

REPARATIONS AND THE RECTIFICATION OF RACE

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ABSTRACT. Positive law and problems with identifying beneficiaries confine reparations for U.S. slavery to the level of discourse. Within the discourse, the broader topic of rectification can be addressed. The rectification of slavery includes restoring full humanity to our ideas of the slaves and their descendants and it requires disabuse of the false biological idea of race. This is not racial eliminativism, because biological race never existed, but more importantly because African American racial identities and redress of present racism are based on lifeworlds of race in contrast with which the biological idea has been an external imposition.

KEY WORDS: African Americans, biological race, German Jews, historical responsibility, Japanese Americans, positive law, racial categories, racial eliminativism, racism, rectification, reparations, slavery

THE DISCOURSE OF REPARATIONS

Contemporary discussion of reparations to African Americans for U.S. chattel slavery is complicated and difficult to resolve. I suspect that at this time consensus and the practicality of resolutions are less important than serious engagement in a discourse that *purports* to be about what to do. Whatever can be agreed upon concerning what ought to be done is probably going to be impractical, for the following reason. Positive law, which is the historical record of laws and their applications, is limited by time and place. Laws are promulgated by governments over limited geographical areas where they have authority. The requirement of a just society that laws be promulgated means that laws must be knowable to those to whom they apply. It follows from this that under a just legal system one cannot be charged with crimes for actions that are considered crimes only after they have been committed. This is a disappointing dimension of justice wherever past actions, which are subsequently recognized to be crimes, were not classified as crimes when they were committed. The same holds for unjust laws whose injustice is legally recognized at a later date. There is no legal mechanism to punish those who enacted the unjust laws, applied them, or acted in accordance with them. Action within the legal system, which addresses past injustice that was in its



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time legal, because there were no laws against it, requires extraordinary measures.

If U.S. state and federal governments enacted reparations for slavery, such reparation could not be based on legal arguments, but would require moral convictions that over-rode a just system of positive law (the system must be presumed to be just already, or else reparations could not be enforced or their new ownership made secure). In a society that remains racist, with relatively few African American government officials, there is little reason to expect that such moral convictions would reach the necessary degree of consensus. This in itself suggests that substantial and serious reparation for slavery is not now a *practical* subject – something which almost all contemporary writers on the subject seem to acknowledge. Nonetheless, it is important for the discourse of reparations (and would be important for the practical implementation of reparations) to clarify what is being repaired, the crime of enslavement or the value of forced labor performed by slaves. Slavery would be wrong if the labor extracted from slaves had no value and never profited those who extracted it.¹ And the material gains from the forced labor of slaves would be ill-gotten gains, stolen property, presumably in perpetuity, if the law recognized a past right of slaves to payment for their labor, as well as rights to bequeath wealth.² So the (moral) objects of reparations would be both enslavement itself and the value of slave labor.

Because the discourse about reparations is about wrongs that were wrong regardless of their legal standing at the time they were perpetrated, the weight of this discourse is moral. The discourse has the potential to put some people in the right and others in the wrong.³ The discourse is also moral in that it requires looking beyond the law, not only to make judgments that have no standing in the legal system, but to understand the legacy of slavery for those who, despite the fact that the present legal system does not permit slavery or other forms of discrimination, remain

¹ On the distinction between the wrongness of slavery and the wrongful material gains that slave owners and those with whom they did business had access to, see J. Angelo Corlett, *Race, Racism and Reparations* (Ithaca: Cornell University Press, 2003), Chapter 9.

² See Bernard Boxill, “The Morality of Reparations,” *Social Theory and Practice* 2 (1972), pp. 113–122.

³ For instance, in the comprehensive arguments for reparations for both Native Americans and African Americans, Corlett aims to establish a moral case for reparations. He acknowledges that the practical implementation of reparations would constitute a hardship for the majority of white Americans. It is not clear from Corlett’s text why he thinks that white Americans would accept the moral argument (Corlett, *Race, Racism and Reparations*, Chapters 8 and 9).

less well off as a result of inherited social disadvantage.⁴ There is also the question of whether those who do not belong to the group descended from slaves continue to have advantages that are the result of the same legacy, advantages that would be morally wrong because slavery and its legacy are morally wrong.

