

1 Reparations, History and the Origins of Global Justice

Katrina Forrester

In 2014, the writer Ta-Nehisi Coates revived an old debate about the reparations owed to African Americans for slavery.¹ The turn of the new century had seen an uptick in organizing around reparations claims: in the United States, the National Coalition of Blacks for Reparations in America (N'COBRA) lent its support to reparations bill HR40, claims were filed in state courts, the Reparations Coordinating Committee was set up to coordinate advocacy domestically and internationally and in 2010 the National Association for the Advancement of Colored People (NAACP) officially declared its support for reparations.² Yet Coates's was the most discussed intervention since Randall Robinson's *The Debt: What America Owes to Blacks* in 2000, and it ignited a fresh wave of debate.³

Criticized by many liberals as sympathetic in theory but unrealistic in practice, the case for reparations has long been opposed by the right on grounds of “reverse-racism”: some claim reparations have already been made, in the form of white lives lost in the Civil War, or of welfare, the Civil Rights Act or the Great Society.⁴ Reparations have also been challenged from the left. In 2016, Coates attacked Senator Bernie Sanders who, on his campaign trail for the Democratic Presidential nomination, restated a familiar leftist skepticism of reparation claims, defending “universal” welfarist policies that operate on class rather

For helpful discussion or comments on earlier drafts, thanks to Duncan Bell, Saul Dubow, Cecile Laborde, Jacob Levy, Jon Levy, Catherine Lu, Jamie Martin, Priya Menon, Charles Mills, Samuel Moyn, the participants of the Cambridge Empire, Race and Global Justice Workshop and audiences at the UCL Legal and Political Theory Seminar and the APSA Annual Meeting 2017.

¹ Ta-Nehisi Coates, “The Case for Reparations”, *The Atlantic* (June 2014).

² http://naacp.3cdn.net/c1f7561993e5844143_4im6bn12c.pdf (accessed 10 March 2016).

³ Randall Robinson, *The Debt: What America Owes to Blacks* (New York: E. P. Dutton, 2000).

⁴ David Horowitz, “Ten Reasons Why Reparations Is a Bad Idea for Blacks, and Racist Too”, *The Black Scholar: Journal of Black Studies and Research*, 32/1 (2001). On the racial divide in support for reparations see Michael C. Dawson and Rovana Popoff, “Reparations: Justice and Greed in Black and White”, *Du Bois Review*, 1/1 (2004), 47–91.

than race lines.⁵ The aim, he implied, of redistributive politics is to benefit the working class, regardless of race.⁶ Political scientist Cedric Johnson made the argument explicit: African Americans are a significant proportion of the working class, and so benefit most from such universal policies; by contrast, reparations claims presuppose a unitary “black community”, and in so doing, obfuscate class divisions and maintain the status quo.⁷ Coates replied that existing racial disparities in poverty demand more than universalist solutions, and in any case, history shows that redistributive policies have often disadvantaged African Americans.⁸ Many framed the debate as a dispute over identity versus class politics. On that framing, for Coates and his defenders, putting class over race was an old leftist mistake. For Johnson and his, putting race over class was a liberal strategy for distraction: Coates’s case for reparations implied a tragic vision of politics that left market liberalism untouched.

There is, however, another way of stating the distinction between the two sides, which is more familiar to political philosophers and avoids false dichotomies of identity and class. For Coates, reparations are due for historic injustices faced by African Americans. For Johnson, reparative justice adds nothing of value to distributive justice; the demands of the former are weaponized in a way that hinders the latter.

American proponents of reparations for slavery disagree over what they would look like: pecuniary or non-pecuniary; one-off cash transfers to individuals, as in South Africa, or compensation in the form of transfers or pensions, like German reparations to the Jewish victims of Nazism; public investment; group-specific banks, trusts or funds; the return of land; job guarantees for black workers. They might be paid for by the federal government, the states, corporations unjustly enriched through their involvement in slavery, the “white community”, white churches and

⁵ Ta-Nehisi Coates, “Why Precisely Is Bernie Sanders Against Reparations?”, *The Atlantic* (19 January 2016).

⁶ <http://fusion.net/video/255113/bernie-sanders-reparations-answer-iowa-forum/> (accessed 10 March 2016).

⁷ Cedric Johnson, “An Open Letter to Ta-Nehisi Coates and the Liberals Who Love Him”, *Jacobin* (3 February 2016); cf. Adolph Reed Jr., “The Case against Reparations”, *The Progressive* (December 2000).

⁸ Coates, “The Enduring Solidarity of Whiteness”, *The Atlantic* (8 February 2016). For the history of institutional racism on which Coates draws see Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (New York: Oxford University Press, 1994); Sean Farhang and Ira Katznelson, “The Southern Imposition: Congress and Labor in the New Deal and Fair Deal”, *Studies in American Political Development*, 19 (2005), 1–30; Beryl Satter, *Family Properties: How the Struggle over Race and Real Estate Transformed Chicago and Urban America* (New York: Picador, 2011); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: W. W. Norton, 2005).

charities or the white descendants of slaveholders; and paid to the black community, descendants of enslaved peoples, African Americans living below a certain poverty line. There are disagreements over what reparations are for and how they should be calculated: whether they should compensate unpaid slave labor, unjust enrichment of slaveholders, wrongs suffered in the Jim Crow South or wrongs suffered because of institutional racism – in homebuying, segregated education and so on – in the North. When in 2017, the Democratic Socialists of America supported a resolution calling for reparations, they were reparations for “slave labor” and “economic exploitation” caused by “colonization”, and as a means of wealth redistribution.⁹ This array of practical choices suggests their ethical aim is up for grabs: are reparations a kind of reconciliation, a means of getting what was owed as a result of historic wrongs or an attack on the present disadvantages of African Americans – or post-colonial peoples in general?¹⁰

In twenty-first-century political philosophy, reparations have been debated less against a backdrop of debates about slavery, equality and structural racism in the USA, and more in terms of identity, cultural politics, global humanitarianism, transitional justice, and state power.¹¹ They tend to be part of a generalizable account of “reparative justice”, often international in scope, which surfaced in liberal philosophy in the 1990s with the human rights movement, and the surge of internationalist attention to reconciliatory and “transitional” justice that followed the end of Apartheid in South Africa.¹² In this context, engaged political theorists have harbored a variety of worries: about the implications of reparations for perpetuating “victim and perpetrator” narratives, reinforcing state or

⁹ Democratic Socialists of America Afro-Socialist Convention Proposal, August 2017, <https://drive.google.com/file/d/0B5P0FbY9YTM-UIVwTzRSTGhQRG8/view> (accessed 11 September 2018).

¹⁰ For these views and more see Michael Martin and Marilyn Yaquinto (eds.), *Redress for Historical Injustices in the United States: On Reparations for Slavery, Jim Crow and their Legacies* (Durham, NC: Duke University Press, 2007); Jon Miller and Rahul Kumar, *Reparations: Interdisciplinary Inquiries* (Oxford: Oxford University Press, 2007).

¹¹ Many black political philosophers continue to explore problems of rectification and reparations for slavery in a US context, but their works are often neglected. See especially Howard McGary, *Race and Social Justice* (Oxford: Blackwell, 1999), 79–125 and Bernard Boxill, *Blacks and Social Justice* (Oxford: Rowman & Littlefield, 1984) whose original contribution to these debates is contextualized below. See also Rodney Roberts (ed.), *Injustice and Rectification* (New York: Peter Lang, 2002) and Rhonda Magee, “The Master’s Tools, from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse”, *Virginia Law Review*, 79/4 (1993), 863–916. For other collections that focus on reparations for slavery in particular see Ronald Saltzburger and Mary Turk, *Reparations for Slavery: A Reader* (Oxford: Rowman & Littlefield, 2004).

¹² Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice”, *Human Rights Quarterly*, 31/2 (2009), 321–67.

group power or individualism and, in its focus on the unpaid labor of slavery, ignoring Southern sexual slavery and problems of gender.¹³ For liberal philosophers of domestic and global justice, reparations claims have largely been seen as at odds with egalitarian distributive claims (in a way that would suggest some shared conclusions, if not arguments, with Johnson, not Coates). Only recently have there been philosophical attempts to integrate reparative claims into theories of distributive justice. These have mostly been part of new theories of global justice, which try to take seriously the legacies of colonialism and empire, and weave claims about redress and repair into arguments about structural injustice that seem to cut across the reparative/ distributive divide.¹⁴

Yet this divide is itself a product of the history of reparation claims and its tangled relationship with Anglophone analytical liberal philosophy. The attempt to accommodate claims about historic injustice and reparations in global justice theory today are intended in part to address the relative philosophical silence about problems of racism and empire. But these correctives themselves do not explain the silence; nor do they explain the ideological underpinnings of the categories that have come to structure liberal philosophy in general, and global justice theory in particular. These were constructed during the late 1960s and 1970s – years which witnessed both the reinvention of political philosophy and the revival of the demand for reparations within African-American movements, particularly black nationalists with links to anti-colonial liberation groups.¹⁵ Their demands spurred debate among a small number of lawyers, economists and philosophers, who for a brief time engaged with them, only to set them aside. This chapter charts these debates about reparations and explores why they matter for understanding the trajectory of philosophical debates about reparations and the place of race and empire in global justice theory. These debates did not last long

¹³ John Torpey, “Paying for the Past? The Movement for Reparations for African-Americans”, *Journal of Human Rights*, 3/2 (2004), 171–87; Lawrie Balfour, “Reparations after Identity Politics”, *Political Theory*, 33/6 (2005), 786–811.

