

## In pursuit of justice on affirmative action

### Call it what it really is: Reverse discrimination

BY JOEL C. MANDELMAN

April 10, 2006

Perhaps the single greatest difficulty in debating the merits of the Michigan Civil Rights Initiative is the unwillingness of opponents even to allow the underlying suppositions to be raised.

One of the premises behind the support of civil rights groups for all affirmative action programs is an unspoken demand for reparations.

In 1850, someone's great-great-grandparents owned a slave in Mississippi. So, a century and a half later, the children of someone else, whose ancestors may not even have arrived in the United States until 1900, must pay for this crime.

However, in American law, there is no liability unless there is fault. Here, the only "fault" of the one being made to pay is being a white male. Or, at least, white. And, in many cases, the one benefiting is not even the descendant of slaves.



Joel C. Mandelman

Beyond the federal and state civil rights laws and the hundreds of billions of dollars spent on poverty and education programs, job training and more, beyond the most bloody war in our nation's history fought by Northern whites to put an end to slavery, how much compensation is due the great-great-grandchildren of enslaved people?

By what perverted system of justice can those who never suffered under slavery be entitled to compensation from those who never enslaved anyone?

The rationale, itself, is racist: All whites are guilty because of their skin color. People whose parents came from Poland, Italy, Russia or other eastern European countries, decades after slavery was abolished, are also guilty.

A second premise behind reverse discrimination policies is the morally and logically indefensible notion that minorities are entitled to representation in every university class, profession, government contract award, etc., in proportion to their numbers in the population as a whole.

Once the poison of race-based discrimination starts, there is no stopping it. It has already advanced from both government and private sector jobs and contracts to grading of exams, and even sentencing for violent criminals.

And it has now spread throughout the world. Countries as diverse as England, India, Sri Lanka, Northern Ireland and Lebanon engage in precisely this same type of reverse discrimination. But, as here, no one is forthright enough to call it that. Proponents never have the honesty to admit that what they want are racial quotas.

Indeed, the establishment does not even wish these issues discussed. That is why big business, organized labor, mainstream media and both political parties have repeatedly tried to silence critics of affirmative

action. They have engaged in all sorts of dilatory and legally questionable tactics, to keep the MCRI proposal off the ballot. Their avowedly Marxist fellow-travelers, the group By Any Means Necessary, have lived up to their name and literally engaged in intimidation tactics and violence

Ironically, anyone who advocates the genuine equal protection of the laws that can only come from a color-blind system is smeared as "racist" and "divisive." Opponents of this long overdue reform will resort to the most vicious and ugly tactics to avoid having to address the merits of the issue.

Voters should not be distracted or intimidated. On Election Day, the people of Michigan will have their best -- and possibly last -- opportunity to toss affirmative action onto what President Ronald Reagan called "the ash heap of history."

*JOEL MANDELMAN* has served as the deputy general counsel to the U.S. Commission on Civil Rights and as a counsel to the U.S. Senate Judiciary Committee. Write to him in care of the Free Press Editorial Page, 600 W. Fort St., Detroit 48226 or [oped@freepress.com](mailto:oped@freepress.com).

**Copyright © 2006 Detroit Free Press Inc.**

Poznan, Poland  
12 April 2006

Dear Mr. Mandelman:

I live in Poland. Poland is currently undergoing the hard-hitting onslaught of the World Jewish Congress and others who wish to cause this country to cry Mea Culpa in respect of the near-extirmination of European Jews. The Polish lands in the 19th and 20th centuries were no longer a "Jewish Paradise" (as they had been in the 13th and 14th centuries), but, so long as the Poles themselves governed, as they sometimes did in limited areas, Poland was no worse than most other parts of Europe.

