28
RECTIFICATION AND HISTORIC INJUSTICE

Jason Lee Byas

Introduction

Libertarianism opposes aggression.[1] There has been a fair bit of that in world history. This raises the question of what to do when aggression goes unresolved, especially when both aggressor and victim have died. Here I will survey some answers to that question.

While this discussion is meant to apply to such "historic injustices" generally, I treat American slavery and colonial land theft as paradigmatic cases.[2] I start by saying a bit about how libertarians thought about rectifying these injustices as (or soon after) they occurred. I then advance to contemporary discussions, first regarding reparations for slavery, and then for issues particular to land theft. I conclude by briefly mentioning some largely uncharted territory for libertarian thought about historic injustice.

Historical Libertarians on Historic Injustice

William Lloyd Garrison and Lysander Spooner agreed that because slavery violates self-ownership, it should be immediately rather than gradually abolished. They disagreed on how to get rid of it. Garrison believed in non-violence, Spooner favored insurrection. What is worth noting for our purposes is that Spooner's contribution to the debate about how to respond to slavery as a present injustice also includes some thoughts about how to respond to it as a past injustice.

Anonymously, he penned "A Plan for the Abolition of Slavery" and "To the Non-slaveholders of the South," which told private citizens to form "Vigilance Committees, or Leagues of Freedom," private militias meant to assist in slave rebellions. The first aim of those rebellions would be to ensure the slaves' freedom, but that was not all. Additionally, Spooner proposed "kidnapping individual [s]laveholders, taking them into the forest, and holding them as hostages for the good behavior of the whites on the plantations, compelling them also to execute deeds of emancipation, and conveyances of their property, to their slaves" (Spooner 1858).

The duress of these transactions was irrelevant, he argued, because slaves had a right to compensation. In taking the slaveholders' land by force, liberated slaves would just be securing property that already belonged to them in moral fact. This distinction between title in positive legal fact and title in moral fact is step one for most libertarian thought on rectification.

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Projects like what Herbert Spencer called the "deeds of blood and rapine" of state colonization can establish the former, but not the latter (Spencer 1851, 368). This presents a prima facie case for reparations on a libertarian framework.

As soon as that case is raised, though, it comes with the worry that there have been so many deeds of blood and rapine that even massive reparations wouldn't put things right. Land theft is ubiquitous, and Spencer appealed to this in discarding Lockeanism for a quasi-Georgist arrangement where all land is collectively owned and privately leased. "It can never be pretended that existing titles to such property are legitimate," he wrote in the first edition of his *Social Statics*, because it is "[v]iolence, fraud, the prerogative of force … [which] … are the sources to which those titles may be traced" (Spencer 1851, 115).

On this last point, Spencer's *Economist* colleague Thomas Hodgskin dissented, arguing that it is incoherent to point to the historical record of property rights violations as a point against those same rights. "We are afraid that the author is led," Hodgskin wrote in his review, "by just indignation at the abuse of the right of property in land which has taken place throughout Europe, to conclude erroneously against the use of such a right" (Hodgskin 1851).

Of course, Spencer's challenge remains, of how exactly we should handle the fact that existing property titles so frequently have their genesis in predation rather than production. Beyond overt conquest, we can also include the enclosures' overturning of long-held common property into private estates.[3] This was among the points raised by critics of property in land in J.H. Levy's symposium on "individualism and the land question," which also included responses from individualist anarchist Wordsworth Donisthorpe and voluntaryist Auberon Herbert to that challenge.

Donisthorpe took these problems as a reason to favor amoralist egoist foundations over natural rights (Donisthorpe 1890, 33–40). Herbert did not, instead motioning briefly toward arguments familiar to today's reparations debate: that much of the land in question has since been freely sold, that it was already stolen before whatever victims the objector has in mind had it, and that, in any case, identification of current claimants will be quite difficult (Herbert 1890, 70).

In his own discussion of Britain and Ireland, Spooner took a different tack. Replying to an apologist for English repression in Ireland, he wrote that since conquest, "[n]either the original robbers, nor any subsequent holders, have ever had any other title than a robber's title," and that "[n]o lapse of time can cure this defect" (Spooner 1880, 4). Accordingly, its present holders cannot claim legitimate ownership, irrespective of whether they themselves had any connection to the original theft. He then acknowledges that this applies to England as well, and that following his advice would overturn "the whole social structure of the United Kingdom," but rejoices that this would be "the opening of a day of freedom" (Spooner 1880, 5). Even if the original claimants cannot be traced, Spooner continues, others have been "deprived … of their natural rights to buy these lands," and can thus have a claim (Spooner 1880, 7). In addition to extending entitlement, so too does Spooner extend liability, including "all who have voluntarily aided in upholding the British government" (Spooner 1880, 7).

