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## Reconsidering Reparations: The Movement for Black Lives and Self-Determination<sup>1</sup>

*"Now, how does this issue of self-determination have a relationship to the demand for reparations today? Simple. The necessary corollary to self-determination is that there must exist the capacity for putting self-determination into effect."<sup>2</sup>*

### Abstract

A consistent theme in movements for Black liberation is a focus on self-determination as an organizing principle. Despite this, much of the philosophical literature on reparations does not address this aspect of reparatory justice. In this chapter I first respond to existing arguments for reparations by philosophers, and then briefly sketch the philosophical features of a distributive justice-based argument for reparations that articulates what I call the "constructive view" of reparations. The constructive view of reparations takes an approach to self-determination that is rooted in a historically informed perspective on distributive justice. I draw from the Movement for Black Lives policy platform, Nkechi Taifa and the Republic of New Afrika, and others in the history of Black activism to sketch the constructive view.

### I. Introduction

The Movement for Black Lives policy platform is an attempt to construct and articulate a broad set of positions on Black liberation that achieve consensus or plurality support among Black political organizations. It succeeds, at least, in building a foundation that can productively orient ideological struggle between competing contemporary visions.

Historically, political organizations and activists have released similarly scoping documents in periods of heightened political activity, including A. Philip Randolph and Bayard Rustin ("A Freedom Budget for All Americans"), Harry Haywood ("A Revolutionary Position on the Negro Question"), the Honorable Elijah Muhammad of the Nation of Islam ("What the Muslims Want"), and the Black Panther Party for Self Defense (the "Ten-Point Program"). There are many ideological divergences between the positions articulated in these documents, but a consistent theme is self-determination as an organizing principle for advancing Black liberation. The visions of reparatory justice offered in many of these documents are no exception to this general orientation.

In contrast, the positions developed by philosophers have largely failed to acknowledge the central role of self-determination in reparatory justice, instead focusing either on arguments that portray reparations in overly legalistic conceptions of harm repair, or refocusing it on symbolic or communicative conceptions of the needed repair of social relations between Black people, their neighbors, and the relevant political and social institutions. Here I explore

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<sup>1</sup> Thanks to Marya Hannun, Keyvan Shafiei, Brandon Hogan, Alex Madva, (everyone else who helped)

<sup>2</sup> Nkechi Taifa, "Reparations and Self-Determination," in *Reparations Yes!* (Washington, DC, 1989), 10.

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another argumentative possibility for reparations made possible by critical engagement with the arguments and proposals historically put forth by activists and other political actors, and the role of self-determination in their efforts.

The arguments for reparations for colonialism, the trans-Atlantic slave trade, and their aftermath are necessarily different from reparations in many other contexts, and we should be cautious in applying insights from other reparations debates to this particular discussion. The historical patterns and events that jointly constitute the history of colonialism and slavery involved hundreds of millions of people, scattered across all of the world's inhabited continents, and have taken place over five centuries. This particular reparations discussion, then, greatly differs in scale from the events or patterns that are the topic of many other discussions, even other mass atrocities - for example, those that were the subject of International Criminal Court tribunals after genocides in Yugoslavia and Rwanda.<sup>3</sup> Partly owing to the scale of colonialism and trans-Atlantic slavery – especially their temporal scale – are a set of philosophical puzzles and problems that have no clear analogue in many other reparations cases.<sup>4</sup>

These observations point to a deeper difference between this reparations conversation and other reparations conversations. Reparations, as such, seeks repair or recompense in response to harm or wrongdoing. But in many reparations discussions, the harm or wrongdoing occurs between parties in a given historical context. The challenge, then, is to figure out what repair looks like in such a context. Trans-Atlantic slavery and colonialism certainly involve and involved harm and wrongdoing at the level of individuals and communities, and responding to these is a very important part of what they ought to achieve. But trans-Atlantic slavery and colonialism are the historical forces that built the modern world, that built world politics as we know it. The world historical context is *itself* an important part of the wrongdoing, which reparations ought to concern itself with.

The implications of this point for the stakes and aims of reparations have been appreciated by activists and actors, particularly those among anti-colonial movements (including radical Indigenous activism) and the Black radical tradition, most notably the vision articulated and acted upon by the Republic of New Afrika in the early 1970s. This paper's aim is to review problems with existing views, and to sketch an alternative critical reconstruction of the aforementioned ignored contributions.

That distinctive view, which I call the *constructive view* of reparations, is rooted in distributive justice. Distributive justice deals with how we understand, justify, or condemn distributions of goods and resources (broadly construed) to people, and the processes and social facts that explain these distributions. It also issues forward-looking recommendations about whether and how to change our current distribution of goods and resources.

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<sup>3</sup> For a discussion of the International Criminal Court's tribunals, see Owiso Owiso, "The International Criminal Court and Reparations: Judicial Innovation or Judicialisation of a Political Process?," *International Criminal Law Review* 19, no. 3 (2019): 505–31.

<sup>4</sup> For a thoughtful discussion of the difference scale makes to reparatory justice, see Yepes 2009: Rodrigo Uprimny Yepes, "Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice," *Netherlands Quarterly of Human Rights* 27, no. 4 (2009): 625–47.

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Reparations is about how to distribute resources between an aggrieved party and a party held responsible.

In part I, I'll examine current views of reparations in mainstream Anglo-American academic philosophy. In part II, I survey rationales and demands put forward by activists and thinkers throughout the African diaspora more widely. Then I briefly sketch the philosophical features of a distributive justice-based argument for reparations that articulates what I call the "constructive view" of reparations, drawing from the Movement for Black Lives, Nkechi Taifa and the Republic of New Afrika, and Dr. Martin Luther King Jr.

## I. Repair Views

There are two broad sub-families of repair views: harm-based repair and relationship repair.

*Harm repair* views treat potential claimants of reparations (individuals or collectives) to have been harmed by the paying party, and view reparations as repairing these harms. On this family of views, the welfare of affected parties is typically treated as the broken thing to be fixed by successfully petitioning for reparations.<sup>5</sup>

*Relationship repair* views likewise consider the claimants as having been harmed, but view the relationship between the parties as the primary locus of importance.<sup>6</sup> On these views, reparations aim either at repairing the relationship broken by the harm and subsequent non-reparation (which cause additional injury), or at rightfully navigating whatever relationship remains between the parties by a performance of obligations arising out of that relationship. On such views, reparations are required because of what it communicates, and in turn because of the terms of amicability or *détente* which parties can reach. I will review objections to both sub-families of views.

