

# 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 unowned 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

the other. On the contrary, there are specific people who now own property they should not have inherited. This physical property and land, and it alone, is vulnerable to transfer. Since "benefits" play no role in the justification, the question of comparing those which helped blacks against those which hurt them does not arise.

Suppose a man rapes a woman, and it is later somehow proven that had he not molested her in this way, she would have instead been run over by a bus and killed. Should this fact mitigate the punishment imposed on him? Not a bit of it. He is a rapist, and should be punished to the full extent of the law. It is entirely irrelevant that in some sense blacks gained from their association with whites, through slavery and kidnapping. The enslavers and the kidnapers should still be punished.

3. Horowitz plaintively and very tellingly asks: "Why should the descendants of non-slaveholding whites owe a debt? What about the descendants of the 350,000 Union soldiers who died to free the slaves? They gave their lives. What possible morality would ask them to pay (through their descendants) again?" This is all well and good insofar as is concerned the claim that all (white) Americans owe a debt to blacks. But it does not at all relieve of obligation the descendants of specific white plantation<sup>25</sup> slave owners to give up their ill inherited gains.

4. Our author in this section makes the point that the children of post slavery immigrants to the U.S. owe blacks nothing for the subjugation of their ancestors, since their ancestors had nothing to do with it, and I am entirely in accord with him on this.

5. Not so, unfortunately, with regard to the precedents established by reparations to Jews from Germany and Japanese-Americans from the U.S. Horowitz rejects these analogies on the entirely spurious ground that "The Jews and Japanese who received reparations were individuals who actually suffered the hurt." But what does it matter whether the payments go to the people actually brutalized, or to their children, who would have, in any case, inherited from them? In taking this position, our author is implicitly arguing that my grandfather owes his grandfather the ring he stole from him, but that when they both die, all bets are off between himself and myself regarding the return of this stolen property. But Horowitz gives no reason for believing that there is some sort of natural statute of limitations for crimes which calls justice to a complete halt when the specific victims and victimizers vanish from the scene.

Horowitz continues: "Jews do not receive reparations from Germany simply because they are Jews. Those who do were corralled into concentration camps and lost immediate family members or personal property. Nor have all Japanese-Americans received payments, but only those whom the government interned in camps and who had their property confiscated." Yes, this argument will suffice against the black "leaders" who argue for com-

pensation for all people of a certain skin color, but it falls by the wayside as far as the more powerful libertarian case is concerned.

6. According to Horowitz, "Behind the reparations arguments lies the unfounded claim that all blacks in America suffer economically from the consequences of slavery ..." His "exhibit A" to the contrary is the case of wealthy blacks such as Oprah Winfrey. But this is not only insufficient to undermine the libertarian case, it doesn't even lay a glove on the case put forth by Jesse Jackson, et al. Even the latter do not claim a transfer of wealth on the ground that blacks are poorer than whites; they do so out of (some-what misguided) claims of *justice*. Is it not possible that rich people can be oppressed? It seems to be Horowitz's argument that this cannot occur; it deserves to be characterized, and rejected, as the "Oprah Winfrey fallacy." This is part and parcel of the *left wing* philosophy which sees the poor as impoverished because of the wealth of the rich,<sup>26</sup> of the view that the well off cannot, by definition, be victims.

It matters not one whit how affluent is Oprah. If she is the great-granddaughter of a slave who worked on the XYZ plantation in Alabama, and she can prove this, then she is entitled, as a matter of libertarian law, and justice, not welfare statism, to a portion of that which she would have received from her great-grandparents upon their release from bondage, had full justice occurred at that time. Her "extraordinary achievement" does not at all "refute ... the reparations argument," contrary to Horowitz. All of his discussion about the prosperous black middle class, and the underclass, and the relative success of "West Indian blacks in America (who) are also descended from slaves," is all beside the point. No one asked how rich were the Japanese Americans who had their property stolen, nor about the wealth of Jews in Germany. This was entirely irrelevant, and properly so. Why is it apropos in the case of blacks?

7. In this section Horowitz argues that black claims will be resented by other ethnic groups. This is but another red herring. We are here concerned with the *justice* of the claim for reparation, not what others will think of it.

8. Horowitz's next sally concerns the "'reparations' to blacks that have already been paid. Since the passage of the Civil Rights Acts and the advent of the Great Society in 1965, trillions of dollars in transfer payments have been made to African-Americans, in the form of welfare benefits and racial preferences (in contracts, job placements and educational admissions)—all under the rationale of redressing historical racial grievances."

This is not at all a bad argument against the case of the left wing blacks for reparations. After all, they want taxpayers' money, and they have already had quite a bit of that.

However, it will not suffice against the libertarian claim. Yes, there were "transfer payments" galore, but not a penny of this was in the form of true reparations. This is because the latter can only come *from* the illegitimate

holders of what is in effect stolen property, not from entirely innocent taxpayers as a whole, and none of these "transfers" came courtesy of the present owners of plantation grounds and buildings. Further, proper reparations can only go to the grand children of those were slaves. The welfare system fails as a candidate for reparations on both these grounds. In addition, the so-called "Great Society" payments actually harmed blacks, rather than help them. As Charles Murray<sup>27</sup> has shown, giving blacks money under provisos which discouraged the formation of their families only undermined their economic and social conditions. The Jews and the Japanese-Americans were given reparations with no such strings attached. Why should blacks be any different, were these true reparations? Further, it was not only blacks who suffered from welfare: so did all recipients, of whatever hue.

