

Reparations and Racial Inequality

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Abstract

A recent development in philosophical scholarship on reparations for black chattel slavery and Jim Crow segregation is reliance upon social science in normative arguments for reparations. Although there are certainly positive things to be said in favor of an empirically informed normative argument for black reparations, given the depth of empirical disagreement about the causes of persistent racial inequalities, and the ethos of 'post-racial' America, the strongest normative argument for reparations may be one that goes through irrespective of how we ultimately explain the causes of racial inequalities. By illuminating the interplay between normative political philosophy and social scientific explanations of racial inequality in the prevailing corrective justice argument for black reparations, I shall explain why an alternative normative argument, which is not tethered to a particular empirical explanation of racial inequality, may be more appealing.

1. *The Reparations Debate*

From when the first recorded black African slaves arrived on the shores of Jamestown, Virginia in 1619, black chattel slavery was practiced and protected until its demise in 1865 with the ratification of the Thirteenth Amendment following the deadliest war in US history. And more than 140 years after the abolition of slavery, the debate over whether living descendants of black slaves should receive reparations for the heinous legacy of slavery and its aftermath is one of the most hotly contested debates in the public sphere. This debate is often situated within the larger international context of nations coming to terms with different legacies of historical injustice in the aftermath of World War II, most notably Germany coming to terms with the legacy of the Holocaust, Japan coming to terms with its treatment of so-called comfort women, and the United States coming to terms with the internment of Japanese-Americans (Barkan 2000; Teitel 2000). Yet, the movement for black reparations has a much longer history than casual observers typically assume. Indeed, it predates the Holocaust reparations movement by many years (Olgetree 2003; Brooks 2004; Brophy 2006).

The black reparations movement has garnered increased public and scholarly visibility in recent years as demands for redress of various historical injustices – and long overdue formal apologies for them – have increased in frequency and prominence worldwide (Barkan 2000; Barkan and Karn 2006; Gibney et al. 2007), and as unprecedented municipal and state slavery era commerce disclosure laws in the United States have forced financial, insurance, and other companies to disclose slavery-era-related business exposing them to legal liability as well as moral condemnation (Brophy 2006). Moreover, the heightened visibility of this debate occurs even during this historic moment when the United States has seated its first black president who, ironically enough, is not a descendant of black African slaves. Of course, this modern black reparations movement invites the provocative questions of whether a public apology for slavery issued by President

Barack Obama would be taken seriously, and whether his election (as some have suggested) renders the continued pursuit of black reparations passé. Yet, it should come as no surprise that the debate over reparations for slavery is most spirited in response to demands for monetary reparations – or the so-called 40 acres and a mule – for the living descendants of black slaves, as opposed to calls for greater black representation in prominent political offices and positions of power, and as opposed to calls for public formal apologies or other purely symbolic measures such as a National Slavery Museum on the Mall in Washington, DC.

Indeed, it is telling that the unprecedented apology to black Americans for wrongs committed against them and their ancestors who suffered under slavery and Jim Crow issued by the US House of Representatives on 29 July 2008 made no explicit mention of reparations though it did commit the House to ‘redressing the lingering consequences of these misdeeds’. Although this purely symbolic step is quite remarkable in its own right, and should not be taken lightly despite the fact that the resolution was nonbinding and passed on a voice vote, it is certainly less threatening and less contentious than passing a binding resolution to provide material reparations to rectify the lingering consequences of slavery and its aftermath, which many would argue includes persistent black–white inequalities in education, wealth, health, and in many other areas. Such a measure certainly would have garnered much more prominent headlines the day after passage than the measure adopted. Furthermore, as some scholars have argued (Brooks 1999; Feagin 2004; Williams and Collins 2004), it is far from clear that anything short of this – including the election of a black president – will be adequate atonement for the legacies of black chattel slavery and Jim Crow segregation.