Perhaps equally as profound as its moral dimension, the discourse of reparations could create an historical consciousness in America, which would be much deeper than the business-as-usual, self-congratulatory and self-indulgent mythology about historical events. The discourse of reparations creates dialogues about responsibility that go beyond actions in the life spans of contemporaries. This is a deep and dangerous responsibility. Deep, because it can make U.S. citizens responsible for the past, simply because they are responsible for how they interact within a community whose members have different experiences of the effects of the past. And dangerous, because to deny such responsibility may require a devitalizing hardening of the heart, while to accept it may destabilize the hard-won secular idea that a person is responsible only for what is or was in her power to do or not do. Practical responsibility is limited to our actions, to what we can do in the world, now and in the future. However, the limits to practical responsibility do not extend to beliefs, feelings, thought or dialogue. We are responsible for what goes on in our minds, for what we make it our business to find out and know, for how we reflect on our knowledge and for how we think about others. We are responsible for what we choose to say and listen to, for what we read and write. Such responsibilities have no temporal limits. We can think about people who are long dead and we can think about how we think about them and how we should think about them. Such thought becomes a subject of moral reflection and ultimately will result in distinctive emotions and feelings. Although much of our psychic life is unbidden or out of our control, the kinds of inferences we draw, our standards for drawing them, and the experiences we seek out that will feed our imaginations are under our control.

Because we are responsible for how we think about the dead, because it is in our power to think about them in ways involving counter-factuals and in ways that are not impugned by being impractical, we have obligations toward those who were enslaved. We are obligated to think about the enslaved in a way that restores something to traditional ideas of them, something that has been lacking in representations of them in a racist culture. Such thought is a subject of discourse and participation in the

⁴ See the support of reparations as a form of understanding and concern for the plight of inner-city African Americans in Glenn C. Loury, *The Anatomy of Racial Inequality* (Cambridge: Harvard University Press, 2002), pp. 126–128.

discourse, either through dialogue or by attending to it, constitutes an historical responsibility.

That the discourse of reparations has this dimension of historical responsibility suggests that it is part of a bigger project, the project of *rectification*. Rectification is the ongoing project that fulfills the Enlightenment goal of universal human rights, not simply by promulgating universal rights doctrine, and implementing it in the present and future, but by doing what can be done about past violations of present universal human rights doctrine. For those who are irreparably disgusted with the Enlightenment doctrine of universal human rights – because that doctrine was applied to white male European property owners, exclusively, for so long – for those thus disaffected, the Enlightenment has a deeper doctrine than the violated universal human rights doctrine. The deeper Enlightenment doctrine is that thinking beings can and ought to make the world a better place than they find it – however “better” is to be defined in post-Enlightenment liberatory contexts. Indeed the very notion of a liberatory context beyond or after the historical Enlightenment, is part of the project of rectification that rests on the doctrine that one ought to make the world a better place than one finds it.

Because the discourse about U.S. slaves is about our ideas of them, and about the use of those ideas, it is not literally true that we can have obligations to the slaves themselves. Still, the pre-theoretical intuition that after all these years, something can and should be done about the wrong of U.S. slavery is expressed by the claim that something is owed to the slaves, even if it cannot be paid to them directly. It is in that less-than-literal sense that we have obligations to U.S. slaves.

There is now a broad recognition in liberatory scholarship and beyond that slaves were deprived of an important aspect of their humanity in the course of being incorporated into a society where only non-slaves – it is another question whether even they were free – had civil liberties and the right to develop their intellectual capacities, for instance, the right to learn how to read and write (or the right not to be barred from doing so). An understanding of how slaves were deprived of rights usually proceeds on the basis of an acceptance of a natural difference between slaves and non-slaves in the U.S. It is presumed to be a racial difference: the slaves were black and the descendants of slaves are black; slave owners were white and whites tend to have ancestors of the same race as slave owners. It is understood that Africans and their progeny were enslaved because they were black. The discourse of reparations thus takes place on an assumption that racial distinctions are natural distinctions that can be genealogically traced over time. Moreover, it is assumed that if racial categories are not natural

– because it is now widely conceded that racial categories are “social constructions” (however that is understood) – that they were nonetheless so effectively socially constructed as to form an ongoing reality that can to this day be taken for granted. However, within the more encompassing discourse of rectification, it becomes necessary to question those assumptions of the discourse of reparations. The questioning must take place before we can restore to our ideas of slaves the aspect of their humanity that was taken from them by their owners (and those with whom their owners conducted financial transactions that were ultimately supported by the ownership of slaves).

