

# U.S. Reparations to Descendants of Enslaved Blacks in the U.S.

by

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“So, doing what is unjust is the second worst thing. Not paying what’s due when one has done what’s unjust is by its nature the first worst thing, the very worst of all.”—Socrates<sup>1</sup>

## Abstract

This paper provides a philosophical account of the issue of U.S. reparations to descendants of enslaved blacks in the U.S. (i.e., African Americans). Subsequent to defining “reparations,” the different kinds, approaches and arguments for and against them are noted. While there are cases to be made against the U.S. Government in favor of reparations to certain African countries and peoples, this paper shall focus attention on the case for reparations by the U.S. Government to descendants of enslaved blacks in the U.S.

**Keywords/names:** Bernard Boxill, compensatory justice, desert, Joel Feinberg, Howard McGary, John Rawls, rectification, reparations, responsibility, rights.

## Introduction

The question of whether or not reparations are owed by the U.S. Government to various peoples and governments is a complex one, and can be approached from any one or more of a variety of perspectives: economically, ethically, legally, philosophically, sociologically, theologically, etc. I provide a distinctly philosophical and ethical approach to the question of whether or not the U.S. Government owes reparations to black people (with origins in Africa) in the U.S. due to the transatlantic slave trade. There are broader issues that are pertinent to the matter of reparations to descendants of enslaved blacks in the U.S., such as whether or not certain African countries owe reparations to them, or whether or not certain oppressor-heirs (those who are the heirs of the slave traders and slave owners of black people in the U.S., for instance) owe reparations to descendants of enslaved blacks in the U.S.

Furthermore, I shall not address the matter of many American Indians being held as slaves in the U.S. and elsewhere. There is a case to be made for reparations to their descendants as well. However, I shall address those important matters on another occasion.

And here I of course refer to such people of African descent (black people) who are descendants of enslaved blacks in the U.S. as a group. And there are yet further issues of whether or not the heirs of U.S. slave traders and slave owners owe compensation to the heirs of particular enslaved people they traded or owned, as the case may be. But I am concerned with the moral class-action issue of whether or not the U.S. Government owes reparations of some kind or another to such black people in the U.S. as a group.

More specifically, I shall provide a definition of “reparations,” one that is based on the notion of reparations in U.S. law. Then I set forth the various kinds and philosophical approaches to reparations. Following this, I provide a general reparations argument, and entertain the most substantial philosophical objections to the argument. In the end, it will be shown that, given certain moral and legal considerations, the most important objections to the reparations argument fail for one reason or another. And given the considerable strength of the considerations in favor of such reparations, it is concluded that the reparations argument stands as being the most plausible answer to the question of U.S. reparations to descendants of enslaved blacks in the U.S.

I assume that moral and legal rights are crucial elements that must be respected in any morally decent society, and that those who commit crimes, especially of the most heinous varieties, ought to be punished or forced to rectify those crimes in approximate proportion to the harms they have wrought on their innocent victims. Those who question the veracity of these assumptions are not those who will find the arguments of this paper plausible. But the reader can be assured that these assumptions are fundamental to U.S. law, and it is the moral foundations of U.S. law that is most relevant to this topic. How ought U.S. law to handle the question of reparations to descendants of enslaved blacks in the U.S., and why?

## **What Are Reparations and Why are They Important?**

Reparations are rectificatory means by which one party, the harming party, sets matters right with regard to the harm s/he has caused her/his victim. A harm is the setting back of a legitimate interest.<sup>2</sup> Thus enslavement is a harm to the enslaved because it sets back the enslaved’s legitimate interest in freedom and autonomy. Living under Jim Crow harmed descendants of the enslaved in the U.S. because it set back their legitimate interest in equal protection under the law, in accordance with the 14<sup>th</sup> Amendment to the U.S. Constitution. And each of these forms of oppression against blacks in the U.S. harms contemporary black people (people with origins in Africa) because it sets back their interest in equal treatment under the law insofar as rectificatory justice is concerned. That is precisely what this paper is about, namely, whether or not the U.S. government owes reparations to descendants of enslaved blacks in the U.S., and why?

But rectification, and hence reparations can be of at least two kinds: compensatory and non-compensatory. Compensatory reparations involve the payment of money for damages caused to another in the form of harm, while non-compensatory reparations involve the rectification of injustices by way of changing society in terms of, say, revising the teaching of history in educational institutions like schools, colleges, universities and museums so that it is taught and understood in its most accurate terms, absent from racist and sexist bias for instance, including the due recognition of heroes and others who genuinely deserve veneration by members of society, the reformation of public schools<sup>3</sup> for the sake of genuine equality of educational opportunities and the quality of educational content, etc. It includes the removal of symbols of injustice, such as statues of oppressors, street and building signs bearing their names. It includes award recognition of those who had previously gone unrecognized for their outstanding efforts, etc.<sup>4</sup>

Most philosophical accounts of reparations to descendants of the enslaved in the U.S. favor programs and policies of non-compensatory reparations. In so doing, they typically endorse what amount to affirmative action programs for black people and “other minorities” in the U.S.<sup>5</sup> But as we shall see below, this approach falls prey to a myriad of problems. For reasons that will soon become clear, the most plausible approach to reparations is a rights-based one which endorses a holist set of both compensatory and non-compensatory reparations policies and programs.

Furthermore, reparations are important because they protect group and individual rights by doing the following: (a) acknowledging the oppression of the group; (b) acknowledging the responsibility for the oppression of the group; (c) disavowing the oppression of the group; (d) upholding law and order and responsibility with respect to the oppression of the group; (e) rectifying societal evils against the oppressed group; (f) expressing sympathy, concern and benevolence toward the oppressed group; (g) paying a debt owed to the oppressed group; (h) promoting the self-respect and self-worth of the oppressed group. Indeed, a genuine apology to the oppressed group requires among other things rectification of the oppression of the group, and said apology is a necessary condition for even the possibility of forgiveness to be experienced by the oppressors. Yet such forgiveness is a necessary condition for genuine reconciliation between groups of oppressors and the oppressed. Thus genuine reconciliation requires genuine forgiveness, which in turn requires a genuine apology and adequate rectification for the oppression to the oppressed by the oppressors. Such is the logic of forgiveness in the contexts of group oppression. This implies that “truth and reconciliation” commissions are not only unlikely to yield either truth or reconciliation, but they actually do not concern themselves with rights-violations and their rectification. They are, to be sure, utilitarian means by which to quell the masses into accepting a less serious manner by which to address even most serious rights violations. This point is illustrated by considering two philosophical approaches to reparations.

