

## Reparations to the Privileged?

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### Abstract:

Many believe that we owe reparations to groups who suffered significant injustice in the past. Oftentimes, groups who suffered historical injustice are not very well-off today, especially when compared to the groups who imposed the injustice on them. However, in some cases, groups who suffered historical injustice are better-off today than the groups who imposed the injustice on them. Under these circumstances, ought the now-better-off group who suffered historical injustice receive reparations from the now-worse-off group who were historical oppressors? Many will think not. Problematically, most of our current theories of reparations, I demonstrate, imply that worse-off groups must pay reparations to better-off groups, if the worse-off group committed a serious injustice against the better-off group in the past. Those theories that avoid this conclusion do so only by severely limiting when reparations are owed generally, leading them to counterintuitive results in more ordinary cases.

## 1. Introduction

Reparations are currently a hot topic in our public discourse.<sup>1</sup> Going beyond mere words, some governments (typically at the local level) have begun issuing or are considering issuing reparations to groups who suffered significant injustice in the past.<sup>2</sup> For instance, the city of Evanston, Illinois recently implemented a program that offers \$25,000 to qualified Black applicants for down payments on homes or home repairs as a form of reparations for past injustice.<sup>3</sup> Eleven U.S. mayors have committed to similar programs.<sup>4</sup> In November of 2021, voters in the city of Greenbelt, Maryland will confront a ballot initiative asking whether the city should create a commission to study whether and how the city should pay reparations to its Black and Indigenous American residents.<sup>5</sup>

Popular discourse on reparations focuses on groups who suffered historical injustice and who are also not very well-off today, especially when compared to the groups who imposed the injustice on them. In the United States, most of the focus is on reparations to Black Americans (for the past harms of slavery and Jim Crow) and reparations to Indigenous Americans (for the past dispossession of their land and genocide of their ancestors). But there is no necessary connection between historical injustice and present-day disadvantage. It is logically possible – and sometimes actually the case – that groups who suffered injustice in the past are better-off today than the groups who imposed the original injustice. Under these circumstances, ought the now-better-off group who suffered historical injustice receive reparations from the now-worse-off group who were historical oppressors?

Here is an example of this. In the United States, Chinese persons were subject to horrific injustices inflicted by the white majority throughout the nineteenth century.<sup>6</sup> According to the 2019 American Community Survey (ACS), the median household income for white Americans

is \$69,823; the median household income for Chinese Americans is \$85,424.<sup>7</sup> Ought poorer white Americans transfer resources to wealthier Chinese Americans as reparations for the harms of the past? This question is almost never raised in our public discourse, perhaps for good reason. But it may be that our best philosophical theories of reparations – the same theories that tell us why white Americans owe reparations to Black and Indigenous Americans – commit us to the claim that poorer white Americans must transfer resources to wealthier Chinese Americans.

And yet, there seems to be something deeply wrong with requiring a group to transfer resources to those that enjoy relative privilege over them. I believe many will share this intuition. If the intuition is correct, then it poses a serious problem for our current theories of reparations. Most of our current theories, I shall demonstrate, imply that worse-off groups must pay reparations to better-off groups, if the worse-off group committed a serious injustice against the better-off group in the past. Transferring resources from the poor to the rich, though, offends many of our sensibilities. Those theories that avoid this conclusion do so only by severely limiting when reparations are owed generally. These theories can address the sorts of cases I am interested in, but only by getting the wrong answer in more ordinary cases. I do not say how this dilemma should be resolved, because I do not know how to resolve it. But it *must* be resolved if we are to have a compelling theory about how the harms of the past are to be rectified.

The structure of the paper is simple. In the next section I present two cases (§2). In the first case, the Majority commits horrific injustices against a group called the Statics. Reforms are passed, and the unjust treatment eventually ceases. Several generations later, the Statics are languishing, and the Majority are still socially and economically superior. Many will have the intuition that the present-day Majority owe reparations to the present-day Statics. In the second case, the Majority commits horrific injustices against a group called the Prosperers. Reforms are

passed, and the unjust treatment eventually ceases. Several generations later, the Prosperers are now flourishing, and it is the Majority that are languishing. Many will have the intuition that the present-day Majority should not pay reparations to the present-day Prosperers. What can explain our diverging intuitions in these two cases? None of our existing theories of reparations can, I argue (§§3-6).

This paper is related to a small literature that examines a tension between reparations and egalitarianism.<sup>8</sup> The tension is this. Suppose egalitarianism demands distribution  $D$ . Now suppose a theory of reparations also demands  $D$ . If true, then the theory is redundant. Now suppose our theory of reparations demands a distribution other than  $D$ . If true, then the theory conflicts with egalitarianism, which gives the egalitarian reason to reject it. Blomfield offers a convincing response to one horn of this dilemma.<sup>9</sup> Egalitarianism, she argues, does not pick out a unique possible world (i.e., a single distribution  $D$ ) for us to strive in pursuit of, but rather a set of possible worlds (i.e., a set of distributions  $D_1, D_2, \dots, D_n$ ). So long as our theory of reparations picks out one world in this set, then the theory is no longer redundant. In fact, the theory is complementary to egalitarianism.

