

# On Reparations to Blacks for Slavery<sup>1</sup>

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## Introduction

This paper is an attempt to shed light on the legitimacy of some recent claims by prominent black leaders and scholars that reparations are owed to members of their race, and should be paid for by the U.S. government out of tax revenues. I shall critically consider in the light of libertarian theory both the views in favor of this position put forth by Robinson<sup>2</sup> and the arguments against it of Horowitz<sup>3</sup> <<http://www.salon.com/news/col/horo/2000/05/10/reparations/index.html>>. See also Myron Magnet, *The Dream and the Nightmare*, New York: Manhattan Institute for Policy Research, especially the chapter, "Race and Reparations."

## Libertarianism

Libertarianism is a political philosophy with private property rights at its core. Its axiom is that physical invasions of persons or property are unjustified,<sup>4</sup> and should be punished. It is based on a variant of Lockean homesteading theory, according to which mixing one's labor with the land justifies ownership of it, whether or not Locke's proviso of "enough and good still being available" is met.

This proviso is all well and good when there are vast lands unsettled, in the U.S. frontier of historical memory. But what is to be done when virtually all usable land has been taken up? There are only several possibilities. We can resort to government ownership<sup>5</sup>. But why should land socialism<sup>7</sup> work any better than the economic variety? In any case, members of the apparatus of the state, by stipulation, did not mix their labor with the land, or do anything else which would remotely justify their ownership status over it. Why, then, should it be granted? True, the government can auction off the land to the highest bidders, or on a first come first served basis, but why would the owners who eventuate from such a process—initially unjustified—be preferable to those whose ownership is based on homesteading? This process would indeed see more money placed in the coffers of the state, but it is easy to make the case that they already

have far too much wealth and control over the economy as it is.<sup>8</sup> The only other candidate is claim theory; ownership, here, is based on a mere affirmation. But this also fails to establish any connection between the owner and that which is owned. In addition, there is the problem of vast over determination, as anyone would be free to claim anything he wishes.

### Alterations in Property Titles

Having established initial ownership in property, the next step in determining justice in property titles is to outline a theory of how they can legitimately change hands from one person to another. This may be done in any non-invasive manner possible, e.g., trade, gifts, inheritance or gambling, for these are the only options compatible with ownership in the first place.<sup>9</sup> That is, if I give you my ring in exchange for your car, this is logically consistent with property rights; if I merely seize your auto, it is not. Nozick calls this "legitimate title transfer."<sup>10</sup>

It must be emphasized that the key element of libertarian punishment theory<sup>11</sup> is an attempt to make the victim "whole," preeminently by compensating him. While this is never fully possible, the goal is to attain this state of affairs insofar as possible. Crimes, in this perspective, are not committed against some general "society," and the main emphasis is not on incarceration, much less reform. Rather, a crime such as assault and battery, murder, rape, etc., is seen as aimed primarily at the victim. Jail, to the extent it arises in a libertarian society, is merely a way of forcing hard labor upon the perpetrator in an attempt to get him to compensate the victim.

### Reparation Theory

Justified reparations are nothing more and nothing less than the forced return of stolen property—even after a significant amount of time has passed. For example, if my grandfather stole a ring from your grandfather, and then bequeathed it to me through the intermediation of my father, then I am, presently, the illegitimate owner of that piece of jewelry. To take the position that reparations are always and forever unjustified is to give an imprimatur to theft, provided a sufficient time period has elapsed. In the just society, your father would have inherited the ring from his own parent, and then given it to you. It is thus not a violation of property rights, but a logical implication of them, to force me to give over this ill gotten gain to you.<sup>12</sup> "In short, we cannot simply talk of defense of 'property rights' or of 'private property' *per se*. For if we do so, we are in grave danger of defending the 'property right' of a criminal aggressor—in fact, we logically must do so." Of course, "possession is nine tenths of the law." It is not sufficient, on your part, merely to claim that the ring now on my finger is

rightfully yours. You must be forthcoming with specific evidence undergirding this demand. A dated picture of your grandfather wearing it, or a bill of sale, would do just fine. Moreover, it is only I who owe you this piece of jewelry, not my neighbor or the general taxpayer,<sup>13</sup> and it is owed only to you, not to any person who wants it, or to those of a given race or ethnicity. Further, I am not a criminal for innocently possessing the ring before you came to claim it, but I am guilty of a criminal act once it is proven that the ring was really your grandfather's and I refuse to give it up to you.