### A. Against Harm Repair Views

Harm repair views give reparations the role of fixing present harms causally connected to or constituted by previous harm. The view of harm typically underlying these arguments is welfarist: considering the aggrieving party to have harmed the victim by lowering them from some baseline of welfare that they would have enjoyed but for the offense. Reparations 'repair' this damage by distributing benefits to the victim that close the gap between their current state of wellness and this purported baseline, perhaps with some interest for their

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<sup>5</sup> For example: Vincene Verdun, "If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans," *Tul. L. Rev.* 67 (1992): 597.

<sup>6</sup> Seana Valentine Shiffrin, "Reparations for US Slavery and Justice over Time," in *Harming Future Persons* (Springer, 2009), 333–39; Rahul Kumar and David Silver, "The Legacy of Injustice. Wronging the Future, Responsibility for the Past," *Justice in Time: Responding to Historical Injustice*, 2004, 145–58.

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trouble.<sup>7</sup> This way of thinking about the harm resembles discussions of liability contract and tort law, and many arguments for reparations in legal literature take this form.<sup>8</sup>

I have no objection to the harm repair view in other domains of political and legal philosophy, or for other cases that demand reparatory justice. However, this strategy runs into difficulties in dealing with reparations claims grounded in trans-Atlantic slavery and colonialism.

The conceptual problems with the harm repair view in this context are about finding the right baseline of welfare. Even had reparations been paid shortly after the abolition of slavery: how could one 'repair', say, whatever harm was done to a child born in the condition of slavery? For this individual's life, there is no "before" to return to. Put generally: it may be impossible to make sense of an individual 'harm' claim on the repair view if the action or process being charged with harm is also responsible for creating the harmed agent. According to this objection, there is no possible world or relevant counterfactual in which the agent is better off without the harming action, because every world in which the harming action does not exist is a world in which the agent who claims they were harmed does not exist either.

Kumar and Silver term this problem the "existential worry", following Christopher Morris' treatment of the problem in ethical theory.<sup>9</sup> If successful, there are no backward-looking considerations that could possibly establish that processes like slavery or colonialism harmed the people formed as a result of those processes (the descendants of enslaved or

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<sup>7</sup> See, to take international criminal law as an example, the ruling of the Permanent Court of Justice in *Factory v. Chorzow*, which informs the current policy of the International Criminal Court under the Rome Statute on reparations. Also see McCarthy's discussion of all the aforementioned. "The Factory At Chorzów (Claim for Indemnity) (The Merits), Germany v. Poland, Judgment, 13 September 1928, Permanent Court of International Justice (PCIJ)," accessed August 6, 2019, [http://www.worldcourts.com/pcij/eng/decisions/1928.09.13\\_chorzow1.htm](http://www.worldcourts.com/pcij/eng/decisions/1928.09.13_chorzow1.htm); Conor McCarthy, "Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory," *International Journal of Transitional Justice* 3, no. 2 (2009): 256–57.

<sup>8</sup> See, for example: Verdun, "If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans"; Jeremy Levitt, "Black African Reparations: Making a Claim for Enslavement and Systematic De Jure Segregation and Racial Discrimination under American and International Law," *SUL Rev.* 25 (1997): 1; McCarthy, "Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory," 256; Ediberto Roman, "Reparations and the Colonial Dilemma: The Insurmountable Hurdles and yet Transformative Benefits," *Berkeley La Raza LJ* 13 (2002): 380.

<sup>9</sup> Christopher Morris discusses, for example, how descendants of slaves would not exist at all but for the facts of slavery, which renders false counterfactual claims constructed along the lines of the repair view. Subsequent treatments of the philosophical problem have termed it the "non-identity problem". Kumar and Silver, "The Legacy of Injustice. Wronging the Future, Responsibility for the Past"; Christopher W Morris, "Existential Limits to the Rectification of Past Wrongs," *American Philosophical Quarterly* 21, no. 2 (1984): 175–82; Melinda A Roberts and David T Wasserman, *Harming Future Persons: Ethics, Genetics and the Nonidentity Problem*, vol. 35 (Springer Science & Business Media, 2009).

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colonized people) and claims of harm cannot underwrite a successful argument for reparations for descendants of aggrieved parties.<sup>10</sup>

The welfarist conception of harm demands a comparison between levels of welfare, real or counterfactual. But it is unclear which contrast cases to use to ground claims of harm. For example, take the 1965 debate between James Baldwin and William Buckley. Buckley favorably compared Blacks' lives in the US to those of Black Africans' at the time.<sup>11</sup> What if, as Buckley pointed out to a packed Oxford audience, Blacks in the US are "better off" than their African counterparts?<sup>12</sup> If so, reparations face an even stronger objection than the existential worry: if a Buckley-style objector is right, there's no harm to repair!<sup>13</sup>

But this genre of response faces its own "existential worry". If the existential worry is a reason that Blacks could not have been harmed by slavery then it is also a reason that they could not have benefited from it. Put generally: if the existential worry rules out counterfactuals that establish harm, it in the very same way also rules out those that establish benefit – either for Blacks or whites whose opportunities and life chances (or lack thereof) owe themselves to a history fueled by a slave system and global colonial capitalism.

Perhaps this doesn't mean that Blacks are advantaged by slavery, but simply that they are not disadvantaged or harmed. But conceptual difficulties remain. The disparities in quality of life between Black Americans and Black Africans are themselves produced by the very historical process that led to the claims for redress, namely colonialism and the slave trade. Those processes figure into the economic development of nations like the United States and

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<sup>10</sup> Kumar and Silver's own view is an interesting intermediate case between the categories of arguments I've termed "harm repair" and "relationship repair". Like the relationship repair theorists, Kumar and Silver reject a solely or primarily welfarist conception of harm as the moral impetus for reparations. They also spend the bulk of their essay on "rectification", which shares argumentative concerns with moral repair theorists, and the inheritance of wrongs (much like the particularly Lockean brand of relationship repair). Nevertheless, they characterize reparations and rectification as responses and remedies to injury (in a non-welfarist sense) to African Americans, so I tend to group them with the harm repair theorists. I don't yet see that anything of interests hangs on this categorization. Kumar and Silver, "The Legacy of Injustice. Wronging the Future, Responsibility for the Past."