¹⁴ Lea Ypi, Robert Goodin and Christian Barry, “Associative Duties, Global Justice, and the Colonies”, *Philosophy and Public Affairs*, 37/2 (2009), 103–35; Catherine Lu, “Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress”, *Journal of Political Philosophy*, 19/3 (2011), 261–81; Iris Marion Young, “Responsibility and Global Labor Justice”, *Journal of Political Philosophy*, 12 (2004), 365–88; Cecile Fabre, *Justice in a Changing World* (Cambridge: Polity, 2007). For a non-international example see Chiara Cordelli, “Reparative Justice and the Moral Limits of Discretionary Philanthropy” in Rob Reich, Chiara Cordelli and Lucy Bernholz (eds.), *Philanthropy in Democratic Societies* (Chicago: University of Chicago Press, 2016).

¹⁵ Robin Kelley, *Freedom Dreams: The Black Radical Imagination* (New York: Beacon Press, 2002), ch. 5; Thomas Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008), 434–6, 272.

within philosophy, and soon gave way to less radical remedies for injustice like preferential hiring and affirmative action. But they occurred at an important turning point in liberal philosophy's history. As such, they not only represent a road not taken, but shaped the ascendant global justice theory in crucial ways.

Though in the late 1960s, the demand for reparations was a demand of the black left, when it entered political philosophy it took on a different ideological valence. In this moment – bookended by black nationalists' reparations-demands and the uptake of reparations by international human rights movements – it was libertarians who were sympathetic to reparations.¹⁶ And in the 1970s, tackling the libertarian challenge preoccupied egalitarian philosophers. This, as well as a number of other internalist theoretical concerns – with the nature of collective and corporate responsibility, and the presence of the past within theories of justice – led them to downplay demands for reparations for slavery. When they turned to theorize the international realm, they downgraded demands for reparations for colonial expropriation too. It was in these debates, however, that philosophers both developed the particular character of global justice theory, and secured the absence of race and empire within their theories for more than a generation. This chapter revisits them to show how the categories and divisions that characterize liberal philosophy today were constructed. By tracing the conceptual preoccupations that enabled the rebuttal of a particular kind of philosophical argument, it also illuminates the mechanisms by which a field of political concern was removed from domestic and global justice theory.

Black Reparations and Justice in the United States

The civil rights activists of the 1960s were famous for their demands for compensatory and distributive programs: from the “Marshall Plan for the Negro”, the Black Panthers' demand for payment for the “overdue debt” owed by the federal government to black communities for their unpaid labor, to Audley “Queen Mother” Moore's broad, therapeutic vision of reparations advocated by her Reparations Committee for United States Slaves Descendants.¹⁷ Many invoked nineteenth-century

¹⁶ For recent statements see Janna Thompson, “Historical Injustice and Reparation: Justifying Claims of Descendants”, *Ethics*, 112/1 (2001), 114–35; Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution between Nations* (Oxford: Oxford University Press, 2009).

¹⁷ Sugrue, *Sweet Land of Liberty*, 434–6, 272.

precedents, when freed slaves, Radical Republicans and later the Ex-Slave Mutual Relief, Bounty and Pension Association had demanded compensatory measures for ex-slaves.¹⁸ By 1968, group-specific demands for reparations increasingly stood alongside calls for universalizing welfarist plans like the Freedom Budget of October 1966,¹⁹ sometimes within the same proposal. In April 1969, the Black Economic Development Conference adopted the “Black Manifesto”.²⁰ The next month, the former executive secretary of the Student Nonviolent Coordinating Committee (SNCC) and Black Panther James Forman, then associated with the socialist League of Revolutionary Black Workers, interrupted a Sunday morning service at New York City’s Riverside Church, attracting widespread controversy and bringing to national attention a demand for reparations based in a politics of liberation that was ultimately universal in its emancipatory aspirations.²¹

The Black Manifesto demanded reparations of \$500 million to black Americans for the centuries of exploitation – of “resources”, “minds”, “bodies” and “labor” – which black people had suffered at the hands of “racist white America”, and for their “role in developing the industrial base of the Western world through ... slave labor”.²² Anti-capitalist and anti-imperialist in rhetoric, Forman described African Americans as living as “colonized people inside the United States”. Unlike West German reparations to Nazi victims – that took the form of individual compensation for personal and professional damages to survivors and their immediate families – he demanded reparations in the form of race-specific public goods: a Southern land bank to establish cooperative farms, or compensate for lands expropriated; cooperative

¹⁸ Eric Foner, *Reconstruction: America’s Unfinished Revolution 1863–77* (New York: Harper, 1988); Mary Francis Berry, *My Face Is Black Is True: Callie House and the Struggle for Ex-Slave Reparations* (New York: Vintage, 2005).

¹⁹ Foner, *Reconstruction*, 376.

²⁰ James Forman, “The Black Manifesto” reprinted in Boris I. Bittker, *The Case for Black Reparations* (New York: Beacon, 1973/2003), 161–75; Elaine Allen Lehtreck, “We Are Demanding \$500 Million for Reparations’: The Black Manifesto, Mainline Religious Denominations, and Black Economic Development”, *Journal of African American History*, 97/1–2 (2012), 39–71. The Black Manifesto was reprinted in multiple venues, notably (for the philosophical audience examined in this chapter) in *The New York Review of Books* (10 July 1969).

²¹ Dan Georgakis and Marvin Surkin, *Detroit, I Do Mind Dying: A Study in Urban Revolution* (New York: South End Press Classics, 1998). Cf. Michael C. Dawson, *Blacks in and out of the Left* (Cambridge, MA: Harvard University Press, 2013), 4–6, 107–9. On Forman’s class analysis in the context of black nationalism see Cedric Johnson, *Revolutionaries to Race Leaders: Black Power and the Making of African American Politics* (Minneapolis: University of Minnesota Press, 2007), 155.

²² Forman, “Black Manifesto” in Bittker, *The Case for Black Reparations*, 167, 172.

investments in the black community in the form of publishing and printing industries, research skills centers and TV networks; a National Black Labor Strike and Defense Fund to protect black workers; investment in the International Black Appeal, a Black University, a Black Anti-Defamation League and more. Also unlike German reparations, Forman did not direct his demands at the US government but primarily at “the white Christian churches and the Jewish synagogues” that were “part and parcel of the system of capitalism”. In keeping with radical black (and much New Left) politics, this reparations claim did not require a view of the state as legitimate.²³

The demand for reparations pulled in different directions, and in the aftermath of the Manifesto its political valence remained ambiguous. Unlike its post-cold war iterations, reparations claims in the Black Power era were often as much associated with emancipation as they were with reconciliation, and were more liberationist than liberal.²⁴ While some Christian groups began to act on the demands, many of Forman’s local and national audience were hostile to them. Critiques came from civil rights leaders, who saw Forman as “inflammatory”, as well as the Democratic and labor left.²⁵ For them, despite Forman’s revolutionary and liberationist rhetoric, the Manifesto was not one that a broad-based mass democratic movement could get behind. It was an appeal to private institutions, not the state. Bayard Rustin described reparations not only as unrealistic but as isolating blacks from whites with whom they shared economic interests.²⁶ Michael Harrington likewise condemned reparations as a distraction from redistributive campaigns.²⁷ It would not make sense to compensate only the descendants of slaves for past exploitation; all workers needed to be compensated. The demand for reparations was here not conceived as in itself redistributive, so it was not the right road to emancipation.

Black nationalists and church leaders, who continued to demand reparations as an acknowledgement of white guilt, emphasizing moral

²³ Forman, “Black Manifesto”, 167–71.

²⁴ John Torpey, *On Making Whole What Has Been Smashed: On Reparations Politics* (Cambridge, MA: Harvard University Press, 2006), 5. On how to conceptualize the political thought of the Black Power era see Brandon M. Terry, “Requiem for a Dream: The Problem-Space of Black Power”, in Tommie Shelby and Brandon M. Terry (eds.), *To Shape a New World* (Cambridge, MA: Harvard University Press, 2018), 293–5.

²⁵ Jerry Frye, “The ‘Black Manifesto’ and the Tactic of Objectification”, *Journal of Black Studies*, 5/1 (1974), 65–76.

²⁶ Bayard Rustin, “The Failure of Black Separatism”, in *Down the Line: The Collected Writings of Bayard Rustin* (Chicago: Quadrangle, 1971), 3–4.