Spooner ends his letter by shifting audience and appealing to the oppressed themselves, suggesting that they should not expect or seek these reparations from the British state. After all, he says of the state's courts and legislatures, "[t]hey exist for no such purpose." Instead, he implores those who have claims to "[t]ake the redress of your own wrongs into your own hands." More specifically: "Put an end to their Parliaments and Courts. Blot out forever their statute books" (Spooner 1880, 11).

Both the practicality and the moral risk of outright revolution might be questioned even for retrieving rightful claims. Nevertheless, the suggestion that reparations might be simply *taken*

by private actors without waiting on the state to provide them is an interesting one that has received little attention in contemporary debates.

Libertarianism and the Past, Today

Turning to today's reparations debate, two positive arguments are typically non-starters for libertarians. The first is any straightforward appeal to the thought that counterfactually, the descendants of direct victims would be better off had the injustice not occurred. The objection to this approach is not unique to libertarians: if the injustice in question had not occurred, the alleged current claimant would not exist (Morris 1984). We cannot then say that they are harmed by comparison with how their life would be without the injustice, because that comparison is with non-existence. Importantly, the claim here is not that descendants of original victims should be grateful for that injustice. They are not better off in virtue of the injustice, either, because the comparison also cannot be made positively. Rather, the point is that the comparison *cannot be made at all*, because the alternative scenario is just a blank. This is called "the non-identity problem," and is a reason that most philosophers arguing for reparations avoid resting their arguments on straightforward counterfactual comparisons.[4]

The second kind of approach unlikely to find favor among libertarians is the claim that privileged parties have been unjustly enriched by historic injustices. Here the reasons are more particular to libertarians. As mentioned in the previous discussion, libertarians and classical liberals tend to think that these practices and institutions were economically destructive, and that societies like the United States are *poorer* than they would have been without them.

This is not to say that, for example, white Americans are not on the whole relatively better off *than black Americans* due to slavery, but only that even white Americans are worse off in absolute terms *than they would be if slavery had never occurred*.[5] Slavery and imperialism did not make Western societies rich, libertarians typically hold, they just made their victims (and to a lesser extent, most everyone else) poor.[6]

Boonin's Compensation Argument

In his *Should Race Matter?*, David Boonin develops the "Compensation Argument," explicitly motivated by worries with counterfactual and unjust-enrichment arguments. Rather than worrying about the liability of any present-day individuals, Boonin focuses on the responsibility of *corporate agents* still in existence that participated in slavery, using the state as his example (Boonin 2011, 48–52). Assuming that corporate agents like the state owe compensation for the wrongful harms they commit, slavery would clearly be such a harm. Then, Boonin argues that the effects of slavery continue to harm present-day black Americans. That harm is not judged by how their lives would otherwise go, since that claim would fall prey to the non-identity problem. Rather, he argues that the social conditions created by slavery continue to harm black Americans in an *ongoing* way, like a polluted environment several years after some toxic waste was released (Boonin 2011, 45–48, 106–112). Since that social pollutant was released in part by the acts of a still-surviving corporate agent, that agent owes compensation (Boonin 2011, 52–53).

One place in which libertarians might challenge Boonin's argument is in attributing a compensatory debt to the state. It may well be that corporate agents are still on the hook for debts regardless of whether any responsible personnel are still affiliated or even alive. Georgetown University owned slaves and recently decided to pay reparations to the descendants of those slaves. Such a choice is unproblematic, and perhaps even requiring it by court order would

have also been unproblematic on libertarian grounds. Yet, while much of Georgetown's money comes from voluntary gift and exchange, the state's comes through coercive taxation. Demanding reparations from the state, a critic might argue, is really demanding reparations from taxpayers, and this requires further justification.[7]

The first thing to note in response here is that this worry is not unique to reparations. If the objector accepts the legitimacy of taxation in general, whatever justification is already available will be enough. Second, the objection falls short even on the assumption of a radical libertarianism that rejects all taxation. While the state should not continue to extract wealth from its citizens, even for the purpose of paying reparations, it nonetheless has quite a lot of wealth already.[8] Since the state has victims – as this sort of objector is especially likely to agree – that existing wealth belongs to its victims. One might say that for a certain kind of libertarian anarchist, the only legitimate function of government is to pay reparations, since this is the one legitimate use of state resources that cannot in principle be done by other entities.

