A Study in the Morality of the African American Reparation

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A STUDY IN THE MORALITY OF THE AFRICAN AMERICAN REPARATION

by

Jason L. Moulenbelt

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Every philosopher has at least two realms in which he or she operates. The separation of these realms at times is impossible, but despite this impossibility it must be striven for at all times. The separation between ‘work and play’ seems to keep a philosopher current and effective. When any philosopher delves into one realm too far he endangers the other realms effectiveness, or at times its existence. Therefore, I wish to keep these realms separate here.

First, the professional realm in no particular order or significance: I am greatly indebted Dr. Bernard Boxill of The University of North Carolina at Chapel Hill for writing his seminal titled “The Morality of Reparation” that eventually lead to the writing of this thesis. I, however, have used Dr. Boxill’s work as more than an inspiration and in fact much of this work is quoted or directly attributed to him. I merely attempt to flesh out the skeleton that he erected.

I would like to thank Dr. Mike Pritchard for all of his help and support and for chairing my thesis committee. He has done nothing short of bringing this modest work from inception to fruition. Similarly, I would like to thank the other members of my thesis committee, Dr. Insoo Hyun and Dr. John Dilworth. To all three: The strength of your philosophy is only exceeded by your level of patience.

I would like to thank Dr. Sylvia Culp for simply believing in me and supporting me at every turn. Not many professionals or philosophers would give funding and a job to a former student who did nothing but tell her that she was wrong. In the end, it was I that was wrong about many, many things.

I would like to thank Dr. Kent Baldner for giving me a very wide berth to discuss many difficult subjects. His continual support and immense guidance has
shown me that there still are people in the world whose highest concern is the education of others.

I would further like to thank Pat Nelson. Department Secretary is a title that does no justice to what Pat does to keep all of the students and faculty in line. A task that at times seems like herding kittens, Pat does with ease and grace. I would also like to acknowledge the entire Western Michigan University Philosophy Department that I have not mentioned by name. It is in this nourishing environment that I have come from a lowly undergraduate to a lowly Masters of Arts, no small task.

Now, on to the personal realm: I would like to thank my Mother, Maryanne Gabriel, who has done everything in her power to support and love me everyday of my life. I must thank my Father, who has shown me that it is never too late to become a real man. A real man loves others. I wish to thank my brother for defining brotherhood.

I am greatly indebted to my wife Amy Moulenbelt for simply putting up with all of the late nights and other projects that made you feel second on my priority list. That as never been and will never be the case. I love you.

I want to thank the Wilson's for simply putting up with all the inquiring questions a white kid in a little town could ask. I hope your patience, love, and understanding are soon rewarded.

I want to lastly thank Nathan Wight who I have too often turned to for guidance through this maze one sometimes calls an education.

Jason L. Moulenbelt
The question that is posed in this thesis is this: Do blacks have a moral claim for reparations for past indiscretions, such as slavery and legalized segregation? A second question dependent on an answer to the first is: If it is decided that blacks do have a claim to reparations, to whom can they make this claim? The first question will be answered through the clarification of the terms compensation and reparation, the exploration of current compensatory programs (such as Affirmative Action) that have claimed reparations as justification for the implementation of compensatory policies, and answering many of the current arguments against reparations. This thesis will conclude that African Americans have a moral claim, and therefore are owed reparations.

The second question will be answered through implementing a synoptic view of history and introducing and defining key concepts such as ‘inheritance of wealth’, ‘inheritance of racist practices’, and ‘community’. This thesis will further conclude that blacks can look to the white community as a whole as well as the government as groups who owe them reparation.
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INTRODUCTION

Affirmative Action (AA) has been criticized since its inception into American law and American tradition as having many conceptual problems. Two of the most damaging arguments AA has faced is that it replaces discrimination against blacks, and other minorities, with discrimination against whites (the 'reverse discrimination' argument) and that AA creates an air of dependence that reinforces concepts that minorities cannot make it on their own. In this thesis I will agree that all of these criticisms are valid and damaging to AA because, even though formulated and conceptualized as a form of reparation (for past discrimination and segregation), AA was designed and implemented as a form of compensation.

Compensation and reparation have been used in the past as synonyms but, as I will argue in greater detail below, the difference between the two lies in the justification behind the redressing of past wrongs. Before the justification of compensation or reparation can be understood it must be recalled that there exists, in any free society, a sort of equilibrium. In this equilibrium, every member of this free society is to be treated as an equal. In a society that believes in free competition for its scarce resources (as opposed to some form of governmental paternalism) this equilibrium should ensure that all members of this society are able to compete as equals. If any one member of the society, as a beginner in this competition has a disadvantage, say that he was born with a bodily handicap, the concept of justice requires that either he be compensated or that the playing field be leveled in order that he be able to compete equally (e.g. that ramps be installed in businesses). Similarly, in this race for resources and positions there will be winners, those who acquire these
resources, and losers, those who attempt but fail at acquiring these resources. It is these ‘losers’, who by simply competing for scarce resources and under no fault of their own have become so destitute as to not be able to compete equally, are due, again because of the concept of justice, compensation.\(^1\) It should be understood that when individuals become involved in a single community that the notion of a community involves a tacit agreement of the whole to bear the costs of compensation. Therefore, the justification of compensation lies in two areas: That an individual, according to the principle of justice, be considered equal in worth to every other member of her society and that all of the individuals involved be members of a community.

It should be noted that no one need be at fault when compensation is due to an individual. The concept of compensation does not require that a prior injustice need occur. This is in direct contrast to the justification of reparation. In reparation, as in compensation, there lies a previous equilibrium in which all members are to be considered equal. However, if one individual, in the pursuit of what he wants, unjustly infringes on another individual and the pursuit of what she wants, reparations can be demanded of the infringing member equal to the original transgression. In this way, reparation does not require a community or a social contract in order to demand reparation. Reparation is more ‘primitive’ in this sense in that the only justification that is needed to demand reparations is the infringement from one individual to another.

It can now be minimally understood that the difference between compensation and reparation is prior injustice. Compensation does not require a prior injustice to have occurred, whereas reparation can only be justified and demanded when an

\(^1\) It should be noted that ‘acts of God’, such as floods or hurricanes, that destroy a persons ability to compete fairly, should also require that a society provide compensation in order to ensure the equality of the competition.
injustice has been perpetrated. Because of this difference, I will argue that it is not the case that compensation can be supplemented for reparation, as I will further argue has been the case in the implementing of AA.

The first half of this thesis, therefore, will be dedicated to understanding the difference between compensation and reparation and to further understanding how AA is an example of the former rather than the latter. To make this fully clear it is both necessary and helpful to understand the basic concepts, goals, justifications, and timeline of Affirmative Action. I will then show the difference between compensation and reparation and highlight how AA is a form of compensation. It will then be argued, as outlined above, that compensation cannot be given where reparation is due. In order to give compelling reasons as to why reparation should be sought as opposed to AA, I will show how reparation does not fall victim to the criticisms leveled against AA, as introduced above.

Unfortunately, however, simply defining the differences between reparation and compensation and listing the strengths of reparation does not automatically save it from other, not yet mentioned, criticisms that have also been applied to AA, and remain applicable to the concept of reparation. These criticisms are; first, that reparationpunishes current generations of whites that may or may not be ‘heirs’ to crimes perpetrated by past generations of whites, while benefiting current generations of minorities that may or may not be ‘heir’ to past generations of victims of past discrimination, and lastly, that reparation gives an entire group benefits for crimes perpetrated against individuals.

Therefore, the second half of this thesis will examine the aforementioned criticisms, show how they are damaging to compensation, and argue that these criticisms can be addressed through reparation. To do this I will need to expand
reparation by introducing the concepts of inheritance and community. It will be argued that blacks as a community have ‘inherited’ discrimination and poverty, while whites as a community have ‘inherited’ privilege and wealth. To fully explain this notion of inheritance it will be necessary to examine a more ‘synoptic view’ of America’s racial history. In the ‘synoptic view’ I will argue that many Americans have made a mistake in believing (and consequently arguing) that the motivations for their current actions and beliefs are completely separable from the motivations of past actions that lead to the injustices of slavery, legalized segregation, and past discrimination. I ask, and attempt to answer the question; Will your children’s, children be able to separate your actions from the racially immoral past of your forefathers? It will be my argument that the racist actions of the past, such as slavery and legalized segregation, have not and cannot be separated from the current era of discrimination that America is embroiled in today. In fact when all of these laws, societal practices, and individual actions are viewed synoptically the ongoing and current inheritance of white privilege and black discrimination will become readily apparent. Because this ‘inheritance’ of racial practices and privilege is still occurring I will conclude that it is legally and morally justified for blacks to be owed reparations.

