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# CIVIL RIGHTS

## A DIALOGUE ON REPARATIONS

BY ROGER CLEGG\*

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*Between an Opponent and a Supporter:*

A: Should African Americans be paid reparations for slavery?

B: The short answer is no, but first let's unpack that question. Do you mean only for slavery, because most reparations advocates also think that reparations are appropriate for post-slavery discrimination.

A. Oh, yes. That should be included, too.

B. But in that case, why limit it to blacks? Other groups have been discriminated against as well.

A. But not as much, wouldn't you agree?

B. I suppose, although you could make a case that the treatment of American Indians has been pretty bad. And Japanese Americans were the only ones actually interned.

A. That's true; those are the two others that are especially bad. But the existence of treaties and reservations makes it possible to consider American Indians separately, and of course the Japanese Americans who were interned already have received reparations.

B. Fair enough. You would concede that other groups have been discriminated against, too, obviously, but your point is that they didn't suffer under an actual Jim Crow system?

A. Correct.

B. But Latino advocates would argue that there has been school and housing segregation, ethnic gerrymandering, and employment discrimination against them. So might Asian advocates. I actually agree with you that it is easy enough to draw a line between blacks and everyone else. But I want to make the point that if you open the door to reparations for blacks for non-slavery discrimination, then others will try to come through that door.

A. Well, what if we limit it to reparations just for slavery, then?

B. This will complicate matters considerably. For instance, it then becomes important that only those with slave ancestors be compensated. Blacks who immigrated after the 13<sup>th</sup> Amendment (December 6, 1865) cannot really claim to have been victims of slavery, nor can their descendants, nor can the descendants of black freemen.

A. But aren't the vast majority of African Americans descendants of slaves?

B. Good question. I don't know. You would agree that the higher the percentage who aren't, the more problematic reparations for all African Americans is, right?

A. Yes, but you would agree that if the percentage is high enough, the assumption that all blacks qualify is a reasonable one?

B. Reasonable, yes, although perhaps not so compelling and narrowly tailored—as the lawyers put it—to pass strict scrutiny. Let me also ask you this. How will we prove who is an African American? That is, if someone claims his or her share of reparations, how will you determine if they are in fact an African American.

A. Won't just looking at the person be good enough in most cases?

B. It depends on how honest you think people are. If you start handing out \$50,000 checks for anyone who claims to be an African American, and you take everyone at his word, I predict you will have some problems with false claims. To put it mildly.

A. Let's have a two-part test. If you can tell the person is black just by looking at them, that's good enough. If not, then the person has to provide some additional proof.

B. And the ones who aren't judged to be black, even though they assert they are, will then have to prove it in some way. DNA tests? Genealogical records? Sworn affidavits?

A. Something like that.

B. As I pointed out earlier, that will be more difficult if you have to show that you are a slave's descendant. And, do you get your check even if you have only one African American ancestor?

A. I don't see any alternative. A person and his or her ancestors probably will have suffered a fair amount of discrimination even with one ancestor.

B. All right. I agree that it would be very broad if you had to trace back not just to one ancestor but to several. By the way, how are you going to define African American?

A. Someone whose ancestors came from Africa.

B. But it can't be just anywhere in Africa, right? White South Africans won't do, nor would North African Arabs, right? Back to my line example, suppose someone admits that he doesn't "look black," but says that's just because his African ancestors were Afrikaner or Egyptian or Moroccan. And what if he can prove it?

A. Well, I can see that it would be a problem if we had to prove immigration from a specific country. Maybe the DNA or genealogical records could help.

B. Maybe. But there's a certain irony here, since generally those supporting reparations also believe that race is a social construct without any true basis in biological science.

A. Look, I see your point, but many reparations advocates make clear that they aren't proposing that individual checks be cut. Instead, they want social programs put in place as the reparations. So you aren't going to have this problem of whites claiming to be blacks.

B. Granted, there will be less fraud if what you're offering in a place in a special school or job training facility rather than a \$50,000 check.

