I. The Idea of Slave Reparations

That the U.S. government should pay reparations for slavery to present-day African Americans.

II. Horowitz' Arguments against It

These are from an ad that he ran circa 2001, in a couple hundred college newspapers. Some newspapers rejected the ad. Others ran it then apologized for running it.

1. There Is No Single Group Clearly Responsible For The Crime Of Slavery (Members of many races participated.)
2. There Is No One Group That Benefited Exclusively From Its Fruits (Present-day black Americans might even have benefited.)
   • ~20% of Southern whites owned slaves.
4. America Today Is A Multi-Ethnic Nation and Most Americans Have No Connection (Direct Or Indirect) To Slavery
5. The Historical Precedents Used To Justify The Reparations Claim Do Not Apply, And The Claim Itself Is Based On Race Not Injury
   • In previous cases, reparations have been paid to the actual victims and their immediate families.
6. The Reparations Argument Is Based On The Unfounded Claim That All African-American Descendants of Slaves Suffer From The Economic Consequences Of Slavery And Discrimination
8. Reparations To African Americans Have Already Been Paid (Referring to social welfare programs and affirmative action.)
9. What About The Debt Blacks Owe To America? (For abolishing slavery, & for the prosperity of American blacks compared to blacks elsewhere.)

III. An Argument for Reparations

Note: This is loosely based on Randall Robinson, plus David Boonin’s Should Race Matter?

A. Why are present-day African Americans owed reparations?
   • Because they belong to the same race as the victims of slavery? No.
   • Maybe the debt was handed down through the generations, like property? Doubtful.
   • Because present-day blacks are harmed by slavery:
     - Blacks are worse off with respect to crime, education levels, teen pregnancy, drug use, income, etc.
     - The best explanation for this is that it is a (perhaps indirect) after-effect of slavery.
B. Who owes them, and why?
   • All white people, because they belong to the same race as the oppressors? No.
   • Some white people, because they inherited the debt from their ancestors? No.
• The U.S. government, because it contributed to slavery:
  - Enforced laws that recognized slaves as property.
  - Fugitive slave laws helped return escaped slaves to their masters.

IV. Objections

A. Present members of government were not around then and didn’t do any of that.
   • Reply: The government itself still exists. When a new President takes office, he doesn’t cancel all debts incurred prior to his taking office.
   • Related: when a corporation changes its members, it does not lose its obligations.

B. Why should present-day taxpayers have to pay?
   • Reply: Taxpayers have to pay government debts in general. Example: the national debt.
   • Possible counter: Government debts in general are invalid. This probably requires rejecting authority of government in general.

C. Black Americans are better off than blacks living in Africa, so we did them a favor.
   • Reply: You can benefit a person overall, and still owe them compensation for an unjust harm.
     Example: You get hurt on the job due to unsafe workplace conditions, but you’re still better off overall than if you never had the job.

D. The non-identity problem: The present-day black Americans are not the people who would have existed if slavery had not occurred. (See why this is true.) To be harmed by X, one must be worse off than one would have been if X had not occurred.
   • Reply: Two accounts of harm:
     i) To harm a person is to do something such that that person would have been better off if you had not done it.
     ii) To harm a person is to (at least partly) cause something bad to happen to them.

If we adopt (ii) instead of (i), we can argue:

- Crime, poverty, etc., are bad.
- Slavery is (indirectly) a cause of those things. The U.S. government (partly) caused slavery.
- So the U.S. government harms the people who suffer those problems.

E. The duty to mitigate: Even when one suffers from an injustice, one still has a responsibility to act reasonably so as to minimize the harm. The perpetrator only owes compensation for the amount of harm that would occur if one so acted. Perhaps present-day black Americans have failed to mitigate the harm.