Why is it necessary to dig so deep? Because recognition of the social construction of racial categories raises questions of when they were constructed, by whom, and for what purpose, and also questions of whether they were on the whole good or bad social constructions. Most writers now concede that race was socially constructed as an ideology that would justify and enable the practice of slavery, but they often make the concession superficially, because they want to carry on with their work on the basis of the same social construction. The nature of the value of the social construction of race is thereby often neglected, glossed over. The value of the social construction of race has a moral component and one relating to truth and falsehood: It was morally wrong to create a hierarchy of human worth, based on biological racial categories, and the biological taxonomy of human racial categories is now known to be false.⁵ The false biology of race was taken as true within the social – in this case scientific – construction of race from the beginning, and it persists to this day, in racialized society that is partly the historical effect of slavery. The larger project of rectification, not to mention the even larger project of existing morally and thoughtfully in the world, requires a radical rethinking of those racial categories.

If this call for a rethinking of racial categories themselves is difficult to fathom in the present, highly *racialized* context, imagine a case of reparations for descendants of a religion whose practitioners were enslaved by members of another religion. Imagine that the enslaving religion had contemporary members who were much better-off than the descendants of the enslaved religion. Imagine that you think all religious categories are socially constructed and that there is no evidence for the superiority of any of them. Now assume that you have sound reasons for being an atheist and that you are obligated to consider how we should think about the people in the past who were enslaved on account of their religious difference. If your atheism is well-grounded, would you not try to imagine the slaves

⁵ See Naomi Zack, *Philosophy of Science and Race* (New York: Routledge, 2002).

in a way that did not buy into the ways in which their owners categorized them religiously? Notice that such reflection goes beyond assumptions that religious freedom is an inalienable right.

The project of rectification thus requires more than egalitarian pluralism on the grounds of race. It is not enough to say, "It is morally wrong to treat people differently on the grounds of biological race and people who behaved that way in the past were wrong." We have to be prepared to say "Not only is it morally wrong to treat people differently on the grounds of biological race but it is mistaken and wrong to think that there are biological racial differences among people, *and it is mistaken and wrong to think that such differences existed when they were used as a basis for slavery.*" That is, we have to be prepared to think about slave owners and their slaves as members of the same biological race, because nothing less than that will fully restore humanity to our ideas of slaves. While it may seem disrespectful to suggest that African Americans who may resist the idea that they are same race as whites are thereby mistaken, I think it is worse than disrespectful to deny that slaves were of the same race as their owners. They were of the same race according to universal human rights doctrine, insofar as that doctrine purported to extend to all of mankind, its hypocrisy notwithstanding. And they were of the same race to the extent that social constructions of racial categories rest on biological categories that are now known not to have factual support in biology.

To say that slaves and their owners were of the same race biologically makes the point rhetorically, but it misstates the scientific issue. Since there are no biological human races and never have been, we cannot all be of one race, for the simple reason that there cannot be a type without a typology. No, it is not that slaves and their owners were of the same race but that slaves were as lacking in biological race, as were their owners. In fact, the slaves were as *raceless* as their owners.

The scientific case is crucial here, not because everyone ought to worship science in this matter, but because beliefs in the existence of human racial categories have always rested on assumptions that such categories had a basis that was confirmed in the science of human biology. David Hume and Immanuel Kant and nineteenth century biologists and anthropologists created the scientific basis for the idea of human races. Twentieth century biologists and anthropologists demolished the same idea.⁶ Just as the development of modern science contributed to the

⁶ See Zack, *Philosophy of Science and Race*, Chapter 1, for the role played by David Hume and Immanuel Kant in the construction of the idea, Chapters 2, 3 and 4 for its demolition, and Chapter 6 for an analysis of the race concept in contemporary anthropology.

construction of a secular social ethos that supplanted a religious one, so will the dissemination of conclusions already accepted in the biological sciences eventually contribute to the construction of a raceless society. The last is inevitable because so much of the social construction of race is still embedded with the now falsified biological taxonomy.

