

Reparations, Once Again

Wilton D. Alston • Walter E. Block

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Abstract Reparations whether to blacks for slavery, or to Indians for land theft, or to settle any number of other conflicts, has an interesting political background. Analysts on the left, who are usually no friend of private property rights, nevertheless rely on this doctrine to support their case for reparations. Those on the right, in contrast, who supposedly defend the institution of property rights, jettison them when it comes to reparations. It is only libertarians, such as the present authors, who both favor private property rights in general, and, also, apply them to the issue of reparations, who are logically consistent.

Introduction

In this paper we attempt to sketch out the libertarian view of reparations. Briefly, it is that reparations for slavery are indeed justified, but must be limited. The only justified recipients are the heirs of the slaves, not, for example, all black people now living in the U.S. The only justified donors are the (mainly white) heirs of the slave masters, who never should have inherited wealth that did not properly belong to their parents; it would be improper to force, for example, all white people now living in the U.S. to pay reparations. This is at stark contrast to those on the right who oppose all reparations, and to those on the left who favor a far more unrestrained notion of reparations. In the “[Philosophy](#)” section we give arguments in support of these con-

W. D. Alston (✉)
Private Scholar, 177 Tioga Drive, Rochester, NY 14616, USA
e-mail: Rock.Marathoner@gmail.com

W. E. Block
College of Business Administration, Loyola University New Orleans, 6363 St. Charles Avenue,
Box 15, Miller 318, New Orleans, LA 70118, USA

tentions. The “**Objections**” section is devoted to responding to a series of objections to our thesis. We conclude in the “**Conclusion**”.

Philosophy

In our view, which is based on adherence to private property rights (Block 1990; Hoppe 1993; Locke 1948; Paul 1987; Rothbard 1973, p. 32; Rozeff 2005), reparations for past wrongs such as slavery and land theft are justified. States Block (2002, p. 54) in this regard: “Justified reparations are nothing more and nothing less than the forced return of stolen property – even after 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 the imprimatur to theft, provided a sufficient time period has elapsed.”

In 1865, at the close of the War to Prevent Southern Secession,¹ all slave masters should have been punished, retroactively, for the crime of slave holding.² They should have been enslaved, and their newly freed ex-slaves should have been set up as their new owners. Needless to say, the land and other property of the (mainly)³ white ex-slave owners should have been given over to the new black slave owners, since a slave cannot own anything, but must give all his property to his master.

What, then, should be done at the present time in this regard? We are long past the time when full justice can be meted out to antebellum slave owners. But the land and other physical property that should have been turned over to the ex-black slaves went instead, to the (mainly) white children of the slave holders. These people are totally and completely innocent of the crime of slave holding. It is impermissible to hold the children responsible for the crimes of their parents. However, the land that was bequeathed to them from their slave holding parents was in effect stolen property, stolen from the slave who worked on the land. This, in justice, never should have been given to them in the first place.

Thus, any (black) grandchild of a slave should be free to demonstrate that his grandfather worked at thus and such a plantation, and thus is entitled to a pro rata share of those landholdings. This is the premise from which we begin our analysis.

Because of past wrongs – like slavery – does the government owe something to a certain group, such as black people? We answer in the negative (Alston 2006a).

¹ There are some who call the “unpleasantness” of 1861 a “civil war.” They are greatly mistaken. See on this Adams 2000; Block 2002a, b, unpublished; DiLorenzo 2006; Gordon 1998; Kreptul 2003; McGee 1994a, 1994b; Rothbard 1967.

² Some might object that this constitute ex post facto law. We support such law. We are not legal positivists (for a critique of this obnoxious doctrine, see Barnett 1978; Groudine 1980; Rothbard, 1998, 178; Simpson 1987). Just because slavery was legal under the laws of the U.S. does not mean this conformed to a higher law, libertarian law, according to which it is impermissible for one person to forcibly enslave another. The case against ex post facto law is a weak one. Indeed, the Nuremberg Trials were based on a denial of the validity of this type of law.

⁰ There were a few black slaveholders.

Certainly there is little doubt that the state directly facilitated slavery. But, were the government to discharge this obligation through taxation,⁴ it would inevitably ensnare within its net all sorts of people who by no extent of the imagination were responsible for the forcible employment of human beings. For example, there are U.S. citizens who only entered the country long after slavery ended. Were the government to give these reparations to all black people, again, injustice will be perpetrated, for many such recipients, also, are new entrants to the country.

