Genetics Justifying Generational Mal: The Unreasonable Burden of Proof to Define Black Origins

Zora Williams
ANTHRO 41: Genes and Identity
March 21, 2018

Introduction

1619: The year that the first African slaves are brought to North American colonies. What ensued afterwards would become known as the Trans-Atlantic Slave Trade- a system that facilitated the forced migration of nearly 30 million African men, women and children to the Americas. Goods from western Europe were sent to Africa and traded for black bodies, these bodies were then transported to the United States, the Caribbean, and South America, and the goods produced by the enslaved people in those places were then brought back Europe; this triangular cycle repeated for four centuries. Enslaved persons were robbed of their humanity and identity by the forced separation of families, state induced illiteracy, and inhumane violence. Even after the legal abolition of slavery in the United States in 1865, the disenfranchisement of Black bodies persisted. The systemic marginalization of American-born descendants of slaves all links back to the institution of slavery and now, they seek reparations. There have been many attempts to seek reparations for Black Americans dating back to Special Field Order No. 15 in 1865 which promised recently freed slaves 40 acres and a mule. There was also Audley Moore's valiant efforts to seek international political remedies from the United Nations in the early sixties. Nonetheless, lawsuits arguing a case for reparations have typically been dismissed, but one viable case using genetic justification has since reinvigorated the reparations fight for Blacks. Namely, Deadria Farmer-Paellmann's pioneering case against multinational corporations. This paper investigates the outcome of Farmer-Paellmann's lawsuit and the unreasonable burden of proof she encounters when using genetics as means to justify her identity and subsequent right to reparations. The case exemplifies how inconsistent interpretations of genetic results influences the lives of people who have forged social identities independent of scientific validation.

Doomed Lawsuits

The history of the quest for reparations has resulted in disappointing and frustrating outcomes. In the past, reparations activists targeted the United States government itself to demand restitution for recently freed Blacks. Callie House, Ex-Slave Association Leader, was defeated in her quest to sue the Secretary of the Treasury in 1915 on the basis that the federal government could not be sued without its consent[1]also known as sovereign immunity. Similarly, in *Cato v. United States*, the case was dismissed on the same sovereign immunity clause but also because of the statute of limitations whereby the descendants of the injured parties were not entitled to restitution for their ancestors since too much time had passed since the offense[2]. Concurrently, in *Obadele v. United States* the court ruled that the Civil Liberties Act of 1988 did not apply to African Americans[3]. In light of these doomed routes, Farmer-Paellmann, a legal activist and founder and executive director of the Reparations Study Group,[4]" implemented a new strategy.

Relying on Genetic Justification

Following a legacy of failed lawsuits in the name of reparations for the descendants of slaves, Farmer-Paellmann proposed a creative avenue for suing in court. Farmer-Paellmann v. FleetBoston was the class action law suit[5] brought forth in 2002 that targeted Aetna Inc. Insurance Company, CSX, and FleetBoston Financial Corporation along with any company that unjustly profited from slave labor or an ancillary institution (labeled Corporate Does Nos. 1-

[1] Johnson v. McAdoo, Opinion of the Court,(D.C. Cir. Nov. 14, 1916).
[2]Alondra, Nelson. "Acts of Reparation." In *The Social Life of DNA*, (Boston, MA: Beacon Press, 2016), 119.
[3] Ibid. Despite being applicable to Japanese Americans who were interned during the Second World War.
[4]Aabaco. Restitution Study Group Webpage. Accessed March 21, 2018. http://www.rsgincorp.com/. A New York based non-profit that aims to "securing restitution for injuries inflicted upon oppressed people
[5]Alondra, Nelson. "The Rosa Parks of the Reparations Litigation Movement." In *The Social Life of DNA*, (Boston, MA: Beacon Press, 2016), 126.; Deadria Farmer-Paellmann v. FleetBoston (United States District Court for the Eastern District of New York Mar. 26, 2002) (FindLaw). Merging of several individual cases in which corporations were sued by descendants of slaves. Also on behalf of all American-born descendants of slaves.

