

A COMMENT ON REPARATIONS FOR SLAVERY

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1. Introduction

There were many plantations developed and houses built by black slaves in the U.S. before 1865. These valuable properties were handed down, through inheritance, by white slave owners to their progeny. Does this capital properly belong to the slaves's heirs or the slave master's heirs? We attempt to answer this question via the prism of libertarianism.

We start our analysis in section II with the libertarian view on reparations. Section III addresses the specifics today's plantation ownership. In section IV we consider, and reject, several objections to our thesis. Section V is our conclusion.

2. The libertarian view on reparations¹

According to the libertarian political philosophy everyone should be legally free to do whatever he wants provided only that his actions do not invade another person's rights (Rothbard, 1998). Property rights are the key to this perspective. The sentence « this is my house » means that you have the right to use it according to your own preferences, and to prevent others from doing so.² You have the right that others will not physically damage it. Moreover, physical invasions should be punished according the libertarian law.³

To understand the concept of reparations, we should first see how, once the property right on a house is settled, it can be transferred. There are several avenues: trade, gifts, sale, inheritance; anything voluntary.

3. Specifics

How does reparation come into play? It arises when property titles have not been legally transferred from one owner to another. Thus, reparation constitutes the forced return of a stolen property, one not transferred voluntarily. Even if the stealing occurred a thousand years ago, and afterward the good has been legally transferred on numerous occasions, today the present possessor is not the rightful owner but rather retains a stolen good.

Suppose the great grandfather of person A stole a watch from the great grandfather of individual B and then, passed it on to his son via inheritance. At his death, grandfather A becomes the owner of the watch. Posit

¹ See on this Alston and Block, 2007; Block, 1993, 2001, 2002; Block and Yeatts, 1999-2000; Crepelle and Block, 2017

² Says philosopher Norman Malcolm about his mentor, Ludwig Wittgenstein : "On one walk he 'gave' to me each tree that we passed, with the reservation that I was not to cut it down or do anything to it, or prevent the previous owners from doing anything to it: with those reservations it was henceforth mine." Malcolm (1958, pp. 31-32)

³ On libertarian punishment theory, see Block, 2009A, 2009B, 2016, 2018; Kinsella, 1996, 1997; Loo and Block, 2017-2018; Olson, 1979; Rothbard, 1977, 1998; Whitehead and Block, 2003. In the view of Rothbard (1998, p. 88, ft. 6): "It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a retributive theory of punishment, a 'tooth (or two teeth) for a tooth' theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as 'primitive' or 'barbaric' and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as 'barbaric' can hardly suffice; after all, it is possible that in this case, the 'barbarians' hit on a concept that was superior to the more modern creeds."

that grandfather A never knew his father stole the watch from great grandfather B. Grandfather A will then think he is the legal owner of the time piece. Then, by inheritance, in turn, his son will become its owner and finally, it is in the possession of person A.

However, he is not the proper owner of the watch even if he thinks he is. This status, rather, belongs to person B. If the latter has proof that this property really belongs to him, even if it was stolen from his family a long time ago justice requires a transfer from A to B. Under reparation theory, person A, the illegitimate owner of the watch should give it back to person B, the legitimate owner. The transfer through inheritance was not valid.

Yes, of course, the burden of proof rests with the person who is not the current owner. « Possession is nine tenths of the law » which means that the current possessor is presumed to be the legitimate owner unless and until the contrary has been proven with specific evidence.

Reparation does not punish the illegitimate owner of the good. He is not a criminal, merely an innocent unjustified possessor. The son or grandson of a thief is not for that reason also to be tarnished with this crime. The person who innocently possesses a stolen good by inheritance for instance shall not be sued unless he refuses to give up the good in question to the legitimate owner. Thus, reparations are the very opposite of theft because they attempt to reverse the effects of stealing by returning property to its rightful owner.

This analysis applies not only to clocks, but also to slavery. However, there is an important difference between the two cases. It has always been a crime to steal a good whereas in the United States before 1865 slavery was legal. This raises the issue of ex post facto law, which will be considered below.