Boonin's argument also rests on the claim that the worsened condition of present-day black Americans is in large part due to slavery and other state wrongs, which some critics will dispute. While I find Boonin's premise very plausible, I also have neither the space nor the expertise to evaluate it here. Instead, I will note a somewhat related issue that does seem problematic for Boonin's approach. This is that merely having present conditions worsened by the long-term effects of slavery does not seem like the right kind of harm to generate debts of compensation. As Boonin himself accepts in his rejection of unjust-enrichment arguments, it is plausible that the long-term effects of slavery have made things worse for all Americans, irrespective of race (Boonin 2011, 33–41). If this is so, Boonin's position would seem to render the odd consequence that even white Americans with no slave ancestors are owed reparations for slavery.

The Boxill-Sher-Cohen Argument

Getting more specific about the harm in question might help avoid this last problem for Boonin's argument. Here we might turn to an argument developed by philosophers Bernard Boxill (2002), George Sher (2005), and Andrew I. Cohen (2009). Among them, Cohen is the only libertarian, but the argument is given in explicitly Lockean terms. It begins with the now-uncontroversial premise that slaves themselves were owed reparations. Had those reparations been paid, the argument continues, the ex-slave would have had greater resources to provide for his or her child. The continued failure to pay that debt, then, unjustly harms the child (Boxill 2002, 88). While that injustice depends on the prior injustice of slavery, it is nonetheless a distinct injustice of its own.

The Boxill-Sher-Cohen argument's innovation is that, because this new injustice occurred after the child was born, non-identity worries no longer apply. At the same time, the harm in question is specific to descendants of slaves, so we do not get the conclusion of universal reparations for slavery that might pose a problem for Boonin's account.

The child is thus owed reparations for those deprivations faced because her parent was unjustly denied reparations for slavery. When that child grows to adulthood and has a child of her own, her child will also be harmed by the failure to pay the reparations she was owed. Thus, he is now owed reparations for the deprivations faced because his parent was unjustly denied reparations for her deprivations – and so on, and so on, linking present claimants to original victims (Boxill 2002, 85–90).

At least, there seems to be such a link if we can safely assume both that children of victims would inherit the relevant claims and that the debtor's failure to pay therefore wrongs those children. Such assumptions are challenged by what Cohen calls "the voluntarist objection,"

which observes that the original victim could have given received reparations to someone else, or simply used them on consumption. From there, the voluntarist objection claims that it is illicit to move automatically to the thought that the child is deprived by that failure to pay reparations to the parent, since the child may well have been deprived even with those reparations. What applies to the victim's child also applies to the victim's child's child, and so we do not have the unbroken link from original victims to current claimants (Cohen 2009, 85–86).

Cohen then patches the argument by adding the claim that parents have natural duties to provide for their children, and children have natural rights to some of what their parents own (Cohen 2009, 86–87). When one wrongfully so harms a parent that they are no longer able to sufficiently fulfill that duty, that wrongdoer also wrongs the child. This is because part of that debt which the debtor withholds *belongs* to the child. The debtor therefore wrongs the child not because the child would counterfactually be better off, but because they are stealing from the child. This bypasses the voluntarist objection, and so we again have an unbroken line of injustices from slavery to the present day.

One line of objection to the Boxill-Sher-Cohen argument is to deny that parents have any natural duty to provide for their children. Some libertarians may be tempted to push this line, following Murray Rothbard's thought that, while parents might have a natural *moral* duty to provide for their children, it is not one that can be legally enforceable (Rothbard 1998, 100–101). Cohen accepts that, without any enforceable natural duty, the argument fails (Cohen 2009, 89–90). However, the thought that parents should be legally free to passively neglect their children to the point of death is hard to swallow, and Roderick Long has argued that libertarians have good reason not to swallow it (Long 1993).

A scaled-back version of the objection might argue that the natural duty in question is only to ensure the child's survival. Since any would-be claimant is alive, this natural duty is necessarily fulfilled, and so the objection concludes that the Boxill-Sher-Cohen argument fails. In response, Cohen denies that the duty can be limited to ensuring survival, since it seems this would be fulfilled even by parents raising their children in a cage with just enough nourishment to survive (Cohen 2009, 90). For that reason, Cohen says that the duty "extends to the provision of at least some of the material conditions required for the acquisition and development of a certain range of functionings" (Cohen 2009, 90).

