

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

No Easy Answers in Reparations Controversy

by Phyllis Raybin Emert

The descendants of slaves have filed lawsuits in New York and New Jersey seeking financial compensation or reparations for slavery and sparking a national debate.

The first lawsuit was filed on March 26, 2002 in federal district court in Brooklyn, New York against three corporations, Fleet Boston Financial, CSX (a railroad firm), and the Aetna Insurance Company. The main plaintiff in this class action suit is Deadria Farmer-Paellmann, whose grandfather was a slave. She is asking for financial payments on behalf of 35 million African-Americans and claims that these three companies (and others to be named later) benefited from the forced, unpaid labor of slaves between 1790 and 1860.

The lawsuit claims that Fleet Boston, a successor to Providence Bank, which was founded by slave trader John Brown of Rhode Island, loaned Brown money to finance his slave trade. The suit alleges that CSX is a successor to many railroads that were partially built or run by slave labor. Aetna Insurance has already admitted that its predecessors issued insurance policies covering death or damage to slaves.

On May 1, 2002, a Somerset County man named Richard E. Barber, the grandson and grandnephew of slaves, filed a similar lawsuit in U.S. District Court in Newark. This class action suit

charges that New York Life Insurance Company, Brown Brothers Harriman & Co., a financial institution, and Norfolk Southern Corporation, a transportation company, profited from the work of slaves.

These lawsuits are not the first to deal with the issue of unpaid slave labor. In 1915, a black man named Cornelius Jones filed a lawsuit against the federal government seeking 68 million dollars for former slaves. He stated that the government benefited from the federal tax placed on the sale of cotton which unpaid slave labor had produced. The case was dismissed.

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Diversity and Fairness in Higher Education

by Dale Frost Stillman

Chances are that some of you will be filling out college applications soon if you haven't done so already. How much of a role do you think race should play in determining who is admitted and who is rejected from institutions of higher education?

As a result of affirmative action, colleges and universities in America have used race as a factor in admissions decisions for the past 30 years in order to increase the number of African-American, Hispanic, Native American and other minority students receiving a college education. Because of the race consideration, Barbara Grutter, a 43-year-old mother of two, claimed that she was rejected from the University of Michigan Law School in 1997 because she is white.

Grutter brought a lawsuit against the school claiming that she had been discriminated against because of her race. White applicants with her credentials had an admission rate of 8.6 percent at the law school while minority applicants with the same credentials had an admission rate of 100 percent. Grutter claimed that her



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equal protection rights under the Fourteenth Amendment to the U.S. Constitution and Title VI of the 1964 Civil Rights Act, which prohibits racial discrimination by any institution receiving federal funds, had been violated.

What is affirmative action?

President Lyndon Johnson signed the Civil Rights Act of 1964 that, among other things, allowed the government to institute lawsuits in order to prevent discrimination in public facilities, public education and federally assisted programs.

In 1965, President Johnson signed an Executive Order initiating affirmative action. Attorney Lisa James-Beavers wrote in an article regarding affirmative action, that the purpose of the Executive Order was "to require contractors doing business with the federal government to make conscious and deliberate efforts to bring qualified minorities into jobs from which they had been traditionally excluded."

Employment and contracting make up two of the three categories to which affirmative action applies. Education is the remaining category.

In the mid to late 1970s, affirmative action in education was challenged with the case of *Regents of the University of California v. Bakke*. In that case, the University of California-Davis School of Medicine used a 16 percent minority quota. The California State Legislature had passed several resolutions in 1974 calling for racial quotas in order to speed up the integration process. The medical school had rejected Allan Bakke twice despite his having a higher grade-point average than many of the minority students who were admitted.

The decision in *Bakke*, written by former U.S. Supreme Court Justice Lewis Powell, held that the school had discriminated against Allan Bakke and further determined that schools could no longer use racial quotas. The Court also stated that race could be only one of the factors used in choosing a diverse student body in university admission decisions. However, Justice Powell did state in his opinion that racial diversity in a student body contributes to the "robust exchange of ideas" on campus. As a result of the Court's decision, Bakke was admitted to the medical school.