9. Horowitz is also mistaken with regard to the relevance of "the debt blacks owe to America—to white Americans—for liberating them from slavery." Contrary to this author, the Civil War was *not* fought to end enslavement; it was undertaken in order to quell secession.<sup>28</sup> However, there is no doubt, as our author eloquently attests, that "there never was an anti-slavery movement until white Englishmen and Americans created one." That ought to put quite a spoke in the wheels of those who deride the culture and philosophy of "dead white males." But of what relevance is the fact that *some* whites acted in a manner which greatly benefited blacks (e.g., the Union soldiers) to the claim that *other* whites (the grand children of plantation owning slave holders) owe them a debt of reparations? Horowitz is free with his condemnation of "racism" against his interlocutors, but here it would appear he is guilty of precisely this himself. That is, whites are not all alike. Some of them owe a debt to blacks for slavery, others actually helped blacks. But the latter only erases the former if, somehow, members of the same race (the white one, in this case) are interchangeable. And I take this implicit claim to be incorrect and objectionably racist.

10. According to Horowitz, "The final and summary reason for rejecting any reparations claim is recognition of the enormous privileges black Americans enjoy as Americans, and therefore of their own stake in America's history, slavery and all."

What are these "privileges"? If they are the ability to participate in a (semi) free enterprise system, then they are rights, not privileges. If this refers to the disproportionate number of blacks on welfare, or who have "benefited" from programs such as affirmative action, then these are not privileges either; they are rights violations. In either case, however, how do these "benefits" relieve the whites who are now in possession of the farm grounds and buildings from their responsibilities to give up their ill gotten gains?

Our author warns "the African-American community [against] isolat[ing] itself even further from America [for this] would be to embark on a course whose consequences are troublesome even to contemplate. Yet the black

community has had a long-running flirtation with separatists and nationalists in its ranks, who must be called what they are: racists who want African-Americans to have no part of America's multiethnic social contract."

But what is so wrong with separatism? If blacks wish to isolate themselves from Horowitz and his ilk, i.e., whites, it is their right. Does this author believe in forced integration with unwilling blacks? Are we to have school busing again, only this time with an impetus from a different direction? Will he oppose black secession, if that is what (some) blacks want? And if so, on what ground? Does he not believe in freedom of association, which would allow blacks (or anyone else) to withdraw from unwanted social (or other) contact?

And which "social contract," pray tell, is he referring to? Did anyone ever sign this contract? If not, why is it incumbent upon anyone to respect it? According to libertarian law, the only thing that all people must respect are the persons and property of everyone else. Anything more is made up by Horowitz as he goes along.

Yes, many of the leftists who urge reparations to all blacks from all non-black U.S. taxpayers are admirers of "Fidel Castro, one of the world's longest-surviving and most sadistic dictators." But this does not by one iota denigrate the rights of the black grandchildren of slaves to compensation from the white grandchildren of slave owners, for the property and value created through this brutal human chattel system.

States Horowitz: "For all their country's faults, African-Americans have an enormous stake in America and above all in the heritage that men like Jefferson helped to shape. This heritage—enshrined in America's founding and the institutions and ideas to which it gave rise—is what is really under attack in the reparations movement." But this is a non sequitur of the highest order. Just because some advocates of reparations couple their demands with anti Americanism does not at all mean that their goal is not justified; it does not mean that all arguments for reparations must be coupled with a denigration of this country. Certainly, that applies to the libertarian case.

### Unfair?

The thought will perhaps occur to some that I have been unfair to Horowitz. After all, here he is criticizing the argument for reparations from all (non black) citizens to all blacks, coupled with a healthy dose of socialism and anti Americanism, and I am attacking him for overlooking the possibility that reparations from some whites to some blacks is justified. It might appear that I am guilty of launching a bit of an intellectual ambush upon this author.

I plead innocent of these charges. Horowitz is not merely rejecting one version of reparations, he is attacking the entire concept. I join with him

for the most part, of course, in his dismissal of the case put forth by Randall Robinson, Jesse Jackson, John Conyers, Henry Louis Gates, Dorothy Lewis, Hannibal Afrik, Albert Thornton, and numerous professors of black "studies." But it is Horowitz's view that, having dealt with these straw men, he has demolished the entire argument for reparations. He has not, and this was the burden of my reply to him. Horowitz simply cannot be allowed to maintain, as he does, that his devastation of a weak and faulty case for reparations undermines all argument for this conclusion. And his unwarranted attack upon the rich, his mistaken embrace of what I have characterized as the Oprah Winfrey fallacy, must be addressed. This is no ambush, but rather a measured reply to an essay which in many ways is correct, but also contains numerous and grave flaws.

### Objections

Let us consider a series of objections to the foregoing, some of which might be launched by Horowitz, others not.

1. "Most land in the south was stolen by carpetbaggers. Why wouldn't they owe compensation? Suppose the carpetbagger stole the land from the guilty slave owner, and then sold it to its present owner. Surely, the present owner would escape liability in this case."