In addition to there being evidence that many people are willing to accept providing black people some form of symbolic reparations for slavery (such as a formal apology or a slavery museum or national monument) but that fewer people are willing to endorse monetary reparations, there is also survey data indicating that pro-reparations and anti-reparations supporters can largely be divided along racial lines. Brophy (2006: 4) cites a poll of Alabama citizens conducted in 2002 by the *Mobile Register* in which only 5% of white people supported reparations for slavery from the federal government in stark contrast to 67% of black people who supported them. The poll also showed that a marginally higher percentage of black people, 73%, and considerably higher number of white people, 24%, believed that the federal government should apologize for slavery. And anticipating the objection that Alabama is way out of step with the mainstream American society, Brophy (2006: 5) also cites an empirical study conducted by Harvard University and University of Chicago researchers in 2003 in which only 4% of white people believed that the federal government should pay compensation for slavery and 67% of black people believed that it should, whereas a marginally higher percentage of both black people, 79%, and considerably higher percentage of white people, 30%, believed that the federal government should apologize for slavery.

Numerous scholars including social scientists, historians, political scientists, critical legal studies scholars, and philosophers have been arguing for years that America and Americans remains deeply divided by race and that these divisions usually show up when ‘race’ matters become a topic of public concern and debate (West 1993; Schuman et al. 1997; Hacker 2003). And from this vantage point any empirical survey data suggesting that the division between advocates for, and critics of, slavery reparations follows along racial lines will not be a surprise. Indeed, some people will say that this is precisely what we should expect to discover. Although such public opinion surveys have merit and cannot be entirely dismissed, we should not presume that the black/white racial divide is

always a reliable way to track the pro/anti-reparations divide. It has been well established that black political thought is complex and diverse, with black people holding a variety of political ideologies along the spectrum of available options including nationalism, liberalism, conservatism, Marxism, and so forth (Dawson 2001). Moreover, it has been shown that black political thought yields further complexity and diversity when viewed through the prism of comparative lens offering a more global view of the black world (Hanchard 2006).

Hence when taking stock of what individual black people think about reparations, affirmative action, rights, freedom, justice, solidarity, equality, and other political ideals or public policies, we must consider how their perspectives are profoundly shaped by their background theories and norms, which may serve to distinguish their perspective not only from white people but from other black people as well. Indeed one implication of the current discussion is that racial membership may not be the most reliable or most telling way to sort defenders and critics of black reparations.

Several questions commonly raised by the reparations debate include: Who is owed reparations? Who owes reparations? And what form should reparations take? But recent philosophical treatments of the topic invite us to consider the following question: What is the relationship between the historical injustices of slavery and Jim Crow and current racial inequalities in wealth, health, housing, crime, and education in the normative argument for black reparations? In this brief study, I show that the prevailing normative argument for black reparations, namely the argument from corrective justice, turns on a particular explanation of the 'root' cause of racial inequalities. And I maintain that this is a source of concern given the depth of disagreement in the social science literature about why black-white inequalities persist in what has been described as the post-racial or post-Obama era (Darby 2009). This conclusion should whet our appetite for an alternative normative argument for black reparations that is not tethered to a particular explanation of the causes of racial inequalities. I conclude this study with a few remarks about how such an argument might proceed by shifting our focus from the normative ideal of corrective justice to the ideal of freedom as self-development.

2. The Corrective Justice Argument

Although defining the nature of historical injustice is far from being a straightforward matter, a common point of agreement is that this is a wrongdoing that occurred in the past, and there is a moral presumption that it be rectified where possible and where defeating conditions do not obtain. Hence, in defining the nature of historical injustice, we will find ourselves taking not only a specific conceptual stance on what kind of wrongdoing it amounts to, but also a normative stance that it be redressed. And here we will most certainly find ourselves disagreeing – perhaps even sharply – about the reasons that historical injustice ought to be redressed and about what exactly this demands.

Before considering one of the main normative arguments for readdressing the historical injustices of slavery and segregation, we should note that one of the things that redressing historical injustice obviously demands is looking back to these past wrongdoings and bringing them into sharper focus before the public eye. Hence, the nation and its citizens must be reminded of these infamous institutions as an essential aspect of coming to terms with their legacy. And, as others have observed in related discussions, this creation of a common collective memory is an essential element of any reparations movement:

A chief function of reparations movements is to create and hallow a particular set of memories, to restore to collective consciousness events otherwise obscured by official histories and “common sense” as defined by dominant groups. (Kutz 2004: 283)

Hence with respect to the black reparations movement in particular, the history of black chattel slavery and Jim Crow segregation must continue to be recollected in our schools and universities as well as in our films, books, theatrical productions, music, museums, and our monuments to the past. Moreover, it must be performed in a way that reflects the wide diversity of perspectives on this past and not merely the perspectives of those who paint a flattering portrait of slavery and segregation.