Barbara Grutter's case is similar to Bakke's in that she believes her rejection from the University of Michigan was unfair and resulted from discrimination because she is white. In an interview with *60 Minutes'* Ed Bradley, Lee Bolinger, president of the University of Michigan, defended the school's stance.

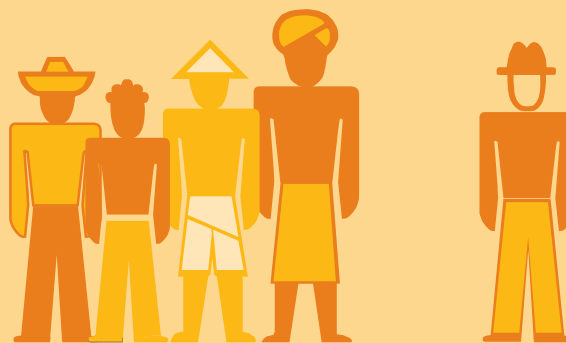
"I think we have a policy that is consistent with the country's values. This is something the United States can and should be proud of. Dealing with race is hard. Every 50 years, perhaps, in our history, we've struggled with this, tried to deal with it and improve, and then perhaps grown tired and backed away. This is not the moment in which to back away," Bolinger said.

Supporters of Grutter ask whether race and ethnicity should be the only factors considered in promoting campus diversity. Though not racially diverse, Grutter's background, supporters believe, would bring a different kind of diversity to the campus. They feel that her admission would promote diversity because unlike many of the other applicants, she is older, runs her own business and is raising a family.

Diversity on college campuses

William Bowen, former president of Princeton University, and Derek Bok, former president of Harvard University, wrote *The Shape of the River*, a book that assesses the importance of race-sensitive policies in

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Several of the corporations named in the modern-day lawsuits have stated that a lawsuit dealing with events that occurred over 150 years ago has no relevance to the present-day companies.

The debate rages on

African-Americans should be compensated for the “massive wrongs and social injuries inflicted upon them by their government, during and after slavery,” declared author Randall Robinson in his book, *The Debt: What America Owes to Blacks*.

Robinson, one of the leading **proponents** of reparations for slavery, believes that the socioeconomic gap between blacks and whites in America today originated in slavery. According to Robinson, because of slavery blacks as a group have had to endure discrimination and racism, which continued long after slavery was abolished.

Centuries of slavery and another hundred years of discrimination have resulted in what Professor Manning Marable in *Newsweek* called a “structural racism” in American society, an ingrained inequality and “accumulated disadvantage” because of race. According to Professor Manning, who is director of African-American Studies at Columbia University, blacks have shorter life spans and a higher poverty rate than whites. They have less health coverage, a higher crime rate, fewer two-parent families, and a higher percentage of unmarried parents than their white counterparts. In 1998, a black family's net wealth was less than one-fifth that of white families, he says.

In a *Newsweek* opinion piece, titled, *An Idea Whose Time Has Come*, Professor Marable declared, “White Americans today aren't guilty of carrying out slavery and segregation. But whites have a moral and political responsibility to acknowledge the continuing burden of history's structural racism.”

Robinson, Marable and others suggest establishing a reparations trust fund that would be dedicated to closing the socioeconomic gap in America between blacks and whites and to improving educational and economic conditions for African-Americans. Money received from the U.S. government and American and foreign corporations that benefited from slave labor, would be given to communities with the greatest need. Other reparations groups advocate compensation in the form of land, companies, stock, free college tuition, or direct cash payments to individual slave descendants.

Proponents of reparations have not yet determined the amount, and there is disagreement as to how the total should be calculated. They believe the millions of slaves providing free labor

for 246 years of slavery (from 1619 when slaves were first brought to the American colonies to 1865 when slavery was abolished) must be taken into account, as well as prevailing wages and adjustments for **inflation**. The total debt could reach trillions of dollars.