If we grant Cohen this point, it is worth noting the scope of reparations owed. Since present-day claims come from a chain of injustices ultimately originating in slavery and the failure to pay reparations to an ex-slave, it requires that present-day claimants descend from slaves, or at least victims of some injustice. The conclusion must therefore be more restricted than Boonin's.[9] This itself is not a problem, indeed some reparations advocates might find that restricted scope more appropriate.

More significantly, notice that if the line of injustices gets broken, any further descendants are no longer entitled to reparations. Cohen plausibly says that if a given child is suffering enough to be entitled to reparations but then things improve, that child is still entitled to reparations for the previous injustice (Cohen 2009, 92–93). Yet he also agrees that if a given child never falls beneath the relevant well-being threshold, they are not entitled to reparations on these grounds (Cohen 2009, 95). It seems, then, that the line would be broken, and that person's descendants would not be entitled to reparations.

It might be a benefit of the view that it includes possible cut-offs like this, given familiar reductios about 1,000-year-old injustices. However, suppose that John and Jane are nearly identically-situated descendants of slaves. Suppose further that this is one way they differ: Jane's grandfather was a successful lawyer, and thus perfectly able to provide for her father, born two years later. As an adult, her father fell back into poverty. This remains true for Jane. John's family

had no such rise and fall, and have instead been poor since slavery. Intuitively, it does not sound right that this difference would be enough to say John is entitled to reparations and Jane is not. Yet, since the chain of unjust deprivations due to unjust deprivations ultimately due to unpaid slave reparations was briefly broken for Jane's family, the Boxill-Sher-Cohen argument would have this result.

One way of softening that issue is noting, as Cohen does, that this way of establishing reparations can be combined with inheritance claims. Irrespective of the point just mentioned, Jane might be the rightful heir to an initial reparations claim still-unpaid (Cohen 2009, 95).

Inheritance Arguments

The arguments just considered try to establish that some group of persons living today are wronged by some injustice or string of injustices starting long before they were born. Regardless of how those claims fare, it is worth remembering again something to which virtually everyone would agree today: the enslaved themselves were wronged in ways that require reparations that they did not receive.

From there, we might have a much simpler argument: When those direct victims passed on, the ownership of that debt transferred to their heirs, as would any ordinary debt. When that debt was still not paid, it transferred to the heirs' heirs, and so on. Those who are alive today, then, are entitled to seize on that debt which they are owed (Simmons 1995, 177–179; Boxill 2002, 67–85; Block 2002; Alston and Block 2008).

Note that this argument does not depend, as Boonin's does, on claims about harms suffered by black Americans today caused by slavery. It also does not depend on claims about the more specific harms pointed to in the Boxill-Sher-Cohen argument. Outside of the failure to pay the debt itself, this argument relies on *no harm whatsoever* to present claimants. In other words, the inheritance argument says that present claimants are entitled to collect reparations, but it does not, strictly speaking, mean that *they* are directly entitled to reparations. Rather, the direct entitlement to reparations was their ancestors', which they have now inherited. Thus, any skepticism about harms to current claimants is irrelevant to this argument.

Yet a similar issue might pose a problem. This is skepticism about whether the sum would have passed down to the current claimant had it been originally paid. As Stephen Kershnar observes, it is highly unlikely that none of the reparation payment would have been spent by the initial recipient, and even less that none of the persons in line between the direct victim and the current claimant would have spent any of their share. To say the current claimant is entitled to reparations, then, might seem to rely on a counterfactual that is shaky at best (Kershnar 2002, 258).

Here, defenders of the inheritance argument have a clear reply. No such counterfactual needs defending, because the inheritance argument does not rest on the thought that current claimants *would have* received the reparations as inheritance. Rather, it says that current claimants *have inherited* the reparations, not counterfactually but factually. While their ancestors did not have the reparations in their possession, they had them in moral title. As the presumed heirs of their ancestors, that moral title now passes down to current claimants. That the original victims and prior heirs probably would have spent some of their reparations is irrelevant, because they never had those reparations in their possession.[10]

As soon as this reply is offered, it invites skepticism from a different angle. Tyler Cowen raises worries for the thought that restitution debt is even a heritable form of property.[11] Among these are ordinary statutes of limitations on collecting debt and that restitution claims exist only to "make the victim whole again," which cannot be done when the victim is gone (Cowen 2006,

25–27).[12] One reason we might doubt the relevance of normal statutes of limitation on debt collection is that, in this case, those entitled to collect it were legally unable to do so.