<sup>11</sup> James Baldwin et al., *Debate: Baldwin vs Buckley* (New York, NY: National Educational Television and Radio Center, 1965).

<sup>12</sup> A closely related style of response is to credit "the West" for any positive developments on the continent (access to modern technology or public health) while blaming African corruption or endogenous environmental and cultural factors for negative developments (war, famine). I'm not sure which argumentative strategy is less philosophically serious, but Mazrui has the stuff of a reply to this concern on pages 8-10 of his MKO Abiola lecture on reparations. Ali A Mazrui, "Global Africa: From Abolitionists to Reparationists," *African Studies Review* 37, no. 3 (1994): 1–18.

<sup>13</sup> For a longer, more in-depth discussion of this web of problems, see Perez chapter 2: Nahshon Perez, *Freedom from Past Injustices: A Critical Evaluation of Claims for Inter-Generational Reparations* (Edinburgh University Press, 2012), chap. 2.

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the relative lack thereof in Africa. Then they also help explain the very gap in living conditions appealed to by the Buckley-style objector.<sup>14</sup>

Even if we were to confine our search for contrasts to a particular state, it is unclear that we would escape counterfactual problems. Take, for example, the United States. Some might use white workers' levels of payment or political privileges as a contrast case, arguing that the extent of harm caused to enslaved Black Americans can be measured by the quality of education whites received or the level of wage payments whites got. But this strategy runs headfirst into counterfactual problems.

First: were it not for slavery, there would be no United States at all. Historian Eric Williams argued that slavery was a stage of a process of colonization, a stopgap measure used to build a building a colony up to the point of development where it can attract free labor.<sup>15</sup> The settling and development of the British empire's American colonies follows something like the pattern that Williams describes: the first colonies imported enslaved African workers and indentured European workers to produce tobacco for the world market and defend the territory taken from the Piscataway and Nacostine peoples.<sup>16</sup> This labor was necessary for the bare survival of the colony and also to attract capital investment and workers to expand Britain's colonial possessions on the continent – that is, for the existence of what became the United States of America. While these sorts facts are often rightly appealed to by Black activists rightly pointing out the critical importance of slavery and its legacy for American history, they cut against the counterfactual argument

Even setting aside larger explanation fail, we don't need a historical explanation quite so elaborate to see the counterfactual difficulties. That's because whites' wage levels and levels of political privileges throughout history were a result of the power structures set by the same

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<sup>14</sup> Shiffrin makes this point about the dependence of everyone, not just descendants of slaves, to the historical legacies of slavery and colonialism on pages 334-335. But, for some historical treatments of both sides of the comparison, see: Olúfẹ́mi Táíwò, *How Colonialism Preempted Modernity in Africa* (Indiana University Press, 2010); Walter Rodney, "How Europe Underdeveloped Africa," *Bogle-L'Ouverture Publications, London and Dar Es Salaam*, 1972; Eric Williams, *Capitalism and Slavery* (UNC Press Books, 2014); Shiffrin, "Reparations for US Slavery and Justice over Time"; Daniel Tetteh Osabu-Kle, "The African Reparation Cry: Rationale, Estimate, Prospects, and Strategies," *Journal of Black Studies* 30, no. 3 (2000): 331–50; Samir Amin, "Underdevelopment and Dependence in Black Africa—Origins and Contemporary Forms," *The Journal of Modern African Studies* 10, no. 4 (1972): 503–24. Pgs. 334-335.

<sup>15</sup> "[w]hen slavery is adopted, it is not adopted as the choice over free labor; there is no choice at all" Williams, *Capitalism and Slavery*, 6–7.

<sup>16</sup> John Thornton, "The African Experience of the 20. and Odd Negroes" Arriving in Virginia in 1619," *The William and Mary Quarterly* 55, no. 3 (1998): 421–34; "400 Years Ago, Enslaved Africans First Arrived in Virginia," *History Magazine*, August 13, 2019, <https://www.nationalgeographic.com/history/magazine/2019/07-08/virginia-first-africans-transatlantic-slave-trade/>; Helen C Rountree, *Pocahontas's People: The Powhatan Indians of Virginia through Four Centuries*, vol. 196 (University of Oklahoma Press, 1990); Chris Myers Asch and George Derek Musgrove, *Chocolate City* (University of North Carolina Press, 2017), chap. 1, [www.jstor.org/stable/10.5149/9781469635873\\_asch](http://www.jstor.org/stable/10.5149/9781469635873_asch).

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social system that rendered Blacks enslaved. Both wages and political privileges are set by contestation across power divides: between employer and workers, political elites and non-elites.<sup>17</sup> The politics of slavery and racial domination, then, also determined the economic destiny of white workers. The question of white workers' complicity doesn't change this basic fact: in the counterfactual case where there is no social reality of systematic racial domination, there is nothing for them to be complicit in.

This same reasoning cuts against Buckley's preferred comparison of Black Americans' levels of income and Black Africans'. Historically, the slave trades involved a transfer of labor power from the African continent so large that, by 1850, the continent's population was half of what it would have been without them.<sup>18</sup> The trans-Atlantic slave trade, by volume, was responsible for double the amount of depopulation as all other slave trades on the continent combined. The labor power that the abducted people possessed then became an economic input in the macroeconomies of the countries where they were forced to work. That was of immense economic and strategic importance to colonial powers. For example, the total economic value of enslaved people in the US south was greater than the entire country's combined industrial capital until well into the 19<sup>th</sup> century.<sup>19</sup> The incentive structure generated by the existence of such a lucrative market for kidnapping resulted in the decline of previously stable societies, the creation of a continental bandit class, and inter-ethnic divisions that continue to undermine political institutions on the continent.<sup>20</sup> These factors powerfully shape the political circumstances and characteristics of African nation-states today.