²⁷ Arnold Kaufman and Michael Harrington, “Black Reparations – Two Views”, *Dissent* (July–August 1969), 318–9.

repair and reconciliation, in part confirmed this perspective. Yet others stressed the economic dimension, advocating a monetary transfer, and were as much concerned with compensation as apology. Like Forman, saw slavery not only as the primary injustice facing African Americans but also a basis for an internationalist anti-colonial movement uniting descendants of slaves globally.²⁸ In 1972, economist Robert Browne argued that the objective of reparations was to “restore the black community to the economic position it would have had had it not been subjected to slavery and discrimination”.²⁹ To make his case for material reparations, he appealed to a growing historical literature on the profitability of slavery and its contribution to America’s economic growth.³⁰ He listed many feasible ways of calculating the cost of slavery to African Americans – the impact of slavery on the total economy; the market prices of slaves; their direct labor output; the value of unpaid black equity or the unpaid wage bill – and argued that reparations could not be a simple payment for unpaid labor, but needed to take seriously underpayment and the denial of opportunity since slavery. He suggested compiling “annual per capita earned income differential between the black and white community”. Elsewhere, like Forman, he linked the issue to the need for land tenure, and the broader “land question” that then preoccupied black nationalist thinkers.³¹ Reparations here were not just compensation but a means of redistribution.³²

²⁸ James Forman, ‘Control, Conflict and Change: The Underlying Concepts of the Black Manifesto’ in Robert Lecky and H. Elliott Wright (eds.), *Black Manifesto: Religion, Racism and Reparations* (New York: Sheed & Ward, 1969), 47–50. For transnational and nationally differentiated demands for reparations (and their relationship to distinctive systems of slavery) see Ana Lucia Araujo, *Reparations for Slavery and the Slave Trade: A Transnational and Comparative History* (London: Bloomsbury, 2017).

²⁹ Robert Browne, ‘The Economic Case for Reparations to Black America’, *The American Economic Review*, 62/1–2 (1972), 43. Cf. Browne, ‘Toward Making “Black Power” Real Power’ in Lecky and Wright (eds.), *Black Manifesto*, 67–77.

³⁰ Alfred Conrad and John Meyer, *The Economics of Slavery* (Chicago: Aldine, 1964); Robert Starobin, *Industrial Slavery in the Old South* (Oxford: Oxford University Press, 1970); Jim Marketti, ‘Black Equity in the Slave Industry’, *Review of Black Political Economy*, 2/2 (1972), 43–66; Robert Fogel and Stanley Engerman, *Time on the Cross: The Economics of American Negro Slavery* (New York: Norton, 1974).

³¹ Robert Browne, ‘Black Land Loss: The Plight of Black Ownership’, *Southern Exposure*, 2 (1974), 112–21; Browne, *Only Six Million Acres: The Decline of Black-Owned Land in the Rural South; A Report* (New York: Rockefeller, 1973). On the land question see Russell Rickford, “‘We Can’t Grow Food on All This Concrete’: The Land Question, Agrarianism, and Black Nationalist Thought in the Late 1960s and 1970s”, *Journal of American History*, 103/4 (2017), 956–80; and on land and reparations see Kelley, *Freedom Dreams*, 124–8.

³² See also Graham Hughes, ‘Reparations for Blacks?’, *New York University Law Review*, 43 (1968), 1063–74.

In 1972, Hugo Bedau, an ethicist widely known for his account of civil disobedience, became the first white liberal philosopher to take up reparations. Bedau recognized the importance of black reparations for distributive justice in the USA. But he also saw a tension between reparations and the ascendant Rawlsian distributive justice theory: the Black Manifesto could be read as positing arguments for compensatory justice that were actually disguised arguments for distributive justice. Ostensibly an argument for repairing past wrongs, it was more concerned with redistributing resources to deal with the disadvantages suffered by contemporary African Americans.³³ Philosophers, Bedau suggested, might object to this confusion. He put it aside, because the distinction between compensatory and distributive justice was still under-theorized in available liberal theories of justice (he pointed here to Rawls, W. G. Runciman and Nicholas Rescher as among the most prominent).³⁴ It might well be the case that present disadvantages were sufficient justification for major redistribution, but this was in any case not Forman's point.

Yet Bedau defended the Manifesto's demands against many possible objections, three of which anticipated other ways in which reparations would pose a problem for liberal analytical philosophy. The first was their corporate nature: Bedau suggested that many would find unworkable the idea that it was to 'corporate black America' that reparations were owed, and that it was the corporate liability (rather than merely the collective guilt) of the white churches – understood as the conscience of a white America itself too disorganized to be viewed in corporate terms – that was at stake. After the Vietnam War raised the problem of war crimes, whether responsibility and guilt could be held individually, collectively or corporately had become a live issue.³⁵ For Bedau, writing just at the moment before corporate accounts of liability were replaced by individualistic accounts of responsibility, the corporate claims of the Manifesto were defensible. Just a few years later, a deep scepticism about ideas of corporate and collective responsibility, which Bedau anticipated, would make such a defense much more difficult.³⁶

³³ Hugo Adam Bedau, "Compensatory Justice and the Black Manifesto", *The Monist*, 56/1 (1972), 22.

³⁴ Bedau, "Compensatory Justice", 23.

³⁵ Peter French (ed.), *Individual and Collective Responsibility: Massacre at My Lai* (Cambridge, MA: Harvard University Press, 1972); Joel Feinberg, "Collective Responsibility", *Journal of Philosophy*, 65 (1968), 674–88; D. Cooper, "Collective Responsibility", *Philosophy*, 43 (1968), 258–68; Virginia Held, "Can a Random Collection of Individuals Be Held Responsible?", *Journal of Philosophy*, 67 (1970), 471–81.

³⁶ Only recently has this philosophical aversion to theorizing corporate and collective responsibility been reversed. For discussion see Thomas McCarthy, "Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery",

Another objection that Bedau briefly raised also reflected this turning point in the history of liberal philosophy. Given that the claims of the Manifesto turned on the concept of desert, liberals might view it as “anachronistic”. As Brian Barry put it already in 1965, politics – with the rise of the welfare state and the move away from atomistic classical liberalism – had witnessed a “revolt against desert”.³⁷ For Rawls, desert was likewise irrelevant to a theory of justice. For Bedau it was “a concept of declining relevance in the adjustment of social relations where inequalities suffered on the scale of those which burden American blacks are concerned”.³⁸ But he put this aside, implying that the rejection of desert claims might be made compatible with openness to claims about the weight of the past. He was right to anticipate the objection. Yet he was overly optimistic about its implications. For the revolt against desert would not entail openness to the past, but the opposite. Soon, it was not simply desert claims that would be disputed by philosophers, but “historical” claims about how states of affairs had come about.

While Bedau dismissed the conflation of compensatory and distributive justice, he also predicted a third objection about Forman’s combination of a Marxist critique of exploitation with a conventional liberal demand for “justifiable compensation”. Bedau, like Arnold Kaufman in his response to Harrington, stressed that the justification for reparations for African Americans, unlike Nazi reparations, did not rely exclusively on an idea of past harm, but of “unjust enrichment”. It was more a question of compensatory than corrective justice (and so not as reliant on proof of criminal harm in court). But it was nonetheless a familiar liberal, legalist demand. Set alongside exploitation, it pointed in the opposite direction. To be “workable” in practice, the Marxian component required evidence to establish that “current wealth in white institutions is the causal product of historic capitalist exploitation” (evidence of the kind that historians, and economists like Browne, were marshaling).³⁹ Claims about compensation, by contrast, need not rely on historical wrongs: it was sufficient to establish “only that blacks still suffer from uncompensated wrongs while others (whites) still enjoy the undeserved benefit of those historic wrongs”. No historical argument about exploitation was necessary.

Political Theory, 32/6 (2004), 750–72. Only recently has the aversion among analytical philosophers to theorizing corporate and collective responsibility been reversed. For discussion see Avia Pasternak, “Limiting States Corporate Responsibility”, *Journal of Political Philosophy*, 21/4 (2013), 361–81; Anna Stiliz, “Collective Responsibility and the State”, *Journal of Political Philosophy*, 19/2 (2011), 190–208.

³⁷ Brian Barry, *Political Argument* (London: Routledge, 1965), 112.

³⁸ Bedau, “Compensatory Justice”, 41. See Barry, *Political Argument*, 113.

³⁹ Bedau, “Compensatory Justice”, 29.

Bedau denied these aspects to Forman's argument were in tension, partly because of his ambiguous use of the terminology of exploitation and partly because he ignored the desert objection:

The labor of generations of blacks has created surplus profits of slight or no benefit to them, and this labor was originally stolen and thenceforth made captive under conditions of structured injustice which a Hume, a Mill, or a Rawls would be able to recognize as such. The slave and Jim Crow heritage, therefore, constitutes both a moral and an economic exploitation. Blacks in America have been doubly exploited, so their argument for compensation is entitled to take this into account and it does. To put it another way, we might view The Black Manifesto as attempting to invoke not merely one or another version of conventional Liberal principles of justice, nor of Marxist justice – if there is such a thing – but what might be called *socialist justice*.⁴⁰

The ideological ambiguity of reparations opened the possibility of a socialist justice theory, which could accommodate both redistribution and reparations.