More significant is the worry that the point of restitution no longer applies. To further motivate this claim, Cowen appeals to the legal precedent that legal restitution claims are not transferable. This, he says, suggests that they are not alienable in a way necessary for inheritance (Cowen 2006, 26–27). In this chapter's context of libertarianism and reparations, it might be worth noting that radical libertarians often hold that restitution claims *should* be transferable (Benson 1996, 92). One way to philosophically interpret that dissent from precedent is as follows. The victim is already, prior to judgement, *morally entitled* to the restitution claim. On this view, the debt is generated by the act of wrongdoing itself, the legal judgment merely affirms it or perhaps settles some details. Since the victim already holds moral title, that title can be transferred like any other, even though the property is not currently in the victim's possession. If this holds for allowing the gift and sale of restitution claims, it also holds for allowing the inheritance of them.

Here we can also appeal to a competing precedent, that of wrongful death suits. Presumably, the direct wrong was done to the person killed, not to whoever collects. Yet the fact that someone can collect suggests restitution claims can be inherited.

One final thing to note about inheritance arguments is that they come with internal limitations. Remember that the claim here is a direct debt of restitution which has then been passed down to presumed heirs, not a unique debt generated and owed anew to each descendant. There is only, then, as much reparations available as would be owed to the direct victims if they were alive today. For cash payments, adjustments for inflation and perhaps interest due to non-payment are in order, but not a new full payment for each descendant. Rather, as the direct victim's living descendants grow in number, the claim divides. For a claim sufficiently far back, the amount available to current would-be claimants will be infinitesimal (Moller 2019, 248).[13]

This internal limit may be desirable to defenders of reparations. When we are talking about a claim with damages as significant and relatively recent on a world-historic scale as American slavery, the amount owed to current claimants will still be notable. When we move to damages accrued in (say) the Roman Empire, assuming a surviving institutional culprit can even be found, these will be very near nothing. This captures well the intuitive difference most advocates of reparations will see between those cases.

Libertarian Reasons for Skepticism about Reparations

In addition to those challenges just discussed to particular frameworks, some libertarians may have further worries with any sweeping program of reparations.

Among these concerns is the sheer cost. For example, one estimate puts the total cost of full reparations for slavery at over double the size of the entire American economy (Marketti 1990, 118). Part of how one thinks about this issue will depend on how one takes damages to be properly calculated, perhaps reaching a much more manageable number.

Yet that probably won't be enough to answer the problem, especially for libertarians. While slavery and colonial land theft are our primary examples of historic injustice in this discussion, they are clearly not the only historic injustices that merit reparations if those do. For example, Jessica Flanigan and Chris Freiman present a compelling case that reparations are owed for victims of America's war on drugs (Flanigan and Freiman 2020). If we think of all the laws whose enforcement libertarianism might count as unjust acts of aggression, the list becomes enormous. Indeed, even for laws prohibiting what libertarianism prohibits, radical

libertarians might take the use of criminal punishment, rather than tort restitution, to be an unjust aggression (Barnett 1977; Long 1999; Chartier 2013, 265–300). For the natural rights libertarian, it quickly becomes apparent that if the state owes reparations for its aggression, it owes an amount that is simply impossible to pay.

This conclusion might not be so bad for anarchists. After all, adding the state's very existence onto its list of aggressions, they are happy to say that states should shut down and leave whatever resources they have to their victims. This will be more of an issue for Nozickian minarchists, who combine the natural rights framework that renders this result with support for a minimal state. One solution for the minarchist might be to limit the state's debts by some principle of proportionality. If we accept the plausible Lockean view that even justified restitution cannot be used to bring debtors to starvation, perhaps an institutional analog is that it also cannot prevent the basic functioning of the state.

The observation that states have such massive debts might raise another challenge for libertarian defenders of reparations for slavery and colonial land theft. This is that, if the state has so many restitution debts, we need a reason for prioritizing some over others.

This objection cannot be taken too far, since even if we grant the premise "there is no reason to prefer reparations for slavery over reparations for seatbelt tickets," this does not mean that neither should be given. It would at most mean that the trade-off can be made by a coin-flip, but that reparations should nevertheless be given.

That said, there are reasons available to prefer one over the other: Slavery and colonialism involve much worse rights violations than nearly any other injustice under consideration. There are expressive benefits to giving those reparations not found in many others. They occurred much earlier than most of the other injustices. Perhaps even if modern racial disparities are not part of the justification for initially establishing the reparations claim, that can be a tie-breaker with other options. On the other side of the equation, one might argue that restitution for injustices whose direct victims are still alive should take precedence.