How, then, should this repayment be funded? Reparations, at their root, should be based on property rights, that is, returning stolen property to its rightful owners, not retribution. Yet most debate seems to center on retribution and why it is justified or not.⁵

Before we attempt to place concepts like reparations into a consistent, logical, and moral context, let us examine the fact regarding the only method available to the state for securing money – theft. Frédéric Bastiat (1962), in his pamphlet *The Law*, puts state-sponsored theft, which he refers to as “plunder,” into scientific terms when he says:

When a portion of wealth is transferred from the person who owns it, without his consent, and without compensation, whether by force or fraud, to someone who does not own it, then I say that property is violated and an action of plunder is committed.

If someone stole something from you, having the state steal from someone altogether different does not really solve the problem, does it? And if the state robbed – or more accurately, allowed someone else to pilfer – something from your ancestors, does it make sense for them to now steal something from everyone else and give it to you? Not at all. All that said, and despite anything David Horowitz⁶ (2000) might say, reparations are a legitimate issue.⁷

The question is not *if* the debt is owed. The questions are: from whom it is owed; to whom it should be paid; and, how best to fund that repayment. But in no case is it justified for the state to tax everyone so that some can get their property back, no matter how often this has been done in the past. That is so, unless we seek to place ourselves at the trough of stolen spoils the state necessarily creates. We have no desire to perpetuate theft, even for reasons as compelling as the debt based on slavery. Ironically, once one embraces the logic of property rights, the arguments against reparations cease to be reasonable from any reasonable perspective. It is a simple matter of proper assignment and recovery. But it does not involve the state –

⁴ However, it would be entirely justified to seize the wealth improperly bequeathed to the heirs of the specific government officials responsible for slavery – the politicians and bureaucrats – and return these to the (black) heirs of the slaves.

⁵ Earl Ofari Hutchinson, has also answered (see: <http://alternet.org/story/10680/>) David Horowitz directly, although his analysis rests upon the type of statist premises that run counter to libertarian law.

⁶ For criticisms of Horowitz (2000), although from very different perspectives, see Arceneaux (2005), Block (2002).

⁷ However, after reading *Twelve Years a Slave*,⁸ by Northup (1997), we were so incensed that we could easily empathize with those blacks who wanted to go out and extract a little personal repayment for themselves.

at least not in the form of taxation. The state cannot properly be used as a tool of theft, even for ostensibly just reasons.

Objections

1. Slavery was unique in American history. The limited reparations justified by libertarianism do not even begin to address the enormity of the problem.

On the contrary, while the scope of chattel slavery was indeed large, the current population of people who have direct ancestry to either group, slave owners or slaves, represents a rather small proportion of the U.S. population.⁸ The argument for the enormity then is based on the moral (and frankly, libertarian) laws that slavery broke. Yet, we are herein advocating a direct action that encompasses all the current descendants of slavery and the current value of that which was stolen from them. This action fully encompasses any “enormity” that can be reasonably expressed.

Further, however, this is not a contest we are now engaged in; however horrendous, slavery was not a unique event calling for special laws. We are suggesting that we adopt a logical legal process and apply it to all issues consistently. Reparations based on slavery are to be sure a challenge for the law. However, it is no more than part and parcel of the general law applying to the return of stolen property. Jurisprudence, it must be readily admitted here, is complicated by the passage of much time since the original theft took place. There is, however, no doubt that just law will ignore this happenstance to the extent possible, and focus its attention on the issue just as it would in any other case of the return of stolen property.

Reparations for slavery are an excellent issue to examine because the amount of writing about it is plentiful⁹ and the emotional baggage about it is rather full-figured. However, it is just an example of how the law of private property rights could be applied to a specific issue. We concede that under our plan there may be folks who will not get justice, whatever that may mean to them, but a simple application of first principles shows that consistent and universal justice will not be obtained from any state-sponsored approach either. The only result will be that injustice will be further exacerbated: other innocents, in addition to the great grandchildren of slaves, will share in the unfairness.

