE PUSH FOR TRANSITIONAL JUSTICE IN LIGHT OF THE M4BL

The increase in activism over the course of the M4BL, similarly to past social movements, has caused another push for justice and societal change in the US. In this case, justice and change are in the form of transitional justice. The failure of criminal justice throughout US history and the failure of federal institutional reform and legislation after the civil rights era are notable causes to this end. In addition, so are the precedents of transitional justice within the US, including the GTRC, MDTRC, MWTRC, reparations for Japanese-American victims of internment and the unwavering activism by the black community for redress.

Looking outside the traditional system has then relocated criminal prosecutions to a means of accountability rather than justice. In that, accountability is seen as a retroactive means of redress to hold perpetrators accountable but does nothing to prevent further injustice whereas justice is seen as proactive to repair and prevent injustice. A notable example of this is Derek Chauvin's conviction, which is accountability for Chauvin, but not justice for his victim, George Floyd, as the institutions and practices that led to his death are still in place.

Justice in the case of human rights abuses against African Americans is multifaceted, multigenerational harm which requires a response that is equally complex. To this end, there have been a number of ambitious transitional justice mechanisms established in the US locally and regionally which have garnered the support of local and state support, including the Truth-Telling Project, the Maryland Truth and Reconciliation Commission, the Tulsa Centennial Commission and a reparations programme in Evanston, Illinois among others. Further, there is a push for transitional justice to be implemented at the national level as well.

4.2.1 *The Maryland Lynching Truth and Reconciliation Commission*

The history of lynching, as in the rest of the south, is a dark and long one. In 2015, the Equal Justice Initiative published a report documenting over 4,000 racial terror lynchings in the south and 28 in Maryland.²⁸⁴ This number has increased as scholars have focused mainly on the state, and there is now evidence for 42 such murders.²⁸⁵

²⁸⁴ The State of Maryland, 'Maryland Lynching Truth and Reconciliation Commission Interim Report' (The State of Maryland 2020).

²⁸⁵ *ibid.*

The Maryland Lynching Truth and Reconciliation Commission (MLTRC) was established first by community organising and, unlike the first truth commissions in the US, has gained the support of the state and in 2019 was signed into being via House Bill 307. The main goal of the MLTRC brings justice to victims of lynching from 1854 to 1933.²⁸⁶ House Bill 307 gives the MLTRC until 1 December 2021, to produce its final report. However, the mandate may be extended to accommodate the setbacks due to the COVID-19 pandemic and the delays of public hearings over this time. The MLTRC, similar to the US truth commissions before it, will hold public hearings from descendants of victims, perpetrators and witnesses and put emphasis on healing and reconciliation within the Maryland community. The MLTRC is the first truth commission established to examine racial terror lynchings in the US. Given the widespread nature of lynchings in the south, the MLTRC hopes to lay the groundwork for other communities to establish their own TRCs for this kind of atrocity.

In addition to the state initiative, Howard County, within Maryland has established a local truth and reconciliation non-profit detailing the three known racial terror lynchings of Rev Hezekiah Brown, Nicholas Snowden and Jacob Henson Jr in 1884, 1885 and 1895 respectively.²⁸⁷ In addition, the non-profit will investigate near lynchings in the county and establish a common narrative of these and the climate in which they occurred. This is a truth project rather than a commission proper and, as such, has no official end date or final report.²⁸⁸ Howard County's history will be heard in the MLTRC, with their tentative hearing date set for January 2022.²⁸⁹

4.2.2 *The Tulsa Race Massacre and Remembrance Project*

The US is also seeing a rise of truth, reconciliation and memory projects rather than commissions proper, such as that in Tulsa, Oklahoma. In 1921, white city officials, law enforcement, and KKK members targeted the Greenwood neighbourhood of Tulsa, also commonly referred to as Black Wall Street, setting much of it on fire, murdering hundreds and

²⁸⁶ The State of Maryland (n 284).