The other side of the coin

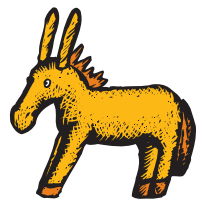
Reparations for slavery are opposed by the majority of Americans and some of the most outspoken are black conservatives such as Professor Walter Williams. Opponents of reparations all agree that slavery was a terrible violation of human rights and dignity, but Professor Williams in the online *Capitalism Magazine* questioned, “What moral principle justifies forcing a white of today to pay a black of today for what a white of yesteryear did to a black of yesteryear?”

In the past, reparations have been paid directly to victims, as was the case with Japanese-Americans who were relocated to internment camps during World War II. The United States government paid \$20,000 in reparations to each of the 60,000 survivors in 1988. The state of Israel (on behalf of Jewish Holocaust victims who had settled in Israel) and the Claims Conference (on behalf of Jewish victims who had relocated to places other than Israel) received reparations from the German government after the Second World War.

Forty Acres and a Mule

The first notion of reparations for slavery came in the form of land. During the final months of the Civil War, Union General William Tecumseh Sherman marched victoriously through Georgia to the sea, nearly unopposed by Confederate forces. Thousands of freed slaves (called freedmen) accompanied Sherman's forces.

General Sherman, with the approval of the War Department, issued Special Field Order No. 15 on January 16, 1865. The order stated that “the islands of Charleston south, the abandoned rice fields along the rivers for thirty miles back from the sea, and the country bordering St. Johns River, Florida are reserved and set apart for the settlement of Negroes now made free by the acts of war and the proclamation of the President of the United States.” Furthermore, Sherman's order specified freedmen would be offered assistance “to enable them to establish a peaceable agricultural settlement.”



Recipients of reparations should be “the direct victims of the injustice or their immediate families,” author David Horowitz stated in his book, *Uncivil Wars: The Controversy Over Reparations for Slavery*.

In response, Robinson referred to the 1994 decision by the state of Florida to pay \$2.1 million in reparations to the descendants of victims of a racist massacre in the town of Rosewood. Six people were killed in 1923 when rampaging white men destroyed the entire black community.

Both Williams and Horowitz note that whites weren't the only ones who benefited from slavery. In his book, Horowitz claims that on average “American blacks enjoy per capita incomes in the range of 20 to 50 times those of blacks living in any of the African nations from which they were kidnapped.”

Williams contends, “Had there not been slavery, and today's blacks were born in Africa instead of the United States, we'd be living in the same poverty that today's Africans live in and under the same brutal regimes.”

Opponents of reparations argue that the majority of Americans were not slave owners and even in the South, only one in five owned slaves. Also, hundreds of thousands of white Union soldiers died to free the slaves in the Civil War. Therefore, reparations have already been paid and there is no debt. In addition, many Americans today have no connection to slavery at all since they immigrated here after 1865.

Reparations opponents say that the gap among blacks and whites today is not caused by the legacy of slavery, but by other socioeconomic factors. Shelby Steele, author of *A Dream Deferred*, whose grandfather was a slave, believes that reparations are just another form of victimization.

“The demand for reparations is yet another demand for white responsibility when today's problem is a failure of black responsibility,” Steele asserted in a *Newsweek* opinion piece, titled, *A Childish Illusion of Justice*.

Proponents of reparations are quick to disagree. “...The black Holocaust is far and away the most **heinous** human rights crime visited upon any group of people in the world over the last five hundred years,” stated Randall Robinson. Slavery has eliminated the culture, custom, ritual, and language of an entire people...It produces its victims **ad infinitum**, long after the active stage of the crime has ended.”

Robinson declared, “...When the black living suffer real and current consequences as a result of wrongs committed by a younger America, then contemporary America must be caused to shoulder responsibility for those wrongs until such wrongs have been adequately compensated and righted.”

There may be no easy answers in this current controversy over reparations for slavery, but one thing is clear, the debate will likely continue to invoke strong feelings and opinions on both sides. ■

The land was divided into 40-acre tracts and Sherman distributed land titles to the head of each family of freedmen. He also ordered animals that were no longer useful to the military (mules and horses) to be distributed to each of the households. This is the origin of the phrase forty acres and a mule, which was promised to each freedman's family. By the summer of 1865, 40,000 freedmen had received 400,000 acres of abandoned Confederate land.