Conceptually, the explanation for why we should always expect to find counterfactual problems is much simpler than the historical case. The very same racialized social system that constitutes a person as a slave (or potentially so) also constitutes other people as slave owners (or potentially so), and the same colonial social system that constitutes persons as members of the colonized group constitutes other people as members of the colonizing group. Then, the disadvantages being placed in one group (e.g. the enslaved) have the same structural causes as the advantages of being in the other group (e.g. potential slave owner): the overarching system that creates these categories to begin with.

A fuller treatment of the causal entanglements appreciated by a historical view shows that there are more existential worries than we initially bargained for. Neither the United States, nor developed countries, nor African countries, nor formerly colonized countries, nor the various gaps between the life chances of their current inhabitants, would be what they are

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<sup>17</sup> Fields makes the point about how this should inform our historical understanding of English working class rights, but the point as I understand it is general. Barbara Jeanne Fields, "Slavery, Race and Ideology in the United States of America," *New Left Review* 181, no. 1 (1990): 102–3.

<sup>18</sup> Nathan Nunn, "The Long-Term Effects of Africa's Slave Trades\*," *The Quarterly Journal of Economics* 123, no. 1 (February 1, 2008): 139–76, <https://doi.org/10.1162/qjec.2008.123.1.139>. Pg. 142 of the Nunn paper.

<sup>19</sup> Thomas Piketty and Gabriel Zucman, "Capital Is Back: Wealth-Income Ratios in Rich Countries 1700–2010," *The Quarterly Journal of Economics* 129, no. 3 (2014): 1255–1310; Williams, *Capitalism and Slavery*.

<sup>20</sup> Rodney, "How Europe Underdeveloped Africa"; Nunn, "The Long-Term Effects of Africa's Slave Trades\*." Chapter 4 in Rodney.

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but for colonialism and the slave trade.<sup>21</sup> This is clear both as an historical, empirical, and conceptual matter.

Then, what point in whose history can we appeal to establish a baseline of harm without triggering the existential worry? I don't think there is a satisfying answer to that question.<sup>22</sup> Harm repair views that treat the relevant harm as having occurred in the distant past don't seem to survive the existential worry.

## B. Against Relationship Repair Views

The problems with the harm repair view have not gone unnoticed. Some authors, like Coates and Bittker, emphasize the importance of racial domination more broadly than the considerable wrongdoing of slavery.<sup>23</sup> This gets something important right, since the harms of racial domination did not end with abolition.

But this strategy also risks incentivizing narrowed attention to individual components of the larger system of racial injustice. Focusing on school segregation as Bittker does, for example, runs into the same problem as trying to calculate the damages of slavery in terms of unpaid wages.<sup>24</sup> This approach may make it easier to calculate legal damages than entire system of racial domination, but for the very reason that they represents a fraction of the injuries that provide the moral force behind reparations claims. The extent and scope of reparations that are likely to result from this reparations programs targeted to redress these might not be of the right scale to address the full system of racial injustice that I argue reparations ought to respond to. Racial domination was much more than wage theft or inadequate schooling, and the moral atrocities it involved demand a reparations project that matches their scale and breadth. Unsatisfied with this option, others opted to shift towards a family of argumentative strategy that gives up on the welfarist assumptions behind reparations-as-restitution entirely.<sup>25</sup>

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<sup>21</sup> Shiffrin, "Reparations for US Slavery and Justice over Time."

<sup>22</sup> Daniel Butt offers a noteworthy attempt to do just this in a 2012 article, proposing a "double counterfactual" which invites us to imagine any particular colonized community not simply without the particular colonial past it has but without having been colonized at all. I suspect this strategy will run into significant hurdles at the calculation stage, and in any event, the constructive view that will be introduced later in this paper obviates the need for it by shifting from "harm" to a more general sort of explanation. Daniel Butt, "Repairing Historical Wrongs and the End of Empire," *Social & Legal Studies* 21, no. 2 (2012): 227–42.

<sup>23</sup> Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic*, June 2014, <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; Boris I Bittker, *The Case for Black Reparations* (Beacon Press, 2003).

<sup>24</sup> Joel N. Morse and Jetaime Ross, "A Forensic Economics Approach to Reparations," [baltimoresun.com](http://baltimoresun.com), accessed January 30, 2020, <https://www.baltimoresun.com/opinion/oped/bs-ed-op-0107-slavery-reparations-20180103-story.html>.

<sup>25</sup> Eric K Yamamoto, "Racial Reparations: Japanese American Redress and African American Claims," *BC Third World LJ* 19 (1998): 491–93.

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Relationship repair views task reparations with fixing damaged relationships: typically between the aggrieved party (and those who inherit their identity) and the aggrieving party (and those who inherit their identity). These authors tend to reject a welfarist conception of harm both as an exhaustive explanation of what it is to harm someone and as the relevant kind of harm to appeal to in making reparations arguments. Instead, these authors take wrongdoing, the violation of the right sort of normative expectations, as the target of their take on reparations arguments. Authors advancing these arguments often frame relationship repair views as a response to the difficulties with harm repair arguments, most notably the nasty philosophical problem of identifying the right contrast class that arises on arguments that presume a welfarist conception of harm. Whatever else slavery and colonialism were, they involved significant moral wrongdoing. This damaged the moral relations that sustain political community, or that enjoy some kind of independent or intrinsic importance. Reparations is then tasked with fixing these moral relations.

One sub-family of relationship repair views, which I call *inheritance arguments*, treats reparations claims as a straightforward payment of a debt. The injustice of slavery generated an obligation to pay and a right to demand payment, thus creating a creditor-debtor relationship between those who are identified with the former and those identified with the latter. Both the moral credit and debt are inheritable on this view: the moral credit is passed on to the descendants of the enslaved, the moral debt onto the descendants of those who were culpable in the slave system, and thus the relation itself is sustained from generation to generation. Reparations, then, alters the moral relationship between the debtors and those to whom the debt is owed, ending a state of war or enmity and restoring the possibility of fully cooperative relations, or simply (on a contractualist view, perhaps) achieving whatever non-instrumental moral value lies in fulfilling one's obligations.