Of course, some people – especially in the aftermath of Obama’s election as President – will disparage the value of looking back to the past in this way as well as the wisdom of seeking reparations for past wrongdoing. Indeed one such critic, sociologist John Torpey (2006: 42), presses the concern this way: ‘The preoccupation with past crimes and atrocities mirrors the eclipse of more visionary modes of imagining the future’. Not only does he credit the Holocaust for stimulating competition for recognition of various historical injustices as ‘Holocaust-like’ or ‘worse than the Holocaust’, in what Barkan (2000) describes as an era of the unfolding of guilt around the globe, moreover, Torpey blames the Holocaust for what he takes to be a not so progressive focus on the preoccupation with the past rather than a focus on the future as the space in which to seek improvements in the human condition. Thus, he contends that looking back to the so-called historical injustices undermines ongoing efforts to realize certain visions of the ideal moral community in which diverse peoples can live together in a nation as citizens beholden to the common normative ideals of freedom, equality, and justice for all. And to the extent that the pursuit of reparations demands that we look back to our infamous past, then this pursuit undermines efforts to realize a particular idealized vision of a common future of unified citizenship.

But we need not deny that a common future of unified citizenship is an admirable aspiration to wonder whether we can reasonably hope to realize such a future without adequately coming to terms with past historical injustices, especially when we are arguably still living with their legacy. With regard to the legacy of slavery and segregation, although there is some debate about whether to make the case for reparations by looking back all the way back to slavery rather than to Jim Crow and the period leading up to *Brown v. Board of Education* and the Great Society and civil rights reforms during the middle of the twentieth century, it has been argued that persistent racial inequalities between black and white people in wealth, health, housing, crime, education, and in other areas are the most visible marks of the past on the present, whether they can be linked all the way back to slavery or only to more recent post-slavery governmental actions and institutions. And these visible marks of racial inequality have informed some of the most recent normative defenses of black reparations in the philosophical literature (Boxill 2003; Lyons 2004; McCarthy 2004; Kaplan and Valls 2007).

Underlying the prevailing normative argument for reparations is the moral intuition that corrective justice supports reparations. The pursuit of corrective justice, which will be familiar to readers of Aristotle’s *Nicomachean Ethics*, demands that if one party (the victim) is wronged by another party (the perpetrator) then the perpetrator has a prima facie moral obligation to make the victim whole by restoring the *status quo ante*, so far as possible, for the wrongful harm. When applied to the case of black chattel slavery, a simple version of the corrective justice argument for reparations goes roughly as follows: black chattel slavery was a wrongful harm against slaves perpetrated by slaveholders.

Slaveholders had a *prima facie* moral obligation to make slaves whole by restoring the *status quo ante*, so far as possible, before this wrongful harm. Some form of reparations to slaves would accomplish this. Therefore, slaveholders owed slaves some form of reparations for the harm of enslavement.

Of course, some critics will object that this argument does not establish that present-day black people are owed reparations for the obvious reason that they were not enslaved. So even if this is a strong argument for reparations, it has no applicability today as there are neither black slaves nor slaveholders in the United States, and therefore no parties that rightfully stand to benefit and none that is obliged to make amends. Obviously if some black people could indeed trace their roots back to slaves who were harmed by some enduring corporate or collective agent, then their case would be stronger. Yet, some critics will add that this will not be sufficient to establish that *all* present-day black people are owed reparations but only ones who can firmly establish their claims. The most compelling line of response to these criticisms of the simple corrective justice argument has been to shift the focus away from individual victims and individual perpetrators to empirically demonstrable patterns of black–white inequalities along various measures of well-being, and to take the closing of these gaps attributable to past wrongdoing as the basis for a more compelling corrective justice argument for reparations.

3. *Reparations for Racial Inequality*

Defenders of reparations have certainly appreciated the force of criticisms that challenge the moral or legal standing of present-day black people to press claims associated with past wrongs to their ancestors. But they deem these criticisms ineffective in derailing the corrective justice argument for reparations. For one thing, they maintain that it is a red herring to take the case to turn on whether there are slaves or slaveholders alive today. Rather, they contend that the strongest corrective justice argument takes account of the direct and indirect role of the US government in supporting and facilitating a system of black subordination and disadvantage long after slavery's demise, a system that has had an enduring and disproportionate impact on black people in general. To be sure, both defenders and indeed most critics of black reparations admit that slavery was a wrongful harm to enslaved black people and their immediate descendants. Yet differences of opinion emerge, as we get further away from slavery, with many critics suggesting that claims of later descendants to have suffered continuing harm become increasingly dubious with the passage of time and changing circumstances.