It is important to note that this thesis will not argue, however, any of the logistics of repaying blacks for past discrimination and segregation. I do not feel it is the job of the ethicist to offer practical (or even impractical) solutions to these problems. This duty is perhaps best left to the political arena as to ascertain the best, most cost efficient, and most equitable approach to giving blacks reparations. I feel it

---

A case could be made for many other minority groups that were enslaved, fell under the title ‘colored’ during the segregation era, or are discriminated against today. However, because blacks and whites are the two largest sub-groups in America today and the enslavement of blacks by whites was done on a wholesale level in comparison to other races, only blacks will be addressed in this thesis. It should also be noted that black and African American are to be used synonymously and either moniker is not intended to offend the reader.
is simply the duty of the ethicists to argue whether or not these concepts, in this case black reparations, are morally compelling or not.
The Basics of Affirmative Action

Affirmative Action is perhaps most easily understood by not attempting to attribute it to any specific law, program, or Supreme Court ruling. Although all of these can affect how AA was created and subsequently is now formed, attempting to reign in such an all encompassing concept in such a way may prove troublesome. AA is best understood as a model, or “policy paradigm”, that follows a certain “way of seeing and constructing the world that specifies what is real and important, and which tools are best for achieving goals”. (Skrentny, p.6)

The origin of the AA model or paradigm (to be used synonymously) is best understood if we first define the civil rights model that preceded it: the color-blind model. “In this model of justice, employers were supposed to view job applicants and candidates for promotion as abstract individuals, differing only in merit or qualification for the job or promotion.” (ibid, p.7) Because of this history and philosophy of civil rights and the fact that AA was attempting to secure civil rights, AA was first designed and its first laws implemented as a more aggressive form of ensuring civil rights while remaining completely ‘wedded’ to the color-blind model.

The first two times the words Affirmative Action appeared in civil rights law were in President John F. Kennedy’s Executive Order 10925 and President Lyndon Johnson’s revision, Executive Order 11246. These two executive orders began to lay

\footnote{All of the historical information that is not directly cited in this section were taken from The Ironies of Affirmative Action by John Skrentny The University of Chicago Press, 1996.}
direction to contractors of the federal government that they were not to discriminate, and were to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment... without regard to their race, creed, color or national origin". (ibid) This 'Affirmative Fairness' was extended to private cases through the passage of the Civil Rights Act of 1964 (CRA 64) in section 706-g where any employer was "intentionally engaged in an unlawful practice" of denying opportunity to a person based on race, creed, etc.

Unfortunately, despite the fact that the ultimate goal of many civil rights groups of the time was the passage of the CRA 64 and later the Voting Rights Act, these two bills did little to secure black jobs. Affirmative Fairness only ensured that it was no longer legal to discriminate on the basis of race (etc.) but it did not qualify blacks for jobs in which they were not skilled in the first place. Affirmative Fairness alone "virtually guarantees that large numbers of people (the least qualified or occupationally meritorious) will cluster at the bottom of the social ladder." (ibid, p.69)

It appeared that the ultimate goal of color-blindness had turned out to be terribly oversimplified and utopian. The dismal reality that accompanied the CRA 64, among other things, resulted in the over-boiling and subsequent rioting of thousands of blacks. Many of these blacks, ironically enough, were formerly organized to march for civil rights and followed the passive teachings of Dr. Martin Luther King, Jr.. Within 16 days of the passage of CRA 64 the 'race riots' had begun and within four years, hundreds of riots throughout the country left hundreds dead, thousands wounded, tens of thousands arrested, and property damage estimated in the billions. In 1965 alone 169 people were killed, 7,000 wounded, and 40,000 arrested.

Congress, in special committees to make sense of the riots seemed to have one theme: Get blacks jobs. The logic behind this was that black men and women would
be too busy to start or participate in riots if they had jobs. This solution was also in line with what the black leaders were asking for. President Johnson responded in kind by creating programs that targeted blacks to become members in programs that were initially intended to be color-blind. The fruits of this ‘Affirmative Recruitment’ were apparent by 1966, when blacks constituted 30% of the total people helped by the Economic Opportunity Act of 1964 (EOA 64). By 1968 the Concentrated Employment Program, had over 81% black participants at its inception. Stopping the riots through employment also mirrored the wants of the black leaders who were clamoring for more governmental intervention in securing more blacks jobs. Despite the laudable aims of the CRA 64, the turn from Affirmative Fairness to Affirmative Recruitment was not aimed at securing the equal competition of Americans, but a simply getting blacks jobs in the quickest way possible. With this ‘administrative pragmatism’ (discussed in greater detail below) began the shift from the protection against black discrimination to the discrimination for blacks and by 1968, thousands of businesses, government programs, and even military recruiting had seemingly forgotten about the color-blind ideas of Affirmative Fairness and had shifted into Affirmative Recruitment.

Affirmative Recruitment is an idea that runs from the moderate concept as enforced by the Equal Employment Opportunity Commission (EEOC - set up in the CRA 64) that businesses must ‘cast a wider net’ to include classified ads and job postings aimed toward blacks to the far more aggressive concepts employed in 1968 by the National Alliance of Businessmen who produced a campaign (consisting of some 306 full pages of advertising) to “give jobs to ghetto blacks before their businesses burned down”. (ibid, p.90) This particular schema worked. The more blacks that got jobs due to these aggressive recruitment campaigns the less volatile the
nation became. In fact, the recruitment campaigns became so aggressive that they blurred the line between recruitment one race and simply preferring to hire one race over another. This preference to hire one race over another even when the applicants are unequally qualified will be called ‘Affirmative Preference’. A Ford Motor Company (who hired tens of thousands of “hard-to-employ” ghetto residents in 1968) employer explained, “[Affirmative Preference] is discrimination in the reverse, but such steps are required to convince Negroes that we are serious and want them to apply for work with us.” (ibid, p.91) It seemed that even the ‘recruiters’ knew that this was something different than even the word ‘recruitment’; in it strongest sense could define.

There had been a significant blurring between Affirmative Recruitment and Preference in the late 1960’s and this blurring was pushed firmly to the side of Preference when Richard Nixon took office. In 1969, Nixon set forth the rules of government contractors that “state[d] that guidelines for bids must be explicit [and that] the affirmative action guidelines [would take] the form of government-determined, numerically explicit percentages of minorities to be hired”. (ibid, p.178) Despite these preferences it must be understood that implicit in Affirmative Preference is the notion of qualified minorities. Therefore, Affirmative Preference should be understood as preferring to hire, or preferring to accept into college, the qualified minority over the qualified non-minority. “This preference can seem minor, such as preferring someone of a particular race or sex when both candidates are essentially equal. The preference can seem more significant, however, when a highly qualified candidate is passed over for a woman or minority applicant who is less qualified.” (McWirtir, p.6)

The Supreme Court backed racial preference, and to a degree racial quotas, in
two cases in 1971, *Swann v. Charlotte-Mecklenburg Bd. of Ed* and *Griggs v. Duke Power Co.* In *Swann v.*, racial quotas were explicitly mentioned and accepted as the "limited use made of mathematical ratios... as a starting point... to desegregate... public schools" (Skrentny, p.8) and deemed acceptable as a proper remedial effort to end segregation. Similarly, in *Griggs v.* the Supreme Court decided that any test or requirement of businesses that leads to segregation (although the test or requirement was not discriminatory on the face) could not be used.\(^4\) This is turn called for a new form of job related criteria that would be valid for all jobs concerned that currently did not exist. Even if criteria like this could be found or invented the cost to do so would outweigh what is gained by using this new criteria. This is seen in trying to invent standardized testing procedures that do not contain a racial bias. The research and testing that it takes to create a standardized test is very expensive and the benefits reaped by these tests are not always as easily measured or outweigh the costs. What consequently happens is that many employers look for loopholes to ensure that they do not have the appearance of adversely impacting African Americans with their business practices. Indeed, what is often termed discrimination, could simply be the result of otherwise equitable procedures that have simply ended in the result of proportionately fewer blacks. The EEOC often decides what is acceptable by assigning 'goals' to companies to employ a 'target' amount of employees often determined from the "percentage of [minorities] in the local or regional population." (Williams, p. 124)

It is also important to note that the AA model "did not spring out fully formed." AA was "legitimated in a piecemeal fashion with different building blocks, or unit ideas, being propounded in different contexts to different audiences, and over a

\(^4\) The opinion of the court referred to *Myart v. Motorola Co.* (1963) That case suggested that standardized tests on which whites performed better than Negroes could never be used. The decision was taken to mean that such tests could never be justified even if the needs of the business required them.
period of time.” Although, AA did start out conceptually as a form of Affirmative Fairness it should be now understood in its entirety. The whole could be mostly summed up through the three categories, as introduced above: Affirmative Fairness, Affirmative Recruitment, and Affirmative Preference. Affirmative action is perhaps summed best by its efforts to “seek to increase the pool of qualified [minority] applicants by using aggressive recruitment and outreach programs, setting goals and timetables, and establishing training programs, among other measures.” (Williams, p. 128)

Justification and Goals of Affirmative Action

It has been argued (McWirter, 1996) that the justification of AA (specifically Affirmative Preference) was well thought out and justified by its planners citing many reasons why America should implement AA. Among these alleged justificatory reasons were first, reparation for specific instances (such as from specific companies, unions, colleges, etc.) of race and gender discrimination in the past, second, to remedy societal discrimination, and third, to create more diversity in a particular organization or American workplaces as a whole. (Ibid) At first, this appears to be in line with how logical human beings operate and subsequently form their laws, until one remembers that AA was first set up as a color-blind theory that only ensured Affirmative Fairness. If one looks at the so called goals of AA and looks at how these goals were initially designed to be achieved, (through Affirmative Fairness) one must see the insignificance of the CRA 64 toward achieving all of these goals. How could the writers of the CRA 64 have reparation as a goal when they sought to only ensure the fairness of competition after the CRA 64 was written? The redressing and repairing of past injustices would have to look back at these previous injustices and at least attempt
to see what steps would need to be taken to repair what damage was done. If ‘looking back’ had been in the minds of the writers of CRA 64, as it is suggested above, then the decision to only secure *future* fairness (a fairness that was supposedly secured with the bill of rights, the 14th amendment, and *Brown v. The Board of Education*) would have been seen as and unacceptable method of achieving this goal.