All that being said, there is also a practical consideration that might render this question moot. As a political reality, radical libertarians who believe the state owes reparations will not control that state anytime soon to be making these choices. So, the answer for which reparations should come first might just be "whichever ones we can get."

Where Libertarians Stand on Land

In addition to those points for and against reparations in general, there are further considerations regarding property.[14]

Principles of Property vs. Actually-Existing Property

As Karl Hess argued, it is less accurate to say libertarianism is about "defending private property" than that it rather seeks to "advance *principles* of property" (Hess 1969, 2, emphasis in original). If we are talking about property in general, "[m]uch of it is stolen. Much of it is of dubious title" (Hess 1969, 2). So, we need to know more about the specifics.

Robert Nozick agreed, stressing that a fully fleshed-out entitlement theory would require some principle of rectification (Nozick 1974, 151–152). Beyond that acknowledgment, he did not say much about the problem.[15] By contrast, Rothbard did.

As he spent three chapters of his *Ethics of Liberty* on illegitimate holdings, the issue was evidently central to Rothbard's political thinking. Often, libertarian economists worry that sweeping restitution of land will cause uncertainty about property titles (Boettke and Coyne

2007, 56). Rothbard argues that refusals to address land grabs also creates uncertainty, and that straightforward economic defenses of the existing must defend the gains of criminals if they are to remain consistent (Rothbard 1998, 52).

Additionally, he says this approach will be powerless against a tyrannical state which holds onto power by simply gifting the country as private property to its ruling class, who might then charge "rents" rather than taxes (Rothbard 1998, 54–55). As he understood well, this hypothetical was not remote for many in the third world (Rothbard 1998, 69–75). Echoing Spooner, he insisted that "if a social system is founded upon monstrously unjust property titles, not molesting them is not peace but rather the enshrinement and entrenchment of permanent aggression" (Rothbard 1998, 53).

On Rothbard's practical framework for dealing with rectification, property titles are assumed legitimate by default, and only come into question if some positive reason can be presented for doubting that legitimacy (Rothbard 1998, 56–57). Otherwise, everyone would have to have the entire history of their property, from its discovery and acquisition to its many transfers, on hand to defend their title. Once unjust acquisition is shown, the current holder's title can still be safe if both of the following are true: first, that the current holder is not complicit in the theft, and second, that the legitimate owner cannot be found (Rothbard 1998, 57). If they fail the first test but not the second, the property is morally unowned, and may be expropriated by anyone (Rothbard 1998, 57–58). If they fail the second test, they must relinquish it to the legitimate owner (Rothbard 1998, 57).

From these seemingly commonsensical points that a thief holds no moral title and that stolen goods should be returned, Rothbard gets some startling conclusions. Because of the anarchist thought that everything the state has is stolen, all state property is up for grabs. Not only that, but so too is the property of nominally private institutions which make most of their revenue through collusion with the state. Specifically, he gives as his examples colleges like Columbia University and creatures of the military-industrial complex like General Dynamics (Rothbard 1969, 3–4). Looking backward, he extends this point to defend reparations to both slaves and serfs in the form of the property they worked, and that current heirs can hold such claims against whoever currently possesses those estates (Rothbard 1969, 4).[16]

As these points suggest, a historically-oriented natural rights approach to property can require much greater amounts of land redistribution, in the form of rectification, than is commonly understood. Some libertarians will embrace this and take it as a point in favor of these frameworks (Chartier 2013, 328–351; Long 2014). As with Donisthorpe, others might take this conclusion as being so unpalatable as to suggest against natural rights in favor of some alternative foundation (Lomasky 2005).

One such alternative is Humean theories, in which stable property rights are instrumentally valuable for enabling individuals to pursue their projects.[17] Starting from such a view, Loren Lomasky provides a more limited view of rectification and compensation. Ordinarily, violations of rights will require redress, both to ensure stability of possessions and because it symbolically validates the victim. However, Lomasky also holds that sufficiently long-standing injustices will not establish claims of redress on those grounds. This is for two reasons: disrupting current holdings for distant wrongdoing destabilizes expectations, and the symbolic effect of redress is strongest when it is soon after wrongdoing (Lomasky 1987: 141–146).

Even with Humean principles of property, though, there may be reason to shift back toward stronger views of reparations. In many cases, the symbolic effect of lingering long-standing injustice can still impact victims or their descendants, and rectifying property claims can help resolve that. Additionally, Rothbard's aforementioned points against economic defenses of the existing could apply here as well. For reasons like these and others, Gary Chartier comes to

conclusions on rectification that are nearly identical to Rothbard's despite holding to a more Humean principle of property (Chartier 2013, 328–351).