For example, by considering the histories of injustice surrounding white settlers' dealings with aboriginal peoples of Australia, New Zealand and North America, legal philosopher Jeremy Waldron (1992, 2002) offered a perspective on our obligations to rectify previous injustices that generated considerable debate in the subsequent legal and philosophical literature on reparations. Observing that efforts to redress historical injustices proceed in the name of principle – the principle of justice – Waldron claimed that we cannot lose sight of the demands of justice in these efforts or, more precisely, that we must realize that justice cuts both ways. Accordingly, we must question the judgment that rectification of past injustice generates a non-negotiable or absolute demand for more than symbolic reparations but for transfers of land, wealth, and other resources. Hence, when considering claims to reparation, such claims must be considered alongside competing and conflicting claims to the resources in question. Arguably, these claims may also be made in the name of justice and, in many cases, may have greater weight and priority, as they are current claims and not ancient ones tied to distant wrongs that took place

generations ago or that impacted people who are long dead, or claims whose force has faded with the passage of time. Although Waldron's suggestion that some historical injustices can thus be superseded by time and changing circumstances has been widely criticized (see, e.g., Dodds 1998; Thompson 2001; Meyer 2004; Patton 2005), it has clear implications for the reparations debate and it has been utilized to challenge the normative case against reparations for the so-called 'ancient' wrong of slavery.

The main way of dealing with the foregoing worry regarding the passage of time has been to turn our gaze back not the 'ancient' wrong of slavery but to much more recent wrongs that have disproportionately harmed present-day black people. For instance, one case study that has received considerable attention in several important articles is the role of the government in supporting and sustaining racial discrimination in housing and lending practices in the post-World War II era (McCarthy 2004; Kaplan and Valls 2007). It has been argued that housing discrimination, and the resulting residential segregation of black and white people, has had far-reaching negative consequences for black people as a group, leaving them with less wealth (Krivo and Kaufman 2004), poorer health (Williams and Collins 2004), greater exposure to crime (Peterson and Krivo 2009), and inferior education (Brooks 2004) relative to white people as a group. And for these reasons, this is an especially pernicious form of discrimination, with much more recent roots and a more demonstrable and quantifiable impact on present-day black people.

According to defenders of reparations, this recent case study and other similar ones have various virtues: (i) they avoid taking us all the way back to slavery and thus avoid certain objections; (ii) they focus on empirically demonstrable and quantifiable harms; (iii) they shift our focus from an individual-centered perspective, in which we look for specific victims and perpetrators, to a group-centered perspective, in which we look for discernable patterns of racial inequality; and (iv) they suggest that the most fitting reparations, if the case can be made, should be aimed at yielding greater equality between these groups across a wide range of measures of well-being.

This shift in focus to more recent wrongs and to real patterns of racial inequality is captured in modified versions of the corrective justice argument reparations. Assuming that the US government played an active role in supporting and sustaining black subordination and disadvantage (e.g., in home ownership opportunities and home equity wealth accumulation) long after the demise of slavery and well beyond the World War II era, and assuming that such practices have been harmful to present-day black people and their immediate descendants, then corrective justice demands that the US government has a moral obligation to redress the visible marks of the harms attributable to its own actions, namely, demonstrable and quantifiable inequalities in which black people are over-represented in the ranks of the least well off and underrepresented in the ranks of the most well off. And insofar as some sort of reparations program would accomplish this, and insofar as these continuing effects of past wrongdoing constitute a continuing harm, then the United States ought to pursue such a program (Forde-Mazrui 2004; McCarthy 2004).