Therefore, the goals of affirmative action either could not have included the reparation of past injustices, or if it did see reparation as a goal, chose a mode of action (Affirmative Fairness) that would virtually guarantee that this goal would not be achieved. It is my argument that the CRA 64 had as its aims only the diversification of the American work place and the equality of its members to compete fairly.\(^5\) This is perhaps best seen in the two government agencies that were created by the CRA 64.

With the creation of the CRA 64 the EEOC and its federal counterpart, the Office for Contract Compliance (OFCC) were formed to ensure that discrimination based on race, etc. was not happening in private business or federally contracted operations. These offices, however, were not only set up to not only prevent discrimination but to “being about black economic equality by preventing discrimination.” (Skrentny, p.112) These goals were influenced in no small part to the “tragic black unemployment picture [that was] mentioned again and again in congressional reports and hearings for the [CRA 64].” (ibid)

It also must be recalled that as the EEOC and the OFCC started on their monumental task and began to decide how to ensure job and contract fairness while getting more and more blacks to work, the rioting in American cities worsened. Both groups were under enormous pressure to produce results (getting more jobs in the hands of blacks and therefore stopping the race riots), and to produce them quickly.

\(^5\) This is not to take away from the steps made by the CRA 64 as they did much to secure increased equality for blacks. However, this conciliation is not to deem the CRA 64 as the only step needed to ensure the absolute equality that blacks, as equals demand.
Affirmative Recruitment, as mentioned above sprung, in part from this desperation but also in part because when both offices (first the OFCC) tried Affirmative Recruitment, *it worked*. As the lines between Affirmative Recruitment and Affirmative Preference blurred (due to relaxed hiring tests, or their removal all together) both offices again found that this latter concept worked even better at getting blacks jobs and stopping the race riots. "‘Success’ comes through demonstrably effective and efficient strategies for attaining the agenc[ies] goal; it is a technician’s logic that gives priority to substantive goals rather than legal proprieties". (ibid, p.111) ‘Success’ in the case of the EEOC was getting every black, that they legally could, a job

Because of AA’s ‘piecemeal’ and trial and error fashion one must view the goals and justification of AA as mostly pragmatic in nature. In layman’s terms, AA simply went with what ‘worked’ and got blacks jobs. However, ‘what worked’ took two offices, the EEOC and the OFCC, that were originally designed to ensure fairness, from their ‘fairness’ roots and placed them in schemes that are preferential in nature. "[The EEOC and OFCC] were guided by the logic of... administrative pragmatism... [and by] following the logic of administrative pragmatism, and for a parochial audience of fellow administrators, concerned citizens and civil rights groups, [AA] was justified – affirmative action, it was said time and again, was effective and technically necessary, it *worked*." (ibid) This is repeated many times throughout the Supreme Court cases that followed and help shape AA and is perhaps best summed up in *Swann v.* summary by Chief Justice Berger “a... remedial plan or a district court’s remedial decree is to be judged by its effectiveness.”

As mentioned above, because of AA’s administrative pragmatism it would be a fallacy to state that AA was justified by giving reparations to black people. This fallacy is made increasingly apparent when considering whom AA attempts to aid.
AA recruits, sets up training programs, and gives group preferences (especially in college admissions) to all minorities that have found themselves historically at the bottom of the earning scale. Some argue that this definition, although admittedly broad, is not realistic because AA has sought to those who have been historically oppressed, not those who happen to find themselves at the bottom of the earning scale. To support the notion that AA seeks to give aid to the 'economically oppressed' an example is perhaps in order. Japanese Americans, who in the past have been so aggressively discriminated against that they have found themselves in internment/relocation (read: concentration) camps, are not awarded any of the aid by AA. This is not because they have not been historically discriminated against as a group, as the contrary has shown, but rather because these Japanese Americans, on average, are found higher on the earning scale and admissions scale than Caucasian Americans.6

It is apparent that AA has found far more justification and goal setting in looking at census data and where certain groups fall economically than from looking at past discrimination when we see what victims AA has been expanded to. “Subsequent provisions [of AA have] extended provisions to all people of color, women, older people, and people with disabilities.” (Williams, p. 129)

The Timeline of Affirmative Action

When Affirmative Fairness and Affirmative Preference were originally justified

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6 It also could be argued that only 17,000 Japanese Americans were relocated to these camps and only for a short period of time in comparison to black segregation or female subjection. In this case one could simply defer this argument to Irish Americans, who have found themselves systematically discriminated against in the past or perhaps Jewish Americans. Again, these peoples are not compensated because they have not found themselves at the bottom of the economic scale for various reasons (perhaps that their race was easier to hide, or that they were not subjected to slavery as a people and then subjected to segregation, and then discrimination).
it was understood that the time line of these strategies was meant to be a ‘temporarily’
‘strong dose’ of fairness that was to be ended when the ‘playing field was leveled’ or
when a “balanced representation of [minority] workers” was achieved. (Williams, p. 129) However, when AA expanded these concepts to include all people of color, women, older people and people with disabilities the temporary timeline was expanded to be indefinite. There will always be old people and relatively handicapped people.
When one group comes to an ‘equal playing field’ with the majority of whites, another will emerge as needing help. There will always be groups that find themselves at the bottom of the economic ladder and perhaps (albeit sadly) always people who are systematically discriminated against and if these cases are found in America, AA will be there to help them. This is not to fault AA or its timeline but it is important to understand that AA has ensured its future by expanding its benefits to nearly all races.
COMPENSATION AND REPARATION: THE CONCEPTUAL DIFFERENCES.

Boxill's Argument

Philosophers, in the past, have used reparation and compensation synonymously. However, in 1973 Bernard Boxill set out to explain the differences between the two by showing that although "both are parts of justice, [reparation and compensation] have different aims..." and therefore are to be considered two different entities.

As mentioned in the introduction, the notion of a 'community equilibrium' must be understood before compensation or reparation can be. In the case of compensation the equilibrium that exists in a society is that all members are competing equally for scarce resources. No one member has a disadvantage at the starting point of this competition that would render him unable to compete fairly. The notion of equality, fairness, and justice demand that in this state of equilibrium all members are to be treated as equally during the competition as they were in the beginning of the competition. In societies, such as America, that believe in the freedom of the individual to make whatever choices he pleases (insofar as this individual does not infringe on the freedom of others when doing so), justice requires compensatory programs be instituted both to ensure that the competition is fair, and that the losers are protected.

Compensation then should be understood as justified by the tacit agreement

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7 The ideas in this section were taken from The Morality of Reparation by Bernard Boxill. Social Theory and Practice #2 1972-73 (pp. 113-123)
8 Howard McGary Jr. proposed a similar argument in 1977. See McGary Jr., 1977 in the bibliography for his full argument.
9 The notion of fairness here is to be taken in the Rawlsian sense.
entered into when one becomes a member of a community or society. When one member of this society cannot attain resources, or the attempt to do so, through no fault of her own, has left her so destitute that she cannot compete on equal footing with the rest of the society, the society should compensate that person.

The justification of compensation, therefore, has two parts that make up its whole. First, the individual seeking compensation must be a member of a community. Secondly, each member of the community must be considered equal in dignity and worth to every other individual, and hence has a right to arrange his life as he sees fit.

Although mentioned in the introduction, I believe it bears repeating that compensation has little to do with fault or blame that any member of the society has found themselves in their respective situations. As Boxill states, “in all [compensatory cases] no prior injustice need have occurred. This is clear, of course, in the case of accidents and “acts of God”; but it is also the case that in a competition, even if everybody abides by the rules and acts fairly and justly, some will necessarily be losers... such a right to compensation does not render the competition nugatory; the losers cannot demand success – they can demand only the minimum necessary to reenter the competition.”

If we are to understand compensation as justified by the fact that every member of a society is to be considered equal this must stand in sharp contrast to the more ‘primitive’ notion of reparation that does not require that an individual be a member of a society in order to demand reparations. Reparations, as Boxill clarifies, “depends only on the premise that every person has an equal right to pursue and acquire what he values.”

When one person infringes on this right the victim of this injustice may demand reparations from the perpetrator that is equal to the injustice. Therefore, an important
difference between compensation and reparation is fault. Compensation does not require fault whereas reparation not only looks at who is at fault but uses that fault as the justification for paying that individual back. Compensation, then, in its essence and practice is "forward looking" in that it seeks to "alleviate disabilities which stand in the way of some future good, however these disabilities may have come about."

Reparation, on the other hand, is to be understood as "backward looking" in that "reparation is due only when a breach of justice has occurred."