2. An apology would be sufficient.

Some may say, “if [pick your favorite mistreated racial group] could just get an honest apology from [pick your favorite mistreater of racial groups] that would mean *something*, would it not?” Not to put too fine a point on this, but the last time we participated in that pageant of American splendor known as commerce very little

⁸ According to the 2000 U.S. Census, the total number of African Americans is approximately 34,000,000 and the total population of the U.S. is approximately 281,000,000. This is 12.1%. Similarly, the total population of slaves in the U.S. in 1860 was approximately 4,000,000 and the total population of the U.S. was approximately 31,000,000, which is 12.7%. It seems clear that the 31,000,000 today are not all descended from the 4,000,000 from history. In other words, simply following the chain of familial connection, as the authors suggest, will account for all who are due payment.

⁹ America 1993; Arceneaux 2005; Bittker 1972; Horowitz 2000, 2002; Robinson 1998, 2000, 2002; Westley 1998.

could be obtained in exchange for a heartfelt apology (Alston 2006b). (It could be that we shop in the wrong places, but we doubt it.) No, apologies avail nothing. Black people in 1865 should have obtained justice, restitution, 40 acres, and a mule, etc.,¹⁰ via conventional (and logical and moral) civil means. Their children are entitled to the present value of these benefits to the extent they can demonstrate familial connection with slaves. And this wealth should come from those children and grandchildren of the slave owners, not from anyone else. Symbolic gestures such as apologies are for politicians, and at this point it should be pretty apparent what our views are in that regard.

3. Why does the black grandchild of the slave have to prove familial connection?

This objection asks for the default position: from where do we start? This is very well established not only in libertarian law, but even in the mainstream: possession is 9/10 of the law. The burden of proof is always and ever on he who would overturn extant property rights, even “when we know,” or think we know, where justice lies in any one case. That is precisely for the courts to decide. Further, in stark contrast to all non-libertarian proposals for reparations, we seek to restrict both the payment and the receipt to only those who were directly involved. Proving familial connection therefore provides a ready barrier to any who might attempt to feed themselves at any perceived trough of good fortune simply because they are of African descent.¹¹

4. In a fair race, all contestants line up at the same starting point, and since current descendants of slaves have endured not only the thievery, but also relatively poor economic position because of it, simply recovering property would be insufficient.

If we all *know* that the current societal setup is a *direct result* of the thievery perpetrated on black people, how can we possibly start “fresh” now, even assuming we can assign proper ownership and transfer possession? This is a seminal question for black folk, because we all know that the scales were not initially balanced. In some sense geographical, we were all at the same “starting” point, but some of us had whips in our hands, and others had our hands and feet in chains. If we start a new, fair race with such a historical deficit, how can anyone think this scenario a fair one? In other words, is it really possible to simply transfer ownership now and call things “all square?” Our answer is that this is the only option available that is both just and conforming to libertarian law.

Although mistakes were made and unfair advantages have been given to some, in a fair race, eventually, the better runner wins. Look at the example of American sports. For years, black folk were categorically and racially locked out of basketball, baseball, football, etc. At present, however, black people are everywhere (on the field at least) and no one thinks it unusual. Certainly, we cannot repay the debt to those who did not get their “shot” historically, but judging on the basis of how things

¹⁰ The “40 acres and a mule” in our view was a rough approximation of what each slave would have been entitled to, on average, in 1865, under the libertarian legal code. Further, historical references speak directly to freed slaves being granted this sum as “payment” for their (immoral) incarceration. Ironically, although the U.S. government of the time promised this sum to ex-slaves, it was never paid.

¹¹ Here, we explicitly adopt the default position that, unless matters can be shown otherwise, the natural progression is for parents to make their children their heirs.

are now, we have a good idea of what the situation would have been even then, a century and a half ago. Consider black quarterbacks in the NFL. Now they are so plentiful that almost no one can remember when it was commonly believed that black men did not have the capacity to make the requisite split-second decisions. Can we go back in time and “make it right” for those men who *should have* gotten a fair shot but did not? No, but, this is an argument, at least, for a more liberal interpretation of reparations than that offered by the libertarian. There is a deeper insight in his question: “How can we just say, ‘let’s start now’ when we *know* that the race would begin with some having an advantage based on what their ancestors stole from them?” Consider the parable of a distance race being run on a track. One competitor is at the starting line for his race, ready to go. His opponent is at an entirely different starting line, some distance, maybe even over half the distance around the track behind that first runner. Looking at this scenario, there are several valid questions one could ask, which might include, although not be limited to:

- 1) is this a fair race?
- 2) how can the competitor with the deficit be expected to compete?
- 3) does not the fact of the race setup virtually guarantee the outcome?