One important aspect of this argument is that it focuses our attention on the concrete effects of past wrongdoing, and it presumes that but for this past wrongdoing these particular harmful effects would not obtain. A defender of the corrective justice argument puts the point this way:

Although, laudably, America enacted national antidiscrimination laws in the 1960s, wide disparities between blacks and whites persist across virtually every indicator of social and economic well-being. Indeed, as the twentieth century came to a close, the condition of many poor black

had worsened in many respects Given the history of discrimination against blacks in this country, the persistence of substantial disparities reflect, at least to some degree, effects of past discrimination. That is, these conditions would not exist to the same extent but for American's history of racial discrimination against black Americans. (Forde–Mazrui 2004: 703–4)

This focus on more recent harms, which do not require us to go all the way back to slavery, presumes that comparisons between the actual circumstances of black people and counterfactual circumstances are much less difficult. But even ardent supports of black reparations have been critical of such counterfactual reasoning in reparations arguments (Roberts 2006).

Another important aspect of this argument is that it presumes the existence of a causal connection between practices of racial discrimination and patterns of racial inequality. In other words, it adopts a particular view of the causes of persistent racial inequalities, one that roots them variously in both overt and subtle past discrimination. To wit, this strategy anticipates two important concerns often raised by critics of reparations. How can the purported harms that present-day black people are alleged to suffer collectively as a result of past wrongdoing be empirically articulated and quantified? And what are the prospects for connecting these present harms with past wrongdoing so as to establish the claim that present-day black people suffer enduring injury? To fully address these questions, advocates of this modified corrective justice argument have deferred to social scientific research findings that empirically articulate and quantify persistent racial disparities, and offer an empirically grounded explanation of why these disparities can arguably be linked back to governmental practices that subordinated and disadvantaged black people long after the demise of slavery. Although the turn to social science is a welcomed development in advancing our understanding of the normative case for reparations, it comes at a price.

4. *Reparations and the Science of Racial Inequality*

Although the era of state sponsored *de jure* racial discrimination is nearly six decades behind us, black Americans – relative to their population size – remain on the short side of various inequalities in education, crime, and in other areas. We find that black children, in larger numbers, underachieve relative to white children on various measures of educational achievement such as performance on standardized tests, grade-point averages, and graduation and promotion rates (Darby 2009). Furthermore, according to one recent report, elementary and secondary school black children also receive much harsher sanctions than white children for school misconduct: they are suspended at a higher percentage (20% of black students compared to 9% of white students); they are left back at a higher percentage (17% of black students compared to 8% of white students); and they are expelled at a higher percentage, 5% of black students being expelled compared to only 1% of white students (Darby 2009: 761). In addition, there is also evidence that black people receive harsher sanctions than white people not only in school but within the criminal justice system as well. For instance, we find that black offenders are much more likely than white offenders to be held in custody prior to sentencing, with nearly 68% of black offenders being held in pretrial detention when their sentence was imposed compared to only 44% of white offenders (Spohn 2009: 888). We also find that black men are eight times more likely to be incarcerated than white men even when controlling for age and educational levels (Western and Widleman 2009: 861).

Both within the public and the academic sphere, defenders of reparations have cited black–white inequalities in these and in other areas to show that present-day black people suffer demonstrable harms due (at least in part) to the legacy of past injustice. And they

have argued that corrective justice demands that these enduring harms be redressed. Essential to this argument is the claim that, in large measure, these enduring racial inequalities are rooted in past government wrongdoing against black people, wrongdoing rooted in the legacy of racial discrimination and subordination that continued long after the demise of slavery. This empirical claim has been supported by relying upon a certain sort of social scientific explanation of racial inequality – an explanation that traces the roots of black–white inequalities in education, crime, health, wealth, and housing to these past discriminatory practices.

Generally speaking, advocates of the modified corrective justice argument have opted for what might be called a *black agent neutral* explanation of persistent racial disparities, which roughly holds that the primary explanation, or the root cause, of these racial disparities does not have to do with the actions of black people in general or even a small subset of black people (e.g., the so-called ghetto poor). Rather the root causes of the relevant racial disparities are deeply rooted in past and continuing practices of systematic discrimination and subordination of black people that have placed them at a serious competitive disadvantage relative to white people in taking advantage of opportunities, competing for resources, and overcoming a range of obstacles to overall well-being.