## Two Philosophical Approaches to Reparations

There are two broad philosophical approaches to reparations. One is utilitarian; the other is rights-based. Classical utilitarianism in general is purely forward-looking and does not place emphasis on past wrongs. Instead, it seeks to maximize social utility by either requiring or favoring those actions (the Consequentialist Principle) that bring about the greatest happiness for the greatest number of people (the Principle of Utility) where the interest of each person is equal to the interests of others (the Equality Principle). Such utilitarian approaches to reparations do not focus on the harms of the past, but rather on factors such as social stability and unity, reconciliation and peace amongst peoples. With these considerations in mind, utilitarian approaches to reparations favor affirmative action kinds of socio-economic programs, instead of rectificatory ones.

One difficulty with such utilitarian approaches to reparations is that they are not approaches to reparations so much as they are means by which to stabilize societies that have experienced the pains of oppression. They do not and cannot conceptually make sufficient room for rights the protection of which and the punishment and compensation for which ought to be respected as the hallmarks of a morally decent society.<sup>6</sup> As such, they do not take sufficiently seriously considerations of responsibility for crimes committed, especially those crimes that are against humanity itself. More specifically, such utilitarian approaches to reparations do not respect considerations of proportional punishment, as the only factors that justify punishment and compensation according to them are those of deterrence and rehabilitation. In other words, such utilitarian approaches to reparations totally deny the relevance or even conceptual viability of what people deserve—either in terms of punishment of the perpetrators of injustice or compensation of the victims of injustice. Rights, justice, desert and related concepts are irrelevant to such utilitarian approaches to reparations so much so that reparations are always reduced in such accounts to policies of affirmative action or social improvement accompanied by issuances of “apologies” by the perpetrators of oppression or “oppressor-heirs” to their victims or “victim heirs” along with plans of reconciliation between said parties in order to attempt to actualize peace and stability in society.

But it is precisely the denial of rights of victims of oppression, responsibility of the oppressors to the victims, and proportional punishment or compensation that condemns such utilitarian approaches on moral grounds, and on the grounds of justice. For insofar as respect for rights and responsibility and proportionality in compensation are bedrocks to any morally decent society, such utilitarian approaches to reparations fail to capture what morality and justice require. So they are to be set aside in the wasteland of philosophically implausible and highly problematic theories.

The other major philosophical approach to reparations is rights-based. Unlike the classical utilitarian approach, the rights-based approach recognizes rights, desert, responsibility and proportionality in compensation as essential to any plausible approach to reparative justice, so much so that it would rather have a society not exist at all unless it respects basic rights—including the rights to compensation. So the utilitarian objection to rights-based approaches to reparations begs the question against them insofar as it assumes without independent argument that a society without rights is worth having. Joel Feinberg has argued persuasively that it is not. Feinberg's assessment of "Nowheresville,"<sup>7</sup> a fictional state wherein everything except rights are present demonstrates that a society absent rights is not worth living in, that is, if self-respect, respect for others, and self-worth are highly valued. For respect for rights is exactly what respects these fundamental moral values.

A rights-based approach to reparations, then, places the highest priorities on rights protection, responsibility for rectifying the wrongs committed against the oppressed, and proportional compensation of the oppressed by the oppressors. If it turns out that a particular society will dissolve if these factors are embedded into the most viable public policies of reparative justice, then that is a society which is poorly structured, lacking a sufficiently good moral foundation, and does not deserve to exist. It must be fundamentally restructured so that such rights can be accommodated without causing the ruination of society. Because rights-based approaches place such a high value on such factors, they are to be preferred over utilitarian approaches which do not.

With the rights-based approach to reparations—both compensatory and non-compensatory—before us, let us consider a general reparations argument, the most important philosophical objections to it, and some replies to such objections in order to arrive at an assessment of said argument.

## **A Reparations Argument**

Having analyzed the concept and practice of reparations, it is time to provide an argument in favor of reparations to descendants of enslaved blacks in the U.S. by the U.S. Government in order to serve as the basis for discussions of various objections to it, and in order to consider replies to those objections. The following is a general argument in favor of reparations to such black people (people with origins in Africa) by the U.S. Government:<sup>8</sup>

(1) As much as humanly possible, instances of clear and substantial historic rights violations against groups ought to be rectified by way of reparations.

(2) The US Government has committed substantial historic rights violations against millions of descendants of the enslaved in the U.S. by way of the institution of slavery and by way of Jim Crow laws.

(3) Therefore, the rights violations by the US Government against US blacks ought to be rectified by way of reparations, as much as humanly possible.

Premise (1) is based on principles of rectificatory justice found in many legal systems, especially in U.S. law. It assumes that law and order ought to prevail in any decent society, and that harmful wrongdoers and oppressors ought to be held responsible for their harms to others for their substantial violations of the rights of others. And premise (2) is a claim based on libraries of historical evidence regarding the institution of slavery in the U.S., along with Jim Crow laws that were designed to oppress descendants of the enslaved in the U.S. (among others) for generations subsequent to the abolition of slavery. It is a matter of historical fact that these oppressions occurred, though the exact numbers of those enslaved and those harmed by Jim Crow can be debated. It is a fact that millions of Africans were enslaved in the U.S., and that millions more were subject to Jim Crow laws which further oppressed descendants of the enslaved in the U.S.