Precisely the same analysis applies to slavery. Owning a slave is a crime under libertarian law. The Nuremberg Trials have established the validity of *ex post facto* law. Those people who owned slaves in the pre civil war U.S. were guilty of the crime of kidnapping, even though such practices were legal at the time. A part of the value of their plantations was based on the forced labor of blacks. Were justice fully done in 1865, these people would have been incarcerated, and that part of the value of their holdings attributable to slave labor would have been turned over to the ex slaves. Instead, these slave masters kept their freedom, and bequeathed their property to their own children. Their (great) grandchildren now possess farms which, under a regime of justice, would have never been given to them. Instead, they would have been in the hands of the (great) grandchildren of slaves. To return these specific lands to those blacks in the present day who can prove their ancestors were forced to work on these plantations is thus to uphold private property rights, not to denigrate them.

### Horowitz

Horowitz seems to have had a knee-jerk reaction to the claims of Jesse Jackson, John Conyers, Randall Robinson and their confreres.<sup>14</sup> Since they have been wrong in just about everything they have ever said in the areas of economics, politics, discrimination, race relations, ethics, etc., he presumes that this applies in this case as well.<sup>15</sup> But here, perhaps through sheer good luck, they have finally hit upon a principle compatible with libertarianism and the free society. Because of his inability to discern a pro free enterprise viewpoint when it comes from so unlikely a quarter, Horowitz is then unable to tax these people with their logical inconsistency; they are Johnny come latelies to the banner of capitalism. If they really wish to press their reparations claims, which are based on the doctrine of private property rights (returning possessions to their rightful owners), then they must renounce all of their previous positions which are incompatible with this vision, e.g., their support for welfare, unions, government intervention into the economy, regulation, business nationalization, etc. Alternatively, if they insist on maintaining these spurious views, then upon pain of contradic-

tion, they must withdraw their demand for reparations, based on stolen (labor) property.<sup>16</sup>

Paradoxically, even if Jackson, Conyers, Gates, Robinson, Farakhan, Lewis, Afrik, Thornton, et al. do change their tune on property rights in general, and thus are logically enabled<sup>17</sup> to press for reparations, they will derive no great measure of comfort from it, as a practical matter. This is because it is notoriously difficult to trace back property titles back in history for any great length of time, particularly if there were no written records kept (as was the case with Indians and other pre literate people).<sup>18</sup> This is why, again only as a practical matter, there are no implications of the libertarian theory of reparations to far off events such as Mongol hordes, competing claims in Jerusalem from 2000 years ago, etc. Reparations theory comes into its own regarding more recent occurrences such as land stolen in the USSR, Cuba, East Germany, etc., where scrupulously accurate records are available. Black slavery in the U.S. occupies an intermediate position; it took place a century and a half ago, and while there were written records, many have been lost in the sands of time. It is only from the position of an all-knowing God that reparations, from as far back in history as you wish to go, written records or no, are relevant to property titles in the present time.

There is another reason black leaders cannot take too much comfort from libertarian reparations theory. Suppose there were 500 slaves on a plantation, but the grandchildren of only one of them can be found. They are entitled to split amongst themselves not all the contributions made by all the slaves, but rather only one-five-hundredth of that, the estimate of the productivity of their own ancestor alone.

Why is this? Would it not be more reasonable to award the children of this one slave the fruits of the labor of all the slaves? At first blush, this is a tenable idea. After all, at the time of the freedom of the slaves, were justice to have reigned at that time, the product of their entire output would have been given to them; none of it at all would have remained in the slave master's hands.<sup>19</sup> And if the ex slave owner would not have been able to keep any of this property, he would not have been able to hand it down to his own progeny. Instead, it would have been under the control of the ex slaves, and, with time, wended its way into the hands of blacks now alive.