But philosophical debate about reparations did not go in the direction Bedau hoped. For it was not a philosopher who took up reparations, but a lawyer. Boris Bittker at Yale was a tax lawyer, who had published influentially on segregation. Described as a “utopian technician”, he was not interested in the philosophical case for reparations but their legal feasibility.⁴¹ He did not attempt to explain Forman's slippages, between the liberal and Marxist, the compensatory and distributive, the legal and political. Instead he prised them apart. Bittker had no trouble with notions of corporate liability, and, not being concerned with ideal or institutional distributive theories, no qualms with the concept of desert. In *The Case for Black Reparations* (1973), reparations went from emancipatory to liberal: he made no claims about structural exploitation, and his argument turned on the existence of a legitimate state and legal system to redress wrongs. Demands for reparations, he argued, were no more complicated than any major social policy or civil damages claims: “a system of black reparations”, not radical but in fact “familiar and conservative”, had a statutory basis and “was actually secreted in existing laws”.⁴² Though this system would target discriminatory practices (rather than harmful acts), it was not distributive justice wearing the mask of compensatory justice. Reparations were not a “poverty program” but a “remedy for injustice”.⁴³ They shared overlapping constituencies with non-racial welfare programs, but worked for

⁴⁰ Bedau, “Compensatory Justice”, 29–30.

⁴¹ Mark Tushnet, “The Utopian Technician”, *Yale Law Journal*, 93/2 (1983), 208–10.

⁴² Bittker, *The Case for Black Reparations*, 34, 68.

⁴³ Bittker, *The Case for Black Reparations*, 133.

different purposes, with different objectives and results. Reparative justice meant the correction of past injustice. It was historical in a way that distributive justice was not.

Precisely how historical was a concern. Bittker argued that black reparations should not be concerned with the “correction of ancient injustice”, but righting the wrongs of segregation.⁴⁴ Slavery was a necessary but insufficient condition for compensatory proposals. An exclusive focus on slavery diminished the wrongs of segregation and let recent political actors off the hook. Reparations should redress injuries “caused by the system of legally imposed segregation”, thus targeting the discriminatory practices of federal and state governments (and requiring federal funding).⁴⁵

Bittker’s shift from slavery to segregation anticipated the objection that long-past historical wrongs could not be taken legally seriously. Compensation for past injuries faced challenges. Statutes of limitation, and the fact that civil plaintiffs often had to have been injured themselves, made the damages claims of slave descendants unworkable – as did the assumption, implicit in the idea of rectification or restoration, of a status quo ante, a historical baseline for redress. As such, with ordinary damages claims and arguments for the pecuniary redress of government misconduct, the usual approach was to eliminate the conditions for future misconduct, rather than provide pecuniary solace for the past. Despite these barriers, Bittker was insistent on the historical nature of his argument, even as he limited its chronological scope: “Justice requires compensating past injuries rather than merely forbidding their repetition.”⁴⁶ He sought to show that reparations were workable anyway, exploring different forms of liability and damage suits, and denying the effect of prior constitutionality of segregation on reparations claims. He focused on how section 1983 of the Civil Rights Act of 1871 – which allowed individuals to sue for damages and redress when federally protected rights were violated by persons acting under state authority – could be used to litigate black reparations suits. Section 1983 could encompass historical claims: it provided the potential for both a backward-looking and forward-looking dimension, opening the door to a distinction between remedying injustice by compensation for the past and by corrective action in the future – and allowed the former to play a central role.⁴⁷

Bittker also thought section 1983 could be reinterpreted to provide a legal basis for the liability question – of whether public agencies or only

⁴⁴ Bittker, *The Case for Black Reparations*, 9.

⁴⁵ Bittker, *The Case for Black Reparations*, 19.

⁴⁶ Bittker, *The Case for Black Reparations*, 26.

⁴⁷ Bittker, *The Case for Black Reparations*, 36–7.

their members could be held responsible for discriminatory practices. It imposed “liability on ‘every person’ whose conduct under color of state law deprives another person of his federally protected rights”. Did that mean, Bittker asked, that it reached “only natural persons, or does the phrase “every person” also embrace state governments and their political subdivisions and administrative agencies?”⁴⁸ It was conventionally interpreted as imposing liability only on individual officials, which would make it insufficient for any kind of real reparations claim. But in the Dictionary Act of the United States Code, the word “person”, Bittker noted, was extended to “bodies politic and corporate”, implying section 1983 – an act of the same year – could be similarly interpreted. The Supreme Court had held otherwise in *Monroe v. Pape*: section 1983 did not impose liability on municipalities, which were thence immune.⁴⁹ Against this, Bittker argued that government agencies could be held liable as corporate entities, and contested municipal immunity through this historical argument about the definition of personhood. Damage suits against the state or its agencies under section 1983 were thus possible.⁵⁰ Changes would be required: for one, the focus on official misconduct should be replaced by the recognition of “government sanctioned discrimination at the highest levels”.⁵¹

Here Bittker showed the practical ways around the problems Bedau had recognized as facing the new justice theories – in particular, their neglect of corporate responsibility and its extension over time. In the early 1970s, philosophical concern with corporate responsibility was displaced by discussions of distributive justice: in Rawlsian theory, the state was part of the “basic structure”, not primarily conceived as a corporate person or agent, as in older state personality theories (that dealt with claims about responsibility across time, not distribution in a static present). Corporate liability claims in law had, however, never gone away, and Bittker bypassed these philosophical difficulties, demonstrating that they could be viable in civil rights suits.⁵²

Yet he acknowledged the political challenges. Like other social schemes, reparations would involve budgetary decisions, hard choices, implementation problems and conflicting interests. All forms of recompense had their downside: individual transfers might do little over the long term; public goods could be unequally accessed.⁵³ Whether

⁴⁸ Bittker, *The Case for Black Reparations*, 50. ⁴⁹ *Monroe v. Pape* 365 (1961).

⁵⁰ Bittker, *The Case for Black Reparations*, 51–8.

⁵¹ Bittker, *The Case for Black Reparations*, 21.

⁵² In fact, in 1978, municipal immunity would be dropped, and local governments deemed “persons” under section 1983 – as Bittker had proposed. *Monell v. Department of Social Services of the City of New York* (1978).

⁵³ Bittker, *The Case for Black Reparations*, 115–35.

reparations should be owed to groups or individuals, and who might speak for the “black community”, raised familiar problems of representation and recognition. So did how its membership should be determined (racial classification being an obvious but controversial solution, and Bittker proposed eligibility determined by attendance at a segregated school instead). In charting these downsides, he portrayed reparations not as a problem of distributive justice, but as a technical problem of compensatory or corrective justice, understood purely in terms of damages claimed for harms suffered under a legal system of discriminatory practices. Bedau had tried to show that reparations could be easily taken up by “a Rawls, Hume or Mill”. Bittker made it safe for lawyers (though very few, in fact, took reparations seriously). But he also made it philosophically unappealing. If reparations were a question of damages claimed through litigation, they had no place in an ideal theory of distributive justice. Or so it initially seemed.

Historical Injustice and Distributive Justice in Ideal Theory

As debates about distributive justice exploded onto the philosophical scene following the publication of Rawls’s *A Theory of Justice* (1971), the reparations debate was pushed in new directions. Mostly this played out in discussions of employment practices. Problems of affirmative action, “reverse discrimination” and “preferential hiring” that had become national preoccupations during the previous decade soon preoccupied philosophers of justice, especially on their home turf, the universities.⁵⁴ Initially, some framed affirmative action as a form of reparation.⁵⁵ But they soon turned away from the question of how to repair the historical wrongs of slavery, and from “backward-looking principles” that justified preferential hiring as remedies for past harm or discrimination.⁵⁶ Historical arguments were highly flexible – and potentially suspect: they were used to justify inaction in desegregation cases (for instance, to justify segregated school districts so long as they had not been produced with intent).⁵⁷ Many defenders of affirmative action thus saw it not as reparation but compensation for current discrimination. Such

⁵⁴ Thomas Sugrue, “Affirmative Action from Below: Civil Rights, the Building Trades, and the Politics of Racial Equality in the Urban North, 1945–1969”, *Journal of American History*, 91/1 (2004), 145–73.

⁵⁵ For the limits of this view see Albert Mosley, “Affirmative Action as a Form of Reparations”, *University of Memphis Law Review*, 33/353 (2003).

⁵⁶ Owen Fiss, “School Desegregation: The Uncertain Path of the Law”, *Philosophy and Public Affairs*, 4/1 (1974), 3–39.

⁵⁷ *Milliken v. Bradley* (1974).

compensation was justifiable, often only temporarily, by “forward-looking principles” that aimed at future equality of opportunity. This move had its legal analogue in the *Bakke* decision of 1978, which took a further step away from backward-looking arguments, declaring affirmative action justifiable only for the sake of diversity (not even as compensation).⁵⁸ In debates about discriminatory practices in employment, then, claims to address historical injustice were often sidestepped or displaced by a focus on current inequities in the receipt of benefits. Bedau had made reparations a form of compensatory justice; soon they were detached from mainstream legal compensatory ideas altogether.