Briefly, the legal system at the federal, state and local levels colluded to oppress descendants of enslaved blacks in the U.S. with the enforcement of various laws and policies that were explicitly designed to support white supremacy and persecute black people (especially descendants of enslaved blacks in the U.S.) no matter what their socio-economic status. From the federal courts' support of the Fugitive Slave Laws, to Congressional passage of the Mann Act, to various local segregation laws, the Executive, Judicial and Legislative branches of the federal government intentionally impeded black progress and often made day to day living increasingly difficult for black folk. One way in which this was done was the manners in which these facets of government turned a blind eye to the daily business operations that supported the institution of slavery even when and where it was illegal (in the northern states): several banks provided loans to slave trade businesses, iron workers manufactured shackles for the transport of the enslaved, distillers who produced the molasses for rum which was the main currency of slavery, coopers built barrels to hold the rum for which enslaved people were traded in the infamous "rum triangle," insurance companies provided insurance for slave traders in case the enslaved died in route to the U.S. from certain African countries where the enslaved were sold to traders in the U.S., etc.<sup>9</sup> Most of the time in which this was going on with the infamous DeWolf slave trading company, slavery was *illegal* in the U.S. But the U.S. Government continually turned a blind eye to this injustice.

Furthermore, the harms that U.S. based and supported slavery against descendants of enslaved blacks in the U.S. is that, unlike whites who no matter what their socio-economic status could legally bequeath property and other kinds of wealth to their families and friends, neither the enslaved black person nor their Jim Crow descendants could do so until more than half-way through the 20<sup>th</sup> century. This of course had a tremendously deleterious effect on the economic well-being of most descendants of the enslaved in the U.S. until the laws prohibiting their bequeathal and inheritance of wealth or property were corrected. Much of poverty among black people in the U.S. today can be reasonably seen as resulting from the unpaid wages of the enslaved and the lack of legal rights for black people to bequeath and inherit wealth.

These unpaid wages of the enslaved are substantial. As I point out in my book, *Heirs of Oppression*, a conservative figuring of such unpaid slave wages would amount to trillions in current U.S. dollars. Yet it is unreasonable to think that such theft is morally justified. It is grand theft in an almost unprecedented level! So these unpaid wages of enslaved people require compensatory means of rectification. They require compensatory reparations to descendants of the enslaved in the U.S. by the U.S. Government in the trillions. Just because slavery was legal in the U.S.—even in the North for a time—does not mean that it was not immoral because it violated the human right of being treated as an equal and this includes being paid a fair wage for one's work just as anyone else would be compensated for work performed. The institution of slavery robbed black people of the value of their labor power for either most or their entire lives, in most cases. Those wages were stolen from them by slave owners, who violated the legal and moral dictum that one ought never to profit from one's own wrongdoing.

But there is also the matter of the violence wrought on many of the enslaved, and the thousands of lynchings of black men, women, and boys during the Jim Crow era. There is no legal statute of limitations in the U.S. on murder. And while it might be difficult indeed to produce the solid evidence to convict this or that perpetrator for the lynchings, various state and local governments throughout the south were complicit in such evils, and they too require rectification. And let us be ever mindful of the untold thousands of African lives that were ended en route to the U.S. as they were tossed from those slave ships as soon as they died from malnutrition or some disease so that the corpses would not infect the remainder of the people enslaved in cargo. Let us not forget the lack of medical care provided for the enslaved in route to trading in the U.S., and the extremely inhumane means of shipment of the enslaved. Yet all of this was well-known throughout the trade, and the U.S. Government did little or nothing to prevent it or even to discourage it. Yet it benefited much from the institution of slavery, which may well explain why it did little or nothing to prevent it for generations.

Compensatory reparations are the legal remedy to address precisely such injustices. Since the price tag for the unpaid wages of the enslaved already totals in the trillions in today's U.S. dollars, the amount of reparations of that already conservative figure simply reinforces the multi-trillion dollar amount of reparations owed to descendants of the enslaved in the U.S. by the U.S. Government. Recall also that it is the U.S. Government that supported every state in significant economic ways throughout the slavery and Jim Crow eras. So it is an accomplice in the oppression of black slaves and those black folks who suffered under Jim Crow.

Thus there is no reasonable doubt about the extent of the slave trade in the U.S. and the U.S. Government's knowledge and support of it. And whether or not it was illegal to trade and own enslaved people, it was morally wrong to do so. Thus any condemnation of such slavery rests primarily on moral grounds. For those who object that it is wrong to condemn U.S. slavery because for several generations it was legal to trade and own slaves, parity of reasoning would suggest that it would also be wrong to condemn Nazi Germany's genocide of millions of persons during the WWII era in that genocide was not a legal crime.

To be sure, the Nuremberg trials were an exercise in *ex post facto* law, and such law is generally morally odious. However, it would seem that just as punishing duly convicted WWII war criminals for their crimes against humanity was morally justified, so too was the race-based enslavement of peoples such as Africans is evil and must be rectified by way of reparations. But since the U.S. has taken it upon itself to permit such crimes against humanity to go unrectified, and since it had colluded in the establishment and maintenance of that “peculiar institution” for generations, it places itself in a position of owing reparations to the heirs of black slavery (at least) within its own borders. For unrectified evil is evil still, and simply because a government refused to punish slave traders and owners for their crimes against humanity does not excuse it from being held partly and substantially morally co-responsible for such atrocities.

Thus whereas (1) is a venerable legal principle, (2) is based on well-documented historical facts. Given the logical validity of the argument, then, it would appear that (1)-(3) is logically sound. Yet there are objections to the very idea that the U.S. Government owes reparations to descendants of the enslaved in the U.S. for the institutions of slavery and Jim Crow. Let us consider the most important ones in turn.

