

Why The Struggle for Equality Continues...

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For Americans who believe that we still have some work to do “to form a more perfect union”¹ as specified in the preamble to our Constitution, an important anniversary in our nation’s history is approaching. On August 28, 2013, we will be commemorating the 50th anniversary of the March on Washington for Jobs and Freedom. This is a propitious time for us to assess how much progress as a nation we have made in overcoming a history of slavery, racial segregation, political discrimination, and economic subordination endured by African Americans and other people of color. School children today learn about the soaring rhetoric contained in Martin Luther King, Jr.’s “I had a Dream Speech,” but too often they are not similarly informed about the racial divide that was the impetus for the March on our nation’s capital.

Some 150 years ago, on January 1, 1863, President Lincoln signed the Emancipation Proclamation, an Executive Order that effectively freed those Americans held in bondage in states in rebellion against the Union, and that laid the groundwork for the eventual passage of the 13th Amendment outlawing slavery throughout the nation. Yet despite the passage of the post-Civil War 13th, 14th and 15th Amendments to the US Constitution that were intended to end chattel slavery, provide for the citizenship rights of African Americans, and prohibit discriminatory voting practices on the basis of race, blacks and other minorities continued to face state sanctioned segregation and discrimination, vigilante justice and lynching, and social isolation and exclusion from the workforce.

One hundred years later, the descendants of those who had been enslaved, disenfranchised, and locked out of the work force organized the March on Washington for Jobs and Freedom that was intended to pressure the Kennedy Administration into passing a comprehensive civil rights bill. In particular, the March organizers were demanding legislation that would end segregated public accommodations, protect the right to vote, enforce procedures for those seeking to secure their constitutional rights, desegregate all public schools immediately, create a major federal works program geared towards those who were unemployed, prohibit continued housing discrimination, and enact a Federal Fair Employment Act that would prohibit discrimination in all employment.²

The March was not universally supported based in part on fears that some of the speeches by the younger leaders were too militant and that a major riot could result.³ But instead of riots the nation witnessed one of the largest peaceful assemblies of citizens who were availing themselves of the right to petition their government as guaranteed by the 1st Amendment as over 250,000 Americans of all ages, colors and regions responded to the cause of the March. Over 5,000 DC Police and National Guardsmen were on duty to respond to the violence that did not occur. Mainstream media largely lauded the peaceful protest and King's speech while ignoring the radical calls for economic justice made by most of the other leaders who spoke during the March.⁴

Those who had supported the March had to work hard to translate the goals of the March into legislative reality. Without the assassination of President John F. Kennedy and the decision by his successor President Lyndon B. Johnson to cast passage of the civil rights bill as a monument to our slain president, it is doubtful that the Civil Rights Act of 1964 would have passed at all. Despite President Johnson's popularity, his legendary arm-twisting of reluctant lawmakers, and his commitment to reintegrating the South into the body politic, the Civil Rights Act of 1964 was subjected to the longest filibuster in our nation's history and its viability was in doubt until the filibuster was broken.⁵ But that difficulty of passing an omnibus law that addressed nearly one hundred years of continued segregation and discrimination was indeed a harbinger of the difficult course ahead of creating a more fair and equitable society.

We often focus solely on the positive messages in Dr. King's remarkable speech, the last one made on August 28, 1963, because we as a nation needed to hold on to the hope embodied in that speech. But on the cusp of the 50th anniversary, it may be instructive for us to review Dr. King's words at the beginning of his speech as he notes the anniversary of the Emancipation Proclamation:

Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity.

But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize a shameful condition.

In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.

It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked "insufficient funds." But we refuse to believe that the bank of justice is bankrupt. We

refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. So we have come to cash this check — a check that will give us upon demand the riches of freedom and the security of justice. We have also come to this hallowed spot to remind America of the fierce urgency of now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quick sands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children.⁶

During the past 50 years we have continued to fight over whether or not it is appropriate to use race-conscious remedies to redress policies and practices that were intended to discriminate on the basis of race, ethnicity and national origin. In the area of public education, we sought to use busing and other artificial tools to desegregate the nation's public schools without addressing the segregated residential housing patterns that would make integration possible at the neighborhood school level nearly impossible. These methods and other policy decisions helped create a backlash that has affected not only race relations generally and political party identification specifically but also elections and state referenda as well as the composition of the federal judiciary, including the Supreme Court. In higher education we have been fighting since 1978 over the use of race in admissions to achieve a diverse student body: it remains an open question if this is a goal the government may pursue constitutionally. In the workplace, explicit affirmative action plans under Title VII of the Civil Rights Act and other federal programs created so much racial tension that proxies like "class based" programs, or "race neutral" initiatives were adopted instead.