Those who did stress compensation tried to show that compensatory justice, despite its implicit reliance on an idea of desert, could be squeezed into a “Rawlsian” – as it was fast becoming known – theory of distributive justice.⁵⁹ Some argued that Rawls’s principles themselves required compensation and remedy for the effects of discrimination; others that compensatory principles would be chosen in the original position alongside the principles of justice.⁶⁰ The problem of whether the beneficiaries of compensation should benefit as individuals or because of their membership in (historically or currently) disadvantaged groups was translated into Rawlsian terms.⁶¹ Should “reparations for blacks” be understood solely as reparations for ‘wronged individuals who happen to be black?’⁶² The status of group identity continued to be vexed, though the case for individual compensation often won out (largely because of the perceived compatibility with Rawls’s focus on persons). With a focus on “private” employment, the question of broader governmental responsibility and corporate public liability was dropped. Reparations for historical injustice were subsumed and domesticated into a theory of compensation for current disadvantage, amenable to a Rawlsian framework. This was largely for conceptual reasons. But the philosophical silences accompanied a political one: unlike the problems of civil rights in the South or civil disobedience against the Vietnam War, which had, just a few years earlier, mobilized numerous justifications and defences, very few philosophers – even among the many who wrote from Boston during the conflicts surrounding court-ordered

⁵⁸ Alan Goldman, “Affirmative Action”, *Philosophy and Public Affairs*, 5/2 (1976), 178–95.

⁵⁹ Thomas Nagel, “Equal Treatment and Compensatory Discrimination”, *Philosophy and Public Affairs*, 2/4 (1973), 348–63.

⁶⁰ James Nickel, “Discrimination and Morally Relevant Characteristics”, *Analysis*, 32/4 (1972), 113–4.

⁶¹ Alan Goldman, “Reparations to Individuals or Groups?”, *Analysis*, 35/3 (1975), 168–70.

⁶² James Nickel, “Should Reparations be to Individuals or to Groups?”, *Analysis*, 34/5 (1974), 154–60; J. L. Cowan, “Inverse Discrimination”, *Analysis*, 33/1 (1972), 10–12; P. W. Taylor, “Reverse Discrimination and Compensatory Justice”, *Analysis*, 33/6, 177–82; M. D. Bayles, “Reparations to Wronged Groups”, *Analysis*, 33/6, 182–4.

school desegregation and the city's busing crisis – provided support for or explored the desegregation controversies they witnessed.⁶³

Meanwhile, an alternative basis for reparations claims was being put forward, by Rawls's most influential early critic, that changed the terms of the reparations debate domestically and internationally. When libertarian Harvard philosopher Robert Nozick published his *Anarchy, State, and Utopia* (1974) he extended the anti-consequentialist strain of Rawls's theory into an account of individual rights that existed outside of any particular institutional arrangement, and in doing so shifted the basis of reparation or compensation claims from discriminatory practices to rights violations. Famously, he provided a critique of “patterned” theories of justice that controlled the goods of individuals by reference to an end-state theory, like a liberal, egalitarian or socialist theory of distribution. The justice of an individual's possessions and control over economic goods was not a function of their contribution to the general welfare, as might be claimed by an “end-state” theory. Instead, Nozick defended a backward-looking “entitlement” theory of justice in distribution that was ‘historical’, rather than ‘structural’, and according to which, “whether a distribution is just depends upon how it came about”.⁶⁴

For Nozick, a distribution was just only if it came about by a “just initial acquisition” or a “just transfer”. But this did not account for all actual situations. People steal, enslave and exclude others, extract their product. When there is past injustice – when these principles have been violated – the principle of rectification kicks in.⁶⁵ Nozick opened the door to a theory that could accommodate rectification, restitution and reparation as crucial to distributive justice. Though an individualist harshly critical of more collectivist approaches, he agreed with socialists about the importance of “notions of earning, producing, entitlement, desert and so forth”; socialism's mistake lay in its “view of what entitlements arise out of what sort of productive processes”.⁶⁶ It was not a question of whether your lot was deserved. It was about how it had come about – crucially, whether you had acquired it in accordance with his principles.

⁶³ The notable exceptions were legal philosophers, for instance Fiss, “School Desegregation” and the Harvard founder of critical race theory, Derrick Bell Jr, “Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation”, *Yale Law Journal*, 86/470 (1976). On school desegregation see Jennifer Hochschild, *The New American Dilemma: Liberal Democracy and School Desegregation* (New Haven, CT: Yale University Press, 1984); Jason Sokol, *All Eyes Are Upon Us: Race and Politics from Boston to Brooklyn* (New York: Basic Books, 2012).

⁶⁴ Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 153. For another contemporary libertarian view of reparations see Julian Simon and Larry Neal, “A Calculation of the Black Reparations Bill”, *Review of Black Political Economy*, 4/3 (1974), 75–86.

⁶⁵ Nozick, *Anarchy, State, and Utopia*, 152. ⁶⁶ Nozick, *Anarchy, State, and Utopia*, 55.

Opening the door to rectification raised a number of issues:

if past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything ought to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example their descendants? Is an injustice done to someone whose holding was itself based upon an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government?⁶⁷

Nozick was likely thinking of reparations for slavery, both here – the footnote referenced Bittker – and when he wrote that it might be difficult to formulate the principle of rectification to apply to persons “who did not themselves violate the first two principles”.⁶⁸ Yet he did not develop the principle of rectification, but merely stated that without one it was impossible “to condemn any particular scheme of transfer payments, unless it is clear that no considerations of rectification of injustice could apply to justify it”. A fierce anti-statist, Nozick added that “although to introduce socialism as the punishment for our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them”.⁶⁹

What Nozick provided was a way of taking seriously historical argument. While his fellow-travelers in the “revolt against desert” eliminated history altogether, Nozick dug down. His theory accommodated injustices committed in the past, in ways Rawlsian theories did not. It built a basis for claims to rectify unjust holdings that did not rely on a set of agreed-upon social rules and practices, or existing institutions from which compensation need be demanded. In this respect, his theory cut against the trajectory of liberal philosophy, which, after Rawls, focused on justifying a set of social rules, but largely ignored moral relations outside of them. It was this that made Nozick attractive to those whom the existing social rules did not benefit, and for whom compensation for discrimination was not enough.

Bernard Boxill, one of the pioneers of African American political philosophy in this period, similarly moved reparations claims outside the social rules. Where Forman had attempted to integrate reparations into a Marxian liberationist framework, Boxill, in his response to Forman,

⁶⁷ Nozick, *Anarchy, State, and Utopia*, 152.

⁶⁸ Nozick, *Anarchy, State, and Utopia*, 172–3.

⁶⁹ Nozick, *Anarchy, State, and Utopia*, 230.

showed how reparations worked in a liberal one.⁷⁰ But his was not a Rawlsian framework that rested on contract, the acceptance of social rules or the “existence of a valid community”. It depended, as Nozick’s did, on rights – not entitlements in property, but of each person to “pursue and acquire what he values”.⁷¹ This distinction was crucial to Boxill’s definition of reparation. He objected to Harrington’s critique of reparations as non-egalitarian on grounds that Harrington had conflated compensation and reparations. Boxill argued that rights of compensation depended on the fact that individuals are “members of a single community which itself implies tacit agreement on the part of the whole to bear the costs of compensation”. In cases where compensation is due, no prior injustice need have occurred: people can be compensated for their bad luck, for natural accidents and “acts of God”. For Boxill, a vision of distributive justice (that rested on a view of society run in terms of fair competition and the protection of society’s losers) required compensatory programmes (to keep competition fair and the losers protected). Such programmes were “forward-looking”, concerned to keep society fair and running smoothly.⁷² By contrast, the case for reparation was “more primitive”. Unlike compensation cases, no “prior commitment” was required to “identify the parties who must bear the cost of reparation; it is simply and clearly the party who has acted unjustly”. A social contract or agreement was unnecessary. The right to claim reparation derived “directly from self-preservation”. Reparation was backward-looking: it “is due only when a breach of justice *has* occurred”.⁷³

Compensation from a community where some suffer from bad luck, need a leg up or safety net, was a different matter from reparations “to black and colonial people”. This depended “precisely on the fact that such people have been reduced to their present condition by a history of injustice”.⁷⁴ Slaves, for instance, had “an indisputable moral right to the products of their labor”, a right they conferred to their descendants just as the slave masters passed the expropriated product to theirs, meaning that “the descendants of slave masters are in possession of wealth to which the descendants of slaves have rights”. This possession extended to the “white community as a whole” – precisely not the federal government or states in

⁷⁰ George Yancy (ed.), *African American Philosophers: 17 Conversations* (Abingdon: Routledge, 1998), ch. 16. For other near-contemporary responses to Forman among African-American philosophers see Howard McGary Jr, “Reparations and Inverse Discrimination”, *Dialogue*, 17/1 (1974), and “Justice and Reparations”, *The Philosophical Forum*, 9/2–3 (1977–8).

⁷¹ Bernard Boxill, ‘The Morality of Reparation’, *Social Theory and Practice*, 2/1 (1972), 113–23.

⁷² Boxill, “The Morality of Reparation”, 117.

⁷³ Boxill, “The Morality of Reparation”, 116.