Here is our response to this very interesting objection: The analogy between life and a race can be pushed too far. Life is a positive-sum game, a track race is a zero-sum game. Everyone can “win” in the former case; each foot race has only one winner; the others are losers. Furthermore, the answer to questions 2 and 3 above would, maybe surprisingly, not be what might otherwise be obvious. For example, if either of the present authors was placed “ahead” of an Olympic marathoner in the second case, there is little doubt that no (reasonable) lead would likely be enough! Similarly, the same could be said for scenario three. Simply put, there are many, many setups that, while placing the present authors at an ostensible advantage, would most assuredly not guarantee them a win. In essence then, if the race is long enough, the better runner will almost always win.

However, we do not think that the libertarian goal is to start at the same starting point; this can never be achieved, in any case. Michael Jordan was born with springs in his legs; is this fair? Is he on the same starting line as the rest of us at least in terms of basketball? Of course not. So what? All this is irrelevant to justice. The libertarian goal is only to uphold private property rights, and, in this case, to return stolen property to its rightful owner. The aim here is not to start everyone on the same starting line, nor to equalize opportunity, whatever that is. The aim here is the simple return of stolen property. We leave the race afterward up to those who wish to participate.

In any case, even assuming some sort of egalitarianism as the proper goal, land accounts for only some 10% of GDP (labor accounts for some 75%). So, what we are talking about here has to be kept in proportion. Far better for today’s poor people to stop the theft against them that is still taking place, than to redress past injustices. However, that is merely an economic argument, perhaps to be ignored. The justice of the matter is that past wrongs must be righted. But if so, the default position is present ownership, not starting lines in a supposed track race.

5. Reparations of the sort advocated by libertarians would disrupt our economy.

There would be vast transfers of property, if enacted. This would hurt the poor.

The libertarian position on reparations is very radical in theory, but rather conservative in practice, at least the further back one goes in history. For, if the presumption against present land ownership is to be overturned, evidence is required. This is harder to come by the further back in history we must go, even apart from the fact that the more years ago, the less likely there is to be a written language in many cases. More importantly, however, what we would establish in the best-case scenario for the libertarian solution is the current proper ownership of real property. No *a priori* assessment can therefore be made about either the socioeconomic status of those from whom property is lawfully taken or those by whom property is lawfully acquired. We judge any ostensible danger to the poor as a red herring.

6. Reparations are unjustified, since our democracy has, at least so far, rejected them.

First, the previous actions of a state are irrelevant in regard to what may have happened that is in obvious conflict with libertarian law. Second, it is false to state that “our democracy has, at least so far, rejected them” unless one is speaking specifically about reparations to blacks for slavery. In the aftermath of World War II, Japan also had to pay reparations. The United States administered removal of capital goods from Japan, and the USSR seized Japanese assets in the former puppet state of Manchukuo. Further, again according to Hutchinson, “the U.S. government has shelled out billions since the 1960s to pay for resettlement, job training, education, and health programs for refugees fleeing Communist repression.”¹²

More directly, however, democracy is hardly the be all and end all of justice. For example, if 51 men voted that rape is okay, and passed a law stating so, would that make the 49 men who thought it should be illegal somehow incorrect? Would that make the claims of the women who were molested after the law was passed less viable? Certainly not. Slavery, too, for that matter, persisted under democratic institutions. That hardly justifies the “curious institution.” Thus, despite the absence of a plebiscite allowing it, the people who were wronged because of slavery, that is, the heirs of the slaves, have just cause to seek restitution. Period. The debate should be about *how* they should seek it, not *if* they may properly do so.

7. Blacks do not deserve any reparations since whites did them a favor by kidnapping their ancestors, bringing them to the New World in chains, and then, subsequently, freeing them. The proof of this is that the black descendents of slaves are much better off, economically, socially, and in every other way, than the descendents of the African blacks who were not enslaved in the U.S.

This is an oft-used argument, that is frankly, based on a false premise. Simply put, it matters not one whit how the folks who were left in Africa fared since the time black people were kidnapped. How could it?