Eradicating the vestiges of slavery and structural racism has proven to be a more difficult task as the Supreme Court has demonstrated an antipathy to civil rights remedies.⁷ At the end of its most recent term, a divided court on a 5-4 basis sought to make it even harder for institutions of higher education to pursue the goal of diversity by suggesting but not defining a stricter standard of review (Fisher vs. University of Texas).⁸ In the face of redoubled efforts by various states to make it more difficult for citizens of color to exercise their right to vote as guaranteed by previous Supreme Court cases and the Voting Rights Act of 1965, the Court again on a 5 to 4 basis decided to gut one of the most important provisions of the Voting Rights Act that required states with a history of racial discrimination in voter registration, redistricting or elections to receive preclearance from the Department of Justice before implementing changes that would adversely affect racial or ethnic minority groups (Shelby County, AL vs. Holder). Until Congress amends the Voting Rights Act to address the Court's analysis of the problems with the current formula for determining which states require preclearance, it will be up to federal courts on a case by case basis to determine if a proposed election change has a discriminatory effect.

Title VII of the Civil Rights Act of 1964 has had a tremendous effect on reducing discrimination on the basis of race and gender in the workplace. However, the Supreme Court, again by a narrow margin, continues to interpret the statute in ways that are intended to make it more difficult for victims of employment discrimination to successfully sue for damages. For example, in another case decided at the end of the 2012-2013 term, the Court narrowed the definition of a supervisor from a common sense understanding (any person with authority over an employee's day to day activities such as work

schedule or evaluation process) to only those who have the power to take tangible employment actions such as hiring or firing an employee (Vance vs. Ball State University). The Court also ruled on a 5-4 basis that under Title VII, an employee may not sue an employer for retaliation in bringing a discrimination complaint unless the employee can prove that unlawful retaliation would not have occurred but for the wrongful acts of the employer (University of Texas Southwestern Medical Center vs. Nassar).

What these cases and other legislative fights over voter suppression, immigration reform, women's reproductive rights, and criminal justice demonstrate is that the struggle for equality, fairness and justice is not an issue from the past but instead is an ongoing one that will determine this nation's future. It is also clear that if the progress in racial and social equity that has been made since 1963 is to be maintained or even expanded, then people of goodwill in communities across the country will have to make their voices heard not only on Election Day but yearly through community organizing, petition drives, and yes social action such as marches. Rather than fall into despair over recent legal setbacks such as the inability of local juries to hold police officers and private citizens accountable when they shoot and kill unarmed minority youth, we have to educate the public about the impact of racial profiling on life chances and how it transforms the presumption of innocence as contemplated by our legal system into the presumption of guilt.

Just this week we have witnessed the beginning of the end of the New York City Police Department's "Stop and Frisk" policy that was held unconstitutional and in violation of the 4th (unreasonable searches and seizures) and 14th Amendments (equal treatment under the law) by a federal court on August 12, 2013. In Floyd vs. City of New York, Federal Judge Shira Scheindlin ruled that the NYPD Police Department resorted to a "policy of indirect racial profiling" as it increased the number of stops in minority communities. That has led to officers' routinely stopping "blacks and Hispanics who would not have been stopped if they were white."⁹

Moreover, Attorney General Eric Holder announced on August 12th that the Department of Justice would be adopting less harsh sentencing guidelines regarding certain drug arrests:

As a society, we pay much too high a price whenever our system fails to deliver outcomes that deter and punish crime, keep us safe, and ensure that those who have paid their debts have the chance to become productive citizens. Right now, unwarranted disparities are far too common. As President Obama said last month, it's time to ask tough questions about how we can strengthen our communities, support young people, and address the fact that young black and Latino men are disproportionately likely to become involved in our criminal justice system – as victims as well as perpetrators.

We also must confront the reality that – once they're in that system – people of color often face harsher punishments than their peers. One deeply troubling report, released in February, indicates that – in recent years – black male offenders have received sentences nearly 20 percent longer than those imposed on white males convicted of similar crimes. This isn't just unacceptable – it is shameful. It's unworthy of our great country, and our great legal tradition. And in response, I have today directed a group of U.S. Attorneys to examine sentencing disparities, and to develop recommendations on how we can address them.

In this area and many others – in ways both large and small – we, as a country, must resolve to do better. The President and I agree that it's time to take a pragmatic approach. And that's why I am proud to announce today that the Justice Department will take a series of significant actions to recalibrate America's federal criminal justice system.