Although not an altogether unreasonable scenario, it is simply incompatible with libertarian law. This is because we must look at this matter not from the point of view of 1865, and on the assumption that the offspring of all 500 slaves can be found, but rather from the perspective of the case we are assuming; that is, it is now the modern era, almost a century and a half after these historical events have unfolded, and we can demonstrate a connection between only one slave and persons now living. Yes, the property in question, in justice, never should have remained in the hands of the slave master; but it did. He handed it on to his innocent children, and they

to theirs. Now, as judges, we are faced with blacks who can trace their roots back to only one of the 500 slaves. Why should they be entitled to land to which they have no connection. The extant owners, at least, are not themselves guilty of any land theft or slave holding, and have established homestead rights to that which they occupy.

Rothbard explains:

But suppose that Jones<sup>20</sup> is *not* the criminal, not the man who stole the watch, but that he had inherited or had innocently purchased it from the thief. And suppose, of course, that neither the victim nor his heirs can be found.<sup>21</sup> In that case, the disappearance of the victim means that the stolen property comes properly into a state of no-ownership. But we have seen that any good in a state of no-ownership, with no legitimate owner of its title, reverts as legitimate property to the first person to come along and use it, to appropriate this now un-owned resource for human use. But this 'first' person is clearly Jones, who has been using it all along. Therefore, we conclude that even though the property was originally stolen, that *if* the victim or his heirs cannot be found, *and if* the current possessor was not the actual criminal who stole the property, then title to that property belongs properly, justly, and ethically to its current possessor.

To sum up, for any property currently claimed and used: (a) if we *know* clearly that there was no criminal origin to its current title, then obviously the current title is legitimate, just and valid; (b) if we *don't* know whether the current title had any criminal origins but can't find out either way, then the hypothetically 'unowned' property reverts instantaneously and justly to its current possessor. (c) if we *do* know that the title is originally criminal, but can't find the victim or his heirs, then (c1) if the current title-holder was not the criminal aggressor against the property, then it reverts to him justly as the first owner of a hypothetically unowned property. But (c2) if the current title-holder is himself the criminal or one of the criminals who stole the property, then clearly he is properly to be deprived of it, and it then reverts to the first man who takes it out of its unowned state and appropriates it for his use. And finally, (d) if the current title is the result of crime, *and* the victim or his heirs can be found, then the title properly reverts immediately to the latter, without compensation to the criminal or to the other holders of the unjust title.<sup>22</sup>

There are three reasons why black leaders<sup>23</sup> should jettison their socialist leanings, and begin to support capitalism. One, it will inure to the benefit of their followers right now in ways unrelated to reparations. Two, they will be able to logically maintain their position on reparations as a matter of principle. And three, some few black grandchildren might actually be able to trace their claims back in time to the pre civil war era, and thereby obtain some compensation, under libertarian law.

### A Critique

In one sense, I have nothing critical to say about Horowitz (2000). He opposes "the idea that taxpayers should pay reparations to black Americans for the damages of slavery and segregation" and so do I. My argument

is that no one owes anything to anyone for segregation, since the law of free association guarantees (or should guarantee) that anyone can discriminate against anyone else for any reason, or no reason at all. Secondly, I maintain that although reparations are indeed owed to some blacks, from some whites, for slavery, all blacks should not be creditors in this regard, nor all (non-black) taxpayers, debtors.

In another sense, I look upon Horowitz (2000) with profound disquiet. For one thing, this essay "proves" far too much; in the view of this writer, there are no blacks at all who are owed reparations from anyone. That is, presumably, the entire concept of reparations for past crimes is somehow invalid, or at least when applied to black slavery in the U.S. For another, most of his arguments are contrary to the libertarian doctrine of reparations in general; they are not limited to all blacks being owed reparations by all (non-black) taxpayers. As such, Horowitz is arguing against a bunch of philosophically very weak straw men: so-called "civil rights" leaders such as Rep. John Conyers, D-Mich., Henry Louis Gates of Harvard, Jesse Jackson, and Randall Robinson, the author of "The Debt: What America Owes to Blacks." By laying waste to their arguments, he concludes that no reparations are owed in this case, and that is a fallacy.