So in response to critics seeking to downplay the significance of these structural factors in determining black life prospects, and instead looking to black culture or black choices to explain black disadvantage, one proponent of the modified corrective justice argument makes the following observation:

Those who blame the victims of hypersegregation for the culture of hypersegregation are *getting the causal story backward*. The institutionalized, federally sanctioned and implemented discrimination that was instrumental in creating the black ghetto and the black underclass was largely the work of individual and corporate agents of the white majority, which was thereby continuing through transforming the institutionalized domination over blacks it inherited from slavery. (McCarthy 2004: 764)

From this perspective, therefore, corrective justice demands redressing past wrongs where the ill effects of past wrongs persist in the form of inequalities that have roots in slavery, Jim Crow, and more recent social policies and practices. But as perceptive advocates of this argument most certainly appreciate, this modified corrective justice argument for reparations is not uncontroversial. Not only does the most developed version of the argument in the literature reply upon a certain historiography, or interpretation of the civil rights movement, *Brown v. Board of Education*, and the Great Society programs, which takes these developments to have been insufficient in bringing about the American Dream for black Americans, moreover, this argument clearly relies upon a particular kind of empirical explanation of persistent racial inequalities.

As one might imagine, various critics of black reparations have contested both the historiography and the social science relied upon by defenders of this argument (Horowitz 2002; McWhorter 2003; Epstein 2004). The most interesting of these debates are between those who agree that slavery did indeed harm black people and their descendants but differ over the significance of *Brown v. Board of Education*, the passage of the Civil Rights Acts of 1957 and 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, and subsequent social welfare legislation and affirmative action programs of the 1960s and 1970s meant to equalize opportunities between black and white people. That is, the most interesting debates are between those who grant that certain disparities between black and white people endure in the post-Civil Rights era but seriously disagree about why they endure and about how to redress these disparities.

So, for example, in response to efforts to link enduring racial disparities to governmental practices that endured long after the demise of slavery, critics of reparations will argue that we must seek an alternative explanation of them in the post-Civil Rights era, which they take to have eradicated the last vestiges of an American society that contributed to racial inequality through racial discrimination. Critics of reparations will concede that slavery and discrimination have, in the aggregate, diminished the wealth of African Americans and may even account for other demonstrable inequalities. But they will add that because the playing field was leveled shortly after *Brown* and the Civil Rights era, we must look to other factors such as high rates of illegitimacy, and substance abuse, and crime, and a failure to take advantage of the educational, employment, and business opportunities to account for racial gaps in wealth, health, education, and crime. In more general terms, they tend to opt for what might be called a *black agent relative* explanation of persistent inequalities, holding that the lions share of persistent racial inequalities has to do with the exercise of black agency at least on the part of some black people (e.g., the ghetto poor) though not necessarily all black people (e.g., the black middle class and wealthy black people).

The causal connection of past racial injustice to present racial inequalities has been described as an issue that ‘haunts’ the debate over reparations (McCarthy 2004: 752). To be sure, unless it is Halloween, a haunted house is generally something we want to avoid. But by the same token we may also want to avoid having our debate over reparations haunted by this causal connection, particularly when we appreciate the depth of disagreement regarding how to explain the causes of persistent racial inequalities, disagreement which may be loosely divided into various versions of black agent neutral and black agent relative explanations. Of course some people will argue that defenders of the modified corrective justice argument who rely upon a black agent neutral explanation of inequality should simply stand their ground and show that the competing empirical explanations relied upon by their critics are flawed, ideological, or do not provide the best explanation of the phenomena.

Perhaps this might be a profitable strategy in the long run. However, it will certainly not be an easy road to hoe in this so-called ‘post-racial’ era in America. A few of the main characteristics of this era is the affirmation of the inclusive nature of the American ideals of freedom and equality, the affirmation that the greatest legacy of the civil rights movement was extending their scope to previously excluded black people, which brought us the final step to achieving one America for all, and the affirmation that this has rendered the need for further government intervention on behalf of black people unnecessary. Within this post-racial ethos, black agent relative explanations of racial disparities have considerable appeal. And one important implication of this appeal is to make corrective justice arguments for reparations tethered to black agent neutral explanation of racial inequality a much harder sell, both to the general public and within scholarly circles. Therefore, at least in the short run, we may do better to mount a normative argument for black reparations that takes account of persistent racial inequalities yet can reach its conclusion irrespective of how we ultimately explain the empirical causes of persistent racial inequalities. Whether such an argument can be grounded in the idea of corrective justice, as opposed to some other normative value, remains to be seen.