A. A lot less.

B. All right. Of course, it's a fair question why a poor or working class white—whose ancestors probably suffered some, too, one way or another—shouldn't be eligible for the programs anyhow. But that brings us to the basic question: Should society pay reparations to all blacks, and only to blacks?

A. The discrimination suffered by African Americans was especially cruel, and so special compensation is required.

B. But, that doesn't make sense. The special cruelty isn't present now, and wasn't suffered by most blacks living now. The median age of African Americans is about 30, which means a birth-date after the end of the Jim Crow era. So it can't be the special cruelty. It must be that the economic impact was especially severe and long-lasting.

A. Economic impact is certainly part of the long-term effects.

B. But if it's the economic impact that matters, why does it matter what its origins were? You have one orphan whose parents were lynched, and another child whose parents were drowned when their boat sank in the South China Sea. Both are penniless, homeless, and alone. Why do we make some programs available to one but not to the other?

A. America didn't sink the boat. But it did the lynching. Remember it is *reparations* we are talking about. Repara-

tions are paid by the wrongdoer to the victim. America is responsible for slavery and Jim Crow discrimination in a way it is not responsible for other calamities that some people have suffered. We *owe* something to blacks, in a way we don't to anyone else.

B. What do you mean "we"? The American people now—its taxpayers, voters, officials, and so forth—are in no way responsible for slavery or Jim Crow discrimination. Even if you say that it was the fault of American federal and state governments and corporations and other non-human entities that were around then and are around now, the reparations are going to have to come out of the pockets of those who *don't* owe African Americans for exploitation, because they weren't around when the exploitation happened.

A. But they still enjoy the profits from that exploitation.

B. Let's talk about that. If you mean that America as a whole was built on the backs of slave labor—an exaggeration, but I'll concede that certainly slave labor was one kind of labor that helped build America—it is true that we still enjoy the results of slave labor, but then that is no less true for blacks than for whites. That is, slaves may have cleared the farmland that now feeds us, but it feeds us black and white alike.

A. But whites profited more from it than blacks did.

B. Certainly slaveowners profited from it more than slaves did. But you're assuming that the class of 19<sup>th</sup> century slaveowners and slaves is the same as the class of 21<sup>st</sup> century whites (really, nonblacks) and blacks. The groups are completely different. It's also very hard for the government tries to ascertain how much wealth a person would have if nothing unfair happened to any of one's ancestors. The problem with the game, of course, is that it is impossible to untangle the past. There's no doubt that slavery and discrimination have, in the aggregate, diminished the wealth of African Americans. But so have disproportionately high rates of illegitimacy, and substance abuse, and crime, and a failure to take advantage of the educational, employment, and business opportunities that were available. To be sure, these bad life-decisions were often a result of discrimination, but quantifying the causation is impossible.

Let me also point out that most of the wealth that the nonblacks have was acquired after slavery. Lots of nonblacks—not just Asians and Latinos, but the Irish and Italians, for instance—didn't arrive here until after slavery. And lots of people who did have some wealth in the early 20<sup>th</sup> century saw it wiped out in the Great Depression. So telling the descendants of these people that they have to pay out a chunk of their wealth in reparations for slavery doesn't make a lot of sense.

A. Enough! This is all logic chopping. The fact of the matter is that slavery and Jim Crow discrimination were uniquely grievous wrongs, that they did result in present blacks hav-

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ing less money than they would have if they had been treated decently, and that it is only fair that they be compensated for these wrongs. Reparations will give many minorities a sense of repose, and we will close a terrible chapter in our history.

B. I think the points I've raised are more fundamental and more valid than mere logic chopping. But even if you think that, after weighing my arguments against yours, there remain some potential benefits to reparations, you also have to weigh the costs.

A. Such as?

B. Reparations could be poisonous to race relations. They could increase white resentment, and they will increase blacks' victim mentality. Those are the last things we need. As discussed, there are also serious practical problems in deciding who is eligible for the program; other groups will soon demand reparations, too; and I will guarantee you that, once the program is begun, it will never end, and the demands for more and more reparations will only increase over time, and never diminish.

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