I do not quarrel in every respect with Horowitz's decision to take these people to task for their many and serious lapses of logic and intellectual coherence. Their views may be dead from the neck up, but they are certainly politically powerful. However, I would not want the impression left that the only arguments for reparations<sup>24</sup> are the ones put forth by these representatives of the "civil rights" establishment. And since Horowitz (2000) argues against *all* reparations for black slavery in the U.S., seemingly as a matter of principle, not mere expediency, it is important that a necessary corrective of his views be entertained. Further, he overlooks one important criticism of his opponents that they richly deserve to have rubbed in their faces.

Among the charges made by Horowitz is that the call for reparations for black slavery will negatively "impact on race relations and [lead to] the self-isolation of the African-American community." To my mind, these are purely peripheral issues. In this reply I shall instead focus on whether these claims are *just*. After all, it is entirely possible that to hang an innocent man will have positive effects on race relations and reduce isolation of the black community. Even if this merely utilitarian consideration is true, it is still almost unworthy of consideration. Of far more importance is the *justice*, or lack of same, underlying these claims.

### Ten Reasons

Horowitz considers and rejects ten separate claims for reparations. In what follows, I shall comment on each, following his order of presentation.

1. States Horowitz: "Assuming there is actually a debt, it is not at all clear who owes it." Our author is perfectly correct in objecting to the claim made by our friends in the "black studies" departments of our major universities that all Americans owe blacks a debt for slavery. No one living now, clearly, was alive during that unhappy epoch; not everyone in the U.S. has illegitimately inherited property not properly belonging to their ancestors. But just because not everyone owes blacks for enslaving their forebears does not mean no one does. As we have seen, the present possessors of wealth handed down to them through the generations, emanating from slavery, do indeed owe a debt to those who can prove they are the direct decedents of the slaves involved.

Horowitz argues "It was not whites but black Africans who first enslaved their brothers and sisters. They were abetted by dark-skinned Arabs ... who organized the slave trade. Are reparations going to be assessed against the descendants of Africans and Arabs for their role in slavery? There were also 3,000 black slave owners in the antebellum United States. Are reparations to be paid by their descendants too?" He asks these questions as if there were no possible affirmative answers. Slave holding, or slave capturing are crimes. This is so regardless of the skin color of masters or victims. Yes, a hundred times yes, if a black person A can prove that money now held by another member of his own black race, B, was inherited improperly by B, and that the grandparents of A were the victims, then this property *should* be transferred from B to A. The races of A and B are strictly irrelevant.

2. It may well be that the socialist black advocates of reparations rely on "the idea that only whites benefited from slavery." As Horowitz avers, this claim "is factually wrong...." But this criticism is the reddest of red herrings as far as the libertarian case for reparations is concerned. I might "benefit" in some direct or indirect sense from any number of goings on. For example, if I own a detective agency, then my profits rise with juvenile delinquency rates. But this does not make me responsible for the crime wave in the first place. An orange grower in Florida benefits from a frost which kills this type of fruit in California; but no one is rash enough to blame him for the bad weather on the other side of the country.

In like manner, Horowitz scores heavily against his straw men opponents by noting that "American blacks on average enjoy per capita incomes in the range of 20 to 50 times those of blacks living in any of the African nations from which they were kidnapped," and asks, "What about this benefit of slavery? Are the reparations proponents going to make black descendants of slaves pay themselves for benefiting from the fruits of their ancestors' servitude?" Yes, these are telling arguments against those of Robinson, et. al. But they are irrelevant to the libertarian case on behalf of returning stolen property to the modern descendants of African slaves. It is not a matter of adding up benefits and costs, and subtracting the one from