The Freedman's Bureau was established by Congress in March 1865 and one of its many functions was to supervise and manage all abandoned and confiscated land in the south and continue to assign tracts of land to former slaves. But the former owners of the land, who were pardoned after the war, began to pressure President Andrew Johnson.



They wanted their land returned to them and were afraid that black landowners and farmers would start to accumulate wealth and power in the South.

On February 5, 1866, Congress defeated that portion of the Freedmen's Bureau Act that gave it the authority to assign land to former slaves. Then President Johnson ordered all land titles **rescinded**. The freedmen were forced off the land, and it was returned to the former white plantation owners.

Over the next few years, many plans were presented to Congress and the President in an effort to secure land for freedmen. One proposal suggested transporting former slaves out west where there was plenty of free land. The Homestead Act of 1862 gave 160 acres of land to each person or family, provided they stayed and worked the land for at least five years.

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Diversity and Fairness

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college admissions. Their research found that students admitted under race-sensitive policies were not unqualified, as many affirmative action dissenters had thought. However, under race-blind admissions policies, many of these qualified black students would have been denied admission, they contend.

In an essay about affirmative action, the current president of Princeton University, Harold T. Shapiro, stated, "The achievement of social justice in an increasingly diverse **polity** such as ours clearly depends on our capacity to extend empathy and mutual respect, as well as toleration, across lines of color, gender, religion, and ethnic background. And, since our society cannot be strong or just if many are without hope or a perceived stake in our future, I believe that it is imperative that we aim to create a pervasive sense of inclusion and a rising sense of hope and possibility for all citizens."

William Perez, Dean of Admissions and Financial Aid at Seton Hall University School of Law, says that his school is "definitely interested in having women and minorities apply and encourages all students to be forthcoming (with respect to their gender and ethnicity) in their applications and essays."

Seton Hall is not alone among New Jersey colleges in looking for diversity in their applicants. As part of freshman orientation, Princeton University offers "Reflections on Diversity," a program designed to show the diversity of the University "by relating the stories, experiences and backgrounds of several students and one faculty member." Minority affairs advisors lead group discussions after the presentations.

Rutgers Law School-Newark offers the services of its Minority Student Program to students of color as well as disadvantaged white students according to the program's dean, Kenneth Padilla. While historically there were admissions incentives for these students, two years ago in response to a challenge brought by the Office of Civil Rights, the program was changed. No formal lawsuit was filed, Padilla says, because the parties reached a compromise, which was that the same admission standards would apply to all students. The Minority Student Program shifted to a post-admissions program, offering orientation services, study groups and placement services to its members, he said.

According to Padilla, Rutgers Law School-Newark has a 35 percent minority enrollment. Although the Minority Student Program may not directly affect admissions, Padilla says that it does play a part in attracting students to Rutgers.

"The Minority Student Program is a good recruiting tool," said Padilla. "It makes Rutgers the kind of school that students are interested in because we are committed to diversity."

What is the consequence of eliminating race-sensitive admissions policies? Jeffrey Lehman, Dean of the Law School at the University of Michigan, told *Newsweek*, "The best predictor is to look at UCLA (University of California-Los Angeles) or Berkeley (University of California-Berkeley)."

Lehman was referring to the fact that these California schools eliminated affirmative action in 1996 and as a result minority enrollment plummeted. "Under a colorblind system, the numbers fall dramatically," Lehman informed *Newsweek*.

Back to the case

In March 2001, a federal court ruled in Grutter's favor, deeming that the use of race as a factor in making admissions decisions is unconstitutional. Grutter's victory was short-lived, however, as the University of Michigan **appealed** the decision and on May 14, 2002, the Sixth U.S. Court of Appeals reversed the lower court's decision in her case. The court said the University of Michigan Law School's policy of considering race in deciding which students to accept is legal. The court stated, "We find that the Law School has a compelling state interest in achieving a diverse student body."