We will start by fundamentally rethinking the notion of mandatory minimum sentences for drug-related crimes. Some statutes that mandate inflexible sentences – regardless of the individual conduct at issue in a particular case – reduce the discretion available to prosecutors, judges, and juries. Because they oftentimes generate unfairly long sentences, they breed disrespect for the system. When applied indiscriminately, they do not serve public safety. They – and some of the enforcement priorities we have set – have had a destabilizing effect on particular communities, largely poor and of color. And, applied inappropriately, they are ultimately counterproductive.¹⁰

Racial and ethnic disparities continue to exist with respect to access to healthcare, to home ownership, to college and to jobs paying more than the minimum wage. The achievement gap still exists between black and Latino students and white and Asian, with public schools re-segregating at their highest rate since Brown v. Board of Education (1954). Young people are having difficulties finding jobs paying decent wages and the unemployment rate for minority youth is 3 times that of white youth. We are still recovering from a severe recession, one that has been prolonged due to Congressional inaction and draconian measures like the sequester (mandatory spending cuts in the absence of a federal budget agreement) that took effect this past spring.

Congressman John Lewis, the last surviving speaker from the original March on Washington expressed his concern over the Court's recent rulings on civil rights cases. He described the nation's election of our first black president not as the fulfillment of Dr. King's dream but "only a down payment."¹¹ Given the broad array of problems President Barack Obama has had to face while in office, and the fact that race relations have may have worsened over the past 5 years, only time will tell the impact of his presidency on the nation's psyche and our future.¹²

However it is clear already clear that President Obama's election and re-election would not occurred without significant support from a broad coalition of groups that included racial and ethnic minorities, women, students and young adults, and white voters. As we consider what landmarks may still be made during President Obama's second term, we should not lose sight of the gains made in terms of the number of minority and female representatives at the federal, state and local levels.

In 1963 there were 5 black members of Congress and no Senators; in 1966 Edward W. Brooke of Massachusetts became the first post-Reconstruction African American Senator to be elected after passage of the Voting Rights Act of 1965.¹³ There were 12 women in the House and 2 in the Senate: today there are 82 women serving in the House and a record 20 serving as Senators.¹⁴ These numbers would not have been possible without the societal changes created by the Civil Rights Act of 1964 and vigorous enforcement of the Voting Rights Act of 1965. America may indeed be ready to elect its first female President during the next general election.

While we appear currently to be unable to reach agreement on fair and equitable immigration reform, the Immigration Reform Act of 1965 is one of the reasons the diversity of our nation has continued to increase. Following the Supreme Court's 1967 decision in Loving v. Virginia that held laws that prevented inter-racial marriage illegal, Americans have crossed racial, ethnic and religious lines to form their families. More recently same-sex couples have been testing the definition of marriage to pursue marriage equality while the LGBT community pursues its right to finally serve openly in the US military. And while the Windsor vs. United States case, decided by the Supreme Court this past June recognized that the Defense of Marriage Act was unconstitutional, was neither as sweeping in its rhetoric or its reach as the Loving case, it has started the march for greater equality. Clearly the fact that our youth have grown up in a society in which a comprehensive civil rights act was the law helps to explain why the so-called Millennials are so advanced in their promotion of equality to all segments of society.

Since its inception in 1925, The Hazen Foundation has been committed to advancing education and the development of young Americans. Its mission has evolved over time to include education reform, youth leadership development and community organizing. More recently, the Board of Trustees has explicitly adopted as its mission the need to support community-based efforts to confront racial and social disparities and inequities not only within the realm of education but also when manifest as structural or institutional racism in areas such as criminal justice, housing, and the economy.¹⁵ While some recent decisions by the Supreme Court on affirmative action, voting rights, Title VII enforcement, and criminal justice may be viewed as setbacks by those committed to racial and social justice, those decisions may also serve to remind us that who we vote for in a democracy determines who ultimately wins these battles and that collective action continues to be a viable tactic for confronting inequality and injustice.

I plan to attend the commemorative march that will be held on Saturday, August 24, 2013 and hope to attend the anniversary March for Jobs and Freedom on August 28, 2013. We hope your schedule allows you to express your views in a peaceful manner in Washington, DC or your hometown on where we as a nation currently stand on issues of fairness, equality, tolerance and justice 50 years after the first March on Washington for Jobs and Freedom.