100[6]). Plaintiffs sought a national apology to the descendants of slaves and financial reparations from the aforementioned corporations in the form of large trust funds that would finance social welfare programs to improve housing, education, and healthcare[7]. After 18 months of deliberation, the United States District Court for the Northern District of Illinois dismissed the case without prejudice, giving the plaintiffs two weeks to reframe their argument. Judge Charles Norgle dismissed the case for many reasons, but the most contentious of them all was the idea that the plaintiffs' case did not demonstrate a precise and direct (genetic) connection to former slaves and so were not entitled to sue as their descendants. Norgle argued the plaintiffs lacked standing in their case by "merely alleging some genealogical relationship to African-Americans held in slavery, over one-hundred, two hundred, or three hundred years ago;[8]" a statement that comes across as a gross affront to both contemporary African Americans and to the reality of American history. Words such as "merely", "alleging" and "some" insinuate a large margin for error or misconstruing of the plaintiffs' background. If in fact, the chattel slavery era of the United States is undisputed then there should be a demand for no more than a preponderance of evidence for the ancestral background of plaintiffs. Consider also that only 8.7% of the nation's black population is foreign born[9] meaning that the courts have a higher chance of dealing with an American born descendant of slaves than not. It is true that non-American born descendants of slaves have also been integrated into the Black population including, Caribbean-born

---

[6] Deadria Farmer-Paellmann v. FleetBoston (United States District Court for the Eastern District of New York Mar. 26, 2002) (FindLaw).
[7] Ibid.
[8]Alondra, Nelson. "The Rosa Parks of the Reparations Litigation Movement." In *The Social Life of DNA*, (Boston, MA: Beacon Press, 2016), 129.
[9]Pew Research Center. *Jamaica, Haiti Largest Birth Countries for Black Immigrants in 2013*. A Rising Share of the US Black Population is Foreign Born. 2015. Accessed March 21, 2018. http://www.pewsocialtrends.org/2015/04/09/a-rising-share-of-the-u-s-black-population-is-foreign-born/st_2015-04-09_black-immigrants-02/.

descendants of slaves, Brazilian-born descendants of slaves and others[10]. However, the fact remains that the overwhelming majority of the Black population in the United States descended from American slaves. Yet, the United States still played a central role in the exploitation of all of those bodies so would not be entirely exempt from paying restitution to those other sub-segments of the Black community. In any case, the question becomes: why do courts demand such a burden of proof on the part of the plaintiffs to prove their lineage despite exhaustively demonstrating the barriers encountered by any Black American to trace their genealogy? In most cases, African Americans hit a "brick wall," during their ancestral search because most tangible links to their past have been deliberately destroyed or hidden. Anthropologists Faubion and Hamilton affirm the sheer lack of archival evidence necessary to establish legal cognizable genealogical relationships between plaintiffs and their ancestors[11].

Direct Link: The Unreasonable Burden of Proof

Pursuant to the demand to prove beyond a reasonable doubt that Farmer-Palleman and her party were in fact ancestrally linked to slaves, the team turns to genetic tests. This would be the first time genetic testing would be used in a civil suit to infer African Ancestry. Conveniently, (at the time) a newly formed genetic testing company called African Ancestry was sought after for evidence to counter Judge Norgle's doubts. The results of the test traced the plaintiffs' DNA to ethnic groups and/or nation-states on the continent of Africa, associating Farmer-Paellmann with the Mende people of Sierra Leone and other plaintiffs to groups in Niger and The Gambia[12]. For the plaintiffs, this genetic connection was proof of a direct link to

[10] Ibid. Including Honduras, Puerto Rico, The Dominican Republic, and Haiti.
[11] James D Faubion, Jennifer Hamilton, Sumptuary Kinship*, Anthropological Quarterly,* 80 (2007): 533-559, accessed March 21,2018, 10.1353/anq.2007.0024.
[12] Alondra, Nelson. "The Rosa Parks of the Reparations Litigation Movement." In *The Social Life of DNA*, (Boston, MA: Beacon Press, 2016), 131.

slavery: they were from the exact populations ensnared in the Transatlantic slave trade. However, Judge Norgle's notion of a direct link was more narrow. He emphasized that a direct link would be "DNA evidence that could show an uninterrupted, definitive line of ancestry from an exploited former slave to an aggrieved present-day descendant or descendants…,"[13] rendering the plaintiffs' genetic results obsolete and imprecise. Not only does this requirement stifle efforts for reparations in a legal forum, it ignores the undeniable reality of the contemporary Black community. As previously mentioned, the vast majority of the Black population is more likely than not descendant from American slaves.