Blomfield's response pushes back against one horn of the dilemma – that theories of reparations may be redundant. But it does not do much to address the concern that theories of reparations may actively *conflict* with egalitarian conclusions. And in fact, my paper shows that many theories do just that. Most theories, I shall show, lead to the conclusion that the worse-off Majority must transfer resources to the better-off Prosperers, which seems to be an anti-egalitarian conclusion. The few theories that avoid this conclusion do so by making reparations toothless. These theories cannot say that the better-off Majority should transfer resources to the worse-off

Statics for the harms of the past, a paradigmatic case where many will think reparations are owed.<sup>10</sup>

One important clarification before beginning. This paper is concerned with reparations understood in terms of a *transfer of resources* from a group that perpetuated historical injustice to a group that suffered historical injustice. But not all reparations take this form. Reparations can be symbolic and need not involve a transfer of resources. In cases of symbolic reparations, “what is wanted isn’t a legal settlement with payments in cash but an apology or some other form of acknowledgment and recognition.”<sup>11</sup> My paper does not present a dilemma for symbolic reparations. I grant that the Majority owe both the Statics and the Prospers an apology and recognition for their past transgressions. Many, however, understand reparations in terms of resource transfers. It is reparations of this kind that I am interested in.

## 2. The Statics and the Prospers

Let us imagine two countries. In the first country, the Majority group is on top. They are wealthy, have good access to education and employment, have good access to healthcare, and so on. In general, life for the Majority is good. Things are very different for the Statics, however. The Statics are treated horrifically by the Majority. They are banned from schools and employment opportunities; they are ridiculed, humiliated, and mocked; in some cases, they are the subject of extralegal violence, for which the offending members of the Majority are never punished.

Things eventually change, though. After years of mass civil disobedience and political pressure from the Statics, laws are passed that prevent the Majority from engaging in unjust

conduct against the Statics. The Statics are now allowed in Majority schools and cannot be discriminated against in the labor market. In general, the Majority are now more tolerant of the Statics, though not perfectly so. Finally, all extralegal violence against the Statics by members of the Majority is quickly prosecuted by the state. Majority members who commit such violence are punished harshly for their crimes.

Nonetheless, life is still not great for the Statics. Five generations after the reforms are passed, schools in areas with a high concentration of Statics are far worse than schools in areas with a high concentration of Majorities. Though they can work in any field they please, the Statics' poor education results in low-paying jobs that are less fulfilling than the jobs many members of the Majority possess. The Statics have far less wealth than the Majority. They also have worse access to healthcare and have a lower life expectancy as a result. In general, life is still not great for the Statics even five generations after the reforms, at least when compared to the life of the average member of the Majority.

If it were suggested that the Majority pay reparations to the Statics for the injustices of the pre-reforms past, many would agree. I myself share this intuition and will hold it fixed throughout the remainder of the paper.

Now let us consider a second country. In this second country, the Majority group is once again on top. They are wealthy, have good access to education and employment, have good access to healthcare, and so on. In general, the Majority lead good lives. Things are very different for the Prospers, however. The Prospers are treated horrifically by the Majority. They are banned from schools and employment opportunities; they are ridiculed, humiliated, and mocked; in some cases, they are the subject of extralegal violence, for which the offending Majority members are never punished.

Things eventually change. After mass civil disobedience and concentrated political pressure from the Prospers, laws are passed that prevent the Majority from engaging in unjust conduct against the Prospers. The Prospers are now allowed in Majority schools and cannot be discriminated against in the labor market. In general, the Majority are now more tolerant of the Prospers, though not perfectly so. Finally, all extralegal violence against the Prospers by members of the Majority is quickly prosecuted by the state. Majority members who commit such violence are punished harshly for their crimes.

So far, our two hypothetical countries have a similar history, but this is where their paths diverge. Five generations after the reforms are passed, the Prospers are now on top. They are far wealthier than the Majority. The Prospers send their children to better schools than Majority members do. Because they are better educated, the Prospers often end up with more satisfying and higher-paying jobs. Consequently, they have better access to healthcare and live longer lives. The Majority, on the other hand, are languishing economically. Though not living in abject poverty, the lives of Majority members are fraught with financial difficulty. Importantly, the Prospers do not mistreat nor did they ever mistreat the Majority. They did not achieve their superior economic and social status through illicit or immoral means. Through a combination of luck and skill, the Prospers now live far better lives than the Majority.

Should the Prospers receive reparations from the Majority for the historical injustices done to them five generations ago? Many will say that they should not. It cuts against our intuitions to suggest that the economically inferior Majority should transfer resources to the economically superior Prospers. Transfer from the disadvantaged to the privileged is hard to square with our sense of justice. This intuition is also one that I share, and one that shall also remain fixed throughout the paper.

So, the puzzle is this: what theory of reparations implies that the Statics *should* receive reparations from the Majority while the Prospers *should not*? Throughout the rest of the paper, I shall argue that none of our existing theories can say this.

### 3. Family Lines

Janna Thompson offers a compelling theory of reparations.<sup>12</sup> Thompson's theory is developed with an eye toward what she calls the "Exclusion Principle." This principle says "that individuals and collectives are entitled to reparation only if they were the ones to whom the injustice was done. Sarah cannot be recompensed for an injury done to Sam."<sup>13</sup> The Exclusion Principle presents a challenge for anyone who insists that persons should receive reparations for injustices committed in the distant past. *Prima facie*, the principle suggests that neither the Statics nor the Prospers should receive reparations for harms committed several generations ago.