The Poisoning Problem

It is nonetheless easy to see the motivation for more restrained views like Lomasky's. If we take seriously the sheer extent to which actually-existing property distributions have violated principles of property, we face a worry for those principles. This is that severe enough injustice might leave property holdings irreparably unjust. If we cannot even hope to get the distribution of property back in line with libertarian principles, perhaps this is a reason to give up and go with some other theory. Since the upshot of this objection is that too much exposure to injustice eliminates the possibility of a consistent libertarianism on land, we can call it "the Poisoning Problem."

The simplest formulation of this challenge is Spencer's: that because so much property was acquired at one point through conquest, Lockean appeals to just transfer are effectively meaningless (Spencer 1851, 115). To motivate this further, remember Spooner's claim that those who acquired once-stolen land in England and Ireland through gift or sale had no title and may be expelled from it (Spooner 1880, 4). Suppose we are willing to agree with Spooner. In many cases, we will not know who is owed a piece of land even if we can say confidently that it was stolen. Therefore, it seems that it is just *removed* from the set of usable land, as if contaminated with some kind of moral radiation. As the objection continues, this is true for so much land that trying to operate on Lockean standards is infeasible, and so we must find some alternative.

Stated in these terms, the Poisoning Problem is easily solved by Rothbard's approach. If we know who has a dispossessed but legitimate title to the land, we just give it to them. If we do not know that, but we do know that the land is currently in the hands of the direct thief, it is not morally poisoned, but *unowned*, open for expropriation by whoever else wants it. If we do not know the original owner, but the land has passed on to some further non-complicit party, that party's acquisition counts as initial appropriation of unowned land. In none of these three scenarios is property left irreparably poisoned.

Unfortunately, the Poisoning Problem can be made a bit stronger. There are at least two situations where swift rectification is not obviously possible even if we know which property was stolen and from whom it was stolen. The first is when that property is irreparably damaged or destroyed, the second is when intervening circumstances have made the original claim no longer permissible.

Lawrence Davis issues the first version against Nozick. Interpreted literally, Nozick's rectification principle requires that after injustice has occurred, we revert holdings back to their last just position. In other words, if you justly have a banana, and I steal it, I have to give it back to you. The problem is that if I eat the banana, I can no longer give it back to you (Davis 1976, 840). The point here can apply to land as well: a stolen area that was once used for hunting grounds, but since then developed into strip malls, cannot go right back to use as hunting grounds. So, if justice is to stay possible after injustice, we need some principled way to fix distributions when they are irreparably altered.

For the second way of extending the problem, consider Locke's proviso that property may be appropriated only provided that "enough and as good" be left for others (Locke 1689, Ch. V, Section 27). Some libertarians will dispute the necessity or justice of that proviso, but I will leave aside those worries here. If there is such a proviso, intervening circumstances will impact its application. A property claim that left enough and as good 400 years ago might not do so today. Accordingly, it might seem that Lockean rectification requires restoring what is today an

impermissible property claim on Lockean terms, and so we would either fall short on rectification or bring about a new injustice (Lyons 1977, 262–268).

In either event, the Poisoning Problem returns because the poison of prior injustice stays trapped in present holdings. If we cannot return the stolen property to its previous owners, this threatens to make historical theories like natural rights libertarianism no longer an option.

John Simmons proposes a solution for both versions of the problem by suggesting that we frame the lingering right in poisoned property as "a historical right to a 'particularized share'" of wealth (Simmons 1995, 162). It is not a right to the particular share they once owned, since that share is no longer accessible. Yet it is still *particularized*, in that it is not a generic right to some share, but must be the closest approximation possible to the share that was taken. If you ate my banana and have another banana, I must have your banana. If you stole my land and the proviso has since then downsized permissible property arrangements, you owe me both what can be returned of the land plus compensation for my inability to use the land in that intervening time. Simmons thus provides a way for historical rights to be useful in rectification even though the particular historical holdings cannot be returned (Simmons 1995, 161–172).

The Future of the Past

Here I have surveyed a small sample of libertarian thinking on the past, specifically on the question of making material reparations for historic injustices. I will close by noting two areas where libertarian writing is sparse, and which may be fruitfully developed in the future.