Dmowski was an anti-Semite, but Pilsudski was not. France, Britain, Austria, even Italy, all had politicians and public figures who were openly anti-Semitic. Poland, especially in the far east of its territories, had the occasional pogrom during these times, and Jews were not treated as equals, but the mass murders in Poland were, with very few exceptions (such as Jedwabne) perpetrated by others, mostly German Nazis, with help from Lithuanians, Latvians, Byelorussians, and Ukrainians. The myth that Poland perpetrated or condoned the Holocaust simply does not stand up to examination. Jan Karski, a Polish Catholic, was among the first to bring eye-witness news to the Allied leaders – and almost everyone disbelieved him.

Recently, embarrassed, angered, and frustrated by references to "Polish Death Camps" the Polish Government has petitioned UNESCO to rename Auschwitz to clarify that it was the "Auschwitz-Birkenau German-Nazi Death Camp." Amazingly, and in my view very short-sightedly, the World Jewish Congress spoke up against the name change – saying that, in fact, Poland bore some responsibility for the existence and effectiveness of the camps and was now trying to shift its responsibility. The argument is the oft-repeated one: the Poles should have done more to stop the Holocaust. No one has ever made clear how they could have done more, but the charge does not disappear simply because the evidence is absent.

Fortunately for the sake of both good sense and decency, not all Jewish organizations have elected to follow the WJC party line. The Anti-Defamation League has courageously and properly come out in support of the Polish position. But why should there even be an argument? What does the WJC hope to gain by acting so peevishly and with so little regard for facts? Auschwitz was undeniably a German-Nazi camp. For the first two and a half years of its existence, its prisoners were almost entirely Poles suspected of anti-German activities. Only in 1942 did the mass extermination of Jews start up at Auschwitz-Birkenau -- of the approximately 800,000-1,200,000 people killed there, more than half the Jews who died came from outside Poland. Most of Poland's Jews had already been murdered either in the "Aktion Reinhardt" camps or in other ways.

I suppose I bear some small degree of responsibility for the fact that the United States military is now in Iraq making one mess after another – because the only thing I did to stop the war was to vote against those who have been leading it. Do I wish I had done more to keep the US out of Iraq? Yes. But do I feel that I and the next several generations of Americans should have to pay for the damage? No. The parallel

argument seems to be that Poles bear some sort of vicarious responsibility for what happened in parts of Central Europe that often did not become parts of Poland until after the war, and that, in any case, were not under Polish control during the war, Poland being wholly occupied and subjugated by the most vicious occupying forces in the history of Europe. Furthermore, why should people who did no wrong, who were not even born at the time, prostrate themselves before those who did not suffer and were not even born at the time? The concept of collective responsibility was repugnant when the Nazi's engaged in it. It is just as repugnant when others try to use it. Those guilty of actual crimes should be held accountable for them and brought to justice; those guilty only of being citizens of a particular country have nothing to feel ashamed of or responsible for.

It seems like madness to me – a serious abuse of any possible concept of justice. As you point out in your article, it amounts to punishing people born long after the event for things they did not do to people who are no longer alive, while rewarding people who did not suffer and have no clear cause for complaint. Reparations from actual perpetrators to actual victims make sense. Reparations three or four generations removed from the events do not. To call it "Holocaust Business," in the phrase of Norman Finkelstein and others, will be offensive to those who choose to be offended by such bluntness – but, sadly, it may still be correct. If it is correct, it is deplorable.

We cannot fix everything. We certainly cannot fix the Holocaust. We should not shift the problems around the map from one people to another merely to spread the misery among as many people as possible. When are people going to draw a line under all these miseries – slavery, the Holocaust, the genocides of Native Americans, Australian Aborigines, Roma and Sinta, Armenians, etc, and get on with making a better world rather than patching over the problems of the past.. We should learn the lessons of these horrors, and then move on.

Thank you for your honest and thoughtful piece about the problems of reverse discrimination in Michigan. They resonate throughout the world, not least in Poland. Sadly, I am sure you are already being called a racist by some, and a traitor by others, for your clear-mindedness and honesty.

-- Andrew Hingston