

WERE WE RIGHT TO CONDUCT THE TESTS: HOW DO WE RIGHT THE WRONGS?

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The testing of nuclear weapons in the Marshall Islands by the United States presents many policy dilemmas. No one would seriously argue against the proposition that the U.S. government mistreated the Marshallese and that redress and compensation is due to the people of the four affected atolls. But like most policy issues based on a redress of grievances, there are complexities and nuances which make their presence known when laws and money attempt to resolve ethical matters. Grievances are easy to advance on ethical grounds, but the resolution usually gets translated to finances pretty quickly with little thought about appropriate behavior for the future. It isn't even clear whether we can make a satisfactory assessment about the ethical missteps of the past.

In 1982, the Reagan administration reached an agreement with the Republic of the Marshall Islands (RMI) on issues resulting from the nuclear testing program. Three years later, the Congress approved the RMI nuclear claims settlement. The settlement established a Nuclear Claims Tribunal to ensure the adequacy of remedies and the finality of the settlement. Since that time and after hundreds of millions of dollars expended to help resolve the matter, a "changed circumstances" petition was presented in 2000. This petition is a statutorily allowed procedure to revisit the compensation package if it proved to be inadequate. The President and Congress have not yet acted on the petition.

One possible solution has been to grant jurisdiction to the U.S. Court of Appeals to review decisions by the Nuclear Claims Tribunal. This would allow the U.S. judicial system the right to review the adequacy and fairness of the awards presented to date. It is anticipated that this will result in higher and higher awards. This is particularly the case since the Marshallese have received far less compensation than U.S. citizens who were victims of mainland nuclear testing. There is some opposition to

extending this jurisdiction to issues arising from claims by non-U.S. citizens. However, the testing was conducted when the Marshallese were under the protection of the U.S. government.

In matters like this, it is always unclear what determines the price of fair redress. Is it determined by how a country treats its own citizens in similar circumstances? U.S. citizens who were victims of testing in Nevada were treated more favorably than the Marshallese. There is also evidence that the standards of what constituted harmful radioactivity were more stringently applied to Americans over Marshallese. Should compensation be constantly revised in light of scientific data? Is there a closing date on the data? Is it simply a political process which will not end as long as advocates and victims can hire lobbyists in Washington?

In this tragedy, what are the real issues? Is it just money? Is America responsible for compensation because it made mistakes in the conduct of the testing program? Was the testing program a mistake? Many in Congress express their outrage about how the Marshallese were treated as guinea pigs during the testing program. But no one has ever said that the testing program itself was in error. To be sure, the Marshallese were not treated in the same way that U.S. citizens would have been treated. But that is not the same thing as saying that no testing should have ever occurred in the Marshall Islands.

The winning of the Cold War against the Soviet Union was made possible because of the testing of nuclear weapons by the U.S. government. The objective of the testing was to be able to maintain a strategic balance in favor of the United States in terms of nuclear weaponry. This allowed the United States to keep the Soviet Union at bay until it eventually collapsed. Does this mean that while mistakes were made, the positive outcome of the testing made it worthwhile? In other words, if we had it to do over again, would we have tested again? The Marshallese were great contributors to the collapse of the Soviet Union. They have made it possible for the U.S. to be the victors in the Cold War. Does this add to the validity of their claims against the U.S. government? Does it give them an additional right to make claims?

Viewed in these terms, there will never be sufficient and fair compensation for the Marshallese. Given all of their contributions to our strength, any amount they ask for will fall far short of their worth to our way of life.

Questions to Consider:

1. Should the nuclear testing program have been conducted at all in the Marshall Islands? Or if the testing *was* necessary, then should it have been implemented with greater care and attention to the concerns of the people of the Marshalls? Can the winning of the Cold War justify or negate the poor treatment of a few hundred people?
2. Should the Marshallese be given the opportunity to enter U.S. Courts to determine the adequacy of the awards given by the Nuclear Claims Tribunal? Should Congress just determine a new and final amount of compensation?
3. How should we measure the adequacy of compensation? What is the yardstick? Is it the treatment of U.S. citizens under similar circumstances?

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