One clarifying point must be made however before we can compare slavery, legalized segregation, and discrimination to compensation and reparation. When a person unfairly blocks another from achieving goals, or obtaining possessions that he or values, these actions are regarded in the same light as the actions of a person that unfairly steals a possession from another. This similarity is shown when Boxill states "When someone possesses something, he has signified by his choice that he values it. By taking it away from him infringes on his equal right to pursue and process what he values. [Equally] if I thwart, unfairly, another's legitimate attempt to do or possess something, I have also acted unjustly." (Ibid, 116) It must be further understood that when stopping someone from obtaining a certain resource it does not matter whether or not that person ever attempted to obtain that resource. To sum Boxill, an injustice has occurred when someone makes it impossible for others to pursue a legitimate goal. This injustice is in no way dependent on that person ever actually attempting to achieve the respective goal.

**Affirmative Action, Compensation, and Reparation**

Now that we have clarified the difference between compensation and reparation it is easy to see how the previously defined Affirmative Action is an
example of the former rather than the latter. It could be argued that when AA was first conceived it was justified as a method of reparation rather than compensation. After all, it sought to overcome the terribly high unemployment rate that blacks currently had found themselves in, as a result of discrimination and segregation, and was only made possible through primarily black civil rights marches and protests. This argument would lose all of its bite once one looked at how AA was practiced.

The EEOC and the OFCC were created to simply ensure the fairness of employment strategies in the private business place and in government contracting. AA sought to wipe the slate clean of all its former unfairness and make sure that all of the hiring that was done after the passage of the CRA 64 was fair and just. The EEOC and OFCC were also places that reverse discrimination complaints could be logged. In essence, the EEOC and the OFCC were primed and paid to swing into action if a person of any color or gender were discriminated against. This is not due to a flaw in AA’s planning but simply because AA was designed to be color-blind.

Even as AA progressed from Affirmative Fairness to Affirmative Recruitment in the mid to late 60’s and from Affirmative Recruitment to Affirmative Preference in the late 60’s and early 70’s, it must be remembered that this was not because some previous wrong needed to be redressed and corrected but rather because blacks were not getting hired and black poverty was not getting any better without these paradigm shifts taking place. Due to the administrative pragmatism of the EEOC and OFCC, AA was shifted from its original design to the place we see it today because these later programs simply worked better than the earlier ones. AA’s justification strategy lied merely in what worked better, not what redressed past discriminatory acts the best.
ARGUMENTS AGAINST AFFIRMATIVE ACTION AS APPLIED TO REPARATION

One could argue that even though it has been shown that Affirmative Action is not a form of reparation but compensation, America has little to gain by jettisoning the in-place-and-working AA for some form of reparation. This section will lay out examples of some of the most damaging arguments that have been leveled at AA and show how reparation is not a victim to these complaints. It will be necessary for me to first spell out each argument and then address them as a whole by showing that each of these arguments are not necessarily leveled at AA but at the fact that it is a compensatory program.

AA Replaces Discrimination Against Blacks with Discrimination Against Whites

After President Nixon took office in 1969 he quickly expanded AA’s boundaries to include Affirmative Preference. The response to this act was immediate and many people argued that AA was trying to fix discrimination against blacks in the past with discrimination against whites brought on by AA. After all, discrimination is discrimination and should be condemned whenever it arises therefore it should be obvious that the government should not attempt to remedy past discrimination with current ‘reverse’ discrimination.

"[The reverse discrimination] argument... claims that to extend special considerations to a formerly oppressed group will be to persist in the mistake of treating a morally irrelevant characteristic as if it were [still] relevant. For if we take a morally irrelevant characteristic [race] and use it as the basis for granting special considerations...we will be treating the morally irrelevant as it were relevant and still engaging in discrimination, albeit reverse discrimination. And hence, it is argued, the proper stance toward groups who have suffered discrimination is one of strict impartiality.” (Nickel 1972, p. 113)
The argument can be boiled down to the objection that whites should not have to give up job opportunities and face 'reverse discrimination' simply because blacks do not have jobs. This argument is validated by the original aims of AA, in that it was supposed to ensure fairness to all not give one group preference over another. It was also not clear to opponents of AA's new tool, Affirmative Preference, that blacks were incapable of finding jobs or work without AA giving preference to them. It is simply not to opponents of AA that despite the social contract, that all Americans had entered into, entitled blacks to jobs over qualified whites, no matter what situation blacks found themselves in.

**AA Reinforces the Concept that Minorities Cannot Make it on Their Own.**

Before AA was initiated in America, blacks were often told (by discriminatory whites) that they were not able to obtain 'real' jobs or get higher education due to a myriad of reasons (i.e. not smart enough, too lazy, or the all encompassing simply inferior). AA seemed to over-ride this previous discrimination by telling blacks that as long as they got had a fair opportunity in the business world they *could* make it. When AA turned from Affirmative Fairness to Affirmative Preference, blacks were in essence told that they could not make it in the world without the help of the EEOC or OFCC intervening on their behalf. “By creating a climate of dependence – [AA] actually penalizes the efforts of individual members of minorities to succeed on their own merits…” (Williams, p.122)

**Why These Arguments can be Addressed by Reparation**

To explain better why these arguments are effective against Affirmative Action
and not reparation it is important to explain the role that ‘fault’ plays in both models. In compensation no admission of guilt or finding of fault is needed because it seeks to address the situation that the community member finds herself in, no matter how she got there. Again it must be remembered that in a competitive free market, even after discrimination has been wiped away, there will always be monetary and resource ‘losers’ and subsequently monetary and resource ‘winners’. If these ‘losers’ are rendered incapable of competing on fair grounds with those still on the market for resources they can and should demand help in the form of compensation to level the playing field once again. This is exemplified in AA due to the fact that it is color blind and seeks to help any person, minority or not, that is hindered by discrimination.

By contrast reparation is only due once a transgression has occurred. In this case reparation is only due because someone is at fault. As Boxill clarifies;

The fact that reparation aims precisely at correcting a prior injustice suggests one further important difference between reparation and compensation. Part of what is involved in rectifying an injustice is an acknowledgment on the part of the transgressor that what he is doing is required of him because of his prior error. This concession of error seems required by the premise that every person is equal in worth and dignity. Without the acknowledgment of error, the injurer implies that the injured has been treated in a manner that befits him, hence, he cannot feel that the injured party is his equal. (Boxill, p.118)

In essence, why all of the above arguments are effective against AA and not reparation is because AA is not justified by the actions of a guilty party (or parties) when seeking to annul past injustices.

If AA was a form of reparations, or looked to the guilt of white people as the perpetrators of past segregation and discrimination, it would be immediately justified as to why whites are being discriminated against now. The original injustice of white people would serve to justify AA as a form of reparation. Furthermore, it would be
evident if AA was a form of reparation that 'reverse' discrimination is exactly what is needed to annul the original transgression. It is because the original transgression occurred that justifies the fact that reparation is being sought now. Additionally, if AA was a form of reparations it would not be the case that blacks would feel that they could not make it on their own or needed AA to succeed. Rather it would be the case that they would feel the need for reparations simply to annul the original transgression. These reparations would be viewed as returning blacks to the equilibrium\(^\text{10}\) that existed before the transgression occurred. This equilibrium would allow blacks to start from the same place as all other competitors who are competing for a limited amount of resources.

In fact, because reparation searches for an admission of guilt it goes beyond simply leveling the playing field by filling a hole created by an injustice perpetrated without an admission of guilt. As Boxill states (while citing Locke), “Justice requires equal consideration between equals” and this requires “not only that we treat people in a certain way, for whatever reason we please, but that we treat them as equal because we believe that they are equals.” (Ibid.) Justice, it can be summed, requires that we acknowledge the way we treat others may be required of us. Reparation, according to Boxill, utilizes this notion of justice in that “where an unjust injury has occurred, the injurer confirms his belief in the other’s equality by conceding that repair can be demanded of him, and the injured rejects the allegations of his inferiority contained in the other’s behavior by demanding reparation.” (Ibid, pp.118-119) When an injustice

\(^{10}\) This equilibrium is separate from monetary equilibrium. It could be noted that to return blacks to equilibrium after slavery is to leave them as relatively (by America’s standards) poor as they were before slavery. However, it must be remembered that one need make reparations equal to the transgression. In the case of slavery a monetary amount must be set for all of the work slaves had done and not gotten paid for. It could be argued that an amount could also be set beyond labor to make reparations for the enslaved for harms incurred while being enslaved (such as harsh living conditions, beatings, rape, kidnapping, etc.). These ‘moral transgressions’ would serve as justification for this enhanced payment that would go beyond ‘returning blacks to the equilibrium that existed prior to the transgression’.
has occurred, such as with systematic discrimination and segregation, and compensation is supplemented in the place of reparation, at least two things happen. First, the victim of this injustice is told that he is not an equal and that reparations are not due to him, and secondly, the perpetrator is told that he can do whatever he pleases and reparation will not be demanded of him.