## **Objections to the Reparations Argument, and Replies**

Objections to the idea that the U.S. Government owes reparations to descendants of the enslaved in the U.S. are numerous. But the most important or viable ones are the following: (a) that it is impossible to define the category of who is “black” so that the heirs of oppression cannot be identified for purposes of reparative justice (the Ethnic Identity Objection to U.S. Reparations to the Descendants of Blacks Enslaved in the U.S.); (b) that it is unjustified to hold responsible the contemporary U.S. government for the harmful wrongdoings of slavery and Jim Crow because those evils existed and persisted long prior to today (the Objection to Collective Responsibility for U.S. Reparations to the Descendants of Blacks Enslaved in the U.S.)<sup>10</sup>; (c) that reconciliation is to be preferred to compensatory reparations in that the latter will promote social inequality which will in turn promote social instability rather than peace and tranquility (the Reconciliation Objection to U.S. Reparations to the Descendants of Blacks Enslaved in the U.S.); (d) that new immigrants to the U.S. should not have to pay reparations to descendants of enslaved blacks in the U.S. by way of a reparations tax to the U.S. Government because such immigrants were not guilty of oppressing descendants of the blacks enslaved in the U.S. (the Immigration Objection to Reparations to the Descendants of Blacks Enslaved in the U.S.); (e) that a policy of reparations to descendants of enslaved blacks in the U.S. by the U.S. Government is not practical because it is unenforceable should the U.S. Government not comply with, say, a ruling of the International Criminal Court against it on such matters of its oppression of enslaved blacks and descendants of enslaved blacks in the U.S. who were oppressed under Jim Crow; and (f) the historical complexity objection to U.S. reparations to descendants of enslaved blacks in the U.S. which states that it is impossible for the U.S. to pay reparations to each of the peoples that it has severely harmed, and that therefore, it owes nothing to any of them. I shall consider each of these objections in turn.

## **The Ethnic Identity Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S.**

It might be argued that “black” is a category that admits of no adequate definition. In fact, the objection states, that people of African origins are a highly complex conglomeration of ethnic groups from various African nations over generations in which U.S. slavery persisted. And it is hard to know not only whether or not a particular U.S. black person is a victim-heir of slavery, but whether or not his or her genealogy can be traced to an African nation. But even if this can be done, it is impossible to in a non-arbitrary manner select a percentage of genealogy that is both necessary and sufficient for membership in the group “black.” Hence it is unjustified to conclude that the U.S. or any other country owes reparations to descendants of enslaved blacks in the U.S. given these factors, as this problem makes it difficult to establish the plaintiff in the case. Without a plaintiff, there is no case for reparative justice. This objection challenges the inference from (2) to (3) in the reparations argument above in questioning whether or not there is such a group as “black” to have been harmed by the institution of slavery in the U.S.

In reply to this objection to the Reparations Argument, it must be pointed out that part of it is an objection to the very idea of ethnic or racial identity *per se*. For the same considerations that apply to the case of why it is difficult to analyze descendants of enslaved blacks in the U.S. also apply to cases of ethnic identity more generally. Nonetheless, it is a problem facing the Reparations Argument.

A further reply to this objection must assume a multi-faceted dimension. For while it is true that there is no non-arbitrary manner by which to select a percentage of genealogy by which to determine the membership in any ethnic group (or ethnic groups, as each human is a member of more than one ethnic group) it does not follow from this that a reasonable public policy cannot be devised that allows historically recognized paradigm case members of such groups to begin to serve as the starting points of base membership, allowing each group to begin to identify itself based on genealogy and socially-constructed categories over time. In other words, descendants of enslaved blacks in the U.S. can easily be identified by way of historical documents, whether by way of official registries or family histories. Thus those such as Venus and Serena Williams can easily have their family histories traced at least to a certain extent back to U.S. slavery. To be sure, there exist inherent challenges concerning this procedure of ethnic identification due to the fact that records of enslaved blacks were often destroyed, families torn asunder, etc.. But several descendants of enslaved blacks in the U.S. are able to trace their roots to U.S. slavery. Thus these historical and familial records serve as one partial source of identifying people with origins in Africa.

Furthermore, mitochondrial DNA analysis can provide increasingly accurate means of tracing the genealogies of people with origins in Africa to particular regions in Africa, among other regions of the world. As this method establishes greater data banks of DNA samples from around the world and especially throughout African nations, it will become increasingly easier to accurately identify people with origins in Africa whose ancestors were enslaved in the U.S. as being descendants of those from a particular region of Africa. Thus given the twin methods of historical and familial documents, on the one hand, and DNA analyses, on the other, there exist an increasingly accurate means by which to accurately (within reason) identify those who constitute members of the class of people with origins in Africa in the U.S. This in turn satisfies the legal concern for the identification of a plaintiff in the case of U.S. reparations to descendants of enslaved blacks in the U.S. Moreover, the case of American Indians serves as an adequate, though imperfect, guide in which public policy depends on Indian historical records and methods to determine tribal membership for purposes of public policy administration. So the concern that it is impossible to identify the membership of the class of people with origins in Africa enslaved in the U.S. is far less of a problem than it seems in that public policy never relies on perfect means of classification in order to mete out approximate but meaningful justice to groups.

### **The Objection to Collective Responsibility for U.S. Reparations to Descendants of Enslaved Blacks in the U.S.**

This objection may take on a variety of forms, one of which is to challenge the viability of the category of the “U.S. Government.” Just as the previous objection insisted that “black” has not meaningful referent in that it is impossible to provide an adequate definition of “black,” one version of this objection states that the referent of the “U.S. Government” is distinct from today to yesteryear. If this is true, then it would make it difficult for one to establish the case for reparations to descendants of enslaved blacks in the U.S. by the U.S. Government in that the supposed defendant in the case is not identifiable. Without an identifiable and existing defendant, there is no case for reparations to descendants of enslaved blacks in the U.S. with origins in Africa. This point challenges the inference from (2) to (3) in the above argument in that it states that today’s U.S. Government is not the same as the U.S. Government that committed the past atrocities against descendants of enslaved blacks in the U.S.

However, history demonstrates that the referent of the “U.S. Government” is the same from era to era. And this is true for a variety of reasons. One reason why it is reasonable to think that the referent of the “U.S. Government” is the same today as it was throughout the institution of slavery and Jim Crow is that the U.S. Government and its servants in each case were and are still bound to swear to uphold the U.S. Constitution as the supreme law of the United States of America. The U.S. Government is still constituted of three main branches of government: the Executive, the Judicial, and the Legislative. While of course the individual members of each branch of government change from time to time, the institution of the U.S. Government persists from its beginning-until today.