²⁸⁷ Howard County Lynching Truth & Reconciliation, Inc (2020) <<https://hocoltr.org/>> accessed 13 March 2021.

²⁸⁸ *ibid.*

²⁸⁹ The State of Maryland (n 284).

burying them in mass graves.²⁹⁰ This massacre was one of the largest racially motivated attacks in US history. More than 800 people were admitted to the hospital, 6,000 black residents were detained for several days and estimates from an Oklahoma investigative body place the death toll between 75 and 300 people.²⁹¹ Thirty-five blocks were destroyed in the process, which left approximately 10,000 black residents homeless.²⁹² No arrests were made following this, and the city did not acknowledge that the massacre had happened since the perpetrators were city officials; the attack was easily hidden.²⁹³

In the aftermath of the massacre only 40% of the black population in Tulsa remained in the city to rebuild.²⁹⁴ However, as is the case with many cities across the US, particularly in the early 1900s, racial segregation, discrimination and violence terrorised the community. Over the coming decades black residents in Tulsa would suffer under the same conditions as black communities across the US facing housing, employment, education and health discrimination. It would not be until Oklahoma established an investigative commission in 2006, that the truth behind the massacre would come to light.²⁹⁵ Further, it would not be until 2018 that a commission for the search and excavation of mass graves went underway.²⁹⁶ The lack of accountability and redress for survivors and their descendants has been a major push for activism in the area and during the M4BL, Tulsa has become a national talking point.

The commission published their final report of the events in 2001, after which point Oklahoma schools were required to include the history of the massacre within the public school history curriculum.²⁹⁷ This commission, similar to the ongoing 1921 Tulsa Race Massacre Centennial Commission, while not transitional justice proper, is indicative of the

²⁹⁰ Vice News, 'Why the Tulsa Race Massacre Is So Important to the Reparations Debate' (*VICE News YouTube*, 2021) <<https://youtube.com/watch?v=a4FcpT52hKs>> accessed 12 May 2021.

²⁹¹ National African American Reparations Commission, 'National African American Reparations Commission Hails Vote on HR-40.' (*National African American Reparations Commission*, 17 April 2021) <<https://reparationscomm.org/naarc-news/press-releases/national-african-american-reparations-commission-hails-vote-on-hr-40/>>; *ibid.* accessed 13 March 2021.

²⁹² Vice News (n 290).

²⁹³ National African American Reparations Commission (n 291).

²⁹⁴ Vice News (n 290).

²⁹⁵ Hannibal B Johnson, 'Tulsa, Then and Now: Reflections on the Legacy of the 1921 Tulsa Race Massacre' (2020) 40 *Great Plains Quarterly* 181.

²⁹⁶ *ibid.*

²⁹⁷ *ibid.*

push for transitional justice in the US now and the community activism that is needed to create it. The secrecy and perpetration by the city led to a movement by the descendants of those present at the massacre to start truth projects. The Centennial Commission has remembrance and truth projects commemorating the 100th anniversary of the massacre. These projects include commemorative projects, economic development, education initiatives and reconciliation.

4.2.3 *The Iowa Ad Hoc Truth and Reconciliation Commission*

As is the case with all truth commissions and projects in the US and beyond, the Iowa city commission was promoted by local activists and supporters. Further, as is an emerging norm in US transitional justice, the commission is also supported by the local government. Established by City Council Resolution 20-228, the Iowa City Ad Hoc Truth and Reconciliation Commission (ICTRC) has a three-part mandate, including fact-finding, truth-telling and reconciliation.²⁹⁸ The ICTRC will first collect evidence and compile a record of racial injustice within the city. Second, the ICTRC will hold hearings where community members can give testimony as well as other means of storytelling such as art, workshops, worship and other means.²⁹⁹ Finally, the ICTRC promotes reconciliation by facilitating dialogue between groups ensuring these dialogues have a replicable model capable of becoming ongoing processes after the ICTRC mandate is over. The ICTRC will also recommend education for community members about injustice become available as well as the publication of their final report. The ICTRC is expected to complete its mandate in June 2022.³⁰⁰