⁷⁴ Boxill, “The Morality of Reparation”, 117.

its corporate capacity (that body, Boxill implied but did not argue, produced by a contract). It was the white community, construed socially rather than politically, who – whether considered as individuals receiving benefits to which others have rights, or as something like a corporation or company, the members of which have joint interests and access to benefits and shares of membership – owe “reparations to the sons of slaves”.⁷⁵

This was a neo-Lockean account, skeptical of the Rawlsian contract, and it provided an attractive theory for those who did not exist within a realm of social rules that benefitted them. But this reparations claim rested on an idea of inherited rights to ownership. Did it thus depend on the validity of inheritance? Boxill argued not, stating that even if the wealth of individuals were returned to the community on their death, the claim would remain. Yet even allowing for common ownership (and thus avoiding the libertarian interpretation of this argument) it still depended on an idea of inherited wealth. Like Nozick, Boxill took trans-historical rights for granted. His were more expansive (and later versions of his demand for repair reflected psychological harms suffered as well as material losses).⁷⁶ But both his and Nozick’s accounts nonetheless supported the kind of reparative claims about unjust enrichment, extracted labor and land, that permeated the Black Manifesto.⁷⁷

On the surface, there was nothing in these arguments – particularly on the common ownership interpretation – that made them unacceptable to socialists. While compensatory arguments had been subsumed into accounts of distributive justice, these historical, reparative arguments, intertwined with accounts of expropriation, seemed feasibly compatible with accounts of productive justice. The sticking point for socialists would not be the history of expropriation but the idea that a slave class had a distinct history, separable from that of all workers (or, more likely, the strategic argument Harrington suggested, that reparations claims were a distraction because they cut across class interests).⁷⁸ By contrast, for Rawlsians, such a neo-Lockean view could not be so easily integrated. It challenged the core of their theory, by positing a realm of historical

⁷⁵ Boxill, “The Morality of Reparation”, 120–1.

⁷⁶ These would be important divisions in later debates, later brought back together in Janna Thompson, “Historical Injustice and Reparation: Justifying Claims of Descendants”, *Ethics*, 112/1 (2001), 114–35. Many arguments about inheritance of possession run up against Waldron’s objection to historical injustice in the form of his “indeterminacy thesis” in Jeremy Waldron, “Superseding Historical Injustice”, *Ethics*, 103/1 (1992), 4–28.

⁷⁷ David Scott, “On the Moral Justification for Reparations for New World Slavery” in Robert Nichols and Jakeet Singh (eds.), *Freedom and Democracy in an Imperial Context: Conversations with James Tully* (Abingdon: Routledge, 2014), 107–9.

⁷⁸ Kaufman and Harrington, “Black Reparations – Two Views”, 318.

argument and transhistorical rights of ownership, property and inheritance that existed outside of social rules and agreements. With no theoretical support from Rawlsians and little practical from socialists, the philosophical case for reparations thus became associated not with the left, but with libertarianism, individualism, property rights and the kind of historical arguments antithetical to contractarian egalitarianism.

By the mid-1970s, Nozick had a near monopoly on historical arguments. The brief interest in squaring claims for black reparations with distributive justice theory had largely waned. One non-libertarian philosopher continued, however, to try to rescue historical argument – not by examining reparations for slavery but the campaign to return dispossessed land to Native Americans.⁷⁹ Unlike the expanding liberal-egalitarian mainstream, David Lyons welcomed Nozick's claim that historical factors were independently relevant to justice. But he thought Nozick went too far the other way when he claimed they were uniquely so, 'and that merit, desert, distribution of benefits and burdens in society are irrelevant'. For Lyons, Nozick exaggerated in this and in his claim that property rights, legitimately acquired, were unaffected by circumstance – both of which had consequences for the defence of reparation as rectification. The disadvantages facing Native Americans were, Lyons wrote, a "wrong it was incumbent on us to right"; their "dispossession may call for significant rectification". Simple rectification claims (whereby injustice corrected meant justice done) that restored land to its "original and rightful owners" were attractive propositions, particularly since they avoided difficulties of reparative and compensatory justice. But Nozick's rights could not give such claims the required support; rights to property and land were more flexible and variable than he assumed, and were not necessarily inheritable.⁸⁰ Inheritance, though not for Lyons always objectionable on egalitarian grounds, led to concentrations of wealth and power that could undermine justice in transfer by creating unfair social arrangements. It was not transhistorical, outside the social rules, but an economic institution that needed justification like any other.⁸¹ Moreover, property rights were not stable even within a single generation – "they can be extinguished without being voluntarily transferred". Nozick's turn to history, while welcome, went wrong in assuming that changing social contexts had no effect on property claims.⁸² This might enable the claim – not made by Nozick himself – that Native Americans had original land rights that were untouched by changing circumstances, but it was

⁷⁹ David Lyons, "The New Indian Claims and Original Rights to Land", *Social Theory and Practice*, 4/3 (1977), 249–72.

⁸⁰ Lyons, "The New Indian Claims", 253. ⁸¹ Lyons, "The New Indian Claims", 258.

⁸² Lyons, "The New Indian Claims", 268.

a mistake. Looking backwards should not be confused with identifying transhistorical moral claims.

Yet Lyons too ended up eliminating the historical, at least from a moral point of view. He argued that the force of Native American claims derived not from the returning of original land, dependent on inheritable property rights outside of institutional contexts, but from their current disadvantage. As would become a common argument in reparations debates, he used a thought experiment to show that if Native Americans were now rich, we would not think their dispossessed lands should be returned. They had claims to a fair share of resources, to compensation for wrongs done to them by the system that deprives them of that fair share. Their “deprivation and their claims are rooted, *causally and historically*, in the wrongs that . . . their ancestors suffered”. But their claims were not normatively derived from their original historical rights. Native Americans had faced systematic discrimination and had a “valid claim to fair share” of resources and opportunities:

They also have a valid claim to compensation for unjust deprivation that the *current* generation has suffered from past injustices. But it is highly doubtful that they have any special claims based upon their distant ancestors’ original occupation of the land. For circumstances have significantly changed. Most of the occupants of America today have had little, if anything, to do with dispossession of Native Americans. This does *not* mean that they have no complicity in a pattern of unjust deprivation of *current* Native Americans, for which compensation is required. I suggest, therefore, that the current Indian land claims be viewed, not as invoking an original right to the land, a right that has been passed down to current Native Americans and that now needs to be enforced, but rather as an occasion for rectifying current inequities (some of which, of course, may trace back causally to the dispossession of Native Americans and the aftermath).⁸³

Lyons here crystallized the battle lines in debates about historic injustice. It was current wrongs that mattered, whether or not they were causally derived from past injustices.⁸⁴ Unless one insisted on transhistorical rights, the force of most claims about the injustices we think of as historical actually came from present inequality. To take seriously the wrongs of history here meant to give up on transhistorical claims and historical argument.

On the one hand, then, were theories that looked to history, reparation, rectification and rights outside of the social rules and institutions; on the other, those that looked to the present or future, compensation, and were dependent on social rules and institutions. The line between the two

⁸³ Lyons, “The New Indian Claims”, 268.

⁸⁴ See also Marshall Cohen, Thomas Nagel and Thomas Scanlon (eds.), *Equality and Preferential Treatment* (Princeton, NJ: Princeton University Press, 1977), xii.

kinds of theory seemed now set.⁸⁵ The reluctance to admit backward-looking reasoning into accounts of justice was reinforced in subsequent years. While Bittker had dissociated slavery and ancient wrongs from backward-looking reasoning, yet still allowed for the latter within his account of reparations, now liberal egalitarian philosophers disconnected the two, looking only to forward-looking justifications, mostly for compensation. The focus shifted to the recent rather than distant past. Justifications focused on addressing current inequalities, or promoting future distributions and equality of opportunity.⁸⁶

These debates were shaped by other changes in philosophy. Concern with environmental problems – declining resources, overpopulation and potential ecological catastrophe – led many to consider obligations to future generations. Relatedly, Derek Parfit’s non-identity problem raised the question of whether we had obligations to future people at all (since the existence of those future people would themselves be determined by our actions in the present).⁸⁷ These concerns permeated debates about the past as well as the future. Reparations claims were faced not only with the problem of establishing a status quo ante but an additional one: given that current generations would not have been born if it were not for slavery, could it even be right to say there was such a thing as a status quo ante to be rectified, since the people alive today could not be said to be worse off than they would have been without slavery, because *these* people would not have been born?⁸⁸ These problems increasingly occupied a central place in debates about historic injustice.⁸⁹ The question of who should pay, and the particularities of the case of African Americans, dropped out of the picture. Liberal philosophy’s fleeting encounter with radical black politics was over.

History and Global Justice

What was just beginning was liberal philosophers’ explorations of the morality of international institutional arrangements, and what came to

⁸⁵ For this argument see Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton, NJ: Princeton University Press, 2019), chapter 4.

⁸⁶ George Sher, “Ancient Wrongs and Modern Rights”, *Philosophy and Public Affairs*, 10/1 (1981), 3–17.

⁸⁷ Katrina Forrester, “The Problem of the Future in Anglo-American Political Thought”, *Climatic Change* (online first: August 2016).

⁸⁸ Lawrence Davis, “Comments on Nozick’s Entitlement Theory”, *Journal of Philosophy*, 73/21 (1976); Michael Levin, “Reverse Discrimination, Shackled Runners, and Personal Identity”, *Philosophical Studies*, 37/2 (1980), 139–49; George Sher, “Compensation and Transworld Personal Identity”, *The Monist*, 62/3 (1979), 378–91.

