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## Higher Education Redress Statutes: A Preliminary Analysis of States' Reparations in Higher Education

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# HIGHER EDUCATION REDRESS STATUTES: A PRELIMINARY ANALYSIS OF STATES' REPARATIONS IN HIGHER EDUCATION

CHRISTOPHER L. MATHIS, JD, PHD\*

*Professor Mathis gave an abbreviated version of this speech at the University of Colorado Law School's 30th Annual Ira C. Rothgerber Jr. Conference during the Institutional Complicity in U.S. Slavery; the Role of the Judiciary and Higher Education panel.<sup>1</sup> Included here are additions to his original Conference speech which provide greater context for his claims.<sup>2</sup>*

I appreciate the opportunity to be here. First, I wish to extend my gratitude to Professor Malveaux<sup>3</sup> and the organizers of this conference for the invitation. I am honored and humbled to share this space with many brilliant legal scholars.

I also want to thank Dean Inniss<sup>4</sup> for writing such a provocative book.<sup>5</sup> My scholarship situates squarely within her

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\* Christopher L. Mathis, Visiting Assistant Professor of Law at the University of Iowa College of Law; American Bar Foundation & AccessLex Institute Doctoral Fellow at the American Bar Foundation; PhD, University of Virginia; JD, University of South Carolina School of Law, 2017; BS, Oakwood University, 2014. With this piece, Mathis hopes to aid genuine equity measures within higher education.

1. Professor Mathis's full speech can be found at: Colorado Law, *Panel 1: Institutional Complicity in U.S. Slavery; the Role of the Judiciary and Higher Education*, YOUTUBE, at 28:13–38:55 (Apr. 12, 2022), <https://www.youtube.com/watch?v=44FhG7PY-yc> [<https://perma.cc/NY57-RGJC>].

2. For a more robust conversation analyzing these statutes, please see Christopher L. Mathis, *Higher Education Redress Statutes: A Critical Analysis of States' Reparations in Higher Education*, 79 WASH. & LEE L. REV. 1829 (2023).

3. Professor Suzette M. Malveaux is the Moses Lasky Professor of Law and Director of the Byron R. White Center for the Study of American Constitutional Law at the University of Colorado Law School.

4. Dean Lolita Buckner Inniss is the current Dean and Provost's Professor of Law at the University of Colorado Law School. As part of the 30th Annual Ira C. Rothgerber Jr. Conference, and prior to the *Institutional Complicity in U.S. Slavery: Role of the Judiciary and Higher Education* panel in which Professor Mathis participated, Dean Inniss gave opening remarks and held a book chat on her new book. LOLITA BUCKNER INNISS, *THE PRINCETON FUGITIVE SLAVE: THE TRIALS OF JAMES COLLINS JOHNSON* (2019)..

5. *Id.*

work, and she makes my life as a scholar much easier through her hard work.

Also, thank you to my mom for traveling all the way from South Carolina to be with me here today.

With that being said, today we're going to talk about *Higher Education Redress Statutes: A Critical Analysis of States Reparations in Higher Education*. As Dean Inniss discussed and claimed, higher education has a clear connection to slavery.

In fact, slavery was not isolated to just one college.<sup>6</sup> It indeed was a central pillar to many institutions in the colonial era, from elite private schools like Harvard,<sup>7</sup> Yale,<sup>8</sup> and Brown,<sup>9</sup> to flagship public universities like the University of Georgia,<sup>10</sup> University of South Carolina, and the University of Virginia<sup>11</sup>—my alma maters. But beyond the actions within the slaving economy, the higher education industry continued oppressive acts well beyond the colonial period. The higher education industry often dispossessed Black people from their homes and businesses,<sup>12</sup> discriminated against and denied educational services,<sup>13</sup> and was the chief social architect that legitimated

6. See generally CRAIG STEVEN WILDER, *EBONY AND IVY: RACE, SLAVERY, AND THE TROUBLED HISTORY OF AMERICA'S UNIVERSITIES* (2013); Juan Carlos Garibay, Christian West & Christopher Mathis, "It Affects Me in Ways That I Don't Even Realize": A Preliminary Study on Black Student Responses to a University's *Enslavement History*, 61 J. COLL. STUD. DEV. 697 (2020).

7. See generally LAWRENCE BACOW, *THE LEGACY OF SLAVERY AT HARVARD: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMITTEE* (2022).