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Chair, Board of Trustees

¹ We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

<http://www.law.cornell.edu/constitution/preamble>

² Stanford University, The King Center Encyclopedia, "March on Washington for Jobs and Freedom," Martin Luther King, Jr. and the Global Freedom Struggle. http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_march_on_washington_for_jobs_and_freedom/

³ Id., John Lewis of the Student Nonviolent Coordinating Committee was asked to tone down his rhetoric concerning the Kennedy Administration's weak civil rights efforts; the executive board of the AFL-CIO refused to

endorse the March but many local unions participated. http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_march_on_washington_for_jobs_and_freedom/ Newspapers like the Lakeland FL Ledger ran headlines anticipating a riots, see, e.g., G. Milton Kelly, "100,000 Negroes May March on Washington; Riots Feared," *Lakeland Ledger*, Page 3, June 21, 1963. <http://news.google.com/newspapers?nid=1346&dat=19630621&id=GagwAAAAIBAJ&sjid=WfoDAAAAIBAJ&pg=2423,3151266>

⁴ Thomas J. Sugrue, "For Jobs and Freedom: An Introduction to the Unfinished March," Report: Race and Ethnicity, Economic Policy Institute, August 5, 2013 <http://www.epi.org/publication/introduction-unfinished-march/>

⁵ Never in history had the Senate been able to muster enough votes to cut off a filibuster on a civil rights bill. And only once in the 37 years since 1927 had it agreed to cloture for any measure. United States Senate History, 1964-Present, Civil Rights Filibuster Ended, June 10, 1964.

http://www.senate.gov/artandhistory/history/minute/Civil_Rights_Filibuster_Ended.htm

After a 54-day filibuster of the legislation, a bipartisan group of Senators introduced a compromise bill. The legislation enjoyed enough Senate support to end the stalemate, and was ultimately passed on June 19, 1964, by a vote of 73 to 27. President Johnson signed the bill after the House passed the Senate version on July 2, 1964. United States Senate, Committee on the Judiciary, Recess Reading: An Occasional Feature From The Judiciary Committee, The Civil Rights Act of 1964. <http://www.judiciary.senate.gov/about/history/CivilRightsAct.cfm>

⁶ Rev. Martin Luther King, Speech at March on Washington, Pages 1-2, August 28, 1963.

<http://www.archives.gov/press/exhibits/dream-speech.pdf>

⁷ David Dante Troutt, Rutgers Law School (Newark) Professor, "The Supreme Court's race impatience," Reuters Great Debate Blog, June 28, 2013. <http://blogs.reuters.com/great-debate/2013/06/28/the-supreme-courts-race-impatience/>

⁸ Case summaries for cited cases may be found in the Supreme Court of the US Blog, www.scotusblog.com

<http://www.scotusblog.com/case-files/cases/fisher-v-university-of-texas-at-austin/>

<http://www.scotusblog.com/case-files/cases/shelby-county-v-holder/>

<http://www.scotusblog.com/case-files/cases/vance-v-ball-state-university/>

<http://www.scotusblog.com/case-files/cases/university-of-texas-southwestern-medical-center-v-nassar/>

⁹ See the case may at <http://www.nytimes.com/interactive/2013/08/12/nyregion/stop-and-frisk-decision.html>

¹⁰ US Attorney General Eric Holder, Speech to the American Bar Association's House of Delegates, August 12, 2013.

<http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>

¹¹ Sheryl Gay Stolberg, "Still Marching on Washington, 50 Years Later," *New York Times*, August 13, 2013.

<http://www.nytimes.com/2013/08/14/us/politics/50-years-later-fighting-the-same-civil-rights-battle.html?pagewanted=all>

¹² According to a poll taken by the Gallup Poll prior to the verdict in the George Zimmerman trial for the shooting of Trayvon Martin, Americans perception of racial and ethnic relations has improved since 2008 when President Obama was elected. Gallop Politics, Jeffrey M. Jones, "Americans Rate Racial and Ethnic Relations in the US Positively: black-Hispanic least positive," July 17, 2013 <http://www.gallup.com/poll/163535/americans-rate-racial-ethnic-relations-positively.aspx> Compare with NBC/Wall Street Journal Poll after the verdict: Fifty-two percent of adults questioned said race relations in the U.S. are "very good" or "fairly good," down from more than 70 percent who said that in NBC/WSJ polls between 2009 and 2011. Mark Murray, "America's race relations take a hit after

Zimmerman verdict,” NBCNEWS.com, July 23, 2013. http://firstread.nbcnews.com/_news/2013/07/23/19644475-americas-race-relations-take-hit-after-zimmerman-verdict-nbc-news-sj-poll-finds?lite

¹³ The five were William Dawson (IL), Charles Diggs (MI), Augustus Hawkins (CA), Robert Nix, Sr. (PA) and Adam Clayton Powell (NY). CRS Report for Congress, Mildred L. Amer, “African American Members of Congress: 1870-2008,” June 23, 2008. <http://www.senate.gov/reference/resources/pdf/RL30378.pdf>

¹⁴ CRS Report for Congress, Jennifer Manning and Colleen Shogan, “Women in the United States Congress: 1917-2012,” November 26, 2012. <http://www.fas.org/sgp/crs/misc/RL30261.pdf>

¹⁵ http://www.hazenfoundation.org/media/docs/4962_Hazen2010to2014Plan.pdf