Suppose A kidnaps B today, and feeds, clothes and educates him, etc. Subsequently, B’s descendant grows up to be a world championship golfer. This happy occurrence does *nothing* to mitigate the original crime. Yes, it cannot be denied, this is a better result than what usually eventuates with kidnapping. However, this objection is like

¹² “Ten Reasons for Reparations”, Earl Ofari Hutchinson, <http://altnet.org/story/10680/>.

trying to categorize a kidnapper as a Good Samaritan because it is later found out that had he not kidnapped his victim, a car would have hit her! This is highly problematic. The original crime is a free-standing event – against the most basic of libertarian laws: the sanctity of the human person. The subsequent history, full of twists and turns, is something else entirely.

8. Blacks do not deserve reparations for slavery since black Africans first enslaved other black africans and sold them to the white slavers for the middle passage. Also, in the U.S., some blacks owned other blacks as slaves.

Certainly, the issue is complex. One could argue that the tribal chiefs who took part in the original seizure of natives for sale to slave ships in Africa are culpable as well. Libertarian law is perfectly indifferent to skin color or epoch. It asks only if uninvited border crossings have taken place, and, if they have, it urges compensation. It may well be that the descendents of these African tribal chiefs, and of the black slave owners in the U.S., owe a debt to the great grandchildren of slaves. If this can be demonstrated, then reparations will be (partially) an intra-black matter. However, none of these considerations mitigates, even in the slightest, the claim that reparations are still owed by the descendents of white slave masters to their contemporaries who are the children of their black slaves. If a contemporary black person *knows and can demonstrate* the identity of the person who owned his great-great grandfather, and, as well, the plantation on which he worked,¹³ and wishes to sue for ownership of part of this land, etc. that he worked but that they inherited, libertarian law would support him.

Another version of this objection states that not only were slaves kidnapped by other blacks, but also that since they did not actually own the land on which they were held, and would not have, even had they been free, the return of the “stolen property” requires some type of complicated calculation. This objection represents at best a red herring for two main reasons. First of all, if libertarian law supports reparations, the complexity of the calculations is at best a secondary issue. Secondly, if libertarian law does not support reparations, the complexity of the calculations is irrelevant.

As an example, if one of the authors kidnaps someone, but eventually relinquishes “ownership” of that hostage via an exchange of money, is the recipient somehow exonerated of kidnapping as well? Of course not. And if that recipient takes that “living investment” and uses it in trade or direct business, was that money not still obtained unlawfully? Of course it was! Clearly, the secondary owner of the slave, the white plantation owner who made this purchase from the original African owner, is no less a lawbreaker than the original seller of the slave.

The issue of multiple sales is thus another red herring. Simply stated, this is irrelevant. If the original kidnapper can be found, or more accurately, his descendants, he simply becomes an *additional* defendant, not a *replacement* defendant in either the civil suit or the dispute arbitration. The lawfulness of reparations under a libertarian paradigm is thus unaffected by this objection.

To the issue of value, positing *arguendo* that it is more than a secondary issue, standard financial calculations could be used to determine the value of the “property”

¹³ This applies to the senior author of the present paper.

involved. (As an aside, there was a time when conviction of kidnapping resulted in the death penalty, just like murder. It would therefore seem rather obvious that the taking of someone's freedom would be substantially more valuable than any "40 acres and a mule" that the slaves were supposedly promised after freedom was finally given.) It seems entirely that the value of the slaves relative to the value of the plantations where they worked must be proportional to one another, otherwise selecting how many slaves to obtain for a plantation would have involved guessing versus economic considerations.¹⁴

Stated another way, if the land could have been successfully worked without the slaves, having them would have made little sense. Certainly every plantation did not have an identical number of slaves, ergo; there was a relatively simple and direct proportionality to the size of the plantation and the number of slaves needed and owned, abstracting from weather, terrain, etc. If the size of the plantation required a certain number of slaves, then the amount due each slave would seem rather easy to compute. These types of questions, however, are for the courts to decide and for the plaintiff to pursue. This paper sets a libertarian framework for *why* the suit can be brought. It does not seek to determine, precisely, what the amount(s) of those damages should be.

9. Blacks do not deserve reparations for slavery since neither the constitution, nor our present laws, provide for any such legal remedy.