8. See generally ANTONY DUGDALE ET AL., *YALE, SLAVERY AND ABOLITION* (2001).

9. See generally Christina H. Paxson, *Foreword* in *BROWN UNIVERSITY'S SLAVERY AND JUSTICE REPORT WITH COMMENTARY ON CONTEXT AND IMPACT*, at ix (2d ed. 2021), <https://slaveryandjustice.brown.edu/sites/default/files/reports/BRW321-SlaveryandJustice-10-22-21.pdf> [<https://perma.cc/7V5D-ZVLS>].

10. See generally Chana Kai Lee, *A Fraught Reckoning: Exploring the History of Slavery at the University of Georgia*, 42 PUB. HISTORIAN 12 (2020); Richard N. Wright, *Ambivalent Bastions of Slavery: The "Peculiar Institution" on College Campuses in Antebellum Georgia*, 80 GA. HIST. Q. 467 (1996).

11. See generally Univ. of Va., *President's Commission on Slavery and the University: Universities Studying Slavery, Fall 2022 (Sept. 28–Oct. 1) USS Conference* (2013), <https://slavery.virginia.edu/universities-studying-slavery> [<https://perma.cc/4CQV-W49A>]; HERBERT BAXTER ADAMS, *THOMAS JEFFERSON AND THE UNIVERSITY OF VIRGINIA* (Wash. Gov't Printing Off. 1888); MAURIE MCINNIS & L.P. NELSON, *EDUCATED IN TYRANNY: SLAVERY AT THOMAS JEFFERSON'S UNIVERSITY* (Univ. of Va. Press 2019).

12. See, e.g., Linnetown Res., Mayor & Comm'n of Athens-Clarke Cnty. (Ga. 2021) (enacted).

13. See, e.g., Juan C. Garibay & Christopher Mathis, *Does a University's Enslavement History Play a Role in Black Student–White Faculty Interactions? A Structural Equation Model*, 11 EDUC. SCIS. 809 (2021); see also Jalil Bishop

academic theories of Black inferiority.<sup>14</sup> It is also important to note that those storied institutional pasts affect contemporary students and their experiences on campus.<sup>15</sup>

Recognizing both the depth and breadth of the harm the higher education industry inflicted on Black people, four states (with five others looking to act similarly) have passed laws to offer reparations for their states' or state universities' involvement in either Black enslavement, harm, or degradation. The four statutes enacted largely have two goals or missions: (1) to memorialize and identify those affected by higher education's harm and (2) to provide a tangible benefit to individuals that demonstrate a historical connection to harm suffered.

Thus, I have coined the term "HERS" as an acronym to mean "Higher Education Redress Statutes" because it captures the legislation that compels the industry to investigate and remedy either its own or the state's role in the degradation of Black people. Today, we see four states with HERS. They are Florida's House Bill 591 (1994), Virginia's House Bill 1980 (2021), Athens and the University of Georgia Resolution (2021), and Maryland's House Bill 1 (2021). While these laws are essential tools for social healing, the four HERS passed into law have important limitations that need to be addressed to achieve real equity within higher education. Therefore, this scholarship initiates a much-needed evaluative process, as HERS display substantial equity and fairness issues worthy of study.

I contend that allowing lawmakers to strip away Black people's deserved redress based on subjective standards proves to be the most recent attempt at legislation that renders certain Black people's pain invisible and unworthy of intervention.<sup>16</sup>

As such, I can break up the central argument in this work into two statements. First, these statutes' boundaries are arbitrary and incomplete and deserve further study and analysis. Second, as currently constructed, HERS do not comply

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Mustaffa, *Mapping Violence, Naming Life: A History of Anti-Black Oppression in the Higher Education System*, 30 INT. J. QUAL. STUD. EDUC. 711 (2017).

14. See Garibay & Mathis, *supra* note 13.

15. See Garibay, West & Mathis, *supra* note 6; *Black Student Views on Higher Education Reparations at a University with an Enslavement History*, 25 RACE ETHNICITY EDUC. 607 (2022).

16. See Michele Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefield*, 102 CALIF. L. REV. 781 (2014); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 97 (2017); Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV. 529 (2021).

or comport with tort remedies scholarship in reparations, redress, and repair.

To help draw out the gaps in the statutes, I turned to a theoretical framework to explain the messiness that exists in reparations. While there were several frameworks to choose from,<sup>17</sup> I employed understanding from Yamamoto and Obery's "Social Healing Through Justice" (STJ) framework because it echoes the mission of many of the statutes.<sup>18</sup> All of the statutes seek to remedy historical wrongs and do so with the goal of healing the harmed community. Similarly, the STJ framework seeks to remedy past wrongs and promote social healing. But beyond the theoretical congruence in both the statutes and framework, the STJ framework offers practical evaluative tenets in reviewing reparations already enacted.