F. Not all bad consequences of an unjust action give rise to a compensation claim.
   Example: I decide to annoy you by poking you in the stomach. This is a (slight) injustice. But because I annoyed you, you are slightly delayed in your activities, which causes you to be in the right location to be mugged by someone. Do I owe you compensation for the mugging too?
   • A possible principle: Not culpable for harms that are more directly caused by some else’s wrong choices, where you did not encourage them to make those choices.
The Benefit of Affirmative Action (AA)

A. Benefits the community

- Causes more blacks & other minorities to graduate from college, enter prestigious positions.
- Why is this important?
  - In present society, minorities are largely excluded from high-status positions. Their race disadvantages them.
  - Note: Dworkin is not committed to a simplistic view of how this works. E.g.,
    - One possibility: whites explicitly discriminate. But this need not be the case.
    - Another possibility: implicit bias. People discriminate without realizing it.
    - E.g., people don’t see minorities as “the type” of person to be doctors.
    - Minorities themselves don’t see themselves as the type to become doctors, etc. (Shortage of role models.)
  - Hence, racial imbalances can be self-perpetuating.
- These problems could be remedied by affirmative action.
- Note: these effects depend upon racism (including on the part of the minorities), i.e., people identify with their race.
- Note how this is different from, e.g.,
  - 1st-born children being under-represented in some area
  - Underrepresentation of minorities in science fiction fan clubs (no one cares about these things)

B. Benefits the university

- Promotes a diverse student body.
- University has an interest in this. Why?
  - Maybe because promoting racial tolerance is part of a university’s mission?
  - Maybe because it creates a diversity of viewpoints, from which students learn? [Note: Dworkin seems to reject this rationale, because he rejects the idea that race determines one’s beliefs (86).]

Does AA Violate Equal Protection?

- 14th Amendment guarantees “equal protection of the laws”. Does AA violate this?
  - More interesting Q: Does AA violate an appropriate moral ideal of equality? Is it wrongfully discriminatory?
- When is “discrimination” impermissible (in the way that paradigmatic racism was impermissible)?
  - Some disadvantage is inevitable and not objectionable. We can’t demand complete equality.
  - Disadvantage is specially objectionable when:
    - It reflects (irrational) prejudice/hostility toward a group,
    - It is part of a general ‘second-class citizenship’ in the society.
    - Paradigm racism – slavery, Jim Crow laws – satisfied these conditions.
- AA does not satisfy these conditions.
  - It does not reflect prejudice/hostility toward white people.
  - It is not part of a system that accords second-class citizenship to whites.

Legal Points

- Note: Ignore all the discussion of what specific judges (O’Connor, Scalia, etc.) have said or would say.
Legal doctrine: Levels of scrutiny:
- Some kinds of discrimination should receive specially strict scrutiny, when they disadvantage “suspect classes” (groups that we’ve traditionally discriminated against in the impermissible ways). Here, the government must have a compelling interest to justify the discrimination (which courts virtually never grant).
- Other kinds should receive relaxed scrutiny. Court allows them as long as there is any rational (read: “not completely nonsensical on its face”) basis for them.
- Most university AA programs should receive relaxed scrutiny. They do not disadvantage suspect groups, and they are not motivated by prejudice or hostility.

Aside: What is the actual motivation for AA in universities?

- Background comment: Support for AA is very strong in universities. Race- and sex-based discrimination in hiring & graduate admissions is routine.
- Universities regularly claim “diversity” as the rationale.
  - This is due to the Supreme Court decisions that recognize diversity as a legitimate rationale – i.e., this is what they have to say for their discrimination to be legally defensible.
- Is it the real motivation? Some considerations:
  - AA is used for blacks, Latinos, and women.
  - It is generally not used to benefit Asians (even where they are underrepresented), Arabs, etc.
  - It is not used for people (merely) from foreign countries.
  - It is not used for people with different religions, philosophies, or political ideologies.
- Hypotheses about alternative motivations:
  - Trying to compensate a race/sex for injustices suffered by it?
  - Intrinsic desire for racial/sexual proportionality?
Phil. 1200  
Notes: Racism (Rand)  

I. Some background  

**Important Concepts:**  
- **“Racism”: Rand’s def.** “It is the notion of ascribing moral, social, or political significance to a man’s genetic lineage.” (Rand, 126)  
- **Affirmative Action:** Giving preference to members of historically discriminated-against groups in hiring and admissions for schools, in order to increase their numbers.  