Today, in the United States, plantations are either owned by the heirs of the white slave masters or by people who bought these properties from such persons. In either case, these lands constitute stolen goods because the owner are not legitimate. Black people who can prove their ancestors worked in these fields or in the plantation house are entitled to reparations.

4. Arguments against reparations

A common argument against reparation to blacks for slavery is that all American taxpayers should not pay black people because not every white American white person is an heir of a slave master. Secondly, not every black American is an heir to black slaves. Indeed, the families of many white and black Americans arrived in the country after 1865⁴. However, the goal of reparations is not to punish people but simply to transfer a good that does not rightly belong to them. Of course, all white taxpayers need not engage in reparation for past slavery. Instead, reparations to blacks should be based, solely, on cases where their ancestors gave their lives, and this can be proven.

Another case made by-the opponents of all reparations, is that too much time has passed since slavery ended in 1865. Nobody in 2019 is guilty of this heinous crime, nor should be punished for their ancestors' behavior. Critics believe that nobody should lose his plantation. Our thesis it can be hard to explain to heirs now occupying this acreage. Ditto for someone who legally bought a plantation house a few years ago. The buyer didn't know that the plantation seller was a great grandchild of a slaveholder and therefore not the legitimate owner. If today, a black person can prove his ancestors were slaves in this plantation, built the house, worked in the fields and died there, he is the legitimate owner.

Another argument against reparation is that slavery was legal before 1865 and that these plantation fields were cleared, and houses built legally. So, the owner of the plantation at the end of the war was legitimate and so is his modern-day heir. Therefore, no reparations are justified.

However, ex post facto law is justified.⁵ There is a higher law than US enactments up until 1865. According to the latter, kidnapping innocent people, and compelling them to work for you, is illicit, no matter what the laws on the books provide.⁶ That being the case, the claims of the slaveowners in 1865 to their property, and their right to leave it to their children, must be rejected.

It is the same with the Nazis. They pleaded that their murder of Jews, blacks, gays, Romany, etc., was not a crime since it was not only legal, but actually required by law. The Nuremberg judges quite properly rejected these please. Similarly, after 1865, justice required that the black slaves be given reparations because a part of

⁴ Horowitz, 2000, 2002, makes this case. For rejoinders, see Arcemeaux, 2005

⁵ After World War II, the Nuremberg Trials established the validity of ex post facto law.

⁶ Slavery of course was far worse than this, but none of the modern-day heirs are guilty of the sins of their forefathers.

the value of the plantations was based on their forced labor. What of the rest of it? It cannot be denied that the white owners were also responsible for the economic development of these properties. Should they not have been able, through bequest, to leave at least this portion to their progeny? Not a bit of it. The punishment for slaveholding should have been severe. They should have been made the slaves of their ex slaves, and their property, all of it, turned over to their victims. Thus, they would not have had any wherewithal to leave to anyone.⁷

According to Cohen (2019)

As the Civil War wound down in 1865, a promise was made that would come to be known as “40 acres and a mule” — redistributing a huge tract of the Atlantic coastline to black Americans recently freed from bondage. President Abraham Lincoln and Congress gave their approval, and soon 40,000 freedmen in the South had started to plant and build. However, within months of Lincoln’s assassination, though, President Johnson rescinded the order and returned the land to its former owners. Congress made another attempt at compensation, but Johnson vetoed it.⁸

If there is any one person to blame for the present unsatisfactory state of affairs it is President Andrew Johnson the 17th President of the United States. In 1865, slaveholders should have been incarcerated, and the former slaves allowed to take back what they legitimately owned, the plantations upon which they had shed their « blood, sweat and tears ». Instead, the slave owners kept their freedom and their plantations and When the last generation of slave masters died, they transferred property titles to their own children instead. Because of this lack of justice in 1865, today, the people who have property titles to these plantations are not necessarily the rightful owners. This is why returning these specific lands to the black people who can today prove their ancestors were forced to work on these plantations is thus the right thing to do and the only action fully respecting property rights.