The first is a broader notion of reparations than material rectification, including symbolic healing from things like official apologies and the changing of place names. Part of why libertarians have written little here is because, unlike material reparations, these have minimal relationship to questions about rights. Yet there is still much to say from libertarians' broader political perspective. Non-Lockean libertarian Jacob Levy's *The Multiculturalism of Fear* gives significant attention to these questions, as does Andrew I. Cohen's work on apologies (Cohen 2020).

A second issue is that of transitional justice. Outside of libertarianism, much work has considered whether in transitional circumstances, as when a nation is shifting from dictatorship to democracy or dealing with the aftermath of a civil war, the demands of justice are different than in ordinary times.[18] If the question is relevant for transitions from dictatorship to democracy, radical libertarians may have reason to consider whether it is relevant for those much more seismic transitions they seek.

Notes

1 As this introduction suggests, I will be focusing on natural rights frameworks. This is not to deny that other approaches count as libertarian.

2 Sometimes, claims about American land theft face more historical than philosophical objections. I bracket that discussion here, but interested readers should see Watner (1983).

3 See Stromberg (1995) for a libertarian critique of the enclosures.

4 However, see the discussion of non-identity issues in Simmons (1995, 178 n. 41). For a general overview of the literature of this problem, see Boonin (2014).

5 Two quick caveats. First, given the non-identity problem just mentioned, it is more strictly accurate to say that they are worse off in absolute terms than their closest counterparts are in the world where slavery did not occur. Second, the point here does not mean that *no one* alive today is a net beneficiary of slavery. For example, it allows for the possibility that the descendants of plantation owners who successfully converted that wealth into some other long-running family enterprise are financially better off than their counterparts in a world without slavery. Yet these much more specific instances of unjust enrichment are not as sweeping as those generally used in arguments for reparations.

6 For a general overview of this perspective and its impact on reparations, see Van der Vossen and Brennan (2018, 112–127).
7 Williams (2015) makes this point. Despite supporting reparations, so does Block (2002), arguing that reparations can only come from land that should have gone to slaves upon emancipation.
8 Additionally, Roderick Long argues that, even if we accepted the objector's point about tax revenue, the state could still pay reparations by ceding state property (Long 2009).
9 Boxill sometimes writes as if he means for reparations to apply to all black Americans, e.g., "And we can assume that the present generation of African Americans are the slaves' heirs" (Boxill 2002, 76). However, it is hard to see how a postbellum black immigrant or descendant of postbellum black immigrants would be included in the slaves' heirs.
10 This is similar to, but distinct from, what Kershnar calls a "trustee model," where current claimants assert the right on behalf of the original victim (Kershnar 2002, 252–255). It is distinct because, on this proposal, the rights themselves have been transferred. An alternative reply, given by Simmons (1995, 177–179), is to appeal to the natural duties of parents to provide for their children.
11 Any broader rejection of moral rights of bequest, such as that given by Hillel Steiner (1994, 250–258) would also block this argument for reparations.
12 Cowen concedes that the statute of limitations on debt collection might not be relevant when "durable physical asset[s,] … such as land" are in question (Cowen 2006, 27). This is relevant even in the case of slavery: Walter Block's proposal is specifically that the descendants of slaves are entitled to the former estates of their ancestors' slaveholders (Block 2002; Alston and Block 2007).
13 Though note also that if someone is a descendant of multiple slaves, they will have multiple reparations payments to collect.
14 Here I consider only the approaches of libertarians who follow Locke, Spooner, Hodgskin, Nozick, and Rothbard in taking natural rights to include rights of private property. For a very different approach from the line that follows Spencer in property rights skepticism, see Steiner and Wolff (2003). Though see also the criticisms in Weatherson (2003).
15 Nozick also suggests, without quite committing to it, the thought that some patterned principle of distributive justice *might* be useful in rectification when severe injustice was known but the details were not (Nozick 1974, 230–231). This may be one way of addressing what I call "the Poisoning Problem" below.
16 However, Rothbard seemingly reversed this position on reparations for slavery during his conservative turn (Rothbard 1993, 3). I say "seemingly," because there Rothbard's criticism is with *state provision of cash reparations*, which is technically consistent with continuing to believe the land from slave plantations should go to the descendants of those who were slaves there. Note, for example, that Block (2002) and Alston and Block (2008) have exactly this combination of views. Thanks to Cory Massimino for pointing me to the 1993 article.
17 This is importantly distinct from the thought that property is *constitutive* of certain projects, and thus respecting individuals' projects necessarily requires respecting their property rights. This second framing points more toward Lockean, rather than Humean theories.
18 See, for instance, Murphy (2017).

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