**Important Laws:**  
- **The 14th Amendment:**  
  “... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ...”  
- **The Civil Rights Act of 1964 (title VII):**  
  “It shall be an unlawful employment practice for an employer - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . .”  
  “Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise . . .”  

**Supreme Court decisions:**  
- **The Bakke case (1978):**  
  Supreme court rules against racial quotas.  
- **In 2003,** the court held that race could be used when “diversity” was important to education. But affirmative action may not be used for redressing past discrimination. Also rejected use of a point system that assigned points for race.  

II. Arguments for Affirmative Action (AA)  

**A. Reparations**  
- Affirmative action makes up for past discrimination.  
- Analogy: repaying someone you have committed a wrong against.  
- **Objections (Rand):**  
  - Depends on treating races as people, assigning rights, guilt, etc. to races.  
  - Present white people are not responsible for their ancestors’ deeds.  
  - Present minority people are not due compensation for their ancestors’ suffering.  

**B. Counters present racism**  
1) Minorities are less represented in many desirable positions than whites.
2) This is due to prejudice, which is wrong.
3) The only way to counter this is through affirmative action.
   • Objections:
     - Is #2 true?
     - Reverse discrimination argument

C. Diversity
1) Diversity is needed for education.
2) Affirmative action is needed to attain this.
   • Objections:
     • Is #1 true?
     • If diversity harmed education, would it then be justified to exclude minorities?

III. Arguments against AA

A. Reverse discrimination (Rand)
1) Racial discrimination is wrong.
2) Affirmative action is racial discrimination.
3) So it is wrong.
   • Objection:
     - Discrimination is wrong when caused by hatred for the racial (or other) group.
     - AA is different because not caused by hatred for the group.

B. The Individual Rights Argument (Rand):
1) Employers have a right to hire/not hire whomever they choose; no individual has a right to be hired by any employer.
   a. This follows from the right to property.
   b. Employer need not hire anyone at all.
   c. Employers (properly) hire in order to serve their own desires, not because others are entitled to it.
2) Discrimination laws contradict that right. (Includes any law for/against discrimination, including laws for/against affirmative action.)
   a. They allow would-be employees to sue for not being hired.
   b. This implies that the employee has a right to be hired (or retained, promoted, etc.).
   c. That contradicts the idea that the employer has a right to employ whom he wants.
3) So discrimination laws are wrong.
Phil. 1200
Notes: The Second Sexism (Benatar)

Background

• The title “The Second Sexism” is an allusion to Simone de Beauvoir’s famous feminist work, The Second Sex.
• The two sexisms:
  1. Prejudice against women & girls.
  2. Prejudice against men & boys.
• #2 is commonly neglected.
• Sexism: discrimination on the basis of sex.
• Discrimination: Unfairly disadvantaging someone on the basis of a morally irrelevant trait.
• Discrimination need not be intentional.
• It may be indirect.

Male Disadvantage

• In the military:
  • Men commonly pressured/forced to join the military.
  • Even women in the military often protected from most dangerous situations.
  • Men are subjected to more dehumanizing treatment during training.
• Aggression:
  • Both women and men tend to be more aggressive toward men than toward women.
  • Twice as many men suffer aggravated assault.
  • More than 3x as many men suffer murder. [Recent statistic: 79% of murder victims are male.]
  • Recent conflicts: In Kosovo, 90% of deaths were of males. In South Africa, overwhelming majority of victims of human rights violations were male.
• In emergency situations, we save “women and children first”.
• Corporal punishment:
  • Applied more often to boys than girls.
  • In some places (South Africa, U.K., Singapore), legally restricted to males.
• Sexual assault:
  • Sexual assault against males is routinely underestimated, taken less seriously.
  • In most jurisdictions, “rape” only includes rape of a female. Only recently has male rape been recognized.
• Child custody:
  • In divorce, mothers get custody 90% of the time.
  • In case of disputed custody, women twice as likely to get custody. (California study)
• Homosexuals:
  • Often, male homosexuality is prohibited, but not female. [Homosexuality is illegal in 70 countries. In 40 of these, only male homosexuality is prohibited. --Wikipedia, “Sodomy Law”]
  • Gay male couples have harder time adopting children.
  • Males more likely to be victims of gaybashing.
• Criminal justice: men get harsher punishments, more executions. Possible discrimination?
Three Prejudicial Attitudes