5. Conclusion

A more attractive normative argument for black reparations could reach its conclusion regardless of how one explains the ‘root’ causes of persistent racial inequalities. Let me

conclude with a few remarks about the shape that such an argument might take. One way to craft such an argument is by shifting our focus away from the normative ideal of corrective justice and toward the normative ideal of freedom as self-development. Although we can draw from any number of thinkers in the history of philosophy and political thought to conceptualize what self-development entails including Plato, Aristotle, Rousseau, Kant, Humboldt, Hegel, Mill, Marx, Green, Nietzsche, Dewey, Hobhouse, Rawls, or Sen, wherever one turns one can certainly adopt a particular evaluative standpoint concerning the importance of developing the human self, say, by developing its distinctive powers or capacities.

From this normative point of departure, let us suppose that the variety of empirically testable causes of racial inequalities – whether they are held to be grounded in facts about the conduct of individual agents (agent-relative factors), in systemic or institutional factors (agent-neutral factors) or in a combination of both kinds of factors – all constitute obstacles to individual self-development, to the development of our distinctive powers or capacities. If this is the case then promoting or securing individual freedom demands that a liberal society with an abiding commitment of freedom endeavor to remove the variety of obstacles to individual self-development regardless of their causes. Hence, to the extent that the pursuit of freedom in a liberal society demands removing, or seeking to remove, obstacles to self-development, which leads to greater freedom, its normative obligation to diminish persistent racial inequalities can be based on its abiding commitment to individual freedom as self-development. A truly liberal society would be committed to eradicating racial inequalities – whatever their causes – in the interest of achieving a greater realization of individual freedom.

A normative argument for black reparations grounded in this normative ideal would not turn on a particular explanation of the ‘root’ causes of racial inequality, although proponents of such an argument could certainly be partial to a particular explanation. Instead, it leaves room for substantial disagreement over the causes of these inequalities. And I believe that this would be a welcomed result for those who wish to defend black reparations while at the same time acknowledging the seemingly intractable disagreement among social scientists over the empirical causes of persistent racial inequalities.

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Short Biography

Derrick Darby’s research in social and political philosophy has focused on how to think about the source and value of rights when taking the legacy of race and racism into account. In addition to authoring numerous papers on this topic in such journals as *Canadian Journal of Philosophy*, *Social Theory and Practice*, *Law, Culture, and the Humanities*, and *Philosophy and Phenomenological Research*, his theory of rights is presented in his book, *Rights, Race, and Recognition* (Cambridge University Press 2009). Drawing on philosophy, economics, and law, his current research deals with how to think about the demands of egalitarianism when taking the legacy of racial inequality into account. This project,

which singles out educational inequality for special attention, is funded by a Spencer Foundation grant. Darby holds a BA in Philosophy from Colgate University, and a PhD in Philosophy from the University of Pittsburgh. He has taught at the University of Virginia, Northwestern University, and Texas A&M University before coming to the University of Kansas, where he holds faculty appointments in philosophy and law, and is a faculty affiliate of the Institute for Policy and Social Research.

