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And Still We Rise

Eva Jefferson Paterson*

I.

INTRODUCTION

Thank you for inviting me here to my alma mater to address the topic of reparations. For the past twenty-seven years, my legal practice has involved fighting for the rights of all with an emphasis on promoting racial equality. My work and understanding of U.S. history lead me to conclude that reparations is of universal importance—important to the descendants of the kidnapped Africans, to those whose ancestors were never enslaved, and to those who were here when the first foreigners arrived. The Reparations Movement forces us to remember what transpired when Africans were captured, brought to this country, and made to work without compensation. The Movement compels the country to examine the present-day consequences of chattel slavery. It will hopefully force us to talk about that most uncomfortable topic, race.

We, as black Americans, have a tradition of honoring those who came before us, those who opened doors and held those doors open. The Africans who paid the highest price for this country's great wealth and endured unthinkable racism were my ancestors; discussing reparations for what they suffered honors them, helps quiet their restless souls, and makes them know we love them and have not forgotten them or their sacrifices. It is often said that the Africans who suffered and survived the Middle Passage and slavery were the most resilient. Many others, uncertain of the slave ships' final destination, desperately hurled themselves into the Atlantic Ocean. The Reparations Movement is for them as well.

II.

TAKING STOCK: THE CURRENT STATE OF THE CIVIL RIGHTS MOVEMENT

When I started analyzing the state of the Civil Rights Movement in preparation for this talk, I was at first pessimistic. It seemed the Movement

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was essentially on the defensive, needing to justify its race consciousness. Two scenarios fueled my negative outlook: post-September 11th sentiments suppressing the discussion of race relations, and California's Proposition 54, the so called "Racial Privacy" Initiative.¹

Among its myriad implications, the fallout of September 11th was a setback for the Civil Rights Movement. After the attacks, there was pervasive discussion reflecting the sentiment that, "Black people need to put their issues on the back burner for a while. We are all Americans now. We have to get it together and be Americans."

In honor of the firefighters who valiantly served our country after the attacks, the New York Fire Department (NYFD) made plans to erect a commemorative statue.² The statue was designed to capture the spirit of the famous photo taken of three firefighters raising an American flag in the midst of a sea of rubble.³ Although the actual firefighters in the photograph were white, the NYFD felt it was important to honor all the firefighters who perished in the towers and therefore made plans that included a Black, a Latino, and a White firefighter. In their own words: "Given that those who died were of all races and all ethnicities and that the statue was to be symbolic of those sacrifices, ultimately a decision was made to honor no one in particular."⁴ The NYFD's decision to create an inclusive memorial elicited public outcry. Some felt that the NYFD was trying to re-write history and turn the bravery of the firefighters into a "racial thing."⁵ These individuals felt that racial issues ought to be put on the backburner during times of crisis so that people may unite as Americans. Instead of creating this inclusive memorial the NYFD has put the creation of a commemorative statue on hold.⁶ It is ironic that during a time when we were all supposed to rally together as Americans, people objected to the inclusion of people of color in the memorial. In all circumstances—even in times of crisis—we must be unwilling to ignore racial disparities and injustices.

In 2001, Ward Connerly introduced a new initiative that he called "The Racial Privacy" Initiative, which would have prohibited any California state entity from collecting data on race. Connerly's initiative was even more pernicious than the post-September 11th sentiments because it threatened not only to silence discussion of racial injustice, but also to devastate our ability to perceive injustice. By barring the collection of racial and ethnic data, the state of California would have crippled civil rights enforcement.

1. See <http://www.racialprivacy.org> (last visited Mar. 30, 2004) (providing the language of the initiative).

2. Stephanie Gaskell, *Flag-Raising Statue Stirs Debate over Authenticity*, THE BOSTON GLOBE, Jan. 12, 2002, at A12.

3. *Id.*

4. *Id.* (quoting statement by NYFD spokesman Frank Gribbon).

5. *Id.* (quoting firefighter Tony Marden of Ladder 165).