What does it mean to say that the enslaved were raceless? And what are the implications of that claim in the discourse of reparations? I will attempt to answer these questions in the rest of the article.

HOW THE ENSLAVED WERE RACELESS

Although biology is by no means the whole story of the lifeworld of race, the notion that human racial taxonomy is biological has always been a background assumption during the modern history of the idea of race in the West.⁷ This biological sense of race posits different human races with hereditary biological traits. While it is true that members of different social races paradigmatically have different hereditary physical traits, human variation in such traits is not consistent enough to support a scientific racial typology.⁸ The enslaved were raceless in the biological sense before slavery, during slavery and after emancipation, in two ways. The first resembles the way in which the earth has never been flat. The earth was not flat during the time it was believed to be flat and if after it was proved not to be flat, the public continued to believe that the earth was flat, this would not make the earth flat. Human racial divisions have never been biologically real and the constructions of race in generations of lifeworlds does not make the taxonomy real. The lifeworlds, of course, were and continue to be real. However, the biological idea of race was not fully developed until U.S. slavery was well established as an institution. The second way in which the enslaved were raceless is that there is no evidence of the biological idea of race in the histories of the African cultures from which those enslaved originated. The biological idea of race was always a Western European and U.S. scientific idea imposed on human beings who were otherwise treated unjustly and it was imposed precisely by their oppressors. As an imposed identity, biological race is a scientific idea. Its nature is mainly cognitive in that it avowedly depends on evidence and conclusions from the biological human sciences.

⁷ See, for instance, Ivan Hannaford, *Race: The History of an Idea in the West* (Baltimore: Johns Hopkins University Press, 1996), Chapters 6, 7, and 8.

⁸ See Zack, *Philosophy of Science and Race*, Chapter 3.

To be sure, African Americans have always had other ideas of race than the biological scientific one, ideas connected with resistance, distinctive cultural transmissions and creations, personal identity and group identity. Those ideas, like the false biological idea, have been attached to physical appearance, social status, and family genealogy, but in lived ways, rather than cognitive scientific ones. These lifeworld ideas of race have been the inside view of the imposed false biological taxonomy, as well as the inside view of the imposed moral taxonomy that accompanied the false scientific one.

U.S. slaves were raceless biologically, but not, of course, existentially. Their resistance, creativity, suffering and endurance, under the imposed idea of biological race was a socially and psychically real racial existence. But in the cognitive dimension of the taxonomy that was used to justify their enslavement, the slaves were as raceless as their owners. To view them in this way restores their humanity to our ideas of them, because it removes from those ideas all the malign imputations of human inferiority and moral baseness that were an integral part of the false hierarchical biological taxonomy that constituted the ideas of race when slavery was defended. There was nothing inherent about the slaves that was biologically black or “negro” – remember that Negro was written with a small ‘n’ until W. E. B. Du Bois’s efforts in the 1930s – to which a false moral taxonomy could be attached. The fiction of physical racial essences was dead in biological anthropology when the last candidate for racial essences, human blood types, were found to vary independently of social racial groups.⁹ Moreover, the biological typology of race always characterized entire human beings as Negroid, Caucasoid, Mongoloid and so forth. The ontology of races was thus a totalizing form of human identity. To remember U.S. slaves as full human beings whose humanity was distorted, injured and obscured for no reason other than that such assault and deprivation benefitted others, is to restore ontological as well as moral innocence to those enslaved, concerning the grounds of their enslavement.

If the slaves are viewed as raceless, the moral judgment against their oppressors becomes all the more harsh because their ideas of biological race become evident as convenient, interested justifications. In this context, it is no excuse to plead innocence of later science, just as it is no excuse to plead innocence of later law. Perhaps, less anachronistically, it could be claimed that the scientists who created the false biology and those who benefitted from slavery were part of the same white supremacist group, all both individually and collectively responsible for the wrong of

⁹ See Zack, *Philosophy of Science and Race*, Chapter 4.

slavery.¹⁰ Furthermore, that U.S. citizens who were not themselves slave owners condoned, accepted or merely acknowledged the existence of slavery on the grounds of false racial divisions that were developed after the fact of slavery serves to condemn the whole society for its mass delusion. And, to repeat, it restores ontological innocence to the slaves, on the grounds of their enslavement. It is no longer even necessary to remind people that the slaves did not choose to be biologically black. Rather, remind them that the slaves were no more biologically black than the ancestors of those who are not African American. Remind them that because race is biologically unreal, there is no physical hereditary stuff to which the imputed inferiorities could have been attached.