Because of these facts, it is clear to Boxill, that “compensation cannot be substituted for reparation where reparation is due, because they satisfy two different requirements of justice.” (Ibid.) Compensation gives special treatment despite the reasons for the disruption in equilibrium and reparation seeks to return the equilibrium through the acknowledgment of the original injustice. AA in its current formation has the same justificatory reasons that national and state welfare programs do. We as a society, through AA and other similar compensatory programs, are not concerned with how a person has reached the level of joblessness or poverty, we only seek to return you to a place where you can compete again. Reparation as we have seen has very different aims and it becomes a serious mistake when the two are confused.
PART TWO

REPARATION EXPANDED

So far, I have minimally spelled out reparation and how it can address current problems that AA cannot. In doing so I have purposely omitted other damaging arguments that have been brought to bear against AA, or more specifically 'reverse discrimination', that also apply to reparation as I have proposed it. These will be discussed below and answered by expanding and fleshing out reparation. This fleshing out will include who should and should not and who can and cannot be considered for repayment for past injustices perpetrated a group of people (whites) or the nation that this group inhabits (America for legalizing slavery and segregation).

It should be noted that the arguments that are about to be presented have also been leveled against AA. AA has failed to defend itself against these arguments for the same lack of justification that was introduced and discussed above. It will be argued that these additional failures of AA can be addressed by reparations.

Reparation Unjustly Punishes Current Generations of Whites

This argument against reparation is actually comprised of two arguments that are related and make up the whole. First, current whites cannot be held responsible for crimes that were perpetrated by their ancestors. Second, not all current whites had ancestors that perpetrated segregation or discrimination in this country and not all current blacks are owed reparations because some did not have relatives that were segregated or discriminated against. I will address these arguments in order.

If we reduce the first argument to its simplest terms, perhaps by showing a
simple example, its point can be more readily seen. If my father were to exceed the speed limit at time $T_1$ and a police officer were to record this indiscretion but not cite my father for it at time $T_1$ but to wait until time $T_2$, after my father had died, and attempted to demand that I, his only son an heir, pay his fine I could argue that this is not morally justified. My father perpetrated the original indiscretion and is the only person that could have been held responsible for his action. I am not legally or morally bound to pay for a crime that some one else has committed. Much in the same way, if my father was a racist and perpetrated many racist acts in his lifetime I could not be held responsible for his racist acts. To demand that I pay reparations for past discrimination and segregation as perpetrated by my father would be absurd.

In the latter argument it is not under dispute that blacks were systematically discriminated against during the segregation laws that ran from 1896 to 1954. However, since this time almost fifty years have passed and although blacks could have been owed demanded reparations when the 14th amendment to the Constitution was amended (making segregation illegal) it is impossible to find a group to pay reparations to now. More than a few generations have passed since legalized segregation was outlawed. The victims and their heirs as well as the perpetrators and their heirs would be nearly impossible to determine (not to mention very probably cost far more than the benefit that would be attained by attempting to complete such a task) even if it were determined that blacks were owed reparations now. Thus, there seems to be no clear ‘group’ that can be designated as requiring reparations. Using skin color to attempt to determine who should bear the cost of reparations and who should receive them will inevitably lead to mistakes.

Also, the concept of giving current generations of blacks reparations does not take into account that these blacks, as well as whites, are partly made up of peoples
that have immigrated to this country since 1954 and could not have been segregated against or perpetrated legalized segregation. The argument is that American cannot morally justify that whites who had no part, or whose fathers had no part, in segregation (let alone slavery) pay reparations to current generations of blacks. Similarly current generations of blacks represent a group currently comprised of people who neither had descendants who were discriminated against or themselves were victims of discrimination or legalized segregation.

For all of these reasons, the argument goes, reparations are not morally justifiable or logistically possible.

Reparations Gives Group Benefits for Crimes Perpetrated Against Individuals.

Until now reparations, as I have defined it, has assumed that current whites as a group would be paying back current blacks as a group. However, this is an assumption that cannot be simply posited. An argument that would, and most likely should, arise is that racism is a crime that is perpetrated by individuals against individuals and therefore blacks as a group cannot be owed reparations for crimes that have been committed against individual blacks. These are two separate and distinct notions that can not be equated.

This argument also does not argue against the fact that blacks were enslaved and that they were legally and systematically segregated for many years. What it does argue is that blacks, if owed reparation, were owed reparation as individuals at that time (when slavery or legalized segregation was outlawed respectively). This argument does take into account descendants of slaves or segregation-era blacks but these descendants would have to prove they had been damaged or treated unfairly by the actions of the past. The argument can be perhaps boiled down to this; because you are
black and in live in America does not mean that you are owed reparations because former laws in America have been discriminatory toward black Americans. You would need to prove how you were harmed, if you were, by these laws and social practices before it would be obvious that you are owed reparations.

One can imagine a group of workers who all share something in common, say the fact that they have blond hair. People with blond hair are not promoted to a supervisor position within the company because the CEO has a severe dislike of people with blond hair. If the blond haired employees were to bring a suit against their employer because they have been systematically been discriminated against it would be necessary for these blond hair employees to show that they had been harmed by the businesses practices. In other words they would need to show how much potential money was lost because they were passed over for supervisor positions because of some criteria that was not job related.

We can also imagine an employee that worked in the mailroom of this company who does not have a degree or applicable experience to become a supervisor who also had blond hair. It could be argued that because he could not have been promoted to a supervisor position because of the additional fact that he was not qualified to do the work that the position demanded. The fact that this employee also happened to have blond hair is irrelevant to his demand for reparations. Because this mailroom employee cannot show that he was damaged by the businesses discriminatory processes it is not obvious that he is owed reparations.

Much in the same way blacks that were not alive or not obviously victimized by legalized segregation or discrimination are not obviously owed reparations. It must be shown by these people that they were indeed harmed in some way by these discriminatory practices before they should be paid reparations if it is indeed shown
that reparations are owed to blacks. Again, it is argued, that it is not the case that simply because you are black and live in America that you are automatically owed reparations because former policies discriminated against blacks. It would need to be shown that a person was discriminated against, or inherited penalties brought on him by former injustices, on an individual basis. Again there is not applicable group of which to demand or pay reparations because these were injustices perpetrated by and against individuals.
Before the arguments introduced above are to be answered (and consequently reparations expanded) I feel it is necessary to explain a slightly different way of viewing historical events that should be adopted before fully understanding how past discriminatory events are relevant to us in the present.

In teaching Race and Gender classes at Western Michigan University it has been my feeling that students today have, for the most part, separated themselves from past historical events and societal practices and view current practices and structures as separate and distinctly different from similar practices in the past. Students do not understand how events or policies of the segregation-era have influenced events and policies that are happening today. In wondering whether this past-directed short sightedness was simply a youthful folly of my students, I have asked questions of (and engaged in many lengthy conversations with) older and more learned peoples. It seems that they too have taken the unjustified luxury of looking back on past discriminatory practices such as slavery and segregation and firmly believe that we are not currently involved in similar or related practices. These conversations have led me to the firm belief that many of the people in American society either do not care or do not understand how the past policies, aimed at the enslavement or segregation of blacks in America, have shaped and molded the practices of today.

This has struck me as odd because I have always believed that current discriminatory injustices suffered by blacks in America today are simply extensions of the racist history of America. A history that began with the dispossession of Africans

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11 This section was inspired by an article written by Robert Sparrow titled “History and Collective Responsibility” in the Australasian Journal of Philosophy #78
from their native continent and sold them into slavery and then institutionally and legally segregated newly freed African Americans. I have attempted to teach my students that although both of these practices have legally ended in this country they should not be viewed as separate and distinct events that have little to nothing to do with our current societal practices and laws. In other words a more synoptic view of history should be adopted to understand the policies and procedures of today.

In this synoptic view we should not view the past as a “series of singular and unrelated events but instead should view it as a collection of “patterns, periods and series of events” (Sparrow, p347) Present individuals in any society should be, in part concerned with how future generations view our current actions and whether or not they will be able to separate these current actions as separate from, or a continuance of, the discriminatory practices that we currently view ourselves as being so far removed from. The distinction that we have made between our past practices and the current practices of our society is not necessarily a historically significant one. The question must be asked by our society today is; will the discrimination, such as what was seen in the in individual and class action law suits brought against Denny’s, Shoneys, and the International House of Pancakes (IHOP) in the early to mid 1990’s be viewed in the future as simply a continuation of the discriminatory practices of America such as what was seen throughout our history, or simply three isolated incidents of discrimination perpetrated by racist individuals or isolated pockets of individuals within those respective companies? It should be feared that without a statement saying that the events in our past were morally wrong and that the people harmed are owed reparations we should fear that as a society we have not made a clear break from the practices of the past and the practices of our present and soon to be future.
When looking on the past using the synoptic view we can see much more clearly that certain events are more significant than others in the understanding the past patterns and the structures in which we currently live. For example we understand the assassination of Arch-Duke Ferdinand as the beginning of World War One, whereas other politically motivated killings of the same period go unremarked and unremembered. Similarly, the CRA 64 that was viewed at the time as a declaration of equality is almost unremembered as a point in history that was supposed to bring about an end to inequality. In fact, the claim that ‘all men [humans] are created equal’ has been made at various times in America’s history (The Constitution of the United States of America, Bill of Rights, and the 13th Amendment) and each time it has not ended in the legal or societal cessation of discriminatory events. Every time this declaration has been uttered in the past bills have been created to protect certain groups and American society responds with the further discrimination and segregation of those residents that these bills were designed to protect.

What is needed to separate past discriminatory practices, such as slavery and legalized segregation from the future in which our descendants will judge us from is something that is stronger than a simple verbal or written declaration that blacks are to be considered equal. It requires the redressing of past injustices and the proper reparative actions that will serve to bring blacks to a greater level of equality with whites. It is through these reparative actions and declarations that people in the future could see reparations as the single significant event that separated Americas racist past from its more equal future.