6. See NewsMax.com, <http://www.newsmax.com/showinsidecover.shtml?a=2002/1/17/162132>

For example, a discrimination lawsuit brought by the Lawyers' Committee for Civil Rights, Equal Rights Advocates, the Asian Law Caucus, Mexican American Legal Defense and Educational Fund, and the Legal Aid Society-Employment Law Center on behalf of Blacks, women, Latinos, and Asian Americans against the San Francisco Fire Department⁷ would not have been possible if Connerly's initiative had been in place at the time of the litigation. We simply would not have had the data to support the claim; for example, we would not have known that there were no Asian-American officers in the San Francisco Fire Department. Connerly's initiative would have rendered us unaware of other vital statistics as well. For example, we would not be able to determine the incidence of prostate cancer among Latinos, and would not know that while white women are more likely to be diagnosed with breast cancer, black women are more likely to succumb to breast cancer.⁸

Thankfully, the story does not end here. For, even when the Movement assumes a defensive posture, lessons are still learned. A sophisticated and ultimately successful campaign was waged to defeat Connerly's initiative. One effective aspect of the campaign involved persuading California officials to change the name from the "Racial Privacy" Initiative to the Classification by Race, Ethnicity, Color, or National Origin (CRECNO).⁹ This undermined one of Connerly's chief strategies namely, including the popular subject "privacy" in the name of the initiative. In 1996, Connerly's successful attempt to dismantle affirmative action in California succeeded in part because Proposition 209 was called the "California Civil Rights" Initiative.¹⁰ I worked to defeat Proposition 209 for three and one half years, yet when I went to vote and reread the initiative, I thought to myself, "This sounds good." I wonder how many other California voters were similarly misled.

The defeat of CRECNO was a milestone for activists in California. We resisted our usual tendency toward infighting. Fractious campaigns around Propositions 187¹¹ and 209 taught us that we must proceed in unity. We were strategic in garnering widespread support by talking about the health implications of failing to collect data. Our masterstroke was presenting former Surgeon General C. Everett Koop in television ads detailing the dire health consequences of ignorance prompted by a lack of data. Finally, by running a disciplined and effective campaign, we convinced those with financial resources to invest in the "No on Prop 54" effort, enabling us to raise more than

7. *Davis v. City of San Francisco*, 976 F.2d 1536 (9th Cir. 1992).

8. See <http://www.cancer.org/downloads/STT/CAFF2003BrFPWSecured.pdf> (last visited Mar. 30, 2004) (providing facts and figures on breast cancer incidence).

9. Although popularly called the "Racial Privacy" Initiative, it was officially listed on the ballot as "Classification by Race, Ethnicity, Color, or National Origin" Initiative. Text of initiative, available at http://www.lao.ca.gov/initiatives/2003/54_10_2003.htm.

10. Text of the "California Civil Rights" Initiative, available at <http://www.acri.org/209>.

11. California proposition making illegal immigrants ineligible public social services. Text of Proposition 187, available at <http://www.americanpatrol.com/REFERENCE/prop187text.html>.

five million dollars.

Today, the lessons learned in California are being shared with civil rights activists in Michigan. Undeterred by defeat at the United States Supreme Court in *Grutter v. Bollinger*,¹² Ward Connerly has initiated the “Michigan Civil Rights” Initiative¹³ aimed at eliminating affirmative action in that state. Activists who defeated CRECNO have traveled to Michigan to give advice on how to proceed. We are hopeful that some of the Proposition 54 strategies may be employed to defeat Connerly in Michigan. Though CRECNO initially cast a shadow on the fate of the new Civil Rights Movement, learning how to overcome CRECNO provided new hope and equipped the Movement with transferable strategies.

I am convinced that there is new vibrancy in the Civil Rights Movement. People from all walks of life are trying to find ways to contribute. More and more law students want to be civil rights lawyers. Interns come to civil rights organizations wanting to volunteer straight out of college and high school. The number of young people and new organizations interested in working on Civil Rights gives us hope.

I would like to highlight two more things that may feed your souls and build your political muscle. First, twenty-five percent of the population holds progressive views consistent with the views shared by most of us in this room.¹⁴ Since most of us are not aware of this, we are often left feeling isolated. Second, according to the book *The Tipping Point: How Little Things Can Make a Big Difference* by Malcolm Gladwell,¹⁵ we do not need millions of people to achieve social change. We only need about ten percent of the population organized and moving strategically.¹⁶

III.

THE ROLE OF THE REPARATIONS MOVEMENT

So, where does today’s Reparations Movement fit into this analysis? The Reparations Movement reinvigorates discussions of race in America. It allows us to talk about social, political, and economic issues and how they are affected by race. The Reparations Movement puts the question “Does race matter?” at the forefront.

There are people like Ward Connerly and Clarence Thomas, who say race

12. 539 U.S. 306 (2003).