Furthermore, the burden of proof courts place on the plaintiffs was nearly impossible to achieve. Results from African Ancestry use both Mitochondrial DNA (mtDNA) and Y-chromosome tests to infer participants' ancestry. These two tests are limited in that they only analyze 1% of a person's DNA and can only be conclusive about one ancestor each generation[14]. Thus, even if the plaintiff had enslaved ancestors, if the one ancestor the test identified during the generation of slavery was not enslaved then legally they would not be recognized as a descendant of slaves. For any African American who knows their history (from stories told by their grandparents, photographs from the past, or the knowledge that their families have been in the same space for since the slavery era) this fact feels like an erasure of their identity and the cultural truths they hold to be self-evident. African Americans' legal identity stands incongruent with their social identity because of different interpretations of the genetic tests and the unreasonable burden of proof the court demands.

---

[13] Ibid. 135; Farmer-Paellmann v. FleetBoston, 1561509 F.2d 1 (N.D Illinois.2005.)
[14]Andrew, Yang, "Is Oprah Zulu? Sampling and Seeming Certainty in DNA Ancestry Testing," *CHANCE* 20, no.1 (2013): 32-39, accessed March 21, 2017, DOI: 10.1080/09332480.2007.10722830.

Additionally, due to the vastness of human genetic diversity within populations, association to specific groups and regions (as noted in the plaintiffs test results) cannot be identified with certainty even with large data bases[15]. Seeing as these methods are the most widely used and available, it served as the most logical route and truly one of the only genetic routes that the plaintiffs in the Farmer-Paellmann case could pursue. Shutting down the already narrow pool of options to prove an ancestral linked by demanding proof a direct linkage to a specific enslaved person coupled with the overwhelming lack or absence of archival documentation on the backgrounds of African Americans further exemplifies the United States' denial of its past.

Though genetic testing poses its own set of drawbacks, the courts refuse to examine the quality of the evidence brought before it. Rather than dwelling on what are [arguably] minor technicalities of the case, they should investigate the validity of the facts:

> Aetna collected premiums for slaveholders for insurance policies written on slaves' lives. Lloyd's of London insured ships that brought slaves from Africa to the Americas. CSX, a railroad company, profited from the transportation of slaves and the use of their unpaid labor to expand its tracks. And Brown Brothers Harriman provided interest-bearing loans to plantation owners enabling them to buy enslaved Africans,[16].

Moreover, Farmer-Palleman found an insurance policy on her great-grandfather Abel Hines with the Aetna Insurance Company. Surely, these facts warrant some form of recompense, something other than downright disavowal. Herein lies the true absurdity of the matter: the courts have found no legal grounds by which to address those facts enumerated above because the beneficiaries cannot be genetically verified. Genetic validation should not bar justice, especially

---

[15] Deborah, Bolnick et. al 2007, "The Science and Business of Genetic Ancestry Testing." *ScienceMag*, October 19, 2007, 399-400. PDF.
[16] Alondra, Nelson. "The Rosa Parks of the Reparations Litigation Movement." In *The Social Life of DNA*, (Boston, MA: Beacon Press, 2016), 128.

when a host of other forms of evidence support the case of the plaintiffs. The legal system has given preference and, in a sense, deference the genetic truth over the cultural and social truths of the Black community.

Existing Evidence

Much of the non-scientific evidence for the Farmer-Paellmann case stems from the current and past state of the African American community. As Ta-Nehisi Coates details in his long-form essay, "The Case for Reparations," the black community has been under continuous institutional attack following the end of slavery. Black Americans were systematically denied housing; "from the 1930s through the 1960s, black people across the country were largely cut out of the legitimate home-mortgage market through means both legal and extralegal,[17]". Before that they were often terrorized and forced into peonage and sharecropping[18]. Today, as Michelle Alexander[19] highlights, a new form of Jim Crow looms over America in the form of mass incarceration; the income gap between black and white households is roughly the same today as it was in 1970; "The Pew Research Center estimates that white households are worth roughly 20 times as much as black households…"; by extension only 15 percent of whites have zero or negative wealth, whereas more than a third of blacks do[20]. Consequently, given this current state of affairs genetic confirmation to link the plaintiffs in the Farmer-Pallemann case to American slaves should be a mere addendum to the excessive social data that resoundingly details the disparate reality of Black Americans. If the plaintiffs adhere to the contemporary social identity of Blackness and can demonstrate their inequities in relation to their white counterparts, that