So to object to the reparations argument on the grounds that there is no identifiable defendant that is the U.S. government because the U.S. Government of yesteryear is not the same as the U.S. Government today is dubious—even perhaps disingenuous. Governments can and do remain the same over time, as most everyone understands about social institutions. They do not dissolve simply because of the change in membership due to deaths, social movement, etc. And since it is the U.S. Government that was complicit in turning a blind eye to the facts of slavery for generations, it failed to protect one of its most vulnerable populations, citizen or not. To the extent that the U.S. Government provided the means that harmed slaves within its borders, it must provide reparations in payment to the millions of people it harmed so severely. But since those enslaved were never compensated for the severe harms wrought on them by the U.S. Government, the U.S. Government owes reparations to their heirs, the victim-heirs of such U.S. oppression.

The Objection to Collective Responsibility of the U.S. Government for Reparations to descendants of Enslaved Blacks in the U.S. may also be implicitly based on the Moral Statute of Limitations Argument which states that there is a moral statute of limitations on historic injustices such that they are no longer a debt that is owed. Thus one can admit, on this line of reasoning, that the U.S. wronged descendants of enslaved blacks in the U.S. by way of slavery and Jim Crow laws, but legitimately deny that there is anything owed to descendants of enslaved blacks in the U.S. because of the passage of time, viability of evidence of harmful wrongdoings and damages, etc. The difficulty with this argument is that it has been thoroughly refuted,<sup>11</sup> rendering it dubious as a means to support its central claim. There is a collective identity over time between the U.S. Government that was responsible for the harms of slavery against descendants of enslaved blacks in the U.S. and the U.S. Government of today, making the U.S. Government responsible and guilty of that crime against humanity.

### **The Reconciliation Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S.**

A third objection to the Reparations Argument noted above is the Reconciliation Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S. It states that even if it is true that there is an identifiable victim in the contemporary, because descendants of enslaved blacks in the U.S. are the victim-heirs of reparations, and even if it is the case that there is an identifiable defendant in the U.S. Government which is responsible for providing reparations to descendants of the enslaved in the U.S., it hardly follows from this that such reparations ought to be compensatory in nature. Instead, what are owed to such blacks are non-compensatory reparations in the form of affirmative action programs and other social justice programs that are designed to provide a level playing field of equal opportunity within U.S. society. Such programs will combat poverty amongst descendants of the enslaved in the U.S. and other groups in need.

But the provision of compensatory reparations as described in Corlett, *Heirs of Oppression* (Chapter 9) will only fuel the inequalities that already persist in U.S. society, digging the needy deeper into poverty and need. Compensatory reparations are not what are owed to descendants of enslaved blacks in the U.S., or to anyone else who is the victim of U.S. oppression because they would create social instability instead of peace and tranquility amongst societal members.

In reply to this objection to the Reparations Argument, it is important to note that it accepts the soundness of the Reparations Argument [(1)-(3)], but qualifies its conclusion (3). This objection does not challenge the conclusion that the U.S. Government owes reparations to descendants of enslaved blacks in the U.S. Rather, it seeks to qualify the kind of reparations owed to such black people. The problem is that it does so on essentially utilitarian grounds. In so doing, it denies, as utilitarianism typically does, the rights to holistic compensation to the victim-heirs of U.S. slavery, and it in turn violates considerations of justice.

Furthermore, this objection violates considerations of proportional compensation as it ignores what victims of human rights crimes deserve in terms of proportional compensation. It seeks, in other words, to subsume considerations of desert and proportional compensation under the veil of social utility maximization, a problem against which John Rawls famously cautions.<sup>12</sup>

Additionally, this reconciliation objection, insofar as it might be based on the idea that affirmative action programs for descendants of enslaved blacks in the U.S. ought to be provided to descendants of enslaved blacks in the U.S. as a means of compensatory reparations, conflates affirmative action programs with compensatory reparations. But while affirmative action programs award benefits to those who have in many cases done something to earn their wages, say, in employment after such programs have placed the person in this or that employment opportunity, compensatory reparative justice is contingent on no such factor. Instead, compensatory reparations are not something a person earns, but something they are awarded because they were wrongfully harmed. And to require or expect a victim-heir of severe injustice to work for what is theirs by moral and legal right of compensation is to misconstrue or confuse the very idea of compensatory justice!

Moreover, in order for genuine reconciliation to occur between parties, there must have been a prior relationship valued by each party. But it is unclear whether black people, whose forebears were brought to North America by force as enslaved people, could even be conceived to want to have a free and equal relationship with those who occupied a land wherein such black people were forcibly enslaved. So it is unclear that there was any relationship between the parties that any reasonable person would be able to say constitutes one worth wanting to preserve!

However, even if it is the case that there is something of a meaningful relationship between descendants of enslaved blacks in the U.S. and U.S. society worthy of preserving, such reconciliation requires genuine forgiveness. But genuine forgiveness requires, among other things, a genuine apology on the part of the oppressor(s)—in this case, the U.S. Government.

But a genuine apology requires, among other things, adequate rectification of the harmful wrongdoings committed against the victims—in this case, the enslaved blacks, and in turn, their heirs who constitute most of today’s black population in the U.S. Thus nothing short of compensatory and non-compensatory reparations will even come close to sufficing for the human rights evils of slavery. To even suggest that non-compensatory reparative justice programs could approximate genuine justice for descendants of enslaved blacks in the U.S. is to insult justice and fairness themselves. Much more, it is to insult the descendants of enslaved blacks in the U.S. in question who have gone generations without a semblance of even a serious national discussion of these matters. It is obvious that U.S. society, whatever it might do to publicly proclaim its support of descendants of enslaved blacks in the U.S., has done relatively little to address what its government owes to descendants of enslaved blacks in the U.S. (black people) due to the devastating and longstanding harmful wrongdoings of slavery and Jim Crow. And when one considers even conservative approximations of what is owed to descendants of enslaved blacks in the U.S. due to slavery alone<sup>13</sup> (not to mention due to the deleterious effects of Jim Crow), it is obvious that non-compensatory reparations in the form of social justice programs are at best a small step in the right direction of genuine justice that alone can serve as the basis of genuine apology for the enslavement of blacks, which in turn can serve as the basis of genuine forgiveness and, in turn, reconciliation. So based on the logic of forgiveness, if there is no genuine justice concerning the compensatory reparation for descendants of enslaved blacks in the U.S. by the U.S. Government, then cries for forgiveness and reconciliation not only do, but should, fall on deaf ears of those who truly respect the rights of the descendants of enslaved blacks in the U.S. —including their rights to holistic and comprehensive reparations for the human rights violations their forbears have experienced in the form of slavery, and for the human rights violations that many of them have experienced not so long ago under the burden of Jim Crow.