There are several problems here. First of all, the state's decision that something is illegal is entirely irrelevant to libertarian law. Governments have prohibited numerous personal and economic liberties since time immemorial. That does not make their acts licit.¹⁵ Slavery (kidnapping followed by forced labor) is not wrong because of the constitution or the opinion of some human being with a black robe! With due respect to the judiciary, the law is above man, not man above law. Slavery is wrong, like stealing is wrong, like murder is wrong – regardless of what the folks with guns and power say. The rightness of what we can properly do to each other exists outside the parameters of what some document says, no matter how grandiose it might be. There is a higher law than the pretentious law of the constitution – libertarian law. Libertarianism bases law on the non-aggression axiom. Suppose Congress, at the behest and advocacy of President Bush, now passes a law saying all left-handed red heads in the U.S. can be put to death, and he proceeds to do just that. This is all entirely legal. It was passed by both houses of congress. Only Ron Paul, we may suppose, voted against this new law. Still, this would be wrong. If Bush did this, he should be punished by law, even though what he did was legal. Ditto for slavery. Even though legal at the time, it still goes against libertarian law. The perpetrators of this should be punished. Property they illicitly passed on to their descendents should be taken away from them, if the rightful

¹⁴ For the claim that, despicable though it was, slavery was run in a "businesslike" manner, see Fogel and Engerman (1974.)

¹⁵ It is only a legal positivist who would equate government edicts with proper law. It is the task of the legislature to discern or discover just law. The obverse is simply not true, that whatever the legislators decree magically turns into proper law. See fn. 2, supra.

owners, the descendents of the slaves, can prove title. Reparations are based on this insight.

10. Implementing any reparations solution via the laws of property in the courts would result a decidedly unlibertarian expansion of power by the courts.

This objection seems to assume that something as basic as dispute resolution must be eschewed by libertarians. This is highly problematic. In every manifestation of society envisioned, including the most anarchic possible, there will necessarily be disputes. As such, dispute resolution will be a necessity, unless men somehow turn into angels. The present paper simply explains why reparations could be pursued under a libertarian paradigm. It does not seek to *a priori* define every conceivable aspect of those proceedings. No analysis can possibly solve *every* possible problem, even related ones. There is such a thing as specialization and the division of labor in intellectual pursuits as there is in all others. The decision of whether those proceedings are civil, i.e., handled in a court, or handled by an arbitrator would occur in the aftermath of the adoption of the paradigm presented in this paper.

We are confident, however, that these matters can be handled, since again, we place reparations in the arena of dispute resolution where it rightfully belongs. The details thereafter are at worst irrelevant, or at best secondary to the larger question this paper seeks to answer. (It is comforting, however, for these types of objections to be raised, since they only exist in the case where reparations can actually be pursued, exactly as this paper justifies!) As one additional point of justification, if the details of a dispute such as the return of stolen property, even property spanning several generations, cannot be handled via a libertarian dispute resolution paradigm, the type of anarchic society suggested by market anarchy cannot exist anyway.

11. Details

“Assume that before the Civil War Tom owned Blackacre and used slaves to work his land. Further assume that descendents of slaves who worked Blackacre are identified. How should reparations proceed in the following circumstances?”

- 1) The current owner of Blackacre is Tom’s great grandson.
- 2) Blackacre was sold right after the civil war, but the money was used to buy Blueacre. Blueacre is owned by Tom’s great grandson.
- 3) Tom sold Blackacre and lost the money in the financial markets.
- 4) Blackacre is currently owned by Tom’s great grandson; 99% of Blackacre’s market value comes from improvements made to it since the civil war.
- 5) Tom’s great grandson sold Blackacre in 1990. He used the money to finance consumption.”¹⁶

First, we object to the characterization of what went on in the U.S. between 1861 and 1865 as a “Civil War.” It was no such thing. A civil war occurs when there are two contending parties, each of whom wishes to rule the totality of which both are

¹⁶ An unusually active, able and insightful referee of this Journal posed this challenge to us. We are delighted to respond to these eminently sensible calls for clarification. Indeed, we mentally kick ourselves for not having anticipated him in this regard. Well, better late than never.

part. The Spanish Civil War of 1936 was indeed a civil war in that the Fascists and the Communists each wanted to govern all of Spain. So was this the case in the Russian Revolution of 1917. The Reds and the Whites both wished to serve as political masters over the entire country. However, in 1861, while the North did indeed desire to control the South, this was *not* reciprocated. The South aimed to secede from the North, not command it.

We now turn to a reply to the specifics:

- 1) The current owner of Blackacre is Tom's great grandson.