Thompson pushes back against this implication by following John Rawls and taking as her basic unit of analysis *family lines*.<sup>14</sup> There are two reasons to focus on family lines. First, family lines are personal relationships of love and care; they embody the special regard that members are supposed to have for each other and their willingness to benefit each other.<sup>15</sup> Second, family lines are "associations that provide individuals with recognition. Family members are predisposed to understand and value each other's activities."<sup>16</sup>

A focus on family lines allows Thompson to justify reparations for past injustice in a manner that does not run afoul of the Exclusion Principle. In fact, there are two arguments for reparations grounded in family lines. The first argument concerns the right of bequest. Parents and grandparents are entitled to pass (at least some) of their resources on to their children and grandchildren. Reparations make it "possible for descendants of victims of injustice to claim

their inheritance—even if their society is now just in all other respects.”<sup>17</sup> Consider Althea who suffers injustice at the hands of Bertha. As a result of this injustice, Althea loses most of her wealth. Cassidy, Althea’s child, can make a claim on Bertha (or Bertha’s descendants) as a part of her right to inherit some of her mother’s wealth that was expropriated by Bertha. This conclusion does not run afoul of the Exclusion Principle, because Cassidy does not claim compensation for Althea’s harm. Instead, she claims compensation for a different harm – that is, missing out on the inheritance that she would get were Bertha not to commit the initial injustice against her mother.

A focus on family lines generates a second argument for reparations. Thompson claims that family lines *themselves* can be the subject of injustice, thus creating claims to compensation. She writes:

An injustice is directed against family lines when the perpetrators seek to wipe out family lines, keep them in perpetual slavery or submission, or attempt to prevent individuals of certain kinds from maintaining family relations, carrying out family obligations, or receiving entitlements as members of a family.<sup>18</sup>

So, injustice can be committed not only against individuals, but against family lines as well.

Importantly, when a family line suffers injustice, it is *everyone* in the line that is harmed, not just those who were alive when the specific injustice occurred. As Thompson articulates it:

Those whose family lines were in the past attacked, exploited, suppressed, or denigrated are likely to suffer from feelings of anger, regret, sadness, or insecurity, at least in those cases where the damage done has not been alleviated by more recent social developments.<sup>19</sup>

Once we recognize that *everyone* in a family line is harmed when an injustice is committed against the line, it becomes clear that this argument for reparations also circumnavigates the Exclusion Principle. Cassidy is not owed reparations because Bertha committed an injustice against her mother (Althea) at some particular time *t*. Instead, she is owed reparations because Bertha (let us suppose) committed an injustice against Althea's entire family line, of which Cassidy is a member.

We can now turn to what Thompson's two arguments have to say about what the Majority owe the Statics and the Prospers. Let us first look at the inheritance argument. There are some tricky issues here. As Thompson notes, the inheritance argument is quite limited in its scope, in that it becomes weaker as time goes on. She writes:

Parents mean to express their love or connection to their children or grand-children and think that their society ought to ensure that these individuals obtain their inheritance.

They are not likely to be so much disturbed by the possibility that their distant descendants may fail to receive these things.<sup>20</sup>

In short, claims to lost inheritance grow weaker as time goes on, because one's great-great-great-great grandmother probably never intended for one to inherit her wealth. Beyond this, claims to lost inheritance grow weaker as time passes on because it becomes murky what exactly one's ancestors possessed before the injustice occurred; even murkier is determining what they would have possessed (i.e., how their assets would have grown) absent the injustice.<sup>21</sup>

The limited scope of the inheritance argument suggests that the Majority do not owe the Prospers anything. By hypothesis, the case takes place five generations after the initial injustice was inflicted on the Prospers. The initial Prospers who suffered injustice had no intention of bequeathing resources to their descendants five generations down the road, and the present-day

Prospers have no way of knowing what was taken from the initial Prospers and what the Prospers would have in present day if the initial injustice never occurred. Thus, the inheritance argument gets the right answer in this case. But, it does so at the cost of saying the exact same thing in the case of the Statics. For the exact same reasons, the Statics are also not owed reparations from the Majority. So, Thompson's inheritance argument can explain our intuitions about the Prospers, but not our intuitions about the Statics.

The argument grounded in harm to family lines is far wider in scope. What does this argument have to say about what the Majority owe the Statics and the Prospers? The argument says that the Majority owe reparations to the Prospers. This is because the harm inflicted on the Prospers' family line is in no way diminished simply because the Prospers are currently flourishing. Thompson understands harm to family lines as consisting of feelings of anger, regret, sadness, or insecurity grounded in what happened in the past.<sup>22</sup> Wealth does not diminish these feelings. The present-day Prospers, when reflecting on the treatment of their ancestors, will still feel anger, regret, sadness, and insecurity. Thus, the harm to the Prospers' family line persists, so they are owed reparations from the present-day Majority. Members of the present-day Statics will also feel anger, regret, sadness, and insecurity when reflecting on the treatment of their ancestors, so they too are owed reparations from the present-day Majority. Hence, Thompson's second argument can explain our intuitions about the Statics, but not our intuitions about the Prospers.

#### 4. Inheriting Claims

Bernard Boxill develops a theory of reparations grounded in inheritance of owed compensation.<sup>23</sup> Quite clearly, slaves were owed compensation from slaveowners. This claim to

compensation can be inherited by the descendants of slaves: “The inheritance argument does not say that African Americans have a claim for reparation based on the enslavement of their ancestors. It says they have a claim to collect the compensation that was owed to their ancestors but was never paid.”<sup>24</sup> This seems plausible. Suppose Bertha inflicts an injustice on Althea. Bertha then owes Althea compensation for this injustice. Suppose the debt is never paid. It does not seem farfetched to suggest that Cassidy, Althea’s child, inherits Althea’s right to compensation from Bertha.