13. Text of “Michigan Civil Rights” Initiative, *available at* <http://www.michigancivilrights.org/>.

14. *See generally*, PAUL H. RAY & SHERRY RUTH ANDERSON, *THE CULTURAL CREATIVES: HOW 50 MILLION PEOPLE ARE CHANGING THE WORLD* (Harmony Books 2000).

15. MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* (Little Brown & Co. 2000).

16. *Id.*

is irrelevant and that we have a colorblind society. Some people question whether discrimination based on race still exists. There are many people who want us to think it does not. Many people of color feel that they have been discriminated against—be it driving while black, brown, or Asian, being followed around in stores, or not having their checks cashed. I do a lot of speaking and often ask if anyone in the audience has been the victim of discrimination. Invariably, almost all the people of color raise their hands. What is most startling is that this occurs even when I am addressing an audience of attorneys.

Race matters. The reparations debate allows us to propagate that message. People want to say, “I didn’t own slaves. My ancestors didn’t own slaves.” Nonetheless, there are present-day consequences of slavery. It is important for people to be aware of, and understand the modern implications of the institution of slavery. Remembering slavery helps us understand why civil rights laws and affirmative action remain important.

One of the reasons we pursue reparations cases is because they give us the power to make and change history. People have rewritten history to remove our presence and erase our history. The Reparations Movement gives us an opportunity to reclaim and rewrite this history, to tell it like it is.

Another important dimension of this debate is that it gives us an opportunity to talk about the great wealth created in this country. The Reparations Movement allows us to address the reason that America was such a prosperous country during the 1700s and 1800s. Put simply, America was built on the bare backs of unpaid laborers. Many people who enjoy the benefits of the economic wealth of this country are only able to do so because persons of African descent were never compensated for their labor. If I didn’t have to pay people to work for me, I too would be rich.

Through my participation in reparations litigation, I have seen each of these theoretical benefits materialize. In 1995, I participated in *Cato v. United States*, a suit against the federal government seeking redress for the enslavement of African people.¹⁷ Although we lost on procedural grounds,¹⁸ two remarkable things happened when we presented to the Ninth Circuit. First, the U.S. Attorney, Mr. Yamaguchi apologized on behalf of the U.S. government and the people in the courtroom for slavery. It was amazing! Here was the official representative of the United States government apologizing to black folks for the government’s role in slavery. It was a stirring moment. The second remarkable thing was that the panel was composed of three women. I was later told that this was only the second time in federal court history that

17. Through my involvement with African-American Attorneys Against American Apartheid (A-6), I participated in representing the plaintiffs in *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995), before the Ninth Circuit.

18. *Id.*

there had been an all female three-judge panel. These factors made it quite an auspicious day and seemed to indicate that taking up the cause of reparations was the right thing for the Movement. In bringing the case, we told our story and permanently inscribed it in the annals of the court; we were victorious because we paid homage to our ancestors.

As we make progress in courts of law, we mustn't forget our courts of public opinion. We must get together and engage the public. I agree with Professor Emma Coleman Jordan that we should tell our story. I also, however, believe that we as activists need to find a way to engage in a dialogue that transcends the racial divide. People on either side of the color line need to find a way to talk to each other so that no one feels they are being called racist, or that their concerns are being ignored. We need to achieve a dialogue that allows people from all backgrounds and walks of life to embrace and engage in our struggle.

According to our pollsters during the Proposition 209 fight, most Americans say, "If discrimination is found, the people who are the discriminators should be put in jail."¹⁹ That is the prevailing sentiment in America. We need to tap into that impulse and connect it with the goals of the Civil Rights Movement and the issues that are raised by the Reparations Movement. I believe that most people are good, and, if we can talk to each other in ways that we can all understand, we will win.

IV. CONCLUSION

I'd like to close with a quote from Maya Angelou's poignant poem "Still I Rise." In it Angelou writes, "I am the dream and the hope of the slave." This line reminds me of our ancestors. I feel their presence at times. I'm sure they're here now, smiling. Many people, not just African people, but also people from other continents, feel a connection with their ancestors. My ancestors suffered, they were kidnapped, they were put into ships; they were beaten and killed. We owe them. It is important that we honor them.

I used to think that "I am the dream and the hope of the slave" just referred to African-American people. Now I have grown to believe that it refers to all of us. Imagine how the slaves would have felt to know that several hundred years later there would be a group of people, not just of African descent, but a very diverse group of people, decrying the injustice of their experiences. In this sense, at this moment, we are all "the dream and the hope of the slave."

19. See data from polls generated by Diane Feldman and Celinda Lake during Proposition 209 campaign (on file with author).