### **The Immigration Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S.**

Another common concern with the reparations argument accepts the soundness of the argument, but then asks who exactly ought to pay the reparations tax in question. Should it be just the descendants of those who oppressed the descendants of enslaved blacks in the U.S. either through slavery or Jim Crow? Should relatively new immigrants to the U.S. have to pay the reparations tax? If so, why?

In reply to this concern, it should be noted that it is not an objection to the Reparations Argument, as it concedes the soundness of it. Rather, it is a question about precisely who owes what, if anything, in terms of a reparations tax to descendants of enslaved blacks in the U.S. After all, if compensatory reparations are owed, then it is the citizens who pay the taxes to pay the reparations. That is how compensatory reparations function. Now the question here is why a new immigrant to the U.S. ought to be exempt from paying the tax.

He or she is not, as an adult, exempt from paying federal income taxes in general so long as he or she earns a certain level of income. Nor is he or she exempt from paying property taxes on any real property he or she might own. And why should new immigrants, completely unconcerned with this fundamental aspect of U.S. history as most certainly are, disrespect that history by insisting that they are exempt from paying the reparations tax simply because they did not have anything to do with the oppression of descendants of enslaved blacks in the U.S.?

Remember that neither do contemporary U.S. citizens have anything to do with the oppression of descendants of enslaved blacks in the U.S. either. But this only means that none of today's people are *guilty* of such oppression. Yet as Feinberg has argued concerning collective responsibility,<sup>14</sup> a government can be collectively responsible for paying reparations to a group that its current constituents were never guilty of harming. Being guilty of something and being responsible for it are two different things. So while past generations of U.S. citizens were guilty of oppressing descendants of enslaved blacks in the U.S., we are not. However, we are stuck with the bill of rectifying the injustices in question. And we cannot morally excuse ourselves as if to say, "We did not do anything to enslave or otherwise oppress descendants of enslaved blacks in the U.S. or their forebears, so why should we pay reparations to them?" Yet if this attitude is adopted, it is being done so on American Indian lands to which we have absolutely no moral right to trespass. There is a deep moral hypocrisy inherent in such an attitude. It simply seeks to sweep under the rug the evils of the past as if they ought to be ignored. It seeks to benefit from the economic goodness of the U.S. when times are good, but then it seeks to distance itself from what the U.S. owes when times are bad. This seems akin to what one would expect of someone who disrespects the U.S., not the view of a patriotic person who stands with the country through good times and tough times.

But unrectified evil is evil still. Thus new immigrants to the U.S. owe compensatory reparations taxes as citizens of the U.S. do because the act of becoming a U.S. citizen burdens one with whatever debts are owed by the U.S. So if one does not want to pay the reparations tax, then one ought to either never become a citizen of the U.S., or resign citizenship and cease receiving the benefits of U.S. citizenship.

### **The Practicality Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S.**

The Practicality Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S. accepts the Reparations Argument in full as being sound. However, it questions the practicality of it. How, it asks, is it possible to think that the U.S. would be forced to pay compensatory reparations? My preference that it be done through congressional legislation is the best method as that means that the U.S. is willing to come to terms with its past evils and become a country with a legitimate moral foundation—giving credence to its laws.

But it is reasonable to think that this is unlikely to occur, mainly, because most U.S. citizens simply do not think with reason in mind, as we are now doing, about such matters. Instead, they think egoistically about how it will affect them and not in light of the arguments we are now considering.

This means that another path to rectificatory justice for descendants of enslaved blacks in the U.S. must be pursued, if necessary. This involves, if the U.S. Congress refuses to pass a law guaranteeing adequate reparations to descendants of enslaved blacks in the U.S. Descendants of enslaved blacks in the U.S., filing a class action law suit with the International Criminal Court against the U.S. Government for the kinds of reparations we are now considering. There is little question that the suit would be won in light of the vast historical evidence about U.S. slavery and Jim Crow, and that a proper judgment for damages based on the harms experienced by enslaved blacks and the experiences of black people in the U.S. under Jim Crow would be in the trillions of U.S. dollars.

But even if this were to occur, what makes it reasonable to think, especially given the U.S.'s past refusals to comply with the International Criminal Court or even United Nations judgments that the U.S. would comply with such a judgment about its owing reparations to descendants of enslaved blacks in the U.S. — especially in the trillions of dollars?

As Rawls argues with regard to international law and global justice considerations, powerful countries can be brought to meaningful measures of justice by way of diplomatic exchanges. If such measures fail, as they would likely fail in this case, then economic pressures can be brought to bear against the U.S. should it balk at not complying with the International Criminal Court's judgment against it.

Numerous U.S.-based businesses, the same ones that have for decades sought cheaper labor costs in the midst of ever-increasing U.S. unionized labor costs, could then very easily find themselves on the wrong side of economic history if China, Mexico, Honduras, India and certain other countries banded together in coalitions to boycott producing by way of such cheap labor products for sale and distribution by such giant U.S. companies, ones the U.S. economy depends on quite substantially. Thus if such countries banded together in such a coalition, they could coerce the U.S. to comply with the International Criminal Court's judgment of reparations with this threat of economic collapse of the U.S. For absent cheap labor, the U.S. economy crumbles rather quickly as goods and services need to be produced and sold to consumers at affordable costs.

Thus even the practicality objection has its limitations, especially since there is no shortage of countries just waiting to give the U.S. its due because of its constant meddling in their affairs over the past century or so. And if it is argued that this makes U.S. compensatory reparations to descendants of enslaved blacks in the U.S. a kind of compromising of U.S. economic greatness, I would reply by pointing out that it is a perceived economic greatness that ever since the beginning has depended upon slave labor and Jim Crow and the genocidal theft of American Indian lands from sea to shining sea.