Boxill’s inheritance argument runs into problems when we start applying it to groups rather than individuals, and when we extend the time horizon across multiple generations. Consider the first problem: many claim that white Americans owe the descendants of slaves reparations for slavery, but many white Americans never owned slaves, nor did they descend from persons who did own slaves. And the second problem: many white Americans are far removed from the evils of slavery; they did not participate in the institution and think that the entire system of slavery was repugnant. These two problems lead us to wonder: how can white Americans broadly construed be the ones who inherit the debts of past slaveowners? Boxill revises the inheritance argument to get around these two objections.

First, slaves and their descendants are not only owed reparations from actual slaveowners but from those who “assisted, concurred, or consented” to the slaveholder’s actions.<sup>25</sup> In other words, anyone complicit in slavery owes a debt. To be complicit in slavery, it is sufficient that white Americans failed to express active dissent against the institution of slavery.<sup>26</sup> This move implicates most (but not all) white Americans who existed when slavery was still occurring.

Boxill gets around the second concern – that current white Americans are far removed from slavery – by noting that many white Americans inherited assets from those who either

owned slaves, or who were complicit in slavery. Since slaves and their descendants have a claim to these assets, white Americans who inherited these assets are obligated to pay. Boxill writes:

This reparation was never paid. Instead each white generation passed on its entire assets to the next white generation. I am not speaking of those few who inherited specific parcels of land or property from the supporters of slavery. I am speaking of whole generations. The whole of each generation of whites passed on its assets to the whole of the next white generation because each generation of whites specified that only whites of the succeeding generation were permitted to own or compete for the assets it was leaving behind. But as I have already shown, the slaves had titles to reparation against these assets. And we can assume that the present generation of African Americans are the slaves' heirs. Hence the present generation of African Americans have inherited titles to a portion of the assets held by the present white population....<sup>27</sup>

We thus have a compelling argument for reparations. Those who suffer historic injustice have claims to the assets of those who committed the injustice against them, as well as those who were complicit in the injustice. This claim is passed down to the descendants of those who suffered the initial injustice. The duty to compensate is passed down to the descendants of the transgressors, insofar as they inherit the assets the initial victims and their descendants have claims to.

Boxill adds an important proviso to his argument that will be relevant for us. When it comes to those who inflict the initial injustice, there is no limit to what they owe: "The transgressor can be compelled to make reparation from his crime, even if he made no profit from it, and even if making reparation puts him in danger of perishing."<sup>28</sup> Things are different, however, for the descendants of the oppressors:

Finally, even if [descendants of oppressors] did inherit assets from [their oppressor ancestors], they have to part with no portion of these assets, including that portion his victims have titles to as reparation for the harms he caused them, if this will put them in danger of perishing. In such a case the victims' rights to reparation are canceled by the Fundamental Law of Nature that requires that as many innocents as possible be saved.<sup>29</sup>

So, there are no limits on what initial transgressors owe the victims of injustice and their descendants, but there *are* limits on what the descendants of the initial transgressors owe. If paying their debt means the descendants of the transgressors would perish, then their debt is cancelled (at least until they are materially better-off).

Let us now examine what Boxill's inheritance argument has to say about what the Majority owe the Statics and the Prospers, starting with the Prospers. The first generation of the Majority commits horrific injustices against the first generation of Prospers. We can also suppose that those Majority members who did not commit injustice were at least complicit in the system overall, in that they did not actively dissent against it. Because of this, the first generation of Prospers have a claim to the assets of the first generation of the Majority. The debt is never paid. Since the debt is never paid, future generations of Prospers inherit this claim to compensation. And insofar as the first generation of the Majority passes on their assets to their progeny, future generations of the Majority owe a portion of these assets to the Prospers. When we arrive at the present day, the disadvantaged Majority owe reparations to the flourishing Prospers. By the same reasoning, the present-day Majority will also owe reparations to the present-day Statics. So, Boxill's argument cannot distinguish between our two cases, and thus cannot account for our diverging intuitions.

There are two objections to my application of Boxill's inheritance theory to the case of the Majority and the Prospers. If either of these objections succeed, then Boxill's theory *can* say that the present-day Majority owe the present-day Statics reparations, but do not owe the present-day Prospers anything.

Here is the first objection. By assumption of the case, the present-day Majority are not well-off compared to the present-day Prospers. This, it might be thought, is evidence that the Majority did not (in the Prospers case) pass down their assets (to which the Prospers and their descendants have a claim on) through the generations. If they did not pass down their assets, then the present-day Majority owe nothing to the present-day Prospers. On the flipside, the present-day Majority are well-off compared to the present-day Statics, so we may infer that the Majority *did* pass down their assets in the Statics case. Since they passed down their assets, the present-day Majority owe the present-day Statics some of these assets. Hence, Boxill's theory can distinguish between the two cases.

These inferences are not sound. In the Prospers case, it is possible for the Majority to pass down assets from the initial generation to the present-day generation and still be worse-off than the Prospers in present day. This is because generational wealth is but one determinant of current wealth. The Majority are worse-off than the Prospers today not because they failed to pass down wealth to their descendants, but because the Prospers made tremendous economic gains through a combination of skill and luck, gains that the Majority failed to make. There is no contradiction in saying that the present-day Majority inherited their ancestors' assets but are still nonetheless poorer than the present-day Prospers (who inherited nothing). It is also possible that, in the Statics case, the initial Majority did *not* transfer assets to their descendants, but their descendants are still better-off than the present-day Statics. Again, generational wealth is but one determinant

of current wealth. We cannot, by merely looking at the status of the Majority relative to the Statics and the Prospers, infer anything about what was or was not passed down through the generations of Majorities.