The grievances it seems are that Iowa City established the ICTRC based on the ideas of local youth activists and the Iowa Freedom Riders to examine racial injustice but has since left out those affected by racial injustice, including the original voices calling for such a commission.³⁰¹ Interestingly, the ICTRC has been met with criticism from activists

²⁹⁸ City of Iowa City, 'Ad Hoc Truth and Reconciliation Commission' (*City of Iowa City*, 2021) <<https://icgov.org/city-government/boards-commissions-and-committees/ad-hoc-truth-and-reconciliation-commission>> accessed 20 April 2021.

²⁹⁹ *ibid.*

³⁰⁰ *ibid.* 1.

³⁰¹ Iowa Freedom Riders, 'Announcement: The Peoples Truth & Reckoning Commission Starting April 15, 2021'.

within Iowa City for the strict control and coordination the city took in its implementation calling the ICTRC performative, avoiding ‘anything uncomfortable to the Council’s power base’.³⁰² In fact, the ICTRC was met with contentious proceedings early on, as only one member of the Iowa Freedom Riders was included in the Commission. Many deemed the ICTRC an unsafe space for the sensitive work it would undertake.³⁰³ The ICTRC then faced several commissioner resignations leaving three seats empty, which forced the ICTRC into temporary suspension.³⁰⁴

In response to the tension and suspension, the original activists who called for a city-wide TRC established the People’s Truth and Reconciliation Commission (PTRC), which operates across the street from the City’s TRC and in opposition to it. The PTRC cites South Africa, Greensboro, Maine-Wabanaki, Canada and Maryland as inspiring their establishment. The means of truth and reconciliation sought by the PTRC include truth-telling, an investigative process, reparations, spiritual and mental health healing regarding trauma, story-telling through art and education initiatives.³⁰⁵ The contentious nature of truth commissions in Iowa City is in fact another example of how state and local governments can be perpetrators. Further, it confirms what activists feared in Greensboro, that of the city hijacking the truth and reconciliation process in favour of keeping the old consensus rather than exploring and healing from the harm caused.

4.2.4 Other ongoing truth commissions and projects

Other initiatives for truth in the US focus on individual cities similar to Greensboro. The Truth Telling Project (TTP) was established in the aftermath of Michael Brown’s killing and the onslaught of national protests which followed.³⁰⁶ The TTP’s work involves supporting grassroots movements for truth-telling processes throughout the US. New York City’s Mayor DeBlasio has created the Racial Justice and Reconciliation Commission to address systemic racism and

³⁰² Iowa Freedom Riders (n 301).

³⁰³ Z Smith, ‘What Will the Iowa Freedom Riders’ “Truth and Reckoning Commission” Mean for Iowa City’s Efforts to Combat Systemic Racism?’ *Iowa City Citizen Press* (April 2021).

³⁰⁴ *ibid.*

³⁰⁵ Iowa Freedom Riders (n 301).

³⁰⁶ Ladisch and Roccatello (n 241).

discrimination to ‘promote social learning, collective introspection, and policy action’.³⁰⁷ In addition, the commission will also re-evaluate the city’s charter and correct the historical inequalities therein as well as look at reparations for the black community in NYC similarly to the reparation programme in Evanston, Illinois. Finally, sponsored by the Grassroots Law Project and the district attorneys in each city, including San Francisco, Philadelphia and Boston formed a coalition in 2020 in an effort to establish truth commissions on police racial violence. This endeavour is notably different from most truth commissions as these would be overseen by district attorneys who would have the opportunity to prosecute. This project comes as a direct result of the influence the George Floyd and Breonna Taylor murders sparked in the summer of 2020.³⁰⁸ During the protests, many cities across the US were confronted with their own cases of police brutality and histories of injustice such as lynchings, segregation, massacres and riots.