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Works Cited

- Barkan, E. *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: W. W. Norton & Company, 2000.
- and A. Karn. *Taking Wrongs Seriously: Apologies and Reconciliation*. Palo Alto, CA: Stanford University Press, 2006.
- Boxill, B. 'A Lockean Argument for Black Reparations.' *The Journal of Ethics* 7 (2003): 63–91.
- Brooks, R. L. *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice*. New York: New York University Press, 1999.
- . *Atonement and Forgiveness: A New Model for Black Reparations*. Berkeley, CA: University of California Press, 2004.
- Brophy, A. L. *Reparations Pro & Con*. New York: Oxford University Press, 2006.
- Darby, D. 'Educational Inequality and the Science of Diversity in *Gutter*: A Lesson for the Reparations Debate in the Age of Obama.' *The University of Kansas Law Review* 57 (2009): 755–93.
- Dawson, M. C. *Black Visions: The Roots of Contemporary African-American Political Ideologies*. Chicago: The University of Chicago Press, 2001.
- Dodds, S. 'Justice and Indigenous Land Rights.' *Inquiry* 41 (1998): 187–205.
- Epstein, R. A. 'The Case Against Black Reparations.' *Boston University Law Review* 24 (2004): 1177–92.
- Feagin, J. R. 'Documenting the Costs of Slavery, Segregation, and Contemporary Racism: Why Reparations are in Order for African Americans.' *Harvard BlackLetter Law Journal* 20 (2004): 49–81.
- Forde-Mazrui, K. 'Taking Conservatives Seriously: A Moral Justification for Affirmative Action and Reparations.' *California Law Review* 92 (2004): 683–753.
- Gibney, M., R. E. Howard-Hassmann, J. Coicaud, and N. Steiner, eds. *The Age of Apology: Facing Up to the Past*. Philadelphia, PA: University of Pennsylvania Press, 2007.
- Hacker, A. *Two Nations: Black and White, Separate, Hostile, Unequal*. New York: Simon & Schuster, 2003.
- Hanchard, M. *Party/Politics: Horizons in Black Political Thought*. New York: Oxford University Press, 2006.
- Horowitz, D. *Uncivil Wars: The Controversy Over Reparations for Slavery*. San Francisco: Encounter Books, 2002.
- Kaplan, J. and A. Valls. 'Housing Discrimination as a Basis for Black Reparations.' *Public Affairs Quarterly* 21 (2007): 255–73.
- Krivo, L. J. and R. L. Kaufman. 'Housing and Wealth Inequality: Racial-Ethnic Differences in Home Equity in the United States.' *Demography* 41 (2004): 585–605.
- Kutz, C. 'Justice in Reparations: The Cost of Memory and the Value of Talk.' *Philosophy and Public Affairs* 32 (2004): 277–312.
- Lyons, D. 'Corrective Justice, Equality Opportunity, and the Legacy of Slavery and Jim Crow.' *Boston University Law Review* 84 (2004): 1375–404.
- McCarthy, T. 'Coming to Terms With Our Past, Part II: On the Morality and Politics of Reparations for Slavery.' *Political Theory* 32 (2004): 750–72.
- McWhorter, J. 'Against Reparations.' *Should America Pay?: Slavery and the Raging Debate on Reparations*. Ed. R. Winbush. New York: HarperCollins, 2003. 180–96.
- Meyer, L. H. 'Historical Injustice and the Right of Return.' *Theoretical Inquires in Law* 5 (2004): 305–16.
- Olgetree, C. J. Jr 'Repairing the Past: New Efforts in the Reparations Debate in America.' *Harvard Civil Rights-Civil Liberties Law Review* 38 (2003): 279–320.
- Patton, P. 'Historic Injustice and the Possibility of Supersession.' *Journal of Intercultural Studies* 26 (2005): 255–66.
- Peterson, R. D. and L. J. Krivo. 'Race, Residence, and Violent Crime: A Structure of Inequality.' *The University of Kansas Law Review* 57 (2009): 903–33.
- Roberts, R. C. 'The Counterfactual Conception of Compensation.' *Metaphilosophy*, 37 (2006): 414–28.

- Schuman, H., C. Steeh, L. D. Bobo, and M. Krysan. *Racial Attitudes in America: Trends and Interpretations*. Cambridge, MA: Harvard University Press, 1997.
- Spohn, C. 'Race, Sex, and Pretrial Detention in Federal Court: Indirect Effects and Cumulative Disadvantage.' *The University of Kansas Law Review* 57 (2009): 879–901.
- Teitel, R. G. *Transitional Justice*. New York: Oxford University Press, 2000.
- Thompson, J. 'Historical Injustice and Reparation: Justifying Claims of Descendants.' *Ethics* 112 (2001): 114–35.
- Torpey, J. *Making Whole What Has Been Smashed: On Reparations Politics*. Cambridge: Harvard University Press, 2006.
- Waldron, J. 'Superseding Historic Injustice.' *Ethics* 103 (1992): 4–28.
- . 'Redressing Historic Injustice.' *The University of Toronto Law Journal* 52 (2002): 135–60.
- West, C. *Race Matters*. Boston: Beacon Press, 1993.
- Western, B. and C. Widleman. 'Punishment, Inequality, and the Future of Mass Incarceration.' *The University of Kansas Law Review* 57 (2009): 851–77.
- Williams, D. R. and C. Collins. 'Reparations: A Viable Strategy to Address the Enigma of African American Health.' *The American Behavioral Scientist* 47 (2004): 977–1000.