An important set of inheritance arguments follow a Lockean approach based on a philosophical commitment to reparations as a moral or political right. Locke thought that the right to reparation of harm was a natural right, one that each person would have over every other person whether in a "commonwealth" or even in the state of nature.<sup>26</sup> Further, on his historical view of reparations, he argued that the children of those dispossessed by war, even where the war is just, retain moral rights to the possession of their ancestors.<sup>27</sup> Where their rights to those possessions, or any other property, are infringed, the claimants are to be considered "slaves under the force of war" rather than free people.<sup>28</sup> That is, the infringement of their rights harms a political relation between the claimants and the broader political community is degraded into conflict and adversity, where the relationship could and should be a cooperative one. Reparations repair by removing one set of barriers between the claimants and the broader political community, and thus help create the conditions for non-adversarial political relations.

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<sup>26</sup> Bernard Boxill points to this passage in "Black Reparations". John Locke and Crawford Brough Macpherson, *Second Treatise of Government* (Hackett Publishing, 1980); Bernard Boxill, "Black Reparations," *Stanford Encyclopedia of Philosophy*, 2011. Book II, sec. 6-12.

<sup>27</sup> Locke and Macpherson, *Second Treatise of Government*. Book XVI, "Conquest", sec. 190-196.

<sup>28</sup> Locke and Macpherson. Book XVI, "Conquest", sec. 192, pg. 63.

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Finding these sorts of theoretical claims congenial, a number of prominent philosophers have made similar if not explicitly Lockean arguments for Black reparations in the United States. This view is most obviously exemplified by Bernard Boxill, though Catherine Lu, Lawrie Balfour, J. Angelo Cortlett, and Robert Fullinwider also provide reparations arguments that make similar moves.<sup>29</sup>

Margaret Walker gives a different kind of relationship repair argument than the Lockean sort in her book *Moral Repair*. She argues that reparations construed as restorative justice for anti-Black racism is aimed at the “restoration of relationships” between Black citizens and other citizens, seeing the alienation of Blacks from their (now) fellow citizens and from the government they live under as a primary harm.<sup>30</sup> Lu, Kumar and Silver, and Shiffrin argue similarly.<sup>31</sup>

The harm to the relationships is constituted by wrongdoing – the violation of the right kind of normative expectations.<sup>32</sup> Moreover, the refusal take reparative steps when one has injured another (or otherwise ought to) can send a further signal that the ongoing moral commitment that the injured party morally deserved their injury or need not be regarded as a moral equal. Refusal can also be criticized for the culpable failure to signal the opposite commitment.<sup>33</sup> The past history of racial discrimination, disrespect, and the current living conditions of much of the Black world, to the extent that these owe their character to slavery and colonialism, would qualify as harm on these conceptions.

Since these views aren't committed to a merely welfarist conception of harm, we needn't appeal to a colonized person's being made “worse-off” relative to an actual past baseline or a counterfactual scenario. These views, then, avoid the so called “non-identity problem” or existential worry. Instead, the important aspect of the ongoing wrongs of slavery (and, presumably, colonialism) for these theories is the ongoing failure of the relevant parties to repudiate the ills of slavery. Failing to provide reparations, these theorists argue, risks tacit endorsement of or some other kind of continuity with the racist attitudes of the past, on which African, African-descended, and other colonized peoples were deserving of inferior social status

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<sup>29</sup> Bernard R Boxill, “A Lockean Argument for Black Reparations,” *The Journal of Ethics* 7, no. 1 (2003): 63–91; Robert K Fullinwider, “The Case for Reparations,” 2000; J Angelo Corlett, “Race, Racism, and Reparations,” *Journal of Social Philosophy* 36, no. 4 (2005): 568–85; Lawrie Balfour, “Reparations after Identity Politics,” *Political Theory* 33, no. 6 (2005): 786–811.

<sup>30</sup> Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing*. Pg. 224.

<sup>31</sup> Catherine Lu, “Reconciliation and Reparations,” *The Oxford Handbook of Ethics of War*, October 2015, <https://doi.org/10.1093/oxfordhb/9780199943418.013.17>; Kumar and Silver, “The Legacy of Injustice. Wronging the Future, Responsibility for the Past”; Shiffrin, “Reparations for US Slavery and Justice over Time.”

<sup>32</sup> Shiffrin, “Reparations for US Slavery and Justice over Time.”

<sup>33</sup> Bernard R Boxill, “The Morality of Reparation,” *Social Theory and Practice* 2, no. 1 (1972): 113–23; Shiffrin, “Reparations for US Slavery and Justice over Time.”

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and treatment.<sup>34</sup> Then, the value of reparations is to be understood as communicative, an expression of serious and sincere regret of the past.<sup>35</sup>

This second group of relationship repair views, however, face a more important worry. Granted, they don't explicitly rule out material redress, and many even call for it. But the *grounds* for calling for material redress only contingently relate to the purpose of reparations as these groups conceive of it. After all, there are many ways to repair relationships and communicate an intention to change one's ways – verbal apologies, constructions of memorials, and other symbolic gestures might well suffice.

But there's another way to think about reparations, the same kind that motivated the harm repair view: that the reason for and moral force of reparations claims is somehow bound up with the present-day living conditions of the potential recipients of reparations, and the consequences of those conditions for the self-determination of the people who live under them. Judged from this perspective about what reparations is about, any "reparations" view that isn't organized around material redress isn't really a defense of reparations at all. I think that many organizations, activists,

## II. Towards The Constructive View

### a. A Difference in Emphasis

In my view, consideration of reparations claims demands a historical view of distributive justice, since the motivations for a present claim of reparations are intrinsically backward looking and discussions of distributive justice tend to focus on the present.<sup>36</sup> Reparations as such, after all, respond to past harm or wrongdoing.

Outside of the philosophical literature, many advocates of reparations for trans-Atlantic slavery and colonialism causally link current conditions faced by people living today to the historical phenomena they are responding to. For these thinkers, reparations are primarily considered based on what it is hoped that they will do for the recipients' lives in particular: give them access to the resources they need to determine their own fates, and pursue opportunities unencumbered by either discrimination or deprivation. Such views rest on stronger argumentative ground than those taken up more commonly in the philosophical and legal literature of the ivory tower. While a full defense of that claim is outside of the scope of this

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<sup>34</sup> Kumar and Silver are speaking about the US context in this section, but I take it that this specific point of theirs generalizes. Kumar and Silver, "The Legacy of Injustice. Wronging the Future, Responsibility for the Past." Page 152.