Finally, other communities have garnered support for looking at past abuses against them. This is the case for the California Truth and Healing Council, which will examine documentation and testimony from native peoples within the state and establish a new historical record of the relationship between the state and nation peoples.³⁰⁹ This council was created by Executive Order N-15-19 by Governor Gavin Newsom in June 2019. The council was intended to begin hearings in January 2020 and complete their work in January 2025.³¹⁰ However, like the MLTRC, the council has faced delays due to the COVID-19 pandemic and is currently still in the drafting phase.

4.2.5 Local reparation projects and programmes

Truth commissions are not the only transitional justice mechanisms to be largely localised in the US. Despite the far-reaching pressure on the national government to accept responsibility for and take

³⁰⁷ The City of New York, ‘Mayor de Blasio Commemorates Juneteenth with New Racial Justice and Reconciliation Commission’ (*The City of New York Office of the Mayor*, 2020) <<https://www1.nyc.gov/office-of-the-mayor/news/452-20/mayor-de-blasio-commemorates-juneteenth-new-racial-justice-reconciliation-commission>> accessed 13 March 2021.

³⁰⁸ National Public Radio, ‘A Year After Breonna Taylor’s Killing, Family Says There’s “No Accountability”’ (n 277).

³⁰⁹ Gavin Newsom, Executive Order N-15-19 2019 [N-15-19].

³¹⁰ *ibid.*

steps toward redress for slavery, most battles for reparations have been won locally.³¹¹ A ground-breaking case for reparation is that of Evanston, Illinois, which in 2019 passed Resolution 58-R-19 and with the support of the City's Equity and Empowerment Commission, implemented an investigative body to identify what kind of reparations residents required.³¹² After holding public hearings, the Commission released Resolution 126-R-19, which established a reparations fund and subcommittee to focus on housing discrimination. The focus on housing was derived from community meetings wherein the Equity and Empowerment Commission and the identification of housing discrimination between the city's early zoning ordinances in 1919 and the ban on housing discrimination in 1969.³¹³ The report on this topic details further abuses against the African American community in Evanston during this same 60-year period, including discrimination in segregation, redlining, employment, education, criminal justice and public service.³¹⁴ Households that qualify for the programme receive up to \$25,000 to go toward a down payment on a home or home repair.³¹⁵ N'COBRA and other national reparations organisations have seen the successful implementation of reparations in Evanston as a necessary first step toward other local initiatives and eventual federal action.³¹⁶

However, the Evanston plan does have critics, which state that the reparations programme is more a housing plan than reparations proper, that it does not allow for broad-based participation of the African American community in Evanston and its limited scope does not lay sufficient groundwork for future processes.³¹⁷ Despite these criticisms, there have been similar local efforts in US cities, including Asheville, North Carolina in June 2020; Tulsa, Oklahoma as an ongoing process since the massacre in 1921; Providence, Rhode Island in July 2020 and

³¹¹ P Dixon, 'U.S. Cities and States Are Discussing Reparations for Black Americans. Here's What's Key.' *The Washington Post* (4 August 2020).

³¹² City of Evanston, 'Evanston Local Reparations' <<https://cityofevanston.org/government/city-council/reparations>> accessed 20 April 2021.

³¹³ *ibid.*

³¹⁴ Morris Robinson and Jenny Thompson, 'Evanston Policies and Practices Directly Affecting the African American Community, 1900 - 1960 (and Present)' (City of Evanston 2020).

³¹⁵ National Public Radio, 'In Likely First, Chicago Suburb Of Evanston Approves Reparations For Black Residents.' (23 March 2021).