⁸⁹ Leif Wenar, “Reparations for the Future”, *Journal of Social Philosophy*, 37/2 (2006), 396–405.

be known as global justice theory. The case for black reparations had begun as a domestic question – so far as philosophers were concerned. In fact, activists had long connected the situation of African Americans to other colonized peoples, but these transnational solidarities and practical demands for internationally administered reparations were hard to square with the liberal and legalistic view of the civil rights movement prevalent among political philosophers.⁹⁰ So when Bedau and Bittker had examined the case for reparations, it was treated as a domestic, and a specifically American, problem. Yet when justice theory after Rawls went international, the problem of reparations shaped discussions of global justice in unexpected and crucial ways. For the Rawlsian reluctance to make historical claims relevant to normative arguments affected not only the philosophical fortunes of demands for black and Native American reparations in particular, but reparations for colonial injustice in general. In these years when international and global justice theory was first taking shape, this mattered. Indeed, it was in the first theories of international justice that the move to subsume arguments for rectification, reparation and compensation into liberal egalitarian theory, and to dull their ideological force, can most clearly be seen. In this international context, the demands from the left that liberal philosophers diffused were not for reparations for slavery, but colonialism. The vector that shaped their arguments from the right – those made by Nozick – remained the same.

In the early and mid-1970s, liberal philosophers turned their attention to international ethics – to the food crisis and world famine, and international inequality in an age of decolonization. One of the central problems they addressed was how Rawls's framework of distributive justice could be extended internationally. In his 1977 account of international order, Thomas Nagel observed two philosophical responses to the sense of growing international crisis. On the one hand was the humanitarian moralism of Peter Singer, which effectively called for rectification through charity, and did not challenge the legitimacy of existing distributions of wealth or property systems. On the other were those that identified the roots of global inequality in the colonial exploitation of trade, labor and development in poor countries.

⁹⁰ On internationalism, transnational solidarities and the black freedom struggle Nikhil Pal Singh, *Black Is a Country: Race and the Unfinished Struggle for Democracy* (Cambridge, MA: Harvard University Press, 2005); Penny von Eschen, *Race Against Empire: Black Americans and Anticolonialism 1937–57* (Ithaca, NY: Cornell University Press, 1997); Jonathan Rosenberg, *How Far the Promised Land? World Affairs and the American Civil Rights Movement from the First World War to Vietnam* (Princeton, NJ: Princeton University Press, 2006); Minkah Makalani, *In the Cause of Freedom: Radical Black Internationalism from Harlem to London, 1917–1939* (Chapel Hill: University of North Carolina Press, 2011); and the chapter by Inés Valdez in this volume (Chapter 5).

These latter arguments were historical, and Nagel objected to them by following Thomas Scanlon's response to Nozick (which shared some moves with Lyons's critique). They may have had historical accuracy, he wrote, but not philosophical or normative force.⁹¹ Focusing solely on colonial exploitation lent all inequalities that were not caused by exploitation a veil of legitimacy. Exploitation could not be blamed for all international inequalities. There were other causes: resource distribution, technology, luck.⁹² What mattered to Nagel was whether a system permitted inequalities, not whether people did bad things to bring about that system. Even if no one had cheated, coerced or exploited anyone else, inequality was still morally objectionable. The problem was the existing system of property under which claims of right and entitlement, defined by mechanisms of acquisition, exchange, inheritance and transfer, were made – the world economy that contributed to the production of radical inequality. It was the current system that should be challenged, not historical wrongs; the social rules, not claims made outside them. Distributive justice was not the same as the rectification of past wrongs.⁹³ At an international level, where the world economy did constitute a single system in the relevant sense (a claim about which Nagel would later become skeptical), it was distributive justice that mattered – a distributive justice that paid attention to the institutions of the present, not transhistorical rights from the past.

Charles Beitz and Brian Barry were among the first philosophers to go beyond Nagel's diagnosis to propose positive theories of international justice. They similarly shored up their theories by deploying the domestic egalitarian response to Nozick – not to rebut the case for black reparations, but to explore demands then being made by anti-colonial theorists, particularly the demands for a New International Economic Order (NIEO).⁹⁴ These were part of an anti-colonial effort to construct plans for a more egalitarian international order, in which autonomous states would get what they were owed. Here, demands for rectification and reparation were not yet associated with claims of reconciliation, human rights and retribution for past crimes – as they would be after the rise of “transitional justice” in the 1980s and

⁹¹ T. M. Scanlon, “Liberty, Contract and Contribution” in G. Dworkin, G. Bermant and P. Brown (eds.), *Markets and Morals* (Washington, DC: Hemisphere Press, 1977).

⁹² Nagel, “Poverty and Food: Why Charity Is Not Enough” in Peter Brown and Henry Shue (eds.), *Food Policy: U.S. Responsibility in the Life and Death Choices* (New York: Free Press, 1977), 54–62.

⁹³ Nagel, “Poverty and Food”, 57.

⁹⁴ Nils Gilman, “The New International Order: A Reintroduction”, *Humanity*, 6/1 (2015), 1–16.

1990s.⁹⁵ Where a language of reparation was used, it was still, like Forman's, associated with calls for economic justice and emancipation, now internationalized.

These anti-colonial demands took a number of forms. "The Declaration for the Establishment of the New International Economic Order" of 1974 itself had a reparation clause, stating the "right of all States, territories and peoples under foreign occupation, alien and colonial domination or apartheid to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples".⁹⁶ Many anti-colonial thinkers who called for a new order married historical argument and demands for redistribution, and posited rectification as remedy for both historic and present injustice and exploitation. Often Marxian in spirit, these ascribed historical, causal and moral responsibility for current inequalities to imperialism, colonial exploitation, capitalism or the affluence of rich countries.⁹⁷ Of these, perhaps the most important for the formation of global justice theory was dependency theory.⁹⁸ Dependency theory had its origins in the hypothesis, put forward by development economists Hans Singer and Raul Prebisch in the late 1940s, that the poverty of the developing world was the result of adverse terms of international trade. By the 1960s, its claim that there existed a causal relationship between poverty in poor countries and affluence in rich, and its remedy of restructuring the terms of global trade, was flourishing as an alternative to modernization theory.⁹⁹ In the 1970s, Andre Gunder Frank and others presented a dependency theory based on a vision of a world capitalist system in which development at the center generated underdevelopment in the peripheries.¹⁰⁰ It not only ascribed causal responsibility for global inequality to the development

⁹⁵ Nicolas Guilhot, "'The Transition to the Human World of Democracy': Notes for a History of the Concept of Transition, from Early Marxism to 1989", *European Journal of Social Theory*, 5/2 (2002), 219–42; Arthur, "How 'Transitions' Reshaped Human Rights".

⁹⁶ UN Resolution adopted by the General Assembly, 3201 (S-VI) Declaration on the Establishment of a New International Economic Order, 1 May 1974, 4f. www.un-documents.net/s6r3201.htm (accessed 11 September 2018).

⁹⁷ Cf. Adom Getachew, *Worldmaking after Empire* (Princeton, NJ: Princeton University Press, 2019).

⁹⁸ See the chapter by Anne Phillips in this volume (Chapter 6).

⁹⁹ Daniel Sargent, "North/South: The United States Responds to the New International Economic Order", *Humanity*, 6/1 (2015), 205–6.

¹⁰⁰ See e.g. Andre Gunder Frank and Samir Amin, "Self-Reliance and the New International Economic Order", *Monthly Review*, 29/3 (1977): 1–21; Arghiri Emmanuel, *Unequal Exchange: A Study of the Imperialism of Trade* (New York: Monthly Review, 1971); Tamas Szentes, *The Political Economy of Underdevelopment* (Budapest: Akadémiai Kiadó, 1976).

of rich countries under capitalism, but suggested that economic relations with rich countries actually worsened the plight of the poor countries. The solution was the rectification of historical expropriation by economic means.

When Beitz turned in the mid-1970s to explain why the distributive rules of the global economic scheme had to be transformed, he also looked to the economic realm but, by contrast, discounted historical arguments. He acknowledged the relevance of the historical description of the origins of global inequalities, and initially seemed sympathetic to certain theories that rested on historical claims for remedying colonial injustice and exploitation.¹⁰¹ But his opposition to historical arguments would ultimately become central both to his own theory, and to the global justice theories that came to dominate philosophy in its wake. As he developed his argument for an international institutional justice theory, he challenged precisely those arguments based on the historical fact of colonialism that suggested that obligations owed from rich to poor countries should be understood as rectification or reparation.¹⁰²

By 1979, Beitz made explicit his rejection of theories of reparation and economic dependency, which rested on the claim that relations between rich and poor countries are “exploitative”: “the rich are said to prosper *because* of their relations with the poor, and the poor to suffer *because* of their relation with the rich”. It was not that simple, Beitz claimed: rich countries do not always benefit from their relationships, poor countries may only be relatively (not absolutely) disadvantaged by their participation in the capitalist world economy and dependency does not always correlate with poverty. Nor was it clear, he wrote, why those who inherit colonial wealth have to bear the burden of the wrongs committed by their ancestors.¹⁰³ Beitz wanted to get away from the idea that dependency was the cause of inequality. History had to be left out of the equation. Distributive justice should not rest on past wrongs, original entitlements or an idea of desert. Rather, the point of distributive justice theories was to get its “grip on us as people who occupy positions in a social division of labor”.¹⁰⁴ The question was not why certain parties had come to own more of the global social product, but how it should now be shared. Beitz took on the Rawlsian tools,

¹⁰¹ Charles Beitz, “Justice and International Relations”, *Philosophy and Public Affairs*, 4/4 (1975), 375. On Beitz and the NIEO see Samuel Moyn, “The Political Origins of Global Justice” in Joel Isaac et al. (eds.), *The Worlds of American Intellectual History* (Oxford: Oxford University Press, 2016), 133–54.