Here is the second objection. Boxill's proviso – that the duties of descendants to compensate dissipate under certain circumstances – may render the duties of the present-day Majority to the present-day Prospers void, but *not* the duties of the present-day Majority to the present-day Statics. If true, then Boxill's theory says that the Majority owe reparations to the Statics but not the Prospers.

Recall the precise nature of Boxill's proviso: the duties of descendants to compensate is rendered void if paying the debt would cause them to perish. This narrow proviso does not apply in the case of the Majority and the Prospers. The reason why is that perishing is not at stake. By assumption of the case, the Majority are not as well-off as the Prospers. But not being as well-off as the Prospers does not imply that the Majority would literally starve to death if they paid the Prospers what they are owed. Compensating the Prospers would indeed be a hardship for the languishing Majority, but by no means a life-ending hardship. They could set up a payment plan that allows the Majority to transfer limited resources to the Prospers on an annual basis for years to come, such that the Majority is still left with enough so that they do not literally starve to death. So, the proviso does not void the Majority's debt to the Prospers.

## 5. Inheriting Punishment

In a recent paper, Jason Fissette develops a novel theory of reparations grounded in punishment.<sup>30</sup> Fissette develops this theory by closely examining Kant's theory of right; he believes that a charitable reading of Kant commits one to the punishment theory of reparations.

Our concern is not with whether the punishment theory of reparations is indeed implicit in Kant's work. Our question is whether this novel theory of reparations can get the right result in both the Statics and Prospers cases.

Fisette's argument for the punishment theory of reparations runs as follows:<sup>31</sup>

(P1) Violations of freedom must be punished.

(P2) The failure to punish violations of freedom must also be punished.

(P3) The punishable failure to punish violations of freedom is inheritable.

(P4) Slavery is a violation of freedom.

(P5) The enslavement of Black Americans has not yet been punished.

(P6) The present generation of Americans inherits a punishable failure to punish those complicit in slavery.

(P7) Reparations is a proportional punishment for those complicit in the failure to punish chattel slavery.

(C) Therefore, reparations for slavery must be made.

Fisette is clearly concerned with reparations for slavery in the United States, but his argument need not be so circumscribed. The argument can apply to any past "violations of freedom" that went unpunished. So long as what the Majority did to the Statics and the Prospers constitute violations of freedom (let us grant that this is the case) then the argument can be applied to our two cases, *mutatis mutandis*.

Let us walk through the argument. Actions of a certain kind ought to be punished. Punishable actions include violations of freedom (P1), but also a failure to punish those who violate the freedom of others (P2). So, Bertha should be punished if she violates Althea's freedom. But not only this, Cassidy should be punished if she could have punished Bertha for violating Althea's freedom, but did not. The key premise is (P3), which says that deserving punishment is inheritable.<sup>32</sup> Suppose Cassidy has a descendant, Dupree. Cassidy, we have seen,

deserves to be punished, so Dupree can inherit this desert. One way of punishing Dupree is by forcing him to pay reparations, presumably to the descendants of those whose freedom was violated in the past but whose violators were never punished (P7).<sup>33</sup> Hence, Dupree owes reparations to Althea's descendants. So, on this view, reparations are not about *compensating* for the harms of the past; they are about *inflicting punishment* that was never issued but should have been.

What does the punishment theory of reparations have to say about the Statics and the Prospers? It says the Majority owe reparations to both the Statics and the Prospers. Consider the Prospers case. Some members of the first generation of Majority violate the freedom of the first generation of Prospers. They deserve punishment. Those in the Majority who did *not* violate the freedom of the Prospers failed to punish their fellow Majority members. They too deserve punishment. This desert of punishment is inherited by the next generation of Majority. No punishment is inflicted on the next generation, however. So, the desert of punishment is once again passed down to the next generation of Majority. This continues until we get to the current generation of Majority. To extract punishment on the current generation of Majority, reparations should be extracted from them and given to the current generation of Prospers. So, the Majority owe reparations to the Prospers. The same reasoning applies to the case of the Majority and the Statics. Thus, the punishment theory of reparations cannot distinguish between our two cases. It says reparations are owed to both groups.

This should not be a terribly surprising result. Boxill's theory, which we have just examined, also fails to distinguish between our two cases. Both Boxill's and Fissette's theories are grounded in the notion of inheritance, but *what* is inherited differs. In Boxill's case, the descendants of *those harmed* in the past inherit claims to compensation. In Fissette's theory, the

descendants of *those who harmed* in the past inherit the desert of punishment. Neither theory can get the right answer, because claims to inheritance do not seem to depend on the status of others. Whether I inherit a claim to compensation does not seem to depend on how poorly off others are in my society; and whether I inherit desert of punishment does not seem to depend on how well-off others are. Yet, for both theories to get the right result, they would need to say something along these lines. Boxill's theory would have to say that the Prospers' inherited claim to compensation is voided precisely because of how poorly off the Majority are. And Fissette's theory would have to say that the Majority's inherited desert to be punished is voided precisely because of how wealthy the Prospers are. But such moves, absent any kind of additional argument, are *ad hoc*.

## 6. Failure to Rectify

George Sher<sup>34</sup> develops a compelling theory of reparations in response to nonidentity arguments against reparations.<sup>35</sup> Nonidentity arguments against reparations run roughly as follows. The point of reparations (according to some) is to make Althea, who suffered injustice at the hands of Bertha, no worse-off than she would have been were the injustice never imposed on Althea in the first place.<sup>36</sup> Suppose Bertha never makes Althea whole. Now consider Althea's child, Cassidy. Following the formula, reparations to Cassidy from Bertha (or Bertha's descendants) should make Cassidy no worse-off than she would have been were the injustice never imposed on Althea in the first place. Yet, were the injustice never imposed on Althea in the first place, Cassidy would probably not exist (assuming Cassidy is born after the injustice). Hence, it does not make sense to even think about how well-off Cassidy would be absent

Bertha's injustice; if Bertha never committed the injustice against Althea, Cassidy would have never been born.