1. “Adult male lives are worth less than adult female lives.”
   - The “missing women” example:
     - There are 105 boys born for every 100 girls.
     - But males die more often, so in advanced countries, the ratio of females to males is ~1.05.
     - But in some countries, the ratio is ~0.94.
     - This leads to Sen’s conclusion that there are 100 million “missing women” due to poverty.
     - But why not speak of the “missing men” in the wealthy societies?
2. “Violence against men is more acceptable than violence against women.”
   - E.g., corporal punishment for boys but not girls.
   - Rape of women punished more severely.
   - Men who hit women are viewed worse than men who hit men.
3. “Male disadvantage is due solely to men being more aggressive, less caring than women.”
   - There may be natural behavioral differences, but these are exaggerated.

Objections

1. “Male disadvantage is due to male aggressiveness, not discrimination.” Case study: military service.
   - Natural male-female difference in aggression is exaggerated.
   - Studies show equal #s of males as females initiating marital violence.
   - Circulating testosterone increases sexual behavior, but data on non-sexual violence is unclear.
   - Studies of girls exposed prenatally to high levels of testosterone are inconclusive.
   - If there is some natural difference, this doesn’t justify the social differences:
     - As long as part of the difference is due to social factors, this may be discriminatory.
     - Even if men are more aggressive, it doesn’t follow that women are not aggressive enough for military service.
     - Doesn’t explain why conscription of unwilling men is appropriate.
     - Counter: maybe women should be excluded because of their (lack of) size & strength?
     - But some women are stronger than some men.
     - Maybe women should be excluded due to risk of being raped.
     - But men may be at greater risk of non-sexual violence. (Torture, maiming.)
2. “Attention to 2nd sexism distracts us from the 1st sexism, which is the worse problem.”
   - In liberal democracies, it’s not clear that 1st sexism is really more serious.
   - It’s false that we should only attend to the worst injustices.
     - Then we would focus on racism, not sexism.
     - Or, we would only attend to the worst forms of sexism (e.g., clitoridectomy).
   - Some anti-male discrimination is worse than some anti-female discrimination. “How can it be acceptable to want an end to sexist speech while males die because of their sex?”
   - Fighting one sexism helps end the other too.
     - Both kinds of sexism stem from the same gender stereotypes.
3. “These examples of male disadvantage are really discrimination against women.”
   - E.g., exclusion from combat also prevents women from gaining some senior command positions.
     - Combatants get some advantages – veterans’ benefits, honors, the joy of combat.
   - Reply: yes, but this pales in comparison to the disadvantages of forced combat.
   - Women live longer than men ... but they therefore need more medical care. Because they only get about equal amounts of medical care dollars, this is inequitable to women.
   - Women are disadvantaged in education: get lower scores on math/science standardized tests. Get
fewer PhD's.

- Yes, but they get higher scores on reading & writing tests; they also get higher grades in all areas.
  Women also get more BA’s and MA’s.

4. “These disadvantages are just the costs of male dominance.”

- Reply: Some disadvantages might be inseparable consequences of dominance. But others are not.
  - E.g., the rich maintain dominance while avoiding military service.
  - How is subjection to corporal punishment just the cost of male dominance?
  - Differences in custody: males were more favored in the past, when they had more power.

**Taking the Second Sexism Seriously**

- The first sexism has gotten enormous attention. The second is almost completely ignored.
- This results in a self-perpetuating cycle: it is considered unimportant because little study has been done on it; little study is done because it is considered unimportant.
- Note that sexism can be perpetuated even by members of the sex that it disadvantages. Ex.: female genital mutilation carried out by women; conscription enforced by men.
- Relevance to affirmative action:
  - Some men are more disadvantaged than some women. So aff. action for women as a class is not just.
  - Shortage of women in engineering is said to be due to subtle sexism in society. But shortage of women in prisons or the military is not said to be due to sexism. Why?
  - If AA is justified, it should also be applied to military, nursing, and other such areas (where men are disadvantaged).