It should also be realized that the “determining influence of the present on the past – and of the future on the present – is not just a matter of the empirical description and schematization of events but of their ethical evaluation...” (Ibid, p
We should not, and simply can not, view past empirical and historical facts and events as separate from the ethical judgments that formed those events at that time and subsequently form current events today. When we look at the past our depiction and description of those events are "infused with normative evaluation and the ethics we bring into our understanding of past events is necessarily our own." (Ibid, p.148) For instance, we view slave owners who forcefully had sex with their slaves as an act of rape and not the free exercise of one man doing what he pleases with his property as it was viewed at that time. In this way history can reveal to us that our current understanding of ethical events may be considered inadequate and that the real nature of current events may be different than what we currently think.

It could, however, be argued that because we can not know how the future generations will view us and our decisions that we should not concern ourselves with this ambiguous 'agent' but concern ourselves with the real agents of the present. However, it must be remembered that the future that we are currently shaping is our own. In much the same way the present that we are currently shaping is our own. It is simply the case that we cannot separate ourselves from the events of the present and in much the same way we cannot separate ourselves from the future. In essence we do care, and should care, about how future generations view us much in the same way that we care about how we are going to view our current actions in the future.

Along with this understanding should come a recognition of the role of the future in determining the nature of the past and current events in that it transforms our understanding of our current ethical predicament. When our current ethical situation is viewed with one eye on the future and how that future will view this current decision it places this current decision in its correct historical context. Essentially,
considering the future “historicises” the present and in doing so “makes the past present for us by situating it in its midst” (Ibid)

Therefore, I wish to remind the reader that the forthcoming notions about to be spelled out are to be viewed from a more historically synoptic view. It is not the case that the past institutions of slavery and segregation are isolated pockets of a nation gone wrong but are to be more correctly viewed as a string of events that have gone from perhaps the most deplorable places man can find himself (the forced servitude of another) through group demoralization (legalized segregation) into the current status of institutionalized discrimination.

Inheritance

It cannot be discounted that there have been many improvements over the years with regard to racial relations between blacks and whites in America. However, it will be my argument that these improvements leading up to the contemporary treatment of blacks in this country is essentially a continuation of a racist tradition. It can and will be shown that not only are black Americans not much better off, and in some cases worse off, than they were before the CRA 64 but that because of this blacks have inherited the unethical hand-me-downs that were perpetrated in slavery, and then in legalized segregation. Because of this inheritance, current generations of blacks are still owed reparations for slavery and legalized segregation. It will furthermore be shown that the only way America can stop the continuing chain of discriminatory events is to grant that these reparations are ethically justified and to demand that these reparations be paid.

To fully show how these racist practices have been handed down throughout the generations in America I will separate the notion of inheritance into two separate
parts; the inheritance of immorally obtained wealth and materials and the inheritance of racist practices and ideas. I will address these two separate notions in order.

The Inheritance of Wealth and Materials

What is needed is a compelling description of how wealth, immorally obtained through the enslaving and the segregation of blacks, has been passed down from generations of the past to current generations. To do this we will need to examine a simple example of when reparations are due and expand that example to show how inheritance can come into play. Let us imagine the following example: Willard has an indisputable right to the possession of a certain item, say, his vehicle. Bert, a neighbor of Willard’s, steals his vehicle. It is clear in this very simple case that Bert owes the vehicle, or an equivalent, and an admission of error to Willard in reparation. Let us complicate the matter a bit; Bert now steals the vehicle and for some reason gives it to his friend Joel without Joel knowing that the vehicle was stolen. Joel in this case, even though he was innocent of stealing owes the vehicle to Willard and an admission that even though he did nothing wrong he did not ever rightfully possess the vehicle. Let us complicate the matter one final way in order to tie in the notion of inheritance of wealth and materials: Bert steals the vehicle from Willard and gives it to his friend Joel, but in the meantime Willard dies and clearly bequeaths (through a last will and testament) the right of ownership to his son Willard II. Even with all of these complications we can have little hesitation in saying that Joel owes the vehicle and a concession of his unrightfully ‘ownership’ of said vehicle to Willard II.

By reflecting on these examples and their complications one can see similar

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12 The examples and the inspiration for this section were also taken from The Morality of Reparation by Bernard Boxill, Social Theory and Practice #2 1972-73 (pp. 113-123)
complications that exist when looking at how the enslaved blacks had an indisputable right to their labor and because the fruits of their labor have been passed down to subsequent generations of whites, their descendants are still owed reparations. Slave owners used the labor of slaves to become more wealthy. This wealth was passed down to subsequent generation when the original slave owner died. In many cases it was not simply the wealth that passed down to the next generation but also the slaves or their descendants that also passed to the next generations because they were simply considered as property. Even though many generations have passed and wealth have subsequently changed hands it does not change the claim that the descendants of slaves have for the fruits of their labor.  

However, this skeletal notion of inheritance simply addresses slavery and not the legalized segregation that followed. When looking at legalized segregation it must be remembered that unfairly or immorally preventing a person from obtaining an item is to be considered an injustice in the same way that stealing this same item from a person is to be considered an injustice. The ownership of an item is a clear sign that someone values that item and to take this item away from someone infringes on his or her right to pursue and to possess what he or she values. In exactly the same way it must be understood that if one person unfairly prevents or makes impossible the ability to possess something, that person has also acted unjustly even if the person whom he

13 A question could be raised about a ‘statute of limitations’ over the right to wealth or property. As this right falls under the civil law jurisdiction it is right to understand how statutes of limitations are defined in this realm. Although there are statutes of limitations for criminal actions (the time of which varies from state to state) the period fixed by the statute of limitations with respect to civil actions runs from the time the cause of action accrues. It is my argument, because of this inheritance of wealth, the cause of action, slavery and legalized segregation, is still accruing. This accruement this can be seen in the discriminatory practices that are institutionalized today (for more on this please read the section titled “The Inheritance of Racist Practices” in this thesis). One consideration must be addressed when placing reparation for blacks in the civil realm however. The current verbiage of civil law uses ‘compensation’ to mean both compensation and reparation as spelled out above. It would take a revamping of verbiage in civil law to utilize compensation and reparation within their respective applications.
is preventing never attempts to achieve possession of the blocked item.

In the case of segregation, and the subsequent discrimination of that era alluded to in the Brown v. The Board of Education of Topeka, white people enjoyed the benefits reaped by legally restricting the competition of blacks for scarce resources that blacks had at least partial rights to. It must further be remembered that during this era, not only did whites as a whole receive the benefits of a diminished sense of competition (through the almost systematic exclusion of blacks\(^\text{14}\)) it was legally (although unfairly) supported and funded by the government. This unfair acquisition of wealth and materials from slavery and segregation was then passed down to descendants of white slave owners and descendants of segregation-era\(^\text{15}\) whites to the relative exclusion of the descendents of slaves and descendants of segregation-era blacks. Therefore, it is in three places where fault can be found and the subsequent demand for reparations can be made: the descendents of white slave owners, the descendents of whites that lived during the segregation-era, and the American government. These reparations are to be paid to the descendents of slaves and people that lived during the segregation-era.

However, it seems to be an oversight to limit the benefactors of immorally obtained wealth to those who have relatives that lived during the time of legalized segregation and / or slavery. This wealth has not been kept simply within the hands of the descendents of white slave owners or the descendents of white segregation-era peoples but has passed into the hands of whites because being white has served to

\(^{14}\) It is conceded here that some businesses, schools, and public industries \textit{did} provide separate but equal facilities that did not significantly decrease the ability of some blacks to compete it should be known that this was rare at best. However, it is also noted here that the Brown v. Board of Education of Topeka ruled that to segregate was to inherently give unequal consideration.

\(^{15}\) I use the term ‘segregation-era’ to term peoples, white or black, that lived during the era of segregation 1898 to 1954 that either perpetrated acts of segregation, were victims of segregation, or gave ‘convention consent’ to legalized segregation. Please see the section titled ‘The Notion of Community’ in this thesis to understand more on convention consent.
identify individuals as recipients of these benefits. This immorally obtained wealth has passed to the white community as a whole to the relative exclusion of blacks and the black community as a whole. It is therefore the current day white community as a whole that must bear the burden of reparations payable to the black community as a whole. I must, however, defer an in depth discussion, as one is surely warranted, on this topic for later in the section titled ‘community’ below.

The inheritance of white wealth in part immorally obtained from blacks during slavery and legalized segregation can be seen as trickling down to current day whites. However, this ‘inheritance’ has not been limited simple to monetary gains or losses. An inheritance of racist practices (more on this in the next section) has also been passed down in America to make further discrimination possible. I feel that the morally justified reparations going unpaid at two very crucial points in America’s history (the end of slavery (1868) and the end of legalized segregation (1954)) have led current generations of Americans to inherit racist practices.

