Testimony before U.S. House of Representatives Committee on Financial Services

Subcommittee on Oversight and Investigations Hearing entitled, "An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement, Part Two"

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I. Introduction

Good morning, Chairman Green, Ranking Member Emmer, and other distinguished members of the subcommittee. Thank you for the invitation to testify today. I am honored to be in the company of illustrious historians and scholars who are providing important detail about the origins of our contemporary financial institutions and systems. In my testimony, I hope to connect history to contemporary economic, financial, and employment inequities. Slavery and the economic systems that developed in its immediate wake did not just shape our modern economy in the past tense: they continue to shape how people experience the labor market, the financial system, and their own economic precarity today. I will provide two examples to illustrate these connections.

I. The subminimum wage

The devaluation of labor has ramifications for the American labor market that persist even to today. The custom of gratuities or tipping has its origins in Europe, but it fell out of favor in Europe by the early 20th century.[i] In the US in the 1870s however, tipping became an entrenched wage system of shifting cost burdens from employers to customers with particular prominence in industries that employed formerly enslaved people, including restaurant, hospitality, and transportation work.[ii] Tipping was codified by the 1938 Fair Labor Standards Act, which exempted those who received tips from the federal minimum wage law. Only in

1966 did an amendment to FLSA require employers to pay any base wage at all to their employees who received tips.[iii] The tipped minimum wage used to be tied to a percentage of the regular minimum wage—always at least half at the federal level—but the mandated link between the two wage levers was severed in 1996. So, while the regular minimum wage has not been raised since 2009, when it was set to $7.25, the minimum wage for tipped workers has been stuck at $2.13 since 1991, losing more than half its value to inflation over the past 30 years.[iv]

While it is true that technically, federal law dictates that if a tipped employee makes less than the regular minimum wage across a two-week pay period, the employer must make up the difference,[v] this system is rife with abuse. A 2012 U.S. Department of Labor investigation of 9,000 restaurants found 1,170 tip credit infractions worth nearly $5.5 million and found that 5 out of 6 restaurants had some kind of wage violation.[vi] One study found that more than 17 percent of low-wage workers reported being paid less than the legal minimum wage, with more than $15 billion in annual stolen wages.[vii]

Women represent two-thirds of the tipped workforce. People of color represent a greater share of workers in key industries than in the labor force at large. Just under half, or 48 percent, of workers in key tipped industries are people of color, while the total labor force is only 37 percent workers of color.[viii] In addition to the quantifiable, monetary amount stolen from these workers by the structure of the law, further inequality and injustice results from shifting the cost burden of hiring from employer to customer: employees are subject to the approval of the customer, not their employer – a relationship in which just and fair treatment is less enforceable by governmental enforcement of anti-discrimination and anti-harassment law. The overrepresentation of women and people of color in these industries has persisted since the end of slavery, and it means that these groups are particularly subject to harassment and demands on their behavior in exchange for their financial security.

According to the Equal Employment Opportunity Commission, one in seven sexual harassment charges between 2005 and 2014 were brought by food service and accommodation workers.[ix] A study from Restaurant Opportunities Center United found that female tipped workers in states where the subminimum wage is $2.13 experiences sexual harassment twice as often as workers in states where tipped workers receive tips on top of the regular minimum wage.[x]

In the past three years of the COVID-19 pandemic, workers have been burdened with a new dimension of harassment and diminished wages. Reports have been frequent of restaurant customers asking tipped workers to remove masks in order to decide how much to tip them.[xi] Diminished in-person customer interaction has also led to decreased tipping: 88 percent of Black tipped workers reported receiving less in tips during the pandemic than before (compared to 78 percent of tipped workers overall). Seventy-six percent of Black tipped workers said they were financially penalized by customers for trying to enforce social distancing and mask mandates, compared to 62 percent of all tipped workers.[xii] Meanwhile, the safety net system that caught millions who lost their jobs in spring 2020 had a conspicuous hole through which tipped workers fell: two-thirds of restaurant workers reported that they did not qualify or were unsure if they qualified for unemployment insurance because their wages were *too low* to qualify them. At one point, more than 40 percent of tipped workers were rejected by their state's unemployment agency for having earned too little in the quarter before applying.[xiii]