If the carpetbagger (or his heirs, to whom he gave his ill gotten gains) can be located, then the grandchildren of the slave have no case against the present occupier, but instead must obtain their compensation from the grandchildren of the carpetbagger. However, suppose, as is more likely, that the carpetbagger and his brood have vanished without a trace. Then we have only the grandchild of the slave, and the present (innocent) owner. The question is, which of them is the legitimate title holder? The libertarian answer is clear: the property must go to its rightful owner, the children of the slave.

According to Rothbard<sup>29</sup>: "suppose that a title to property is clearly identifiable as criminal, does this necessarily mean that the current possessor must give it up? No, not necessarily. For that depends upon two considerations: (a) whether the *victim* (the property owner originally aggressed against) or his heirs are clearly identifiable and can now be found; or (b) whether or not the current possessor is *himself* the criminal who stole the property. Suppose, for example, that Jones possesses a watch, and that we can clearly show that Jones's title is originally criminal, either because (1) his ancestor stole it, or (2) because he or his ancestor purchased it from a thief (whether wittingly or unwittingly is immaterial here). Now, if we can identify and find the victim or his heir, then it is clear that Jones's title to the watch is totally invalid, and that it must promptly revert to its true and legitimate owner. Thus, if Jones inherited or purchased the watch from a man who stole it from Smith, and if Smith or the heir to his estate can be

found, then the title to the watch properly reverts back to Smith or his descendants, *without* compensation to the existing possessor of the criminally derived 'title.'"

In the context of our example, Jones is the present owner of the land, the carpetbagger is the thief, and Smith is the grandchild of the slave. To allow Jones to keep his land in the face of proof from Smith that he is the rightful owner, is to not uphold legitimacy in private property rights; it is to denigrate it. If A is the rightful owner, B steals property from A, sells it to C and then disappears, there is only one correct answer to the question of who should keep it, according to libertarianism: A. C is out of luck, unless he can somehow locate B.

2. "If a person is an unjust owner, can he legitimately bequeath his property? No. If not, then he cannot properly sell it either. Thus, the libertarian search for the successor of the original (and rightful) owner will also have to include those who purchased the land. Every land transaction after 1860 will have to be declared null and void. And why stop with 1860, since that date is arbitrarily based on the beginning of the war? In theory, there is nothing to preclude the requirement from going back in history until the beginning of time."

This sounds like a telling criticism of the libertarian theory of property rights, but it is not. Again we call upon Rothbard (1998, p. 57) to elucidate: "if we do not *know* if Jones's title to any given property is criminally derived, then we may assume that this property was, at least momentarily, in a state of non ownership... and therefore that the proper title of ownership reverted instantaneously to Jones as its 'first' (i.e., current) possessor and user. In short, where we are not sure about a title but it cannot be clearly identified as criminally derived, then the title properly and legitimately reverts to its current possessor."

The point is, the libertarian theory is actually a very conservative one, not at all calling for research in property titles back to the dawn of history. Unless proven otherwise, every extant property title is to be considered legitimate. The burden of proof, that is, rests squarely on the shoulders of those who wish to *overturn* duly registered property. If there is any historical research to be undertaken, this must be done by those who wish to refute already accepted claims, not those who wish to defend them.

In sum, this objection puts things in the exact opposite position from where they are, as far as practicality is concerned. It misconstrues the burden of proof.

3. "The white Southerners who permitted blacks to live on their land should not be held more responsible for reparations than Northerners who refused to even allow blacks to pass through their borders."

There are several problems here. First, it is not the case that before the Civil War slavery was confined to the south; yes, it predominated there, but

this section of the country had no monopoly over the "curious institution." Second, compare all those who engaged in slavery vs. all those who did not, but would not allow blacks entry into their territory. Surely the former would be regarded by all, not just libertarians, as by far the more serious crime. That is, kidnapping is a major violation of human rights, while prohibiting immigration is at best only a minor one.<sup>30</sup> If so, then if heavy reparations are due to those who were enslaved, only light ones are due to those who were forcibly prevented from engaging in immigration.

4. "The slave owners fed and sheltered their property. These expenses should be offset against any debt owed by their progeny to the grandchildren of slaves. With any reasonable discount rate, since so many years have already passed, there will be little or nothing due to the children of slaves in reparations."

Suppose I kidnap you and keep you prisoner for a year. Whereupon I am caught by the forces of law and order, and argue, in my defense, mitigation in that I fed and sheltered you for this duration of time. This should be dismissed out of hand. For had I not fed and sheltered you in this context, I would have been guilty of the more serious crime of murder. That I am "only" charged with kidnapping results from the fact that at least I did keep you alive during your period of capture. In other words, feeding and housing you does indeed mitigate the charge of *murder*. But, as I am not being charged with that crime, only with kidnapping, this offset has already been made. To put this in the parlance of accounting, this objection incorporates the fallacy of double counting.

5. "White landowners paid freed blacks a form of private welfare after their emancipation. Many former masters allowed former slaves to stay on their land, and fed them too, as a matter of charity. These monies should be subtracted from any reparations owed."