The Inheritance of Racist Practices

The lack of reparations being paid at the end of slavery and substituting compensation for reparation 10 years after the end of legalized segregation has led to the inheritance of racist practices on both sides of the issue; black and white. Because blacks have not been paid reparations at these two points they have not been able to adequately protect themselves from future immoral actions. Furthermore, because reparations were not demanded of whites the immorality of their previous actions or actions of their white predecessors have been not been shown in their true immoral context. Because America, through its governmental officials, simply ceased the practice of slavery and legalized segregation and did not pay the reparations that the
immoral acts warranted, blacks were told by American society that they were not equals within the society. This lack of reparations also served to tell whites that the wrongs perpetrated in slavery and legalized segregation, although now illegal, was not immoral and that if similar acts were perpetrated again no reparations would be demanded of them. I wish to address both of these issues in greater detail in the order that they were outlined above.

The Lack of ReparationsLeading to a Defenseless Black Sub-Class

To give reparations to one person after a wrong has been perpetrated against him is to attempt to return the equilibrium that existed before the original injustice. When slavery ended, blacks were left destitute. No program of reparation\textsuperscript{16} had been instituted that would allow them to compete, or help them acquire a level of competition, that would allow them to compete for resources. This of course left blacks in an unbelievably poor condition without the money or the resources to even feed and clothe themselves let alone pay for legal counsel. When the Supreme Court case of\textit{Plessy v. Ferguson} was decided and the segregation was legalized, blacks as a community did not have the resources to fight against this decision. Had blacks been given reparations (in any fair form) they would have been better able to refute this decision or the laws, practices, and decisions that led up to them. In this respect it was the lack of reparations, in part, that made legalized segregation possible.

Similarly, it was the lack of reparation for legalized segregation that led to the rampant discrimination that followed and is still alive today. Because blacks were still not treated as equals or returned to a position that would allow them to equally compete for resources, they could not, and can not, equally fend off the discriminatory

\textsuperscript{16}It is noted here that blacks were to be set aside 40 acres and a mule as reparation for the immorality of slavery. These ‘reparations’ were almost never paid.
acts that were and are still institutionalized in American society today (Williams, p.23). This is echoed by Bernard Boxill, “a stable and equitable society is not possible without reparation being given and demanded when it is due.” (Boxill, p.119) Blacks have not been given the resources (owed to them after slavery and legalized segregation) to adequately defend themselves against further attacks, attacks that can occur even today.

It should be noted that although we have seen a decline in discriminatory acts per black capita since the end of segregation (Williams, p.25) it is only a sign that the compensatory programs brought on by AA, along with a lot of hard work and perseverance, are allowing blacks to have the resources to bring legal consequences to those who continue to discriminate. This limited success of AA cannot be confused as a success in repairing the wrongs done during slavery, however. The more affluent blacks become in our society, despite the cause for their wealth, the better they can fend off new discriminatory acts. It is of further detriment, substituting compensation for reparation, that it has taken so long for blacks to be in a position to defend themselves. Had reparations been paid immediately many more blacks would have been in an immediate position to oppose newly encountered discriminatory acts.

**The Lack of Reparations Leading to Further Immoral Acts**

The concept of justice requires that equal consideration be given between equals or that we treat each other equally because we believe that we are equals. The concept of justice further requires that we acknowledge that our treatment of others can be demanded of us so that if we act unjustly, reparations may be required to return this notion of equality to the place it was before the original injustice occurred.

Therefore, the demand that reparations be made and their subsequent payment serves
to reaffirm the equal relationship between the perpetrator and the victim. Thusly the perpetrator not only acknowledges his wrong-doing, but by doing so concedes the immorality of his actions. The perpetrator and the victim see how the perpetrator acted immorally because for a period of time the perpetrator considered the victim as morally unequal.

In the case of slavery no reparations were given. Blacks and whites, victims and perpetrators, were not shown the immorality of slavery through the demanding and payment of reparations. Because of this, blacks and whites alike were told that blacks were still not equals morally in America. Through the lack of reparations whites were not only shown that their previous actions were not immoral but that future actions that treated blacks as less than equal could be perpetrated without a demand for reparations being required of them. The lack of reparations for slavery then, for all of the aforementioned reasons, in part led to legalized segregation. The lack of reparations for slavery, therefore, allowed America as a whole to ‘inherit’ legalized segregation.

It is no surprise that this pattern continued when legalized segregation ended and the current era of discrimination began. This time the substitution of compensation for reparation in the form of Affirmative Action, although helping blacks monetarily, not only reaffirmed that whites could treat blacks as unequal, but through Affirmative Preference taught whites that they must treat them as unequal.

It could be argued, perhaps, that one must treat the victims of immoral actions unequally (in favor of the victim) in order to reestablish the equality that existed before the original immoral act and that Affirmative Preference was only seeking to do this. However, it must be remembered that AA was instituted as a form of compensation and that all forms of compensation are forward looking. Compensation does not have
at its basis the act of repairing original injustices. In fact, as it has been argued above, when compensation has been substituted for reparation a lack of acknowledgment as to the immorality of the original injustices occurs. So if AA sought to repair the original injustices through Affirmative Preference it did so without proper justification. To give preference to one party without justification is an injustice no matter how it is enacted. If AA had used reparations as justification for the use of Affirmative Preference these actions of treating whites unfairly would have been justified. However, because AA used Affirmative Preference within the framework of compensation, it discriminated against whites without condemning the immorality of the original injustices that could be traced back to the first instances of slavery in America. Because whites had not been shown the immorality of legalized segregation and reparations had not been demanded of them they are correct in arguing that Affirmative Preference discriminates against them without proper justification. It is only within the framework of reparations that Affirmative Preference can be utilized and properly justified.

It is of no wonder that the improper use of Affirmative Preference has not only led to whites feeling disdain for blacks who are unfairly being preferred but also to blacks feeling that the only reason they have the resources and jobs they have today is because of unfair practices and not their own laurels. Blacks have not been given the resources owed them through reparation that would allow them to feel equal to their white counterparts and have unfairly been given advantages that lead, in part, to their further feeling of inadequacy.

It is through the lack of reparation given at the end of slavery and legalized segregation that has led to blacks ‘inheriting’ the lack of two very important things: equality of opportunity, and ‘primary social goods’ (such as fair access to health care,
minimal income and social position). John Rawls\textsuperscript{17} has argued that it is these two things that are needed for anyone to develop self-respect. It is no surprise that blacks find themselves needing programs like AA in order to get jobs. It is simply the case that they have been made to feel that they cannot get a job any other way. The real tragedy behind giving AA (through Affirmative Preference) where reparation is due is the fact that these programs only fuel the feeling of being unequal and the lack of respect that accompanies this. In this respect blacks have 'inherited' a diminished ability to defend themselves against injustices incurred after reparations had not been paid, an unequal status in respect to whites who have not been forced to pay reparations, and the lack of self-respect that accompanies things like legalized segregation and slavery.

It can now be seen how the notion of 'inheritance', as spelled out above, has brought the injustices of the past into the present by not only showing how the wealth immorally obtained though slavery and legalized segregation has passed down to current generations of whites through the exclusion of current generations of blacks, but also how the immoral behavior of treating blacks as unequal in relation to whites has been passed down from slavery, through legalized segregation, and into the current era of discrimination. This also shows why current generations of blacks can demand reparations from current generations of whites. Current whites are the clear benefactors of wealth, resources, and privilege unjustly obtained during the times slavery, the legalized segregation era, and are still amassing these benefits through the 'efforts' of discrimination still alive today.

It should also be clear that without reparations being paid now future generations will inherit not only the immorality of the past but the current

discriminatory injustices of the present. It is only with the clear break made by reparations that future generations will be able to distinguish current and future actions as separate and distinct from the racist history of the past.

The Notion of Community

The notion of inheritance as spelled out above has shown that wealth that has been immorally obtained in the past has been passed down to current generations. The fact that reparations were not given when slavery and legalized segregation ended has furthermore led to the inheritance of racist practices that have, in part, led to the current levels of discrimination that we have in America today. However, the notion of inheritance spelled out above does not yet address the argument that the immoral acts of the past were immoral acts perpetrated by individuals to individuals and subsequently reparations are to be paid to or by whole groups. It has only served, thus far, to show how wealth has been passed down from generation to generation from individuals to individuals. Without something more it is not clear why whites as a group should pay reparations to blacks as a group.

It has been argued\textsuperscript{18} that even if the correlation between being white and inheriting immorally obtained wealth and privileges is very high, say 99\%, it cannot be the case that we should punish the white community as a whole. It is immoral to punish those few whites that have not inherited any immorally obtained wealth. The argument continues that, although it is immoral to punish whites as whole, it is not morally objectionable to give blacks, as a whole, reparations even though some have not been affected by legalized segregation and slavery. In the cases where some blacks are given reparations that are not owed them, such mistakes would only lead to giving

\textsuperscript{18} Silvestry, Philip., "The Justification of Inverse Discrimination", Analysis, 34.1 (1973)
more than one is due. Therefore, the argument can be restated as such: to *give* to a

group based on a high correlation is not morally objectionable but to *punish* based on

a high correlation is. Correlations, even when extremely high cannot be used to punish

the innocent because each person has *individual* rights. This notion is seen reflected

in the American judicial system where we are willing to let some guilty criminals go

free because we do not want to imprison a person who is not guilty. Each person

must be considered individually when it comes to the moral treatment of others.