³¹⁶ *ibid.*

³¹⁷ *ibid.*

Burlington, Vermont in August 2020.³¹⁸

The reparations movement in Tulsa stems from the race massacre on Black Wall Street in 1921. In Oklahoma’s investigative commission in 2001, it was found that the damages to the Greenwood neighbourhood would equal \$30 million today.³¹⁹ The main recommendation from the 2001 Commission was a reparations programme for survivors and their descendants. However, the city did not take action even 20 years later.³²⁰ Survivors have been fighting for compensation and redress since 1921 and have filed at least 193 claims of damages over this 100-year history.³²¹ The push for reparations alongside truth-telling in Tulsa is particularly indicative of the complementarity of these mechanisms. Tulsa is often looked at as a microcosm of the US as the truth is buried and contested, and redress and accountability yet to be actualised.

4.3 NATIONAL TRANSITIONAL JUSTICE MECHANISMS

Introduced by Congresswoman Barbara Lee, H Con Res 19 is a federal bill for the establishment of a United States Commission on Truth, Racial Healing and Transformation. This bill has 145 cosponsors in the House, 15 cosponsors in the Senate. The bill, as of 28 April 2021, has been referred to the Subcommittee on the Constitution, Civil Rights and Civil Liberties in the House of Representatives. This marks a historic piece of legislation as the first bill to be introduced for the establishment of a national truth commission.

H Con Res 19 and the concurrent legislation in the Senate go on to enumerate the history of human rights abuses in the US, including slavery, the denial of opportunity and mobility to African Americans, the failure of reconstruction, discriminatory government practice, disenfranchisement of Native Peoples, Federal Indian Boarding School Policy, removal of Native peoples from their Tribal lands, removal of Mexicans through

³¹⁸ D McGowan, ‘Providence to Consider Reparations Program for People with African or Indigenous Heritage’ *The Boston Globe* (15 July 2020); Dixon (n 311); J Burgess, ‘As Asheville Makes History on Local Reparations, Experts Disagree on Whether to “Applaud”’ *Asheville Citizen Times* (2021); National Public Radio, ‘A Year After Breonna Taylor’s Killing, Family Says There’s “No Accountability”’ (n 278); Vice News (n 291).

³¹⁹ Johnson (n 295).

³²⁰ *ibid.*

³²¹ Vice News (n 290).

discriminatory deportation, the annexation of Puerto Rico without the right to vote, racial discrimination against Latin Americans, xenophobic legislation against Chinese Americans, conspiracy to overthrow the kingdom of Hawaii and finally US colonialism in the Pacific. Further, the bill states that these past abuses have contributed to modern disparities ‘such as the achievement gap, school dropout rates, income gaps, homeownership rates, health outcome, and incarceration rates’.³²² H Con Res 19 is certainly comprehensive exploring a litany of long-standing multigenerational abuses the US has committed against many different racial and ethnic groups over its history. As a complement to this bill is legislation for the establishment of a committee to explore a federal reparations programme.

First introduced over 30 years ago, HR 40 now has 185 cosponsors in the House of Representatives and 20 cosponsors in the Senate. On 14 April 2021, HR 40 was picked up by the House Judiciary Committee in a historic vote of 25-17.³²³ Until M4BL became the largest social movement in US history, HR 40 seldom received more than 50 cosponsors in its 30-year history.³²⁴

HR 40, as presented in 2021, calls for the establishment of a ‘Commission to Study and Develop Reparation Proposals for African Americans’. The bill goes on much like H Con Res 19 in enumerating a list of abuses against the black community, beginning in slavery and continuing to the present, and then establishes the duties of the commission. These include compiling documentation about the institution of slavery from 1619 to 1865, the complicity of federal and state governments, discriminatory federal and state laws and practice, and the lingering effects of slavery; recommending means for education on the findings on the issue of slavery and remedies to address these lingering effects and submitting a final report to Congress. Membership of the commission would include 13 members appointed by the President, Speaker of the House, President pro tempore of the Senate, and major civil society organisations for reparations. All such members should possess the necessary skills and knowledge to serve on such a

³²² Sheila Jackson Lee, ‘Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation’(H Con Res 19).