The difficulty with this objection is that there were two separate acts, one of slaveholding, the other of charity, and it is not clear that the two are connected in any way. Let us return to the case where my grandfather stole a ring from your grandfather. In addition to this act of theft, this ancestor of mine also gave some charity to your grandfather. Does the second act mitigate the first? Not at all. Were my grandfather hauled into court on charges of stealing a ring from your grandfather, it would avail him nothing in defense, nor should it, that in a completely separate incident, he acted charitably toward your grandfather.

So, charity will not do. However, there is a kernel of truth in this objection, in that while mere charity will not suffice, reparations will. That is, had my grandfather given yours money not as an act of charity, but out of contrition and reparations, then and only then would this count in ameliorating the debt I now owe you.

Let us now return to the slave reparations case. Suppose that Oprah Winfrey can prove her great grandfather was a slave on the XYZ planta-

tion, and that the descendants of this owner owe her \$X. Then from this, using the same rate of discount, should be subtracted whatever reparations—not charity—the master of XYZ gave to her ancestor. However, it should be noted that the burden of proof is now reversed. Oprah has, let us say, satisfied her burden of proof. But now the present holders of the XYZ lands, whoever they are, must prove that the original owner supported his ex slaves not as a matter of charity, but out of a motive of repatriating money owed to them. If so, then the one can indeed be an offset against the other.

6. "The whites in the U.S. who bought the slaves purchased them not from freedom but from slavery, the state in which they were found in Africa. Shouldn't the original enslavers, then, bear a great deal of the burden? Perhaps there should be a search through the tribal history of Africa to discover the identities of all the descendants of enslavers dating back centuries?"

This is meant as a *reductio ad absurdum* of the libertarian position. The proper answer is to take the bull by the horns and accept the premise: yes, if the black slave catchers in Africa who first captured the slaves who were later to be sent to the U.S. can be identified, then the money they left to their grandchildren would become vulnerable to a lawsuit brought by the grandchildren of these U.S. slaves. This is meant to sound preposterous, but instead it has all the earmarks of a just solution. Libertarian law cares not at all for the color of a person's skin. If he is a slave master, of whatever race, he is guilty of the crime of slave holding or slave capturing.

7. "Many blacks, after the war, were drafted into the army and sent west to slaughter Indians. Public slavery in effect replaced private slavery. Why focus on crimes further back in time rather than crimes more recent in time?"

There are several difficulties with this objection. For one thing, while a military draft and slavery are both crimes against humanity, there are surely relevant differences. For another, the answer to the question of which crimes to pursue, earlier or later ones, is "both." Just because the U.S. government drafted newly freed blacks to kill Indians (for which compensation is due, from those responsible) does not for a minute allow a free ride to those guilty or earlier crimes. Libertarian punishment theory is a timeless concept. It matters not when or where or why a crime was committed. If it can be proven, there is a case for pursuing the victimizers, and for turning over the fruits of the crime to their rightful owners.

8. "The demand for slavery reparations is a diversion to put all Americans—black, white, brown—off their guard as tax slavery emerges on a global scale.

"It sounds farfetched, but hear my tale. Consider first how nonsensical is the reparations argument. Whites, none of whom are or were slave owners, would be making transfer payments to blacks, none of whom are or were slaves.



"Not even a 'sins of the fathers' rationale justifies race reparations. A majority of white Americans are descendants of people who immigrated to these shores after slavery had come to an end. Similarly, many blacks are descendants of people who arrived in the United States in the post-slavery era. Indeed, the millions of "preferred minorities" who have arrived in the last three decades are legally privileged compared to native born whites.

"To find descendants of slave owners and descendants of slaves would require more extensive racial genealogies than Nazi Germany and South Africa were able to assemble for their race-based policies. And how would we classify people with ancestors in both camps? Would they pay reparations to themselves? Would descendants of black slave owners pay reparations?"<sup>31</sup>

There is a difficulty with Roberts' characterization of taxes as akin to slavery, or worse, an instance of it. A more accurate description of taxation is not slavery but theft. Both the tax gatherer and the holdup man demand money from you against your will. In contrast, the kidnapper and the enslaver, but neither the tax-man nor the robber, take over your physical body—if you give in to their demands. An objection might be that the tax collector comes to you at the behest of a majority vote, and offers services in return for the money he mulcts from you. Neither suffices. First, assume that not one but *two* highwaymen accost you, demanding your money. When you demur on grounds of democracy (they are philosophical thieves and are willing to discourse with you) they hold an election as to whether you should keep your money or give it to them, and they win by a majority two to one vote. The point is, you have not *agreed* to be part of this "election," no more than you have consented to be part of the "robber gang called the U.S. government."<sup>32</sup> Second, posit that these stickup men offer the "service" of giving you a paper clip in return for your money. Again, the point is not whether those who take your money by force give you something in return, but whether or not you have assented to the deal.

There are problems, too, with Roberts' dismissal of the arguments for reparations to today's blacks for the enslavement of their ancestors. First, I am not arguing this case on the basis of "sins of the fathers." Rather, reparations are justified because "sins of the sons," namely, not giving up the property they never should have received from their sinning fathers in the first place, to the sons of those from whom it was stolen. This is a subtle difference, but an important one nonetheless.