The STJ framework is largely captured through its "four R's." The first R is *recognition*. *Recognition* illuminates how organizational structures (e.g., laws) can embody discriminatory policies that deny fair access to resources and remedies.<sup>19</sup> The subsequent R, *responsibility*, examines the level of control and "power over" others, encouraging those who created the harm to accept full responsibility.<sup>20</sup> The third R is *reconstruction*, which calls for the reframing of history. It also calls for the reallocation of political and economic power to ensure non-repetition of events that created the injustice in the first place.<sup>21</sup> The fourth R, *reparations*, encompasses much more than money. Here, STJ essentially advocates for comprehensive restoration in all aspects.<sup>22</sup>

The STJ framework's authors dictate that legislators must fully engage in all "four R's" to heal social wounds. If all four are not comprehensively engaged, "the most sincere healing efforts will likely be experienced as incomplete, insufficient, and ultimately, a failure [to the harmed group]."<sup>23</sup>

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17. See Kaimipono David Wenger, "Too Big to Remedy?" *Rethinking Mass Restitution for Slavery and Jim Crow*, 44 LOY. L.A. L. REV. 177 (2010); Valorie E. Douglas, *Reparations 4.0: Trading in Older Models for a New Vehicle*, 62 ARIZ. L. REV. 839 (2020); Eric K. Yamamoto & Ashley Kaiao Obrey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 ASIAN AM. L.J. 5 (2009).

18. Yamamoto & Obrey, *supra* note 17.

19. *Id.* at 33.

20. *Id.* at 34.

21. *Id.*

22. *Id.* at 35.

23. *Id.*

With the remainder of our time together, we will shine a probing light on how two of these statutes create arbitrary boundaries. I chose two statutes to analyze in this case: the University of Georgia and the City of Athens Resolution (2021) and Virginia House Bill 1980 (2021). I chose these statutes to explore, first, because they each have expressed a goal of remedying past wrongs. Second, the legislation explicitly implicates higher education. Lastly, each statute represents legislators' varying degrees of engagement in redress and comprehensiveness often enacted in this arena.

Understanding this logic, let's turn to analysis and how these two statutes display serious equity issues.

On January 19, 2021, Athens and the University of Georgia System (UGA) signed a resolution supporting redress for Linnentown—a neighborhood destroyed by White supremacy and by the University of Georgia's urban renewal plans.<sup>24</sup> The urban renewal partnership between Athens and UGA effectively terrorized fifty Black families, dispossessed twenty-two acres, displaced dozens of businesses, and economically devastated groups of Black people.<sup>25</sup> This is because UGA wanted to “clear out the total slum area” where Linnentown existed.<sup>26</sup> As a result, Linnentown was demolished so that UGA could erect three luxury dormitories.<sup>27</sup>

While I agree that redress for Linnentown certainly is essential, my critique is that this legislation, as crafted, confines redress so narrowly to the residents and descendants of Linnentown and yet ignores other instances where the UGA conspired and conducted acts of equivalent or more significant harm.

Given my time reviewing historical archives, I learned of other stories, neighborhoods, and communities devastated by UGA and the city of Athens.

Take, for example, a property reduced and labeled in the archives as the “Negro Property.”<sup>28</sup> The Negro Property was bought right from under the residents for \$25,000. This reality

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24. Linnentown Res., *supra* note 12.

25. *Id.*

26. *Id.* at 2.

27. *Id.*

28. VII Minutes of the Board of Trustees 200 (June 14, 1920), *in* UNIVERSITY OF GEORGIA BOARD OF TRUSTEES CORRESPONDENCE AND REPORTS 6 (on file with the University of Georgia Archives) (discussing all university transactions from hiring to firing, campus enhancement plans to accreditation, the Minutes are the official university record of the business for the institution).

was echoed in the Board of Trustee Minutes, noting that the institution had to buy the Negro Property abutting its grounds because it was “essential to the protection of [their] property and the safeguarding of the young [White] women in our charge.”<sup>29</sup>

These predatory and aggressive actions in the Negro Property were no different than those at Linnentown. They were the same actors, in the same city, victimizing the same minoritized communities. But the descendants and residents of the Negro Property are not included in the statutory repair.

It is also important to note that Linnentown received redress only after the greater community of Athens studied Athens’s and UGA’s actions. Thus, it is very likely that in studying and learning, the public will also support and encourage broader and more inclusive reparations.

Understanding the resemblance of the harm to the Linnentown residents and seeing that the residents of the Negro Property are not in the reparation bills arguably renders this statute out of compliance with STJ and other remedies frameworks in this area.