Sher's theory of reparations is meant to circumnavigate these sorts of arguments. Sher begins by distinguishing between the injustice Bertha imposes on Althea, and a second but related injustice. This second, related injustice is the failure to rectify the initial injustice. For example, consider the case of land stolen from Indigenous Americans. This is certainly an injustice. However, there is a second, related injustice: the fact that no rectification was ever made for the initial theft of the land. In the case of the second injustice, this injustice does not occur at a specific time  $t$ , unlike Bertha's initial act of injustice against Althea. Rather, this second injustice occurs *for the remainder of Althea's days*. Since this second injustice occurs for the remainder of Althea's days, and since Cassidy is born before the end of Althea's days,<sup>37</sup> we can now coherently talk about Cassidy's welfare in a world where this second injustice – the injustice of failing to rectify – did not occur. Were the second injustice not to occur – that is, were Althea rectified for the initial injustice – Cassidy would be better-off than she is today. Hence, Bertha (or her descendants) must make Cassidy whole.

Cassidy is Althea's immediate descendant, but Sher's reasoning can be iterated for infinite generations. He writes:

If the child of an original victim of an injustice can be owed compensation for a wrongful failure to compensate that victim after the child is conceived, then the grandchild of the original victim can in turn be owed compensation for a wrongful failure to compensate the *child* after the *grandchild* is conceived; and the same holds, *mutatis mutandis*, for the original victim's great-grandchild, great-great-grandchild, and so on.<sup>38</sup>

Sher's theory of reparations thus elegantly gets around nonidentity objections to reparations. In this respect, it is a compelling theory of reparations. Our question now is: what does Sher's theory have to say about what the Majority owe the Statics and the Prospers?

Let us start with the Prospers. As our story goes, the Majority commits injustice against the Prospers. However, as Sher notes, there is a second injustice committed by the Majority against the Prospers: they never compensate the Prospers for the initial injustice. This injustice lasts for the remainder of the first generation of Prospers' days. Because the second injustice lasts for the remainder of the first generation of Prospers' days, and because the second generation of Prospers is born before the end of the first generation of Prospers' days, it follows that the second generation of Prospers would be better-off were this injustice not to occur. Hence, the second generation of Prospers are owed reparations from the Majority.

Because the Majority does not pay reparations to the second generation of Prospers, an injustice is done to them. Namely, the second generation is never compensated what they are owed. This injustice lasts for the remainder of the second generation of Prospers' days. Because this injustice lasts for the remainder of the second generation of Prospers' days, and because the third generation of Prospers is born before the end of the second generation of Prospers' days, it follows that the third generation of Prospers would be better-off were this injustice not to occur. Hence, the third generation is owed reparations from the Majority. Clearly, the reasoning can be iterated until we get to the present-day Prospers.

And so it follows that the present-day Majority owe reparations to the present-day Prospers. Thus, Sher's theory of reparations implies that the disadvantaged Majority must transfer resources to the privileged Prospers. The same reasoning also applies to the case of the

Statics – the Majority will also owe them reparations, according to Sher’s theory. Thus, Sher’s theory cannot distinguish between our two cases.

There is a way of revising Sher’s theory that may allow it to differentiate between our two cases. Andrew Cohen is in large agreement with Sher’s theory, but adds an important revision to it.<sup>39</sup> Cohen begins by noting an ambiguity in Sher’s account: it is unclear how exactly to measure the welfare gains Cassidy would receive were Althea compensated for Bertha’s failure to rectify. This is because parents have discretion concerning the resources they spend on their children. Suppose Althea was awarded one million dollars in compensation for Bertha’s failure to rectify. Perhaps she would have spent all this money on Cassidy, or maybe just some. Given the wide range of possibilities, it is difficult to determine what Cassidy’s welfare would have been in the world where Althea was compensated for Bertha’s failure to rectify the initial injustice.

Cohen has an elegant solution to this problem. Parents have duties to provide a minimum level of resources to their children. First, they must provide sufficient resources to ensure that their children do not perish. Second, a parent’s duties will also extend to “the provision of at least some of the material conditions required for the acquisition and development of a certain range of functionings.”<sup>40</sup> Call  $W$  the level of welfare parents have a duty to provide for their children. Since all parents have a duty to provide  $W$  for their children, we know that, were Althea compensated, Cassidy would at least be owed resources from this compensation sufficient to raise her welfare to  $W$ .

Hence, in the world where Bertha does *not* compensate Althea for her failure to rectify the initial injustice, Bertha (or her descendants) owes Cassidy sufficient resources to ensure that she is at welfare level  $W$ . As Cohen articulates it:

We need only note that if a child's right to parental support entitles her at least to some level of welfare beyond survival, then a transgressor who fails to compensate her parents for an earlier injustice can wrongfully harm the child by denying her access to commodities to which she is entitled.<sup>41</sup>

Cohen's revision gives a precise answer to what the descendants of those who were never rectified are owed, but in doing so he restricts *when* reparations are owed. Consider the following case. Bertha harms Althea, and never compensates her. This failure to rectify is a harm to Althea. Althea has a child, Cassidy. Even though Bertha never rectifies the injustice, Althea still has sufficient resources to provide welfare level W for Cassidy. In this case, Bertha no longer owes Cassidy anything. In Cohen's words:

Should the parents provide well for the child despite unsatisfied claims to compensation for an earlier injustice, the child would not seem to be entitled to the *additional* bump in welfare she *might* enjoy were her parents to receive the compensation they are due.<sup>42</sup>

Thus, Cohen's revision of Sher's theory places strict limits on when reparations are owed. If parents, who were never rectified for past injustice, can nonetheless provide sufficient welfare for their children, then their children are owed nothing.