³²³ Sheila Jackson Lee, ‘Commission to Study and Develop Reparation Proposals for African Americans Act’(HR 40).

³²⁴ National African American Reparations Commission Hails Vote on HR-40 (n 291).

commission. The power of the HR 40 commission includes hearing testimony, producing evidence and the issuance of subpoenas. Further, the commission is granted all access to all official information deemed useful to perform its duties. The bill goes on to provide for terms and compensation of the commissioners and administrative properties of the commission.

Congresswoman Barbara Lee has gone on to reiterate what decades of activists before her have also noted, ‘This moment should have taken place in 1865 (...) We will never end these systemic issues without truth-telling’.³²⁵ In addition to H Con Res 19, Rep. Lee also advocates for the establishment of local commissions, which is the usual way truth commissions are established in the US. Seemingly more are going forward with their mandate every day. Between 30 and 40 local commissions have been established since 2019.³²⁶ H Con Res 19 also positions itself as a complementary mechanism to HR 40. The complementarity between reparations and truth commission has been established in precedents set by former TRCs, which include monetary compensation to victims in their recommendations of the final report as in the case in Peru, Canada, South Africa and Greensboro.³²⁷ Finally, as another historical moment in the reparations movements, President Joe Biden has pronounced his support of HR 40 as well as ‘action within his own government in the meantime’.³²⁸ This statement marks the first time a president has vocalised support of legislation for reparations. The actions referenced in his statement were promises during Biden’s campaign and the early days of his presidency, including an executive order to ‘Advance Racial Equality and Support Underserved Communities’.³²⁹ This executive order addresses housing, incarceration, tribal sovereignty and Asian American and Pacific Islander xenophobia.³³⁰

³²⁵ Travesi (n 258).

³²⁶ Jennifer Trahan, ‘Time for Action: Transitional Justice and Legacies of Racial Injustice in the United States’ (New York University Center for Global Affairs and International Center for Transitional Justice 2020) <<https://facebook.com/watch/?extid=SEO---&v=381805929865967>> accessed 9 December 2021; *ibid*.

³²⁷ Magarrell L and Wesley J, ‘Report Series Lessons in Truth-Seeking : International Experiences Informing United States’ (2006) International Center for Transitional Justice.’; ICTJ ‘What Is Transitional Justice?’ [2009] International Center for Transitional Justice 2.

³²⁸ A Srikanth, ‘Biden Adviser Reportedly Says White House Will Start Reparations to Black Community “Now”’ *The Hill* (1 March 2021).

³²⁹ The White House, ‘Fact Sheet: President Biden to Take Action to Advance Racial Equity and Support Underserved Communities’ (The White House 2021).

³³⁰ *ibid*.

4.4 CONCLUSION

It is hard to understate the impact the M4BL has had on US communities and national dialogue surrounding racial injustice. Since the beginning of the movement it has become an international organisation and sparked protests around the world. In the US in particular the M4BL has grown to garner support for transitional justice mechanisms that were at one point non-existent or unsupported in the country. The culmination of the legacy of racial injustice and the newfound widespread awareness for it has led to this push for transitional justice in the US and its communities.

CONCLUSION

The implementation of truth commissions in the early 2000s based on the South African model of reconciliation and the spark of the M4BL has led directly to a boom in transitional justice mechanisms, particularly truth commissions and reparations in the US. The dredging up of unresolved human rights abuses by the US against African American populations by the movement shows a need for multifaceted and complex redress, and local communities and the federal government have a role to play in each. Further, the failure of traditional means of accountability, justice and redress have pushed communities and, in truth, US civil society as a whole away from criminal prosecutions of individual perpetrators and institutional reforms as seen in the civil rights era. Instead, they have moved toward unattempted and novel means in truth commissions and projects and reparations programmes. The changing concept of transitional justice as a result of its applications to racial injustice in the US are important to note. As mentioned, transitional justice in the US has different features than its international counterparts, particularly the local application of such mechanisms. Bringing transitional justice to the local level in the forms seen in the US, that is truth commissions and reparations, is certainly an interesting development. Further, it would be interesting for continued research if these applications influence other communities, as the M4BL is linked to transnational civil society and social movements far beyond those in the US.