Further, if indeed it is true that reparations would "require more extensive racial genealogies than Nazi Germany and South Africa were able to assemble for their race-based policies," so what. Perhaps we can do better than those two countries, genealogical-wise. And if we cannot, this is *still* not an argument against the *justice* of reparations, as maintained by Roberts, but only of the inability of the sons of slaves to prove their case. Based on the principle that "possession is nine tenths of the law," these disputed properties would stay in the hands of the white grandchildren of slave owners.

And last but not least, the phenomenon of mixed race children places no insuperable barrier to our analysis. For it is unlikely in the extreme that any slave master would have given his *black* children any of his land or possessions. If so, then there will be no *black* descendants of slave owners who owe other children of slaves any reparations. But let us suppose that this is indeed the case. That is, Mr. X, the mixed race child of a white male slave owner and a black female slave,<sup>33</sup> is given some land by his father, which he duly hands down to his own descendants. These particular blacks would have not case for reparations in the present day since, by stipulation, they have *already* been given them. Roberts' problem is that he is analyzing the argument for reparations as if it is made on a racial basis. While this is indeed true for some proponents of this program,<sup>34</sup> this certainly does not apply to libertarianism.

### Notes

1. The author holds the Wirth Endowed Chair of Economics at Loyola University New Orleans. He wishes to thank Jeff Tucker of the Mises Institute for helpful comments and criticism, and Hannah Block for editing.
2. Robinson, Randall, *The Debt: What America Owes to Blacks*. See also Richard America *Paying the Social Debt: What White America Owes Black America*.
3. Horowitz, David, "The latest civil rights disaster: Ten reasons why reparations for slavery are a bad idea for black people—and racist too."
4. On libertarianism, see Anderson, Terry and Hill, P.J., "An American Experiment in Anarcho-Capitalism: the not so Wild, Wild West," *Journal of Libertarian Studies* Vol. 3, No. 1, 1979, pp. 9-29; Barnett, Randy E., *The Structure of Liberty: Justice and the Rule of Law*, Oxford: Clarendon Press, 1998; Benson, Bruce L., 1989, *Enforcement of Private Property Rights in Primitive Societies: Law Without Government*, *The Journal of Libertarian Studies*, Vol. IX, No. 1, Winter, pp. 1-26; Benson, Bruce L., "The Spontaneous Evolution of Commercial Law," *Southern Economic Journal*, 55: 644-661, 1989; Benson, Bruce L., *The Enterprise of Law: Justice Without the State*, San Francisco: Pacific Research Institute for Public Policy, 1990; Cuzán, Alfred G., "Do We Ever Really Get Out of Anarchy?," *Journal of Libertarian Studies*, Vol. 3, No. 2 (Summer, 1979); De Jasay, Anthony, *The State*, Oxford: Basil Blackwell, 1985; Friedman, David, *The Machinery of Freedom: Guide to a Radical Capitalism*, La Salle, IL: Open Court, 2nd ed., 1989; Friedman, David, "Private Creation and Enforcement of Law: A Historical Case," *Journal of Legal Studies*, 8: 399-415, 1979; Hoppe, Hans-Hermann, *A Theory of Socialism and Capitalism: Economics, Politics and Ethics*, Boston: Kluwer, 1989; Hoppe, Hans-Hermann, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer, 1993; Hoppe, Hans-Hermann, "The Private Production of Defense," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter 1998-1999, pp. 27-52; Hummel, Jeffrey Rogers, *National Goods Versus Public Goods: Defense, Disarmament, and Free Riders*, 4 *Rev. Austrian Econ.* 88 (1990); Morris, Andrew P., "Miners, Vigilantes and Cattlemen: Overcoming Free Rider Problems in the Private Provision of Law," *Land and Water Law Review*, Vol. XXXIII, No. 2, 1998, pp. 581-696; Peden, Joseph R., 1977, "Property rights in Celtic Irish law," *The Journal of Libertarian Studies*, Vol. 1, No. 2, Spring, pp. 81-96; Rothbard, Murray N., *For a New Liberty*, Macmillan, New York, 1978; Rothbard, Murray N., *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, N.J., 1982; Rothbard, Murray N., "Society Without a State," J. K. Pennock and J. W. Chapman (eds.), *Anarchism: Nomos XIX*, New York: New York University Press, 1978, pp. 191-207; Rothbard, Murray N., *Man, Economy and State*, Auburn AL: Mises Institute, 1993;