What Glenn Loury has recently called *racial stigma*, or “dishonorable meanings socially inscribed on arbitrary bodily marks”¹¹ cannot include being descended from slaves without a mediation of something unique about slaves that was associated with their slavery. The practice of generationally inherited racial stigma could not have come into being without a belief that race is inherited. Those phenotypic traits that have been racialized are inherited, but they are no different from any other heritable traits and there is no guarantee that if an ancestor had one or more of them, that descendants will have them as well. Nothing short of the traits defining all *Homo sapiens* as a species are present in any group large enough to count as a race in the social sense, given the reality of Mendelian heredity.¹² Rather than focus on racial stigmas in diagnoses of ongoing racism, liberatory critics should begin investigating the slander and libel involved in applying the idea of biological race, and they – we – all U.S. citizens should interrogate the context in which those who were enslaved in the U.S. were, in addition, insulted by being racialized in a false biological way. Such interrogation can be directed to many different contexts in U.S. racial history: segregation, white supremacy, special neglect of the black poor, special apprehension and punishment of black criminals, and so forth.

HOW BIOLOGICAL RACELESSNESS AFFECTS MATERIAL REPARATIONS

How does the biological racelessness of U.S. slaves affect the discourse of material reparations and/or punitive damages? It raises the value of such

¹⁰ On the white supremacy of the nineteenth century scientists of race, see Stephen Jay Gould, *The Mismeasure of Man* (New York: W. W. Norton Co., 1981).

¹¹ Loury, *The Anatomy of Racial Inequality*, p. 59.

¹² See Zack, *Philosophy of Science and Race*, Chapter 4.

reparations to heights difficult to calculate, which is a further practical problem with reparations for U.S. slaves. But those who are still slandered, libeled, insulted and slighted by having false ideas of biological race applied to them could seek reparations for the harm which has occurred in their lifetimes. Ignorance of the truth is no longer a credible excuse, given that biologists and anthropologists have been disabusing themselves of the idea of biological race for well over fifty years. The information is available for school children and for principled educators who care to teach them. But, perhaps this stretches the meaning of reparations. We do not speak of reparations for present crimes. If the perpetrator is found guilty in civil court, the term is "damages," while if society pays the victim, the term is "compensation."

How, specifically, does the biological racelessness of U.S. slaves affect the nature of reparations for slavery? Let us forget for a moment that reparations are presently impractical and figure out who alive today would be entitled to reparations, given what is now scientifically known about biological race. It cannot be said that all who are racially black in an objective biological way are entitled to reparations, for several reasons: there were free blacks since before slavery and black immigrants who arrived after slavery was abolished. Even if these problems could be solved, there is no objective way to determine who is black because "blackness" as a biological category has no meaning scientifically. If we say that the descendents of slaves would be entitled to reparations, the question is how slave ancestry could be proved for all the cases to whom it would apply. The situations were different for American reparations to Japanese Americans for unjust internment during World War II and for German payments to Jewish survivors of the Jewish Holocaust, or their relatives. Both Japanese Americans and German Jews had civil rights in the offending countries before the injustices against them were committed. The antecedent possession of such rights and the attendant social status of Japanese Americans and German Jews, as persons, made it relatively easy to document their victimization and their family genealogies decades later. The crimes against U.S. slaves were crimes against people with no civil rights or even the minimal social standing that would document their identity as persons (e.g., addresses, surnames, property ownership, and birth, death and marriage records).