However, I introduced an argument above, warranting clarification now, that

accounts for how the white community *as a whole* has inherited the wealth and

privileges immorally obtained during legalized segregation and slavery. This minimally

outlined argument can be separated into two distinctly different arguments; the first

argument is that each white person, individually owes reparation to the black

community as a whole, the second differs in that the white community as whole can be

considered a sort of corporation and that as a whole whites owe the black community

reparations. I will take these in order.

As mentioned above it is not the case that only the descendents of white slave

owners or the descendents of segregation-era whites that have been the beneficiaries

of immorally obtained wealth, but that each individual in the white community has

benefited. To be white in America is to denote that you are a member of an elite club,

a club from which blacks are and have been systematically excluded since before the

independence of America. During slavery, being white denoted that you were not to

be enslaved without reason (indentured servitude was entered into by whites but by

contract only) and that you could hold another person (almost solely black) as

property and reap the benefits of his labor without paying him or her. This continued
to a degree during the segregation era in that being white denoted that you received
diminished competition for jobs and resources while benefiting from the notion that even if you were to become the lowliest of low among the whites you would not be treated as a second class citizen as blacks were. This notion continued past 1954 when segregation was made illegal and 1964 when again the federal government declared that all humans should be considered equal in the job market. Discrimination against blacks in the job market still exists, the percentage that blacks make in comparison to whites has not changed from the late sixties to the late nineties (Williams, p. 21), and whites still enjoy a diminished sense of competition from their black counterparts.

Even though inheritance of this wealth and privilege has passed into the hands of whites to the virtual exclusion of blacks, it could be argued that recent white immigrants to America could not possibly owe reparations to recent black immigrants. How could it be possible that a white person that arrived last week to America owes reparations to a black person that was on the same flight? It must be remembered that being white is a sort of designator that identifies a person who is to receive certain benefits. In much the same way being black is a designator used to identify a person of which not to pass benefits and wealth on to. It is true that the black immigrant may have more wealth and means when he comes to America that the white immigrant but this does not mean that his wealth makes him immune from the discrimination that he will encounter when coming to this country. The only immunity you can have to black discrimination in America is being white.

It could, however, be argued that the white immigrant is a passive recipient of this immorally obtained wealth and privilege and is not subject to payment of reparations. This arguments' bite comes from the notion that whites, and certainly recently immigrated whites, are not in a position to refuse the benefits that belong
(whether they are cognizant of it or not) to blacks and are therefore not be held culpable of receiving these benefits and are therefore not liable to make reparations. This argument, while seemingly valid, misses the point of receiving immorally obtained wealth and privilege. In the case of the recent immigrant, it is not an argument over whether this immigrant is morally culpable or not or to what extent he is culpable, but that by being white this recent immigrant has received, and will further receive, benefits to which others have at least partial rights. An example is in order: Willard has a heart attack and is taken unconscious to the hospital. Bert, also in the same hospital, has recently just passed away from injuries suffered while in an automobile accident. The doctors, realizing that Bert is a perfect tissue match for Willard, transplant his heart to Willard in order to save his life. The doctors had no way of contacting Bert’s family and in the interest of saving one life have performed the transplant without permission. If Willard lives through this extreme ordeal he must make proper reparations to Bert’s family while admitting that he is alive today because he is possession of a heart that is not rightfully his. Willard can explain that he had no choice in receiving this heart but that this lack of choice does not make the possession of this heart any more morally justified. The simple truth of the matter is that an injustice has been perpetrated by the doctors that Willard has been a party to without knowing it. This injustice is cause for reparations. There is certainly a case to be made for the doctors owing Bert’s family reparations (because they have given something to Willard that was not theirs to give) but this does not excuse the case that Willard owes reparations as well. Much like the automobile theft, just because Willard was in possession of something that was not rightfully his and did not know it, does not excuse him from making reparations.

The consequences of this argument are that it really does not matter whether
one is culpable in receiving the benefits that being white entail but that one concedes to being in possession of these benefits and make the proper reparations to those who have a rightful claim to them.

A few further questions can, and perhaps should, be raised by following the notion of individual reparations paid to a community to its logical end. Is it the case that in demanding that white individuals pay all black individuals means that the poorest white individual owes the richest black individual reparations? How is it clear that poor white individuals have benefited monetarily from the wealth and privilege mentioned above? Doesn’t it seem that the wealthy black individuals have not been affected by past injustices such as slavery and legalized segregation? It is argued from questions like this that the payment of reparations to the black community as a whole by all white individuals leads to consequences that are undesired, namely that poor whites will have to pay reparations to rich blacks. However, it does not follow that simply because a white person is poor and that a black person is relatively rich that they have not been affected by the inheritance of legalized segregation and slavery. It could be the case that the white person’s lack of wealth is due to poor business decisions and the black persons relative affluence is due to perseverance in the face of discrimination.

Again an example seems applicable: Suppose Willard steals Bert’s car while Bert remains unaware that Willard has stolen his vehicle. In this case Bert can make no demands of Willard to pay suitable reparations because he is still unaware that Willard is the one who has stolen his vehicle. Let us now suppose that Bert opens a car dealership and it does very well. Bert in a few short months is now in possession of a hundred cars and also comes to realize that Willard stole his car a few months ago. Bert can now make the demand that Willard owes him applicable reparations as
well as an admission that he was wrongfully in possession of his car. Although Bert owns a hundred cars it is not the case that this diminishes his rightful claim to the one that Bert has stolen. Much in the same way it is unimportant to point to the wealth and prestige that people such as Oprah Winfrey and Colin Powell have because these things do not negate the claim that all blacks have to reparations.

The second argument mentioned above is that the white community can be taken as a whole, much like a corporation, and that this whole owes reparations to the black community as a whole. It is true that the white community does resemble businesses and corporations in certain ways. Much like corporations whites have interests that are different from and opposed to the interests of other communities. Also, businesses-like group action is taken by members of the white community to protect the white communal interests while seeking to exclude the interests of the black community (or any other non-white community). It is understood that there are many differences in this analogy. Such as, members of the white community are born into this ‘corporation’ and do not choose to be members like traditional corporations do. However, like the argument above, it is unimportant whether it was the choice of whites to become members of the white community or to be given the benefits that are passed to white members of America. However, as Boxill insists, it is important that a white person “chooses to accept these benefits..., sees such benefits as belonging exclusively to members of the white community, identifies one’s interests with those of the community, viewing them as opposed to those of others outside the community, and finally takes joint action with other members of the community to protect such interests”. (Boxill, p. 122)

This sort of behavior is the same sort of behavior that Jean Hampton described in her book *Political Philosophy* when people born into a government have argued that
they did not chose that particular governing body and therefore do not owe any fealty to the current regime. “On the convention model, each subject of a regime gives a kind of “consent” to it as long as her behavior is either supportive of or at least not undermining of the governing convention of that regime.” (Hampton, p.94) Much in the same way when whites immigrate to America and begin to receive benefits designated to them, they have not chosen to receive these benefits but in receiving them and doing nothing against the regime or community that makes it possible for them to receive them have given a sort of consent to receive these benefits. In these cases it seems fair to consider the present white community as members of a corporation who have inherited the debt incurred by the company before they were members. Furthermore it seems fair to demand reparations that are applicable to the costs of the debts incurred.

In either case, whether whites are to be individually charged with paying reparations, or whites are to be considered a sort of corporation and as a community are to pay reparations, it is clear that a case can and has been made for all whites to make reparations to all blacks. It is conceded that this conclusion leads us to some unpleasant situations that seem on the face to be unfair. Only upon further inspection can we see that despite these unpleasant situations fairness can only be restored to blacks and whites in America through reparations.
CONCLUSION

If what has been explained above is true, and I think it is, there is one conclusion that must be accepted: that blacks are owed reparations for slavery, legalized segregation, and institutionalized discrimination. However, this conclusion has taken many steps and I believe it is worth iterating how this thesis came to the conclusion that blacks are owed reparations.

- Affirmative Action (AA), for many reasons detailed above, is a form of compensation rather than a form of reparation.

- Reparation cannot be substituted for compensation because, in part, it does not treat both parties, the transgressor and the victim, as equals. Nor does the lack of reparations return the equilibrium that was held before the transgression occurred.

- This lack of restoring the previously held equilibrium has led to the inheritance, and the further promoting of the very properties that were deemed illegal and immoral in the original transgression (slavery to segregation and to institutionalized discrimination).

- This notion of 'inheritance' brings validity to the black claim to reparations as well as updating the original claim of reparations by tracking it throughout history and showing how it led to further injustice. ‘Inheritance’ also serves to widen the original claim from the actual victims involved in the transgression or their ancestors to the black community as a whole.
The black community as a whole is owed reparations because the benefactors of this ‘inheritance’ have been the white community as a whole (deemed such for the reasons detailed above) to the exclusion of the black community as a whole. It is the white community as a whole that should be looked upon to bear the costs of reparations owed to the black community.

It is only through the demanding and the payment of reparations to the black community that a schism can be made between the obviously immoral practices of America’s forefathers and our current and future actions. It is only the demanding and payment of reparations to the black community that will remind American’s that all people in America are ‘created equal’ and if one person does not believe so (and acts on that belief) reparations can and will be demanded of him. It is only the demanding and payment of reparations to the black community that the black community can consider themselves equal and be actually equal to the rest of America.
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