**Conclusion**

- Not claiming men are overall worse off than women. But men are subject to sexism which should be opposed.
- Men may be victims of sexism even if they are content with their roles.
Phil. 1200
The Second Sexism: Responses (Moore, Clatterbaugh)

Suzanne Moore’s Response

- Suzanne Moore: English feminist journalist; has written for The New Statesman, The Guardian, etc.
- Her reading of Benatar and others (?):
  - “men, not women, are discriminated against”
  - “a bit of underarm hair signals the end of western civilization”
  - “It is basic conservatism that says any challenge to the system, any rights won, have gone ‘too far’.”
  - “These people cannot speak about the inequalities riven between classes, ethnicities and genders because it's all about individuals who power through.”
- Her responses:
  - More men in prison does not indicate discrimination: it’s just because men commit more crimes.
  - Indications of discrimination against women in our society:
    - Abortion is not unquestioned: “battles rage over who gets control of women’s bodies, women themselves or the state”; “I am simply bewildered by a feminism that would not want to advance women's control of their own reproduction”
    - “apart from rape, murder, equal pay, genital mutilation, the power imbalance in politics, business, education, law and arts they may have a point.”
  - Insults:
    - “Still, abundant tripe trickles down from on high, even academe.”
    - “All of this is done without class or context – he is a philosopher, all right?”

Kenneth Clatterbaugh’s Response

- Criticisms of the definition of “discrimination”:
  - Discrimination need not be disadvantageous; one can discriminate in favor of someone. Ex.: two equal-sized groups that discriminate in favor of their own members; on net, no one is disadvantaged.
  - Only some discrimination gives rise to a call for social justice. Ex.: the discrimination suffered by celebrities. Maybe the discrimination has to be pervasive & comprehensive? Ex.: we can’t infer from “Johnny is discriminated against” to “Men are discriminated against.”
  - Discrimination need not be based on a morally irrelevant feature. It may just be causally irrelevant.
- The military service example:
  - Few men in the military ever see combat.
  - Military service is advantageous to most.
  - So overall, the exclusion of women is advantageous to men.
  - [What about conscription?]
  - Male disadvantage = the costs of power.
  - Men suffer some disadvantages from failing in the contest for power (e.g., being assassinated in a coup). Women avoid these, because they are excluded from playing.
  - Benetar’s response: many of the male disadvantages are not inevitable concomitants of power.
  - Reply: I didn’t claim they were inevitable, only that they were causal consequences of power.
    - Example: a man is discouraged from becoming a nurse. But this is because being a nurse is considered unworthy of a man; a man should be a doctor.
    - [What about Benetar’s examples? Conscription, corporal punishment, child custody, murder ...?]
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Review

Know what these things are:
The 14th Amendment (& equal protection clause)
Civil Rights Act
Affirmative action
Racism, Rand’s definition
The “second sexism”
Discrimination (Benatar’s def.)
3 prejudicial attitudes about males (Benatar)

Be familiar with these arguments:

About affirmative action:
Reverse discrimination argument
& Dworkin’s response
Individual rights argument (incl. what it shows, what right it appeals to)
How aff. action benefits the community

About reparations:
Arguments against reparations, incl.:
- why it might be racist, why no living person owes or is owed compensation
- how America has benefitted blacks
Reparations argument, incl.:
- why blacks are owed compensation
- who owes it and why
- the account of “harm” used
Objection to reparations, esp.:
- The duty to mitigate

About sexism:
Examples of male disadvantage, incl.:
- in military service
- murder
- “women & children first”
Clatterbaugh: why male disadvantage isn’t sexism, & isn’t a social injustice to men
& Benatar’s response

Know what positions these people took:
Robinson
Horowitz
Dworkin
Rand
Benatar
Moore
Clatterbaugh