¹⁰² Beitz, “Global Egalitarianism: Can We Make out a Case?”, *Dissent*, 26/1 (1979), 59–68.

¹⁰³ Beitz, “Global Egalitarianism”, 60. ¹⁰⁴ Beitz, “Global Egalitarianism”, 62.

honed by the challenge of libertarianism, to domesticate the arguments of the anti-imperialist left.

In his 1980 Tanner Lectures, Brian Barry described his theory of international justice in precisely these terms, as an attempt to “domesticate” the idea of world distribution contained in the demands for the NIEO.¹⁰⁵ The trouble for liberal egalitarians remained how to squeeze historical reparations claims into distributive justice theories, with which they seemed ideologically incompatible. Barry took a different route to Beitz. He was not as uncomfortable with reparations claims as other liberal philosophers. It was, he suggested, citing Bittker, hard to argue that descendants of exploiters have no obligation to atone for the injustice of their ancestors – if they are themselves richer as a result of exploitation, and the descendants of the exploited poorer.¹⁰⁶ Yet what this qualifier showed was that the argumentative force derived again from current inequalities, not past injustice. Equality was what mattered, not rectification in itself – which Barry saw as basically “conservative”.¹⁰⁷ This he made clear in his critique of the application of theories of justice as reciprocity to international politics. He conceded that one of the most plausible accounts of international justice rested on an idea of justice as requital or fair exchange. That idea he saw as underpinning the various Marxian and anti-colonial arguments that claimed reparations were owed by rich to poor countries, by the center to the periphery. He pointed to dependency economist Arghiri Emmanuel’s account of unequal exchange; like Beitz, Barry looked to versions of dependency theory that focused on trade in commodities other than persons, rather than those that linked underdevelopment to slavery.¹⁰⁸

Such ideas could not on their own generate a theory of international justice. Supplementary ideas were needed. Here Barry looked to theorists of fair exchange – from Locke to Robert Nozick to James Buchanan – who, by defending the need for an additional argument about the initial endowments and control of natural resources, got a handle on international justice in a way that non-historical Rawlsian arguments (which were silent on this question of initial access to

¹⁰⁵ Brian Barry, *Do Countries Have Moral Obligations?: The Case of World Poverty* (The Tanner Lectures on Human Values, 1980), 28. https://tannerlectures.utah.edu/_documents/a-to-z/b/barry81.pdf (accessed 11 September 2018).

¹⁰⁶ Brian Barry, “Justice as Reciprocity”, in E. Kamenka and A. Erh-Soon Tay (eds.), *Justice* (New York: St Martins Press, 1980), 63.

¹⁰⁷ Barry, “Humanity and Justice in Global Perspective”, in J. Pennock and J. Chapman (eds.), *NOMOS: Ethics, Economics and Law* (New York: Harvester, 1982), 227.

¹⁰⁸ See e.g. Walter Rodney, *How Europe Underdeveloped Africa* (London: Bogle-L’Overture Publications, 1972).

resources) did not.¹⁰⁹ Barry similarly attached an independent argument about initial control to his account of justice – not an individual right to property, but equality of opportunity in the sense of equal claims on the world’s natural resources. This commons-style entitlement claim (which paralleled Boxill as much as Nozick) allowed Barry to argue for international distributive justice in a way that sidestepped historical reparation and rectification arguments, while acknowledging their force. The debt owed from rich to poor countries became not a question of compensating for what had been lost, but of transferring resources that belonged to one country but were in the possession of another. The idea of reparation had no stable place in his account of international distributive justice. Resources might be returned as a result of mistaken belonging, as a matter of justice in the present, but not because of a history of exploitation, expropriation or injustice.

Like Lyons, Barry recognized the force of historical arguments even as he deflected them. He also recognized the importance of an account of corporate liability and collective responsibility to reparations claims in a domestic context, and to any theory of international justice. Barry departed from Beitz, and subsequent theories of global justice, in stressing not only state autonomy but the autonomy and agency of collectivities in general. In his unpublished *Rich Countries and Poor Countries* (1980), he argued that an “individualistic ideology” was taking over liberal philosophy.¹¹⁰ Philosophy had changed in precisely the ways Bedau had anticipated. The revolt against desert had continued, taking history with it. The attempt to reinterpret socialism had, for the most part, given way to its rejection. As Barry here confirmed, notions of corporate and collective responsibility had largely dropped out of liberal philosophy, replaced by a strict individualism. Even on Barry’s model of international justice, where state autonomy remained vital, states were not bearers of historical responsibility but subjects of current distribution.

By the end of the 1970s, then, anti-historical arguments were widespread, and became fundamental to global justice theory. History dropped out of the egalitarian picture. Problems of corporate liability and responsibility were displaced. Reparations were absent from distributive justice, exploitation and colonialism cut off from global justice. Beitz’s theory largely set the terms of the global justice that would develop in subsequent decades, most notably that of Thomas Pogge: it was an

¹⁰⁹ Barry, ‘Justice as Reciprocity’, 73; Barry, ‘Humanity and Justice in Global Perspective’, 247–50.

¹¹⁰ Barry, *Rich Countries and Poor Countries* (unpublished ms, 1980), 13.

extension of Rawls's, institutional and egalitarian.¹¹¹ Viewed against what it was not – a theory of anti-colonial reparations – global justice theory's non-historical character, its relationship to social rules and practices in the present, was clear. Its presentist egalitarianism was an alternative to both historical anti-colonialism and libertarianism.

Freeing justice theory from historical argument might have allowed for a very demanding form of domestic and global egalitarianism, but that egalitarianism in theory was bought at the cost of ignoring historical and structural injustice in practice. For not only was the challenge of integrating reparations with egalitarian and emancipatory claims passed over by later liberal egalitarians, who domesticated elements of anti-colonial theories while rejecting the arguments on which they relied. In a context where liberal philosophers were not activist in their support for anti-racist politics, and with problems of racism and empire folded into the “cultural” politics of the 1980s, the rejection of reparations led to the concomitant neglect-by-association of other social and distributional problems categorized and conflated under the cover of “race”.¹¹² That included those that might have been more readily conceptually accommodated within liberal egalitarianism – for instance, the racial wealth gap.

The demand for reparations did not disappear from mainstream liberal philosophy entirely. Decades later, it would be revived in the context of Australian and Canadian arguments about obligations to indigenous groups. In the interim years, where it survived, it was by and large not associated with African-American or anti-colonial politics but with libertarian and neo-Lockean arguments.¹¹³ Continuing debates among African-American philosophers were largely neglected. If the original object of reparations debates, black chattel slavery, made an appearance – other than as a slippery slope argument against utilitarianism – it was as a historical fact with little normative force. This did not mean, however, that the politics of reparations more broadly was moved out of a discourse of identity and unpaid labor, to one of property – an area where liberal philosophy was primed to offer solutions. Instead, the problem of reparations was transformed from one of anti-colonialism

¹¹¹ Samuel Scheffler, ‘The Idea of Global Justice: A Progress Report’, *Harvard Review of Philosophy*, 20 (2014), 17–35.

¹¹² On the substitution of ‘culture’ for ‘race’ see Thomas Holt, *The Problem of Race in the Twenty-First Century* (Cambridge, MA: Harvard University Press, 2002), 13–14; on the conflation of various concerns under the ‘euphemism’ of race see Karen Fields and Barbara Fields, *Racecraft: The Soul of Inequality in American Life* (London: Verso, 2012), 100.

¹¹³ On the uses of the latter for the former see Bill Lawson, ‘Locke and the Legal Obligations of Black Americans’, *Public Affairs Quarterly*, 3 (1989). For reparations as treated by black philosophers outside the philosophical mainstream see n. 12.

and material compensation – bound to arguments about capitalist exploitation as much as liberal and legal compensation – to one of humanitarian transitional justice and reconciliation, synonymous with a sometimes depoliticized and often individualized repair. It was cut off from its emancipatory roots. And as the demand for reparations was left in the realm of humanity and identity, so were its original associations. Problems of racism and empire were relegated to these realms, and kept outside that of distributive justice, both domestic and global. The legacy of these early reparations debates was thus double. On the one hand, the logic of the arguments described here served to secure this absence; on the other, they contributed to the construction of an alternative form of argument and collection of categories that has dominated philosophy ever since. The recent efforts of justice theorists to find a compelling way out of these divisions, to reunite historical and distributive arguments, confirms how entrenched they have been for so long.