Any great grandchild of a slave of Blackacre who can prove this should be able to sue Tom's great grandson, and collect an amount proportional to the number of slaves who worked there. For example, if there were 100 slaves on that plantation, this black grandchild should be able to receive damages. However, the burden of proof rests with the latter.

- 2) Blackacre was sold right after the civil war, but the money was used to buy Blueacre. Blueacre is owned by Tom's great grandson.

Tom's son (grandson, great grandson) never should have received Blackacre in the first place. He owes all of it to all the (grand) children of the slaves, as the latter should have been given the entire plantation in 1865 to divide among themselves. Surely, Tom should not be allowed to escape this debt by converting Blackacre to Blueacre. Therefore, the grandchildren of the slaves will have to content themselves with a share of Blueacre instead of Blackacre, assuming equal value of the two. But, suppose Blueacre is worth far less than Blackacre. Say, the former was 10,000 acres and the latter 10 acres of homogeneous land. Then, obviously, Tom is trying to escape his debt. The children of the slaves have a right to come after Tom's progeny for the difference in value between the two, as well as to attach Blueacre.

- 3) Tom sold Blackacre and lost the money in the financial markets.

Justice will not be done, unless we assume a God's eye view, and can trace exactly the path of the money. The blacks will be out of luck. Who can they sue?

Take another case; hopefully, this will be regarded as a friendly amendment to the referee's challenge. Suppose Tom lost Blackacre in a bet to Joe,¹⁷ and Joe's, not Tom's great grandchild, now owns Blackacre. Then, Tom gambled with someone else's money (that, properly, of the slaves). He had no right to do so. That is, Joe would be out of luck if we, the forces of justice, could take a time machine and travel back to 1865. We would tell Joe to get his money out of Tom's carcass; e.g., if Tom has no other resources, Joe is limited to a proverbial "pound of flesh out of Tom." However, the lack of a time machine is irrelevant to the justice of the matter. The black grandchildren can sue Joe's grandchild, not Tom's. If Joe himself was not the proper, legitimate owner of Blackacre, then neither is his grandchild, the present owner.

- 4) Blackacre is currently owned by Tom's great grandson. Ninety-nine percent of Blackacre's market value comes from improvements made to it since the civil war.

¹⁷ We assume this was a real bet, and not merely an attempt to hide resources. If the latter, see text, *supra*.

The black grandchildren are limited to the 1% of Blackacre that is attributable to the work of their grandfathers. Tom's great grandson, after all, is an entirely innocent person. Yes, he received property that never should have been given to him, but he did homestead it ever since. That 1% would still be worth a lot; in any case, no less than if Tom's great grandson had not been such a successful entrepreneur.

5) Tom's great grandson sold Blackacre in 1990. He used the money to finance consumption.

This is variation on our "friendly amendment" scenario concocted and discussed under the heading of point 3 above. If Tom spent the proceeds of Blackacre's sale in 1990 on "wine, women and song," without a God's eye view, it is unclear as to whom the black grandchildren of slaves should direct their lawsuits. They are thus cheated of their patrimony.¹⁸

This case devolves into two others. First, suppose that after this 1990 sale, Tom's great grandson has other (unrelated) wealth, or second, is penniless. If the first assumption is true, then the black grandchildren can sue Tom's great grandson for this other wealth. If the second, then the black grandchildren are simply out of luck. True, Tom's great grandson spent money not properly his on the "wine, women and song," from an overarching libertarian point of view, but, at the time, he was legally, and properly, the (innocent) owner of Blackacre. While we are perfectly willing to impose ex post facto law on malefactors, and we do regard Tom in this manner, hence the justification of reparations in the first place, we see Tom's great grandson as innocent.

Conclusion

We conclude that slavery was wrong, despite the law of the land at the time, and the Constitution; that reparations are part and parcel of private property rights, not their abnegation; that reparations can be justified, but only in a *limited* way: they are to transfer property not from everyone, but only from those who inherited property that did not properly belong to their parents; and to only those who can demonstrate, beyond a reasonable doubt, that they are the descendents of slaves, and who, thus, in the ordinary course of events, would have inherited the wealth of their (great) grandparents.

¹⁸ It may be worth noting here that we use as our "precedent" the normal proceedings of today's small claims court. It is quite possible to obtain a decision in favor of a plaintiff against a defendant who is unable to pay. In that case, the plaintiff is simply "out of luck", and the same would be true for our slave descendants above. In effect they can "win" and still not be paid if the defendant is insolvent.

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