- Skoble, Aeon J. "The Anarchism Controversy," in *Liberty for the 21st Century: Essays in Contemporary Libertarian Thought*, eds. Tibor Machan and Douglas Rasmussen, Lanham MD: Rowman and Littlefield, 1995, pp. 77-96; Sechrest, Larry J., "Rand, Anarchy, and Taxes," *The Journal of Ayn Rand Studies*, Vol. 1, No. 1, Fall 1999, pp. 87-105; Spooner, Lysander, *No Treason*, Larkspur, Colorado, (1870) 1966; Stringham, Edward, "Justice Without Government," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter 1998-1999, pp. 53-77; Tinsley, Patrick, "With Liberty and Justice for All: A Case for Private Police," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter 1998-1999, pp. 95-100; Tannehill, Morris and Linda, *The Market for Liberty*, New York: Laissez Faire Books, 1984; Woolridge, William C., *Uncle Sam the Monopoly Man*, New Rochelle, N.Y.: Arlington House, 1970.
5. John Locke, *An Essay Concerning the True Original, Extant and End of Civil Government*, in *SOCIAL CONTRACT* 17-18 (E. Barker ed., 1948)
  6. The U.S. Bureau of Land Management's control over much of the land west of the Mississippi has been more of a disaster than anything else. See on this Anderson, Terry L., and Hill, Peter J., "Property Rights as a Common Pool Resource," *Bureaucracy vs. Environment: The Environmental Costs of Bureaucratic Governance*, John Baden and Richard L. Stroup, eds., Ann Arbor: University of Michigan Press, 1981; Anderson, Terry L., and Leal, Donald R., *Free Market Environmentalism*, San Francisco: Pacific Research Institute, 1991; Block, Walter, "Ownership will save the environment," *New Environment*, First Quarter, 1991, 41-43; Block, Walter, "Protection of property rights key to maintaining resources," *Environment Policy and Law*, Vol. 1, No. 3, June 1990, p. 28; Block, Walter, ed., *Economics and the Environment: A Reconciliation*, Vancouver: The Fraser Institute, 1990; Block, Walter, "Earning Happiness Through Homesteading Un-owned Land: a comment on 'Buying Misery with Federal Land' by Richard Stroup," *Journal of Social Political and Economic Studies*, Vol. 15, No. 2, Summer 1990, pp. 237-253; Hill, Peter J., and Meiners, Roger E., eds., *Who Owns the Environment?*, New York: Rowman and Littlefield, 1998; Hoppe, Hans-Hermann, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer, 1993; Horowitz, Morton J., *The Transformation of American Law: 1780-1860*, Cambridge: Harvard University Press, 1977; Margaret N. Maxey and Robert L. Kuhn, eds., *Regulatory Reform: New Vision or Old Curse*, New York: Praeger, 1985; Rathje, William L., "Rubbish!," *Atlantic Monthly*, Vol. 264, No. 6, December 1989, pp. 99-109; Ray, Dixie Lee, 1990, *Trashing the Planet*, Washington D.C.: Regnery Gateway; Rothbard, Murray N., "Law, Property Rights, and Air Pollution," *Economics and the Environment: A Reconciliation*, Walter Block, ed., Vancouver: The Fraser Institute, 1990; Stroup, Richard L., and John C. Goodman, et. al., (1991) *Progressive Environmentalism: A Pro-Human, Pro-Science, Pro-Free Enterprise Agenda for Change*, Dallas, TX: National Center for Policy Analysis, Task Force Report; Stroup, Richard L., and Baden, John A., "Endowment Areas: A Clearing in the Policy Wilderness," *Cato Journal*, 2 Winter 1982, pp. 691-708
  7. The latest managerial failure of the bureaucrats, the U.S. Park Service in this case, has been a forest fire set by the authorities themselves as a preventative; the only difficulty is that it ragged out of control, creating millions of dollars of damages. See on this "Los Alamos Under Siege," *Newsweek*, 5/22/00, p. 35. Were any private enterprise guilty of so massive a blunder, it surely would have become enmeshed in bankruptcy proceedings. But by the very nature of things this fail-safe mechanism is available to markets, not governments.
  8. Gwartney, James, Robert Lawson and Walter Block, *Economic Freedom of the World, 1975-1995*, Vancouver, B.C. Canada: the Fraser Institute, 1996
  9. Nozick, Robert, *Anarchy, State, and Utopia*, New York: Basic Books Inc., 1974; N. Stephan Kinsella, "A Theory of Contracts: Binding Promises, Title Transfer, and Inalienability" (paper presented at Auburn, Alabama, April 1999, Ludwig von Mises Institute's Austrian Scholars Conference 5; published version forthcoming).
  10. Nozick, Robert, *Anarchy, State, and Utopia*, New York: Basic Books Inc., 1974, p. 150.
  11. On libertarian punishment theory, see Barnett, Randy, and Hagel, John, eds., *Assessing the Criminal*, Cambridge MA: Ballinger, 1977; Block, Walter, "Toward a Libertarian Theory of Guilt and Punishment for the Crime of Statism," Huelsmann, Guido, ed., *The Rise*