<sup>35</sup> Shiffrin, "Reparations for US Slavery and Justice over Time." Page 335.

<sup>36</sup> McGary argues that this plays a distinctive role in the moral evaluation of reparations claims, where this evaluation is taken to be separable from an evaluation of future-looking, consequence-based analyses. Boxill distinguishes reparations programs, which are necessarily backward looking, from mere compensatory accounts, which need only be forward looking. HOWARD MCGARY, "RECONCILIATION AND REPARATIONS," *Metaphilosophy* 41, no. 4 (July 1, 2010): 546–62, <https://doi.org/10.1111/j.1467-9973.2010.01659.x>; Boxill, "The Morality of Reparation." Pg. 117.

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paper, I aim to both explain the basic structure of the reconstructed view and gesture at the commitments a full defense of it would take on.

A view centered on self-determination seems to be part and parcel of the Movement for Black Lives platform generally, to which its reparations platform is no exception. The very first sentence of the reparations platform tasks it with addressing “past and continuing harms” and goes on to propose policy initiatives aimed at empowering Black people directly with money and education, rather than spiritual healing or symbolism.<sup>37</sup> These include a universal basic income, provisions to deal with physical and mental trauma, and access and control of food sources, housing, and land.<sup>38</sup> The rationale for the provisions, particularly “control of food sources, housing, and land” seems motivated by considerations of self-determination and neither make reference to nor rely on any conception of reconciliation with or friendship to white or non-Black citizens.

This focus puts them in good company in the history of Black liberation movements. Dr. Martin Luther King Jr. argued that we should generally understand the stakes of movements for Black liberation in the following way:

The Negro today is not struggling for some abstract, vague rights, but for concrete and prompt improvement in his way of life. What will it profit him to be able to send his children to an integrated school if the family income is insufficient to buy them school clothes? What will he gain by being permitted to move to an integrated neighborhood if he cannot afford to do so because he is unemployed or has a low-paying job with no future? During the lunch-counter sit-ins in Greensboro, North Carolina, a nightclub comic observed that, had the demonstrators been served, some of them could not have paid for the meal...The struggle for rights is, at bottom, a struggle for opportunities.”<sup>39</sup>

More specifically, on the topic of reparations, Nkechi Taifa wrote:

Now, how does this issue of self-determination have a relationship to the demand for reparations today? Simple. The necessary corollary to self-determination is that there must exist the capacity for putting self-determination into effect.<sup>40</sup>

I content that, like the Movement for Black Lives platform, both King and Taifa's comments are based in the importance of self-determination. They view their target as giving Black people the tools with which to meet their own needs and control their own lives, rather than fighting to achieve the good terms on which to beg, borrow, or get charity from those who have the power to determine their own destinies.

Activists, organization leaders, and actors in multinational or international contexts seem to advocate a different purpose for reparations than many academic philosophers have. Despite different justifications, argument styles, and concrete goals, a theme that emerges among these disparate views is a focus on the changes reparations could make to the lives of

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<sup>37</sup> “Reparations,” The Movement for Black Lives, accessed November 29, 2018, <https://policy.m4bl.org/reparations/>.

<sup>38</sup> “Reparations.”

<sup>39</sup> Martin Luther King, *Why We Can't Wait* (Penguin, 2000). Pg 129.

<sup>40</sup> Taifa, “Reparations and Self-Determination,” 10.

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recipients in material terms, and the resultant empowerment of African descended peoples within the power structures and institutions that construct and limit their individual and collective agency operate within. This strategic gambit towards reclaiming self-determination for African-descended peoples stands in stark contrast both to the moralizing, obligation-based arguments of harm repair views and the symbolic and communicative value emphasized in many versions of the relationship repair views.

### **b. Reparations and Distributive Justice**

These views share a commitment to a conception of the import of reparations as primarily emanating from a concern with the present material and social conditions of Blacks across the diaspora today, especially as these interact with the ability of Black people to govern their own lives. But that might be the very reason you're wondering: where's the *reparations*? Talk about self-determination and just distribution of resources is all well and good, but we don't need a history lesson to do that. What is the difference between a view of reparations that centers on the living conditions and self-determination of present day people and regular old policy conversations, which also are concerned with living conditions in the ordinary sense? Why do we need the kind of backward-looking considerations that come up in reparations conversations to answer questions about whether or not to have this tax or that housing initiative?

But this is a virtue of the constructive view of reparations, not a vice. Every "regular policy" is itself a continuation of history, a use of the institutions and resources the past made available to the present. As such, every such policy constitutes a success or failure to break with the legacies of oppression that define our present. Redlining, sharecropping, Jim Crow, and mass incarceration were all constituted and preserved by a web of often individually banal policy conversations about zoning, property taxes, and price regulation.

Recall that principles of distributive justice govern how we understand, justify, or condemn distributions of benefits and burdens to people. It is possible to stop there. I call a *snapshot view* of distributive justice one that conceptually 'starts over' and analyzes the appropriateness of the current distribution of wealth, resources, and social goods in abstraction from the historical processes that produced the distribution in question a *snapshot view* of distributive justice.<sup>41</sup> On such an approach, the only considerations that ought to bear on

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<sup>41</sup> Rawls' *A Theory of Justice* gives a famous ideal theory of political philosophy that gives considerable attention to distributive justice, but not to corrective justice. Charles Mills points out that Rawls does not explicitly discuss rectificatory justice and seems to openly admit that the principles he outlines will be of limited application to (what Mills terms) "ill-formed" societies, those whose actual history does not sufficiently resemble the "well formed" society. There is some disagreement in the literature about whether the view Rawls develops can adequately account for corrective justice: for example, see the exchange between Tommie Shelby and Charles Mills, with Shelby dissenting, preferring a view that Rawls' theory provides adequate resources for the corrective justice needed for racial justice specifically. John Rawls, *A Theory of Justice*, Revised Edition (Cambridge: Harvard university press, 1999); Tommie Shelby, "Race and Social Justice: Rawlsian Considerations," *Fordham L. Rev.* 72 (2003): 1697; Charles W

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reparations are forward-looking – for example, disincentivizing the past aggressor to take future harmful actions, or creating the possibility of future moral relations by signaling the aggressor party's stance on past injustices.<sup>42</sup> Many academic philosophers defend such views of distributive justice.<sup>43</sup>

Reparations is concerned with distributive justice, viewed as the distribution of the conditions for self-determination. But we can't see how from a snapshot view of distributive justice, since that elides the backward looking considerations that make reparations what it is. A different view of distributive justice is required.<sup>44</sup>

Moreover, the view of distributive justice implicitly held by the activists and thinkers in part III explicitly appeal to backward looking considerations of past racial domination and violence to explain their reparations demands. A *historical* view of distributive justice takes into account both welfarist considerations the snapshot theorist would consider (how well the distribution in question meets the needs of the people it affects), but also historical considerations explaining how that distribution was fairly or unfairly established are relevant.<sup>45</sup> The historical causes of present day living conditions figure prominently, but as an explanation for who is on the hook for paying the costs of fixing the downstream effects of those historical trajectories.