Finally, it is important to examine the transitional justice mechanisms not discussed at length in this research in terms of the ongoing push for transitional justice in light of the M4BL. Certainly, strides were made in institutional reforms that fall in line with the push despite their historical failures. These same historical failures were the reason for their exclusion as civil society has moved more forcefully toward novel means of justice

and redress. The same is not true for criminal prosecutions as a means of transitional justice. As Anna Myriam Rocatello mentions, ‘there is a tendency for transitional justice scholars at the international level to equate justice with criminal accountability’,³³¹ This is not the case in the US. Criminal prosecutions in the US since 2019 have largely been seen as a means of accountability for individual perpetrators rather than as justice for victims.³³² This shift in the perspective of criminal prosecutions comes as faith in the system to provide justice has been shattered as law enforcement misconduct has been met with impunity.³³³ In addition, victims rarely see justice in this system, as noted in the Trayvon Martin, Michael Brown, Eric Garner, Breonna Taylor and Ahmaud Arbery cases. In fact, George Floyd is the only victim of police brutality and racial injustice among the current M4BL movement whose murderer was held accountable for their crimes.

In order to regain society’s trust in criminal justice and, to a broader extent, US institutions as a whole, local, regional and federal reforms are needed.³³⁴ During the M4BL institutional reform, particularly that of the police was an immediate agenda item. Many of these initiatives have been started in police departments around the country with some departments implementing antiracism training and demilitarising their forces in response to the movement. However, as calls for reallocating funds from police departments have increased in the M4BL, many other local and regional governments have in fact given law enforcement more funding. As Ladisch and Roccatello note, institutional reform is a long and ongoing process to reach the fundamental transformation of these systems.³³⁵ Law enforcement, in particular, should undergo periodic reforms to match society’s needs in their respective communities. Further research in the field of transitional justice in the US, particularly the ongoing push, can examine these institutional reform movements such as the defunding the police, police and prison abolition, as well as community-based policing.

In addition to the exclusion of criminal prosecutions and institutional reforms, this research has thus far focused solely on racial injustice.

³³¹ Travesi (n 258).

³³² *ibid.*

³³³ Ladisch and Roccatello (n 241).

³³⁴ *ibid.*

³³⁵ *ibid.*

However, the history of race relations is also marked by black resistance and activism and black resilience and agency.³³⁶ The importance of this cannot be understated as this agency is at the heart of each successive movement against human rights abuses against African Americans from the transatlantic slave trade to the M4BL, resistance to oppression, civil society action, and change has been formed by the activism of black men and women.³³⁷

Finally, the reasons behind the ongoing push for transitional justice also reveal what it takes to enact change within this US context. Namely, active, persistent, widespread organisation by civil society through multiple avenues will prompt leadership and lead to new means of justice and redress. In this context of transitional justice, these means are through truth commissions, reparations, criminal accountability, and institutional reforms. Within the M4BL and societal change facing the US, the fight for justice is a contentious one facing national and local debate as the US tries to heal from the past, remake the present and reimagine the future.

³³⁶ Ray (n 246).

³³⁷ Ruffin II (n 247).

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The present thesis - *Re-imagining Truth and Redress: Racial Injustice against African Americans in the United States and the Current Push for Transitional Justice* written by **Katie Boatright** and supervised by Stephan Parmentier, KU Leuven - was submitted in partial fulfillment of the requirements for the European Master's Programme in Human Rights and Democratisation (EMA), coordinated by Global Campus Europe.