- and Fall of the State, forthcoming; Block, Walter, "National Defense and the Theory of Externalities, Public Goods and Clubs," Hoppe, Hans-Hermann, ed., *Explorations in the Theory and History of Security Production*, forthcoming King, J. Charles, A Rationale for Punishment, 4 J. Libertarian Stud. 151, 154 (1980); Kinsella, Stephan N., "A Libertarian Theory of Punishment and Rights," (volume) 30 Loy. L.A. L. Rev. 607-45 (1997); Kinsella, Stephan N., "New Rationalist Directions in Libertarian Rights Theory," 12:2 J. Libertarian Studies 313-26 (Fall 1996); Kinsella, Stephan N., "Punishment and Proportionality: The Estoppel Approach," 12:1 J. Libertarian Studies 51 (Spring 1996); Kinsella, Stephan N., "Estoppel: A New Justification for Individual Rights," Reason Papers No. 17 (Fall 1992), p. 61; Kinsella, N. Stephan, "Inalienability and Punishment: A Reply to George Smith," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter, 1998-1999, pp. 79-93; Rothbard, Murray N., *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, N.J., 1982.
12. States Rothbard, Murray N., *The Ethics of Liberty*, New York: New York University Press (1998 [1982]), pp. 51-52: "Suppose we are walking down the street and we see a man, A, seizing B by the wrist and grabbing B's wristwatch. There is no question that A is here violating both the person and the property of B. Can we then simply infer from this scene that A is a criminal aggressor, and B his innocent victim?  
 "Certainly not—for we don't know simply from our observation whether A is indeed a thief, or whether A is merely repossessing his own watch from B who had previously stolen it from him. In short, while the watch had undoubtedly been B's property until the moment of A's attack, we don't know whether or not A had been the legitimate owner at some earlier time, and had been robbed by B. Therefore, we do not yet know which on of the two men is the legitimate or just property owner. We can only find the answer through investigating the concrete data of the particular case, i.e., through 'historical' inquiry.  
 "Thus, we cannot simply say that the great axiomatic moral rule of the libertarian society is the protection of property rights, period. For the criminal has not natural right whatever to the retention of property that he has stolen; the aggressor has no right to claim any property that he has acquired by aggression. Therefore, we must ... clarify the basic rule of the libertarian society to say that no one has the right to aggress against the legitimate or just property of another.
  13. The freed slaves were presumably promised "40 acres and a mule." If from the slave master, well and good; this is at least an approximation of what they were owed. If this was to have been derived, however, courtesy of the taxpayer, then it would be unjust, since the average citizen was not responsible for slavery. For the view that voting does not make one responsible for the acts of politicians, see Spooner, Lysander, *No Treason*, Larkspur, Colorado, (1870) 1966.
  14. Others who have made similar reparations claims in behalf of blacks include Dorothy Lewis and Hannibal Afrik of the National Coalition of Blacks for Reparations in America, and Albert Thornton, chairman of the political science department at Howard University, a historically black college. See on this *The National Post*, 6/7/00, p. A3.
  15. I confess this is a very tempting conclusion to draw. Why else do we have induction if not for things just of this sort?
  16. Their probable response to this sally would be to attempt to have their cake and eat it, presumably by claiming that "linear" logic is an invention of dead white males, and doesn't apply to them. It is impossible to take such people seriously. In any case, my argument is with the far more coherent Horowitz, not them. Here, I am only pointing out that Horowitz does not carry forth as fully as he might his attack on these black "scholars," due to his inability to see that for once they are on the side of the angels.
  17. In Kinsella's terminology, they are no longer "estopped" from making these claims. See on this Kinsella, Stephan N., "A Libertarian Theory of Punishment and Rights," (volume) 30 Loy. L.A. L. Rev. 607-45 (1997); Kinsella, Stephan N., "New Rationalist Directions in Libertarian Rights Theory," 12:2 J. Libertarian Studies 313-26 (Fall 1996); Kinsella, Stephan N., "Punishment and Proportionality: The Estoppel Approach," 12:1 J. Libertarian Studies 51 (Spring 1996); Kinsella, Stephan N., "Estoppel: A New Justification for Individual Rights," Reason Papers No. 17 (Fall 1992), p. 61; Kinsella, N. Stephan, "Inalienability and Punishment: A Reply to George Smith," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter, 1998-1999, pp. 79-93; Rothbard, Murray N., *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, N.J., 1982.