---

[17] Ta-Nehisi, Coates, "The Case for Reparations." *The Atlantic*, June 2014, accessed March 21, 2018, https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/.
[18] Ibid.
[19] Alexander, Michelle. *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, (New York: New Press, Distributed by Perseus Distribution, 2010.)
[20] Ta-Nehisi, Coates, "The Case for Reparations." *The Atlantic*, June 2014, accessed March 21, 2018, https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/.

should suffice in a court of law. Since, in essence, these differences link back to the system of slavery.

Genetic testing has often been perceived as infallible justification for certain aspects of people's identities[21]. Yet, in the Farmer-Pallemann v. FleetBoston case, the extent of current genetic technology falls short of making a (culturally) indisputable claim of identity viable in a court of law. The case for reparations was hindered by an unreasonable burden of proof that demanded plaintiffs to demonstrate a direct and uninterrupted genetic link to an individual enslaved African in the United States- a feat that is nearly impossible to accomplish for the entire class at stake, Black Americans. This burden of proof seems rather preposterous given the widely accepted social knowledge of the starkly disproportionate lives of Black Americans and their white counterparts, along with the origins of those disproportionalities. Having been dodged and denied by the legal system for nearly 150 years in the quest for reparations, the Black Community continues to operate in the truth that they are due restitution. Evidently, genetic science continues to indirectly inform the recognition and even existence of identities. Though it does play a role in the construction of the legal and political veracity of Black origins, genetic validation or a lack thereof does not alter the collective social understanding of the origins of Black identity for the Black community.

[21] Deborah, Bolnick et. al 2007. "The Science and Business of Genetic Ancestry Testing." *ScienceMag*, October 19, 2007, 399-400. PDF.

Bibliography

Aabaco. Restitution Study Group Webpage. Accessed March 21, 2018. http://www.rsgincorp.com/.

Alexander, Michelle. *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*. New York: New Press, Distributed by Perseus Distribution, 2010.

Bolnick, Deborah A., Duana Fullwiley. Troy Duster, Richard S. Cooper, Joan H. Fujimura, Jonathan Kahn, Jay S. Kaufman, Jonathan Marks, Ann Morning, Alondra Nelson, Pilar Ossorio, Jenny Reardon, Susan M. Reverby, and Kimberly TallBear. "The Science and Business of Genetic Ancestry Testing." *ScienceMag*, October 19, 2007, 399-400. PDF.

Coates, Ta-Nehisi. "The Case for Reparations." *The Atlantic*, June 2014. Accessed March 21, 2018. https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/.

Deadria Farmer-Paellmann v. FleetBoston (United States District Court for the Eastern District of New York Mar. 26, 2002) (FindLaw).

Farmer-Paellmann v. FleetBoston, 1561509 F.2d 1 (United States District Court Northern District of Illinois July 6, 2005.

Faubion, James, D. Hamilton, Jennifer. Sumptuary Kinship. *Anthropological Quarterly.* 80 (2007): 533-559. Accessed March 21,2018. 10.1353/anq.2007.0024.

Johnson v. McAdoo, 45 *Cases Adjudged by the United States Court of Appeals*. 440 (D.C. Cir. Nov. 14, 1916)

Nelson, Alondra. "Acts of Reparation." In *The Social Life of DNA*, 107-20. Boston, MA: Beacon Press, 2016.

Nelson, Alondra. "The Rosa Parks of the Reparations Litigation Movement." In *The Social Life of DNA*, 121-140. Boston, MA: Beacon Press, 2016.

Pew Research Center. *Jamaica, Haiti Largest Birth Countries for Black Immigrants in 2013*. A Rising Share of the US Black Population is Foreign Born. 2015. Accessed March 21, 2018. http://www.pewsocialtrends.org/2015/04/09/a-rising-share-of-the-u-s-black-population-is-foreign-born/st_2015-04-09_black-immigrants-02/.

Yang, Andrew. Is Oprah Zulu? Sampling and Seeming Certainty in DNA Ancestry Testing. *CHANCE* 20, no.1 (2013): 32-39. Accessed March 21, 2017. DOI: 10.1080/09332480.2007.10722830