Barbara Grutter and her attorneys requested that the U.S. Supreme Court review the case and render a final decision. The Supreme Court has refused to hear such cases in the past, including the 1996 case of *Hopwood v. Texas*, where the University of Texas' admissions policy came under fire. In that case, the Fifth Circuit Court of Appeals nullified an admissions policy at the University of Texas Law School that looked for certain percentages of black and Latino students. The judges in that case denounced the use of racial classifications and did not believe that creating a diverse student body was important in admissions decisions.

Although the Court refused to hear the *Hopwood* case, a recent announcement of cases on the U.S. Supreme Court's docket includes Grutter's case. Arguments from both sides could be heard as early as January 2003, and the outcome could have broad implications for the fate of affirmative action. ■

Bring a Little Drama to Your Class to Promote Tolerance

Teachers looking for an innovative way to promote tolerance might consider having the George Street Playhouse's Touring Theatre perform one of its tolerance-based stage productions at their school.

The plays address such issues as school violence, tolerance, prejudice and peer pressure. The performances are followed by a discussion with the audience facilitated by the actors. Every student receives a student guide or "playbill." Printing of the "playbills" is sponsored by the New Jersey State Bar Foundation.

The plays are as diverse as their subject matter and cater to different age groups. A description of each play follows.

The Last Bridge (grades 5–12) recounts the true story of Barbara Ledermann, a young woman in war-time Amsterdam, who is faced with the horrible decision of whether to go with her family and face certain death in a Nazi concentration camp or live underground.

New Kid (grades 1–6) is the story of an immigrant family from a fictitious place called "Homeland." Through comedy, this play addresses the themes of racism, prejudice, peer pressure, and conveys the need for tolerance.

Peacemaker (grades K–4) is the story of the Blue People and the Red People who have lived on either side of a "Wall" for many years. A parable of our diverse society, the play promotes the themes of tolerance and acceptance and advocates an end to prejudice on the basis of appearance and origin.

In Between (grades 6–9) explores issues of self-esteem, social pressure and the correlation between peer disrespect and school violence. The use of popular music and youthful dialogue holds the students' attention, allowing the idea that they have options and the courage needed to effect change in their own lives to be absorbed.

For a brochure and/or booking information call the George Street Playhouse at 732-846-2895 ext. 115. ■

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President Johnson vetoed every proposal that provided land to former slaves. Under the Southern Homestead Act, freedmen could purchase land at low prices, but few had any money after years of unpaid labor on the plantations.

Civil rights legislation was passed by Congress in 1866, 1871, and 1875, but none mentioned reparations for slavery, and few of the acts were enforced, especially in the South. At the turn of the century, several black organizations tried to gain support in Congress for pensions for former slaves and their families, but they were unsuccessful.

The Civil Rights Acts of 1957, 1960, 1964, 1965, and 1968 made considerable progress in the areas of school desegregation, voting rights, and prohibiting racial discrimination in employment, housing, and all public facilities. However, no mention of reparations for slavery was made in

any of this legislation. In 1969, organizations such as the Black Panther Party, the Black Muslims, and the Student Non-Violent Coordinating Committee demanded financial reparations for slavery.

Beginning in 1989 and every year since, Representative John Conyers of Missouri has introduced a bill in Congress to establish a commission to study the reparations issue and make recommendations. According to Conyers, the bill would "...acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and establish a commission to examine the institution of slavery." The bill has never made it to the House floor. ■

Sources: www.yale.edu

www.seattletimes.nwsourc.com.

Glossary

ad infinitum—endlessly, without limit. **appeal**—legal proceeding where a case is brought from a lower court to a higher court to be heard. **class action**—a legal proceeding initiated by one or more individuals representing the interests of a large number of people or group. **heinous**—evil, horrible. **inflation**—rise in prices which results in the decreased value of money. **plaintiff**—a person who brings a legal action or lawsuit in a court. **polity**—the people or commonwealth. **proponent**—supporter of a particular cause or idea. **quota**—a required, proportional share. **rescind**—take back or cancel, repeal.