The second statute I wish to analyze is the Virginia House Bill 1980. In analyzing the statute’s first clause separately, an individual had to have labored on the University of Virginia (UVA) campus to be worthy of identification and memorialization.<sup>30</sup> Superficially, this language reads relatively straightforward, yet in its simplicity, we will likely forget more illustrative stories because of the unforgiving rigidity in the law, should it remain unchanged.

To illustrate this inequity further, historical documentation maintains that the College of William and Mary participated in every aspect of chattel slavery, including insidiously selling young children away from their parents.<sup>31</sup> Taking the statute’s words on its face, the sold children, or people who did not labor but were sold before labor began on the campus, would fall

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29. *Id.* at 199 (“An appropriation of a sufficient amount of money to purchase the negro property abutting on our grounds and contiguous to the new Woman’s Building. We consider this essential to the protection of our property and the safeguarding of the young women in our charge.”).

30. H.B. 1980 (Va. 2021).

31. William & Mary, *The Lemon Project: A Journey of Reconciliation*, WILLIAM & MARY, <https://www.wm.edu/sites/lemonproject> [<https://perma.cc/PMK9-A83A>]; Terry L. Meyers, *Thinking About Slavery at the College of William and Mary*, 21 WM. & MARY BILL RTS. J. 1215 (2012); Terry L. Meyers, *A First Look at the Worst: Slavery and Race Relations at the College of William and Mary*, 16 WM. & MARY BILL OF RTS. J. 1141 (2007).



outside of the law's confines.<sup>32</sup> As a result, their narrative, stories, and existence would not materialize in the state's mandated memorialization program.

Also within the first clause, the statute only extends to those who were enslaved individuals who labored on former or current institutionally controlled grounds and property. To illustrate this discriminatory limitation, notice that the statute only extends to those who were "enslaved individuals." This sounds straightforward; however, archival evidence demonstrates that universities employed servants who were bound to similar inhumane conditions as enslaved people.

For example, William Carr, a university student at UVA in 1829, sexually harassed an enslaved woman on campus, and this type of behavior was common towards enslaved women and free servants at the time.<sup>33</sup> In fact, the University itself corroborates this claim and notes that it was not an uncommon practice for women servants to be emotionally, sexually, and physically assaulted and abused.<sup>34</sup>

This then begs the question of how different enslaved people and servants were when their living quarters, punishment, subjugation, and maltreatment were the same. I assert there is no substantive difference in their roles—but for their distinct titles, both servants and enslaved people were essentially the same. Yet, given the rigidity of the law, servants and their descendants are unlikely to be recognized under the statute.

Generally, the issue of inequity regularly appears in reparation statutes or in cases where the benefit is largely conferred to minoritized people. Accepting these arguments, the logical questions one would ask are: "Well, what do we do now?" and "What is the next step?"

First, I claim that the problem presented here partly stems from the legislatures being ignorant of the breadth of the injury that higher education committed toward Black people. Additionally, given that most, if not all, of the statutes were erected in haste out of political crisis and upheaval, politicians promulgated erroneous boundaries because legislators did not adequately study the issue. As such, I advocate that states empower an interdisciplinary commission to study the wide

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32. VIRGINIA GAZETTE, Nov. 28, 1777, at 2.

33. *Slavery at the University of Virginia: Visitor's Guide*, UNIV. OF VA., [https://dei.virginia.edu/sites/g/files/jsddwu511/files/inline-files/SlaveryatUVaBrochure\\_FINAL.pdf](https://dei.virginia.edu/sites/g/files/jsddwu511/files/inline-files/SlaveryatUVaBrochure_FINAL.pdf) [<https://perma.cc/U4BW-YN6L>].

34. *Id.*

variance and depth of harm committed against Black people. Again, within this reparations space, historically, as the masses become aware of the wide-reaching harm and how it affected specific communities, repair and remedy do seem to follow.

Second, given that HERS largely originated with the work of dedicated activists, I call on activists to look beyond the statehouse to other influential third-party influences that likely can persuade stakeholders to proffer comprehensive repair and reparations. Activists should expand and extend their dialogue to include academic accrediting bodies and the U.S. News and World Report's Ranking Systems. If activists successfully get third-party entities to adopt standards related to repair and redress, legislators and universities will likely offer comprehensive redress to prevent their own state's institutions from experiencing negative consequences that will subsequently affect the public universities' academic stature and standing.<sup>35</sup>

Lastly, an important step forward is ensuring that substantial statutory reform is implemented in the statutes currently enacted. That means adding language mandating enforcement and compliance with the terms of the statutes.

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35. *E.g.*, Christopher L. Mathis, *An Access and Equity Ranking of Public Law Schools*, RUTGERS U. L. REV. 677 (2021).