CONLEY V. GIBSON: ECONOMICS OF DISCRIMINATION

*Delenn Cooper**

Looking at a Black person in 2021, it might be hard for someone not well-versed in Black history to understand how the legacy of slavery and discrimination could impact a Black person today. Economics play a major role in this connection. As a member of the Black community, this connection was not something I learned about in a classroom in high school, or even in college. These institutions taught me about the economic deficiencies that troubled the Black community, but they offered no explanation. Those loose ends were left for me to discover on my own, outside of a classroom setting.

The reasons behind the Black community's economic challenges are left for Black people to uncover on their own. For myself, these explanations came from whatever accounts of Black history that I was exposed to. For example, I, like many other first-year law students, studied the case of *Conley v. Gibson*.[1] In my first-year Civil Procedure class, we learned that this case was one of the initial precedents for when a complaint should be dismissed for failure to state a claim.[2] However, this precedent was decided against a backdrop of equally illuminating and troubling facts.[3] Unfortunately, these facts often go undiscussed in a first-year law school class. My Civil Procedure professor was one such professor who, despite his sensitivity to Black issues, overlooked this piece of Black history. Consequently, very few

* Delenn Cooper a Spring 2021 graduate of the University of Houston Law Center.

1. Conley v. Gibson, 355 U.S. 41 (1957).

2. Id. at 45–46.

3. See id. at 42–43 (describing an employer's decision to terminate or demote unionized Black employees and replace them with White employees).

students see how this case illustrates the connection between discrimination and economics in the Black community.

The underlying facts of *Conley* involve Black railroad workers.[4] In an act of blatant discrimination, forty-five Black railroad workers were fired and replaced by White people.[5] Some of these workers were rehired, but they were put into lower-paying positions.[6] Worse yet, this case was not against their employer.[7] Rather, these workers brought suit against their labor union that failed to execute on its promise to protect them.[8] This case presents a very tangible example of the pervasive nature of discrimination. For Black people, discrimination pervaded their workplaces, and even the institutions meant to protect them.

At an individual level, it is easy to see the tremendous impact losing a job or a significant decrease in pay could have on a family. One could imagine that this could diminish the academic prospects of a child in that family. The link between income and education[9] means that any drastic change in income has the potential to change the economic destiny of this family and their descendants. At the very least, this type of event would set a family back, but at the worst, this type of event could trap generations into a cycle of lesser education, poverty, and worse opportunities. On one end of the spectrum, we see how the economic success of someone like John D. Rockefeller in 1870[10] has translated to a net worth of $8.4 billion for the Rockefeller family in 2020.[11] Thus, on the other end of that spectrum, it seems

---

4. Id.

5. Id.

6. Id. at 43.

7. Id. at 42.

8. Id.

9. Matt Barnum, The Wealth Gap: How the Education World Fails to Fully Measure Students' Economic Disadvantage, Chalkbeat (Sept. 29, 2020, 1:52 PM), https://www.chalkbeat.org/2020/9/29/21493981/wealth-gap-race-schools-education-research.

10. Rockefeller Family, Forbes, https://www.forbes.com/profile/rockefeller/?sh=5a4f5d3c430e (last visited Apr. 6, 2021).

11. Forbes Wealth Team, Billion Dollar Dynasties: These Are the Richest Families in America, Forbes (Dec. 17, 2020, 6:00 AM), https://www.forbes.com/sites/kerryadolan/2020/12/17/billion-dollar-dynasties-these-are-the-richest-families-in-america/?sh=73c63eb2772c.

more than plausible that the economic hardships faced by a Black family in 1957 (the year of the *Conley* decision) could have consequences on their descendants today. Whatever the imagined economic implication is, it has to be multiplied by the forty-five families represented by the plaintiffs in this suit,[12] and by the potentially countless other undocumented incidents of discrimination. The economic ramifications of the events of *Conley* are unknown, as are the full effects of the much longer history of discrimination and systemic racism in the United States. Moreover, even internationally the full economic toll of discrimination has yet to be accounted for. The economic consequences of historical instances of discrimination such as Apartheid, the *encomienda* system, and the Holocaust, among others, are still open questions. Although these questions remain unanswered, they are nonetheless critical to fully understanding these communities and their present-day economics.

For better or worse, history has the potential to alter lives in a way that persists far beyond the date of any particular event. Similarly, the repercussions of discrimination can change lives in a way that continues far beyond any particular individual who experiences discrimination. On a large scale, this can affect entire communities or entire races. Understanding the economic effects of discrimination is crucial to confront the challenges of a Black person in 2021.

---

12. Conley, 355 U.S. at 43.