### c. Laying out the constructive view

The constructivist views reparations as the project of constructing the just world, in which the advantages and disadvantages of the transition to the just world are distributed in ways sensitive to past injustice. The constructive view relies on a division of labor between backward looking considerations and forward looking considerations. Forward looking considerations establish the *target* state of affairs, and backward looking considerations bear upon potential distributions of the costs of transition to the target state of affairs.

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Mills, "Retrieving Rawls for Racial Justice? A Critique of Tommie Shelby," *Critical Philosophy of Race* 1, no. 1 (2013): 1–27; Charles W Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism* (Oxford University Press, 2017).

<sup>42</sup> Leif Wenar, "Reparations for the Future," *Journal of Social Philosophy* 37, no. 3 (2006): 396–405. Pgs. 403-405.

<sup>43</sup> Wenar. Pgs 396-397.

<sup>44</sup> Rawls seems to offer a stronger claim, one that implies that the views I've labeled "snapshot" views are somehow incoherent: "Thus in this kind of procedural justice the correctness of the distribution is founded on the justice of the scheme of cooperation from which it arises and on answering the claims of individuals engaged in it. A distribution cannot be judged in isolation from the system of which it is the outcome or from what individuals have done in good faith in the light of established expectations." I won't lean on a claim this strong here. Rawls, *A Theory of Justice*. Pg 76.

<sup>45</sup> Nozick's "entitlement theory of acquisition" counts as historical in the technical sense considered here. Robert Nozick, *Anarchy, State, and Utopia*, vol. 5038 (Basic books, 1974), 150–51; Rawls, *A Theory of Justice*.

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We can only get from the status quo distribution to a stable world characterized by the recommended distributions by expense of considerable effort, labor, investment, and other costs. In the transitory period where this work is done, there will be winners and losers across of a host of domains of human interaction, resulting in a field of benefits and burdens. These transitional burdens must also be distributed. Another way to describe the constructive view of reparations, then, is concerned with the distributive justice of a particular sort of transition – the transition from unjust social structure to a just one.

The constructive view thus sharply distinguishes two questions about distributive justice that are too often run together: diagnostic questions identifying problems with how resources are distributed in the status quo (stages 1 and 2) from prescriptive questions about distributive justice that ask what we should do about our current distribution of resources. Further, it provides a way of relating them to each other that clarifies what they have to do with one another.<sup>46</sup>

The vision emanating from the 1972 Black Political Convention in Gary, Indiana is particularly instructive as a historical example of the theory of the constructive view. The conference endorsed reparations as part of a broader “Anti-Depression Program” advanced by the Republic of New Afrika, which included provisions for the construction of a literal Black nation-state by plebiscites. Each location or region could vote in the plebiscite to join or abstain from the nation, and the territorial borders of the resultant nation-state would thus be literally constituted by election, since the Black nation would be composed of all and only the areas that elect to join.<sup>47</sup> It also called for a cession of land and a \$300 billion initial payout to help finance the nation-building process, justified by the history of “slavery and unjust war against the black nation”.

Nkechi Taifa provides a clear articulation of the philosophy of the constructive view in the broader section that the epigraph to this piece originates from:

*If the self-determining decision is to accept the U.S. offer of citizenship in the United States, then that citizenship must be unconditional and carry with it the requisite affirmative measures needed to effectively integrate the Afrikan into American society. If the self-determining decision is to return to a country in Afrika, those persons must have transportation resources plus those additional reparations necessary to restore enough of the Afrikan personality for the individual to have a reasonable chance of success in reintegrating into African society in the motherland. If the self-determining decision is to emigrate to a country outside of Afrika, the person must have the same reparations as persons emigrating to countries inside Afrika. If, finally, the decision is for an independent New Afrikan nation-state on this soil, then the reparations must be those agreed upon between the United States government and the New Afrikan government. The reparations must be at least sufficient to assure the new nation a reasonable chance of success in solving the problems imposed upon us by the Americans in our status as a colonized people.*<sup>48</sup>

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<sup>46</sup> For discussion of the problems relating distributive justice to reparatory justice (more conventionally understood), see Yepes 2009: Yepes, “Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice.”

<sup>47</sup> Dan Berger, “The Malcolm X Doctrine: The Republic of New Afrika and National Liberation on US Soil,” *New World Coming: The Sixties and the Shaping of Global Consciousness*, 2009, 50.

<sup>48</sup> Taifa, “Reparations and Self-Determination,” 10.

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Though Taifa certainly may have a preference between these options, she is clear and careful to that reparations for slavery and colonialism is consistent with a variety of choices at the level of the individual Black region or even person. For Taifa, reparations is the achievement of a state of affairs where the ability to choose between these disjuncts is meaningfully materially accessible to Black people, which requires material reparations to provide access to the resources required to make the choices practically available. This is also implicit in the Republic of New Afrika's decision to populate and demarcate the borders of the ex-U.S. Black nation-state through plebiscite rather than imposition.

Finally, something like the constructive view seems at work in the Movement for Black Lives policy platform. The platform's reparations section uses the word "harm" to describe the "past and continuing" effects stemming from "colonialism to slavery" through food, housing, redlining, and mass incarceration policies, and wisely asks for race specific policies to remedy these effects.<sup>49</sup> But this section of the proposal is situated within the full platform's larger vision of deep structural change, including its "invest-Divest" section, which describes fundamentally renegotiating the distributions of resources and social advantages from the status quo, and its "economic justice" section, which specifies general and universal political rights that should be upheld for all.<sup>50</sup> Taken together, the document represents a comprehensive view of justice that reparations contributes to, which I would describe as the constructive view in action.