II. The Freedman's Savings and Trust Company

The Freedman's Savings and Trust Company was signed into law by President Abraham Lincoln in 1865, with the intent to provide a savings institution for newly freed enslaved people and their descendants. In less than a decade, the company had opened 37 branches in 17 states and Washington, D.C. It gained more than an estimated 70,000 depositors and more than $57 million in deposits.[xiv]

After several years of deposits from individuals, families, and benevolent societies and organizations, however, well-intentioned mismanagement by those with no financial expertise—as well as outright fraud and risky loans to institutions and businesses run by white people—led to the bank's collapse. The funds remaining in the bank were lost, as were the deposits that had been withdrawn by customers during several years of public uncertainty about the bank's fate.[xv] Although the bank's failure predated federal deposit insurance, contemporary advertisements and records indicate that bank representatives led potential depositors to believe that their account would be backed by the federal government and thus immune from risk. Depositors lost significant assets, and many Black families and communities lost faith in financial institutions, with good reason. While most people had already withdrawn their deposits and lost access to interest and dividends, the more than 61,000 depositors who still had their money in the bank at the time of its closure lost what today would be the equivalent of nearly $81 million.[xvi]

As civil rights activist W.E.B Dubois stated, "Then in one sad day came the crash—all the hard-earned dollars of the freedmen disappeared; but that was the least of the loss—all the faith in saving went too, and much of the faith in men."[xvii]

It is unlikely that the Freedman's Savings and Trust disaster is the primary driver of anyone's personal judgment of the trustworthiness of modern-day financial institutions. But the disaster and its lack of significant consequences for those who contributed to it, whether purposefully or through negligence, are demonstrative of a systemic exclusion of Black Americans from the financial system, and of a cultural willingness to accept the purposeful destruction of assets and wealth accumulated by the Black community.

Discrimination, exclusion, and financial insecurity have all led to diminished participation by Black Americans in the formal financial system. My coauthors and I find that just before the pandemic, nearly one-quarter of American households were either unbanked or underbanked, according to the Federal Deposit Insurance Corporation's National Survey of Unbanked and

Underbanked Households. Black Americans represented 36.6 percent of the unbanked population, meaning they have no savings or checking account. They represented 22.8 percent of the underbanked population, meaning that while they have a bank account, they primarily rely on fringe banking options such as check cashers. Overall, the Black population only represented 9.3 percent of the fully banked population, while white Americans represented 75.2 percent of the fully banked population.[xviii] The driving factor in households being either unbanked or underbanked is a lack of access to mainstream banking institutions in their communities.[xix]

Not only are Black workers earning less than their white counterparts, they also have less wealth, and it costs them more to access and save the money they have earned because they are more likely to lack a bank account. When the COVID-19 pandemic hit, people who were unbanked had to wait months for paper checks to arrive in CARES Act-funded Economic Impact Payments, unlike those who got much faster relief through direct deposit.[xx] Easy access to liquid savings is particularly necessary as electronic transactions become more prevalent, including for transit agencies and other necessities that used to take cash.

III. Conclusion

Lack of financial services access and lower wages compound to make wealth-building harder for Black Americans. By removing barriers to mainstream financial services, constraining the ability of predatory actors to strip wealth out of Black communities, eliminating wage disparities, and targeting programs to redress past wrongs, federal policymakers can make effective changes that could help close the racial wealth gap. Private financial institutions can take steps to rectify these wrongs as well. In December 2021, for example, the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity encouraged lenders to evaluate the past and current barriers to credit they had imposed on people of color and other underserved populations, and to use Special Purpose Credit Programs to help resolve those injustices.[xxi] As my historian colleagues have detailed during April's hearing and today's hearing, financial institutions are fully capable of learning their own history and understanding their own roles in past injustice. Next, they must work to ensure that they counter contemporary wrongs and avoid the easier instinct to think of historical context as separate from current circumstances – and be held accountable in doing so by the federal government, by shareholders, and by customers.

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