5. Conclusion

In this paper, we focus on the question of reparations to blacks for slavery in the specific case of plantation houses and grounds. Should the government, especially via white taxpayers compensate black Americans for the crime of slavery? We cannot see our way clear to agreeing with this contention. There are many people, of both races, whose parents, or they themselves, arrived in this country after 1865, and thus had nothing to do with slavery.⁹

If there is any case for reparations, and there is a very strong one, the transfers of wealth should come not from guilty parties, there are no living people responsible for these horrific acts, but from those whose ownership titles are problematic. This certainly does not apply to every American citizen. It would be robbery of every citizen who paid tax for this purpose.

The argument that unpaid slave labor helped build the American economy, creating vast wealth that African-Americans were barred from sharing is true. But we cannot deduce from this fact that today American taxpayers should pay for these reparations as they are not guilty of any crime and are not liable for what

⁷ On libertarian punishment theory, which is rather Draconian, see fn. 3., *supra*.

⁸ See also Hong, 2019.

⁹ But perhaps they *benefitted* from this “curious institution” even though they did not partake of it? Maybe so, maybe not, but, irrelevant in our view. Just because you benefit from something does not mean you are obliged to pay for it. Friedman (1962, 191) argues to the contrary: “It can be argued that private charity is insufficient because the benefits from it accrue to people other than those who make the gifts – again, a neighborhood effect. I am distressed by the sight of poverty; I am benefited by its alleviation; but I am benefited equally whether I or someone else pays for its alleviation; the benefits of other people’s charity therefore party accrue to me. To put it differently, we might all of us be willing to contribute to the relief of poverty, provided everyone else did. We might not be willing to contribute the same amount without such assurance... Suppose one accepts, as I do, this line of reasoning as justifying governmental action to alleviate poverty...” But this is clearly erroneous. We all benefit from Mozart, from soap, from the Salk vaccine. This does not in the slightest obligate anyone to pay anything to anyone else. For more on this see Block, 2013; Friedman and Block, 2006.

happened in the past¹⁰. After the war between the states¹¹, black slaves should have inherited the plantations¹². Because justice at that time did not prevail, slaves never received what they were owed, and properly owned. In the modern era this failure can be fixed by giving the slaves' heirs the relevant property titles. However, innocent individuals today should not have to pay for the actions of white slaveholders before 1865.

In the latest census, nearly 47 million Americans identified themselves as black or African-American.¹³ A majority are descended from slaves, but some are more recent migrants. Cohen (2019) reports that

William A. Darity Jr, a leading scholar on reparations suggests two conditions to be qualified for reparations : having at least one ancestor who was enslaved in the United States, and to be identified as African-American on a legal document for at least a decade before the approval of any reparations. According to these criteria, Oprah Winfrey for instance, who has traced her DNA to slaves captured in West Africa in the early 19th century, would qualify. However, do we know if and in which plantation did her ancestors worked?

Cohen (2019) analyzed the data of that last census and based on the works of William A. Darity Jr., suggested that a reparation program tracking the origins of every black in America might be a solution to the reparations issue. However, a document demonstrating that the ancestor worked in a specific plantation should be a necessary piece of evidence, a criterion for reparations for slavery and for the restitution of plantation.

¹⁰ Except insofar, and to the extent that, they are now the owners of property properly belonging to the great grandchildren of black slaves.

¹¹ This conflagration is sometimes called the "Civil War" but that is mistaken. A civil war takes place between two contending internal armies, both of which wish to rule the entire country. The Spanish Civil War of 1936 and the Russian Civil War of 1917 both qualify. But the "unpleasantness" of 1861 does not. The north did indeed wish to impose its rule over the entire nation, but the south, in contrast, did not. Rather, its goal was secession. Therefore, a more accurate appellation would be the War of Secession or, as in the text, the War Between the States.

¹²-Block, 2001, 2002.

¹³Cohen, 2019.

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