Can we say that all who have been *considered* black are entitled to reparations because they have been affected by a distinctively U.S. form of racism that originated in slavery? Yes, but it is not the historical origins of racism that are important here but the fact that present U.S. anti-

black¹³ racism is associated with the belief that blacks were once slaves in the U.S. That is, U.S. anti-black racism is cruel, because it punishes people unjustly in part because they belong to a group that has a history of unjust punishment. The truth emerging here is that whether we like it or not, reparations, even on the impractical level of discourse, concerns payment to people alive today, on account of what they are still suffering today. Should there be a needs test so that black millionaires are ineligible for reparations, or is suffering from racism a question of mental pain and suffering? Again, present racism becomes the subject.

Perhaps some of the confusion about reparations can be clarified by focusing on who should pay. There are the similar problems identifying the white racial group: white immigrants may have arrived after slavery; some whites had ancestors who were enslaved during the colonial period; there is no objective way to determine a white race, any more than a black one. The problem of proof of ancestry is not likely to come up on the part of those who would make payments, but it could come up for those who wanted to claim exclusion from having to make payments. However, all whites do presumably benefit from ongoing racism and blacks suffer from it. Since there is no fair and objective way to pick out the payees, as white, perhaps state and federal governments, as the present incorporations of past governments condoning slavery, should pay reparations to all who are now considered black, because they still suffer racism that is connected with the belief that they are descended from slaves. Since governments get their money mainly from taxation, everyone, including members of the group considered black, would be paying for reparations. There is a cruel irony in this.

Even on a purely theoretical level, with no consideration of cost, the idea of reparations for slavery flounders. However, as even this brief discussion of the problems with reparations makes evident, any justification of reparations as payment to people alive today, will likely have some reference to present racism. If the descendants of U.S. slaves now constituted a ruling class, or even a solid middle class, it is difficult to imagine the subject of reparations for slavery arising.

RECTIFICATION

What is to be done? I think that we ought to think about the broader project of rectification. As an imposition of false biological taxonomy, race is

¹³ Thanks to Lewis Gordon for this new term. See Lewis R. Gordon, *Bad Faith and Anti-Black Racism* (Atlantic Highlands: Humanities Press, 1995).

irreparable and racism cannot be addressed without an elimination of that false taxonomy. But that is not an elimination of race, in either its biological or its lifeworld-existential sense. Since biological race never existed, it cannot be eliminated. Such elimination is not even a logical possibility.¹⁴ Those who argue against what they believe to be racial eliminativism are usually concerned with one or more of the following effects of what they imagine elimination to be: first, a complete assimilation of black culture into white, which would be tantamount to a kind of genocide against black identities; second, an end to advocacy for African Americans as a group in need of special consideration in contexts of structural racism; and third, a return to worse forms of racism because, without a notion of race, racists could carry on as they liked and deny that they were doing so as a result of racial difference, while victims would no longer have the racial identities on the basis of which to seek justice.

These concerns are based on a misunderstanding of what is entailed in disabusing folks of the biological notion of race. First, a broad understanding that race as we know it lacks a foundation in biology as a scientific subject, would be nothing more than that, an understanding. To the extent that the lifeworlds of racialized people are based on beliefs that racial groups are natural biological kinds, there would be some voluntary revision of racial identities. But concerning group and familial associations, cultural traditions, culture, and personal identities, such understanding would have no direct or automatic bearing. There might be less essentialism in discourse about racial identities among African Americans, but there are other well-established intellectual and moral reasons for critiquing essentialism, such as personal autonomy and the deconstruction of racist stereotypes of race.

Second, an understanding that racial distinctions are not biologically based would emphasize the need for special consideration of the disadvantaged plight of African Americans, particularly the multi-generational poor. Genetic arguments about racial heredity could not get started, because the absence of genetic races entails that there is no distinctive hereditary material to which other traits could be attached.

And third, the cognitive dimension of racism would lose all credibility in the light of a broad understanding that race had no biological reality. All of the mechanisms for picking people out on the basis of race, that is, the social epistemology of race, would continue to function, as would the grounds on which those victimized by racism seek justice.

As with our ideas of slaves, correction of the biological mythology surrounding race would restore humanity to those deprived of it through

¹⁴ I thank Bradford Z. Mahon for pointing this out to me.

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the process of racialization. To restore humanity to our ideas of slaves and to their living descendants, and their future descendants, would go part of the way toward rectifying race. How far is an empirical question. Another empirical question is whether this degree of racial rectification would in time minimize both individual and structural racisms, as we have known them.

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