Cohen's revision implies that the present-day Majority do not owe the present-day Prospers anything. The Majority harm the Prospers in the past, and never rectify this harm. According to Sher's theory, the harm of never rectifying the initial injustice is passed down through the generations, so a debt is owed to all future generations (at least until rectification is made). But according to Cohen's revision, this debt is cancelled as soon as the Prospers can supply sufficient welfare for their children. When the Prospers can ensure their children achieve welfare level W, the debt owed to the Prospers' children is cancelled. Since the Prospers are

quite well-off in our story, we shall suppose that, by the time we get to the present day, the Prosperers can provide welfare level  $W$  for their children. Hence, the Majority owe the Prosperers nothing, at least according to Cohen's revised theory.

Cohen's revised theory gets the right answer in the case of the Prosperers, but it is unclear whether it can still get the right answer in the case of the Statics. The Majority harm the Statics in the past, and never rectify this harm. According to Sher's theory, the harm of never rectifying the initial injustice is passed down through the generations, so a debt is owed to all future generations of Statics (at least until rectification is made). But according to Cohen's revision, this debt is cancelled as soon as the Statics can supply sufficient welfare for their children. So, the question is: can the present-day Statics supply sufficient welfare for their children? As the story goes, the Statics are not well-off compared to the Majority. But not being well-off compared to the Majority does *not* imply that the Statics cannot supply the minimal level of welfare for their children demanded by Cohen's theory. The Statics can be significantly poorer than the Majority but still be able to provide basic care for their children.

It is hard to say whether the Statics can supply welfare level  $W$  for their children in our story, because Cohen does not say what  $W$  is. He just claims that such a minimal standard exists, but never rigorously defines it. Given this, I will understand the case of the Statics and the Majority as follows: though the Statics are much worse-off than the Majority in present day, they can still provide the minimal amount of welfare for their children that they have a duty to provide. With this revision, I do not think our intuitions about the case change. The flourishing Majority still owe the languishing Statics reparations of some kind, even though the Statics can provide the minimal level of welfare for their children. But, according to Cohen's revised version of Sher's argument, the Majority owe the Statics nothing.

## 7. Conclusion

This paper examined what several theories of reparations have to say about the Statics and the Prosperers. The governing intuition is that the Majority owe reparations to the Statics, but not the Prosperers. No theory could say this, however. Thompson's harm to family lines account, Boxill's inheritance theory, Fissette's punishment theory, and Sher's account grounded in a failure to rectify past injustice all say that the Majority owe reparations to both the Statics and the Prosperers. By saying that the Majority owe reparations to the Prosperers, these theories reach inequalitarian conclusions. On the other hand, Thompson's inheritance argument and Cohen's revised version of Sher's account say that the Majority owe neither the Statics nor the Prosperers. By saying that the Majority do not owe reparations to the Statics, these theories make reparations toothless.

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<sup>1</sup> E.g., Rashawn Ray and Andre M. Perry, 'Why we need reparations for Black Americans', Brookings Institution (15 April 2020), <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/>; William Darity, Jr., 'Why reparations are needed to close the wealth gap', *The New York Times* (24 September 2021), <https://www.nytimes.com/2021/09/24/business/reparations-wealth-gap.html>; William P. Jones, 'What is owed', *The Nation* (8 September 2021), <https://www.thenation.com/article/culture/darity-mullen-reparations/>; P. R. Lockhart, 'What slavery reparations from the federal government could look like', NBC News (12 May 2021), <https://www.nbcnews.com/news/nbcblk/slavery-reparations-federal-goverations-looks-2021-rcna900>.

<sup>2</sup> Giulia Heyward, 'Reparations for black residents are becoming a local issue as well as a national one', *The New York Times* (25 September 2021), <https://www.nytimes.com/2021/09/25/us/reparations-african-americans-usa.html>.

<sup>3</sup> Rachel Treisman, 'In likely first, Chicago suburb of Evanston approves reparations for black residents', NPR (23 March 2021), <https://www.npr.org/2021/03/23/980277688/in-likely-first-chicago-suburb-of-evanston-approves-reparations-for-black-reside>.

<sup>4</sup> Adam Beam, '11 U.S. mayors commit to develop reparations pilot projects', Associated Press (18 June 2021), <https://apnews.com/article/joe-biden-race-and-ethnicity-government-and-politics-a9edb3b1292e40b1e82f33257b8d3222>.

<sup>5</sup> Karina Elwood, 'Should Greenbelt tackle reparations? Residents of this Maryland city will decide in November', *The Washington Post* (21 August 2021), <https://www.washingtonpost.com/dc-md-va/2021/08/21/greenbelt-adds-reparations-ballot/>.

<sup>6</sup> Charles J. McClain, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America* (Berkeley: University of California Press, 1994); Beth Lew-Williams, *The Chinese Must Go* (Cambridge: Harvard University Press, 2018).