- fication for Individual Rights," Reason Papers No. 17 (Fall 1992), p. 61; Kinsella, N. Stephan, "Inalienability and Punishment: A Reply to George Smith," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter, 1998-1999, pp. 79-93.
18. A court in Canada has ruled that written records are not required for proof of ownership. The recollections of tribal elders will suffice in their stead. Here is the court's finding in *R. v. Van Der Peet*, [1996] 2 S. C. R. 507, a case concerning Indian fishing rights, from the summary: "A court should approach the rules of evidence and interpret the evidence that exists, conscious of the special nature of aboriginal claims and of the evidentiary difficulties in proving a right which originates in times when there were no written records of the practices, customs and traditions and customs engaged in. The courts must not undervalue the evidence presented by aboriginal claimants simply because that evidence does not conform precisely with the evidentiary standards applied in other contexts." This finding played a role in the decision concerning a land reparations case, *Delgamuukw v British Columbia*, [1997] 3 S.C.R. 1010, which cited paragraph #68 of *R. v. Van Der Peet*, [1996] 2 S. C. R. 507, which has been just summarized. To say the least, this determination is not at all compatible with libertarian requirements of proof. For one thing, the testimony may be a lie. For another, it is not disinterested. For a third, it may be honestly believed, but mistaken. This seems to be the conclusion in many cases of recovered memory of girlhood incest charges on the part of adult women. But there is a practical implication as well. If this unwarranted decision were to become a precedent, then, truly, the reductio ad absurdum charge against the libertarian position that it would open the floodgates of land reparations cases back before the beginning of recorded history could then be sustained. But this is only a utilitarian consideration, unworthy, probably, of our attention.
  19. He, himself, would have been very seriously punished for the crime of slave holding.
  20. In our context, Jones is the white grandchild of the slave owner, who is now in possession of the property under dispute.
  21. Remember, in our example, the 499 victims and their heirs cannot be found.
  22. Rothbard, Murray N., *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, N.J., 1982, pp. 58-59.
  23. We must never lose sight of the fact that there are some black scholars who are avid supporters of free enterprise. Unfortunately, while this honor roll is very distinguished, it is also very short. Among economists it includes Williams, Walter E., *The State Against Blacks*, New York, McGraw-Hill, 1982; Williams, Walter E., *South Africa's War Against Capitalism*, New York: Praeger, 1989; Williams, Walter E., and Walter Block, "Male-Female Earnings Differentials: A Critical Reappraisal," *The Journal of Labor Research*, Vol. II, No. 2, Fall 1981, pp. 385-388; Sowell, Thomas, *The Vision of the Anointed*, New York: Basic Books, 1995; Sowell, Thomas, *Race and Economics*, New York: Longman, 1975; Sowell, Thomas, *Patterns of Black Excellence*, Washington D.C.: Ethics and Public Policy Center, 1976; Sowell, Thomas, *Pink and Brown People*, San Francisco: The Hoover Institution Press, 1981; Sowell, Thomas, *Ethnic America*, New York: Basic Books, 1981; Sowell, Thomas, "Weber and Bakke and the presuppositions of Affirmative Action," *Discrimination, Affirmative Action and Equal Opportunity*, Walter Block and Michael Walker, eds., Vancouver: The Fraser Institute, 1982; Sowell, Thomas, *The Economics and Politics of Race: An International Perspective*, New York, Morrow, 1983; Sowell, Thomas, *Civil Rights: Rhetoric or Reality*, New York: William Morrow, 1984; Sowell, Thomas, *A Conflict of Visions: Ideological Origins of Political Struggles*, New York: William Morrow, 1987; Sowell, Thomas, "Preferential Policies," in *Thinking About America: The United States in the 1990s*, Annelise Anderson and Dennis L. Bark, eds., San Francisco: The Hoover Institution Press, 1988; Sowell, Thomas, *Inside American Education: The Decline, the Deception, The Dogmas*, New York: The Free Press, 1993; Sowell, Thomas, *Race and Culture: A World View*, New York: Basic Books, 1994.
  24. For the libertarian case in behalf of reparations, see Block, Walter and Yeatts, Guillermo "Land Reform," *University of Kentucky Journal of Natural Resources and Environmental Law*, forthcoming; Block, Walter, "Review Essay of Bethell, Tom, *The Noblest Triumph: Property and Prosperity Through the Ages*, New York: St. Martin's Press, 1998," in *The*

- Quarterly Journal of Austrian Economics*, Vol. 2, No. 3, Fall 1999, pp. 65-84; Walter Block, David Friedman, Milton Friedman, Philip Wogaman, Kenneth Boulding, Walter Berns, Edmund Opitz, Paul Heyne and Geoffrey Brennan, *Discussion*, in *MORALITY OF THE MARKET: RELIGIOUS AND ECONOMIC PERSPECTIVES*, Walter Block, Geoffrey Brennan & Kenneth Elzinga, eds., Fraser Institute: Vancouver, 1985, pp. 495-510; Rothbard, Murray N., *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, N.J., 1982. Levin, Michael, *Why Race Matters: Race Differences and What They Mean*, New York: Praeger, 1997, pp. 229-289 opposes reparations to blacks, but not for reasons relevant to our present concerns.
25. There is a temptation to assume that all defendants in black reparations cases would be southerners. This must be resisted. Strictly speaking, of course, slavery took place not only in the South, but in the North as well.
  26. Horowitz may have had "second thoughts" about some of his previous political economic philosophy, but, judging from his analytic framework in the present case, there are still vestiges of Marxism infecting his perspective.
  27. Murray, Charles, *Losing Ground: American Social Policy from 1950 to 1980*, New York: Basic Books, 1984.
  28. Hummel, Jeffrey Rogers, *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War*, Chicago: Open Court, 1996; DiLorenzo, Thomas, *The Real Lincoln*, Roseville, CA: Forum/Random House, 2002.
  29. Rothbard, Murray N., *The Ethics of Liberty*, New York: New York University Press (1998 [1982], pp. 57-58); for more on the libertarian theory of private property rights, see Hoppe, Hans-Hermann, *A Theory of Socialism and Capitalism: Economics, Politics and Ethics*, Boston: Kluwer, 1989; Hoppe, Hans-Hermann, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer, 1993.
  30. For a libertarian debate on whether immigration laws are per se criminal, see *Journal of Libertarian Studies: An Interdisciplinary Review*, Vol. 13, No. 2, summer 1998. If true, then all those who can prove that their grandparents would have immigrated to a given country have a reparations case under libertarian law not against all citizens of that nation, but only against the grandchildren of those few people specifically responsible for this law.
  31. Roberts, Paul Craig, "Taxing Away Freedoms," *TownHall.Com Columnists*, 7/21/01. See <http://www.townhall.com/columnists/paulcraigroberts/pcr20010719.shtml>, accessed on 7/21/01.
  32. See Spooner, Lysander, *No Treason*, Larkspur, Colorado, (1870) 1966.
  33. The opposite case is a possible albeit less historically likely occurrence.
  34. E.g., see Robinson, op. cit.