And if that is the foundation upon which U.S. greatness rests, that is a morally compromised foundation indeed! And it is a moral foundation, evil as it is, that requires severe correction, if not dismantling if necessary. For a country is only as good as its moral foundation. And if that country refuses to rectify its most severe injustices, then it is not a country that is worth having around! It has become tyrannical, and what the Declaration of Independence says about citizens' rights and duties to destroy the government if it becomes tyrannical....U.S. citizens have a right and a duty to destroy it with due haste. And if that is true, then one can hardly blame non-U.S. citizens who seek to destroy the U.S. should it continue to refuse to pay what it owes to descendants of blacks enslaved in the U.S.

### **The Historical Complexity Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S.<sup>15</sup>**

Finally, the Historical Complexity Objection to U.S. Reparations to Descendants of Enslaved Blacks in the U.S. is related to the previous practicality objection in its concern for the viability of the U.S. being able to pay reparations to each of the parties it has oppressed. Such a measure would surely bring the U.S. to bankruptcy, essentially reducing it to a pauper state. Thus, this objection either invokes the reconciliation objection in order to ensure the stability of the U.S., or it relies on a kind of "might makes right" morality that continues to make it the world's enemy, if not most untrustworthy country.

The historical complexity objection faces several problems. One is that it hardly follows logically from the fact that the U.S. cannot pay all of the reparations it owes that it ought not to pay some, especially the most important of them in terms of the levels and endurances of the oppressions requiring reparations. In effect, the absurdity of the historical complexity objection is akin to insisting that since all crimes cannot be solved and punished, then none of them should be solved and punished. I do not see anyone, besides (no doubt) several convicted criminals and their sympathizers, standing in line to support that absurd position. Just as crimes and punishments must be solved and meted out as justly as possible, so too must measures of reparative justice. So this objection is flawed from the start. And if the payment of reparations owed by the U.S. to various of its victims renders the U.S. a pauper state, then this is what justice requires and this is what it deserves for building its wealth and power on a moral foundation of the immoralities of slavery, Jim Crow, genocide and massive land theft! Any country that refuses to pay what it owes after living off of the misery of others for so long a time qualifies as tyrannical and should not be permitted to persist.

Moreover, the historical complexity objection to reparations, as we see, tends to rely on a morally bankrupt utilitarian ethic or an even worst "might makes right" ethic. In either case, the practical reality is that this is precisely what the U.S. has done until now, and it has resulted in most of the world's distrust or hatred of the U.S. So this objection, no matter which way it is construed, lands the U.S. in an oppressor's state of being hated and mistrusted by most of the rest of the world. And that the U.S. would continue to countenance such a strategy is unreasonable if it is genuinely concerned with justice.

Thus it is clear that these objections to the Reparations Argument, or to parts or interpretations of parts of it, fall prey to various problems. Unless there are other more plausible objections to the reparations argument, it stands as a justificatory means for establishing a case for holistic reparations to descendants of the enslaved in the U.S. by the U.S. Government.

## **An Outline of Reparations Policies to Descendants of Enslaved Blacks in the U.S.**

Given the soundness of the Reparations Argument and of the claim that the U.S. owes reparations to descendants of enslaved blacks in the U.S., what at least in broad outline form ought such reparations take? While the most detailed account is found in Corlett, *Heirs of Oppression*, Chapter 9, I shall provide a general account here. The U.S. owes reparations to descendants of enslaved blacks in the U.S. in the forms of compensatory and non-compensatory reparations and along the following lines.

### **Compensatory Reparations**

Once it is determined who belongs to the class of “black,” descendants of enslaved blacks in the U.S. would then discuss and vote to select from a list of candidates who would serve a 4-year term on the Committee for U.S. Black Reparations, a committee organized and completely separate from the United States Government or any other government, business or organization within the domain of the U.S., the aim of which is to collect, monitor, and allocate the compensation paid to it by the U.S. Department of the Treasury by either an act of Congress or by an act of the President, or both. This act would authorize the payment of a certain amount of funding per year to the Committee for U.S. Black Reparations in perpetuity due to the extraordinary severity of the evils perpetrated against black people under both slavery and Jim Crow, and because it took centuries for the U.S. to even begin to take the issue seriously. The amount of what is owed just for unpaid wages of enslaved blacks amounts to trillions of U.S. dollars. Then there are the facts of Jim Crow that made it illegal for descendants of enslaved blacks in the U.S. to bequeath wealth, and the lynchings of thousands of descendants of enslaved blacks in the U.S., the many other implications of Jim Crow, etc.. So in *Heirs of Oppression* I have made an offer that the U.S. pay (in perpetuity) to the Committee for U.S. Black Reparations the amount of 3% of the gross annual incomes of each and every U.S. citizen or those employed in the U.S.

These annual payments to the Committee for U.S. Black Reparations would be managed by a 25-member committee the aim of which is to invest, save, and otherwise allocate the funds in terms of education, health care, job training, etc. for descendants of enslaved blacks in the U.S. It would also include substantial cash disbursements to each and every U.S. black as it is their right to compensation. But all of this is subject to the will of the Committee for U.S. Black Reparations, as during certain periods of time it might decide to allocate funds differently than in others.

But the members of said committee are likely to be famous and well-respected businesspersons like Oprah Winfrey, or prominent black businessmen and businesswomen of Fortune 500 companies, political leaders in Harlem, etc. There is no shortage of qualified descendants of enslaved blacks in the U.S. to serve on the committee.

### **Non-compensatory Reparations**

But compensatory reparations are not all of what is owed to black people by the U.S. Government. Non-compensatory reparations include the revision of the lies of history as it is propagated by school teachers to school children, about how history and its “heroes” is communicated to the public by government agencies, how certain streets and buildings and monuments are named after persons who were owners of slaves and supporters of slaves and who colluded in the oppression of black people via Jim Crow. These names must be removed from wherever they appear, just as Germany does not feature the names of Nazis on any public building or monument or street.

Moreover, as part of its non-compensatory reparations policy to descendants of enslaved blacks in the U.S., the U.S. Government must also disavow publicly the persons whose names are removed from such buildings, street signs, and monuments, and publish for the world to read the real history of such persons, warts and all, while simultaneously giving full due credit to those history-makers who deserve prime discussion in historical accounts of the U.S.