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- <sup>7</sup> American Community Survey, ‘ACS 1-Year Estimates Selected Population Profiles’, 2019, retrieved from <https://data.census.gov/cedsci/table?t=002%20-%20White%20alone%3A017%20-%20Chinese%20%28except%20Taiwanese%29%20alone%20%28410-411%29%3A018%20-%20Taiwanese%20alone%20%28412-419%29&tid=ACSSPP1Y2019.S0201&moe=false&tp=false&hidePreview=true>. This latter figure is for persons of Chinese origin, excluding Taiwan. If one looks at persons of Taiwanese origin, then the median household income is \$102,405.
- <sup>8</sup> E.g., Roland Pierik, ‘Reparations for luck egalitarians’, *Journal of Social Philosophy*, 37 (2006): 423-40; Leif Wenar, ‘Reparations for the future’, *Journal of Social Philosophy*, 37 (2006): 396-405; Kok-Chor Tan, ‘Colonialism, reparations, and global justice’ in Jon Miller and Rahul Kumar (eds.), *Reparations: Interdisciplinary Inquiries* (Oxford: Oxford University Press, 2007), pp. 280-306 at §12.2; Andrew I. Cohen, ‘Corrective vs. distributive justice: The case of apologies’, *Ethical Theory & Moral Practice*, 19 (2016): 663-77; Megan Blomfield, ‘Reparations and egalitarianism’, *Ethical Theory & Moral Practice* (Forthcoming).
- <sup>9</sup> Blomfield, op. cit., §6.
- <sup>10</sup> One might say that this is a fine conclusion to reach, because an egalitarian theory of justice will demand that the better-off Majority transfer resources to the worse-off Statics anyways, so we get the right result at the end of the day. While true, this response turns reparations into something like a useless appendix. Reparations are basically never owed, and distributive justice does all the heavy lifting.
- <sup>11</sup> Dan Moller, *Governing Least* (Oxford: Oxford University Press, 2019), p. 232. Derrick Darby distinguishes between these two types of reparations in the context of reparations for slavery in the United States. See Derrick Darby, ‘Reparations and racial equality’, *Philosophy Compass*, 5 (2010): 55-66 at 56.
- <sup>12</sup> Janna Thompson, ‘Historical injustice and reparation: Justifying the claims of descendants’, *Ethics*, 112 (2001): 114-35. Thompson expands on these arguments in her book, *Taking Responsibility for the Past* (Cambridge: Polity, 2002). For the purposes of this paper, I will focus exclusively on her 2001 article published in *Ethics*.
- <sup>13</sup> Thompson, ‘Historical injustice and reparation’, p. 116.
- <sup>14</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 128.
- <sup>15</sup> Thompson, op. cit., p. 125.
- <sup>16</sup> Thompson, op. cit., p. 126.
- <sup>17</sup> Thompson, op. cit., p. 130.
- <sup>18</sup> Thompson, op. cit., p. 133.
- <sup>19</sup> Thompson, op. cit., p. 134.
- <sup>20</sup> Thompson, op. cit., p. 131-2.
- <sup>21</sup> Thompson, op. cit., p. 132.
- <sup>22</sup> Thompson, op. cit., p. 134.
- <sup>23</sup> Bernard Boxill, ‘A Lockean argument for black reparations’, *Journal of Ethics*, 7 (2003): 63-91. See also Bernard Boxill, ‘The morality of reparation’, *Social Theory and Practice*, 2 (1972): 113-23. For criticism of inheritance-based arguments, see Stephen Kershnar, ‘The inheritance-based claim to reparations’, *Legal Theory*, 8 (2001): 243-67. In an earlier piece, Kershnar seems to offer a defense of reparations grounded in inheritance. See Stephen Kershnar, ‘Are the descendants of slaves owed compensation for slavery?’ *Journal of Applied Philosophy*, 16 (1999): 95-101.
- <sup>24</sup> Boxill, ‘Lockean argument’, p. 69.
- <sup>25</sup> Boxill, ‘Lockean argument’, p. 74.
- <sup>26</sup> Boxill, ‘Lockean argument’, p. 74.
- <sup>27</sup> Boxill, ‘Lockean argument’, p. 76.
- <sup>28</sup> Boxill, ‘Lockean argument’, p. 78.
- <sup>29</sup> Boxill, ‘Lockean argument’, p. 78.
- <sup>30</sup> Jason R. Fissette, ‘At the bar of conscience: A Kantian argument for slavery reparations’, *Philosophy and Social Criticism* (Forthcoming).
- <sup>31</sup> Fissette, op. cit., p. 5-6.
- <sup>32</sup> This is the most controversial premise of the argument. For a defense, see Fissette, op. cit., p. 5.
- <sup>33</sup> Why are reparations suitable punishment? For a defense, see Fissette, op. cit., p. 9.
- <sup>34</sup> George Sher, ‘Transgenerational compensation’, *Philosophy & Public Affairs*, 33 (2005): 181-200.
- <sup>35</sup> E.g., Christopher Morris, ‘Existential limits to the rectification of past wrongs’, *American Philosophical Quarterly*, 21 (1984): 175-82.
- <sup>36</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 57.

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<sup>37</sup> This is not necessarily true. Althea can die in the act of conception, and Althea's partner is the one who births Cassidy. In this case, Cassidy is born *after* the end of Althea's days. Sher addresses these sorts of objections in the back half of his paper.

<sup>38</sup> Sher, *op cit.*, p. 194.

<sup>39</sup> Andrew I. Cohen, 'Compensating historic injustices: Completing the Boxill and Sher argument', *Philosophy & Public Affairs*, 37 (2009): 81-102.

<sup>40</sup> Cohen, 'Compensating historic injustices', p. 90.

<sup>41</sup> Cohen, 'Compensating historic injustices', p. 91.

<sup>42</sup> Cohen, 'Compensating historic injustices', p. 91.