In this respect, we can sharply distinguish the success of the Movement for Black Lives platform as an instance of the constructive view with something descriptively nearby but normatively far from the mark. Reparations paid by Germany for the crimes of the Holocaust to the state of Israel provide a clear historical example of something approaching the constructive view in action. The atrocities of the Holocaust – like those of the trans-Atlantic slave trade and of European colonialism – involved incalculable and unjustifiable human suffering.<sup>51</sup> The reparations paid Israel, however, neither represented an attempt to calculate it (as one might on the harm-repair view) nor primarily a making of amends (as on relationship-repair view). Nor did they represent the responsibilities of just *any* well-off country to just any displaced and aggrieved people. Instead, the reparations payment was calculated based on the estimated costs of resettling those who would become citizens of Israel – that is, according to forward-looking considerations that aimed to bring about a specific political outcome in the future.<sup>52</sup> Furthermore, the parties of this transfer were also non-accidentally related to the history that produced the reason for the transfer. This example is explicitly appealed to by Taifa in her explication of the case for reparations, for reasons that the constructive view more or less

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<sup>49</sup> "Reparations."

<sup>50</sup> "Invest-Divest," The Movement for Black Lives, n.d., <https://policy.m4bl.org/>; "Economic Justice," The Movement for Black Lives, n.d., <https://policy.m4bl.org/>.

<sup>51</sup> Frederick Honig, "The Reparations Agreement between Israel and the Federal Republic of Germany," *The American Journal of International Law* 48, no. 4 (1954): 564–78, <https://doi.org/10.2307/2195023>.

<sup>52</sup> I refer here specifically to the rationale for the resettlement payments, not the selection of land for resettlement, which needs to be justified on independent grounds. As such, this point provides no defense for either Israel's or the international community's treatment of Palestinians. I'm indebted to [personal communication redacted] for this point.

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restates: snapshot considerations established the outcome that needed to be pursued (resettlement) and historical distributive justice principles identified Germany as the party that ought to bear the costs.<sup>53</sup> Many of the recognizable features of the constructive view are at play in this example.

But this example is also instructively different from the constructive view. Pointing out this respect in which the financial relationship between Germany and Israel on the resettlement question is not to endorse where and under what circumstances the now-Israelis were resettled – that is to say, not to endorse the prices paid by *Palestinians*, who were disempowered and displaced by the resettlement scheme devised by other parties.<sup>54</sup> The ethical problems brought up by the occupation of Palestine underscore a virtue of the constructive view's demand for justice over the harm repair and relationship repair views, which demand reparations for specific target relationships or zones of welfare but often relegate questions about what will happen to everyone else to the background. Only an act of restructuring of the world *towards justice* counts as reparations on the constructive view, for which redress of past grievances is a necessary but insufficient condition. This is also a particular virtue of the Movement for Black Lives platform, which calls for targeted reparations for the descendants of American slavery but also for general structural changes that address what the resulting system will be like for all involved: including demands for the protection of political rights for workers of any ancestry to organize and divestment from fossil fuels to protect everyone's environment.<sup>55</sup>

Settling the amount of reparations to be demanded is an important question. Some argue that the amount of reparation demanded should be sufficient to return the total amount of wealth generated due to trans-Atlantic slavery and colonialism, which would undoubtedly be an astronomical amount on any serious calculation – hearkening back, implicitly, to the failed harm repair argument.

But on the most natural extension of the philosophically reconstructed version of the constructive view, backward looking considerations primarily establish *who*: who is to be burdened (and how) with the costs of correcting the distribution of goods and resources and who is to be benefited. They do not establish the extent to which each side is to be burdened and benefited – that target is set by the future looking considerations that aim to establish a just distribution of resources and goods. Then, wealth and capital transfer demanded by corrective justice as I have construed it here would not be queued to the immeasurable amount of value plundered from colonized nations by colonizing nations, but rather to whatever amount is required to produce a just future. Moreover, they would be limited by the ability of the relevant liable parties to pay in quite conventional ways, given that a just distribution is the target goal and attempts to achieve this by burdening the poor or less powerful beyond what they can afford is a contradiction in terms.<sup>56</sup>

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<sup>53</sup> Taifa, "Reparations and Self-Determination," 10.

<sup>54</sup> Joseph Massad, "Palestinians and Jewish History: Recognition or Submission?," *Journal of Palestine Studies* 30, no. 1 (2000): 52–67.

<sup>55</sup> "Economic Justice"; "Invest-Divest."

<sup>56</sup> Again, for further discussion of the seeming conflict between corrective justice and distributive justice conventionally understood, see Yepes 2009: Yepes, "Transformative

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Admittedly, this philosophical reconstruction is in some tension with various activist arguments for reparations, most notably with respect to arguments attempting to establish how large the costs of reparations ought to be. Though the broad contours of the arguments for reparations considered in the previous section are concerned with distributive justice, rationales for the amounts demanded often proceed on the harm-repair model, which I have rejected here. For example, the account given of the constructive view here doesn't provide rationale or support for calculations of reparations amounts that construe them as back wages for unpaid labor during slavery.<sup>57</sup>

### III. Conclusion

I've sketched a constructive view of reparations that takes self-determination and distributive justice as its goal and subject matter. This critical reconstruction of activists' views clashes directly with the repair and relationship views' ways of making out the harms of slavery and, especially, the extent of reparations owed that have been articulated by these peoples.

Maybe the descendants of the colonizers and inheritors of their spoils are sorry, maybe they are not. Maybe we'll be bosom buddies, maybe we won't. Maybe paying reparations will confer political and moral legitimacy on the paying states, perhaps it will not. But I side with voices like the Movement for Black Lives and the Republic of New Afrika in insisting that none of these possibilities are the point. Reparations is about the just construction of a better world.

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Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice.”

<sup>57</sup> Dalton Conley, “Forty Acres and a Mule: What If America Pays Reparations?,” *Contexts* 1, no. 3 (2002): 13–20.

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