Thus the U.S. owes both compensatory and non-compensatory reparations to descendants of enslaved blacks of African origins in the U.S. And no amount of utilitarian rights-disrespecting excuse-making can plausibly deny such a claim. For in order to defeat the above Reparations Argument, the theory upon which the objection is established must be an unproblematic one, and utilitarianism is a most problematic moral theory as it disrespects rights, desert, earned inequality, proportional compensation for harmful wrongdoings, etc..

### **Conclusion**

In sum, I have clarified the basic terms of the argument for reparations by the U.S. Government to descendants of enslaved blacks in the U.S. I have, furthermore, assessed the most formidable objections to the idea of reparations to descendants of enslaved blacks in the U.S. Such objections were found wanting in plausibility for a variety of reasons. There are parties other than the U.S. Government that persist today that owe compensatory reparations to descendants of enslaved blacks of African origins in the U.S.: Aetna Insurance has admitted its complicity in the institution of slavery and so serves as yet another party to the claim for reparations to descendants of enslaved blacks in the U.S. No doubt there are other businesses for profit that played roles in that peculiar institution: CXS and certain other U.S. railroads either owned slaves or had some significant stake in the institution of slavery, and they certainly upheld Jim Crow laws concerning passenger trains.

Various hotels and restaurants, many of which still exist and operate today, upheld Jim Crow laws in their establishments, thereby oppressing descendants of enslaved blacks in the U.S. generation after generation. These businesses and many others saw it in their interests to protect perhaps the first big business enterprise in the U.S., namely, slavery. They too must pay their fair share of reparations to descendants of enslaved blacks in the U.S. But since it was the U.S. Government which provided the primary stability for the institution of slavery, it is the U.S. Government that must provide both compensatory and non-compensatory reparations to descendants of enslaved blacks in the U.S.

If it is prudent, the U.S. Government will attempt to recoup some of its debt to descendants of enslaved blacks of African origins in the U.S. by suing businesses such as Aetna for what they owe with regard to their complicity in the enslavement of black people on U.S. soil. Finally, the U.S. Government could file charges in the International Criminal Court against various other countries and their governments for their involvement in the European transatlantic slave trade: France, Great Britain, the Netherlands, Portugal, Spain, and even the Vatican, for instance. In so doing, the U.S. would effectively be able to reduce the amount of compensatory reparations that it owes to descendants of enslaved blacks in the U.S., and also extend the march toward reparative justice for the contemporary and future heirs of oppression of that evil institution. This means that victim heirs from Canada, Mexico, countries in Central and South America and their surrounding islands, etc., would also become beneficiaries of reparative justice.

What seems increasingly clearer given the above argumentation, ethical principles and historical evidence is that the U.S. owes reparations of a compensatory and of a non-compensatory nature to descendants of enslaved blacks of African origins in the U.S. And this is true whether or not it owes reparations to others. At present, most in the world either hate or greatly distrust the U.S. Government precisely because it has ignored what it owes to those it has severely harmed. As a result, the U.S. is deemed by most as a bastion of evil and oppression, a bully to others and one of the most evil empires in human history. But if the U.S. Government begins to take seriously what it owes to those who it has oppressed, it will begin to rise in the ranks of the truly great countries of world history. Until then, statements like “The U.S. is the greatest country in the world!” can mean something true only to those who refuse to admit the facts, both historical and moral, of their beloved country. And if the U.S. Government refuses to bring justice to those whom it has greatly harmed, it can hardly complain if terrorism visits it. Anyone who is oppressed by another has a moral right to defend oneself and to seek justice against the party that harmed one. And if peaceful means of seeking justice are continually denied without good reason, then the oppressor party is in no moral position to complain if it too becomes the victim of severe injustice.

## Notes

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<sup>1</sup> Plato, *Gorgias* 479d, Donald J. Zeyl, Translator, in *Plato: Complete Works*, John M. Cooper and D. S. Hutchinson, Editors (Indianapolis: Hackett Publishing Company, 1997).

<sup>2</sup> Joel Feinberg, *Harm to Others* (Oxford: Oxford University Press, 1984).

<sup>3</sup> Verna L. Williams, "Reading, Writing, and Reparations: Systematic Reform of Public Schools as a Matter of Justice," *Michigan Journal of Race & Law*, 11 (2006), pp. 419-479.

<sup>4</sup> J. Angelo Corlett, *Heirs of Oppression* (Lanham: Rowman & Littlefield Publishers, 2010), pp. 21-23.

<sup>5</sup> Janna Thompson, *Taking Responsibility for the Past* (Cambridge: Polity, 2002); Margaret Urban Walker, *Moral Repair* (Oxford: Oxford University Press, 2006).

<sup>6</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 3-5.

<sup>7</sup> Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 2000), Chapter 7.

<sup>8</sup> This argument is also found in Corlett, *Heirs of Oppression*, p. 165.

<sup>9</sup> Thomas Norman DeWolf, *Inheriting the Trade* (Boston: Beacon, 2008).

<sup>10</sup> Objections similar to this one are addressed in Bernard R. Boxill, "The Morality of Reparations," *Social Theory & Practice*, 2 (1972), pp. 113-122; J. Angelo Corlett, *Race, Racism, and Reparations* (Ithaca: Cornell University Press, 2003), pp. 197-213; *Heirs of Oppression*, pp. 168-186; *Race, Racism, and Reparations* (Ithaca: Cornell University Press, 2003), Chapters 8-9; Howard McGary, *Race and Social Justice* (London: Blackwell Publishers, 1999), Chapter 5.

<sup>11</sup> Rodney C. Roberts, "The Morality of a Moral Statute of Limitations on Injustice," *The Journal of Ethics*, 7 (2003), pp. 115-138.

<sup>12</sup> Rawls, *A Theory of Justice*, pp. 3-5.

<sup>13</sup> Corlett, *Heirs of Oppression*, Chapter 9.

<sup>14</sup> Joel Feinberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970), Chapter 9.

<sup>15</sup> An abbreviated version of this argument is found in Corlett, *Race, Racism, and Reparations*, p. 213.